



UK issues country-by-country reporting regulations

Global Transfer Pricing Alert 2016-007

The UK's [Taxes \(Base Erosion and Profit Shifting\) \(Country-by-Country Reporting\) Regulations 2016 SI 2016 No 237](#) were laid before parliament on February 26, 2016, and will apply from March 18, 2016. The regulations require certain multinational enterprises (MNEs) to report annually to the UK tax authorities (HMRC) details of revenue, profit, taxes and other measures of economic activity for each tax jurisdiction in which they do business. This information will help HMRC and tax administrations in relevant countries to assess whether MNEs may have engaged in actions intended to erode the tax base or shift profits to low-tax jurisdictions. The information will be automatically shared with other relevant tax jurisdictions in accordance with international agreements governing the exchange of information as set up by the OECD.

Reports will be required to be filed for accounting periods beginning on or after January 1, 2016. Reporting entities will have 12 months from the end of the relevant accounting period to file a report with HMRC.

The regulations provide details in support of the obligation for MNE groups in the UK to file country-by-country (CbC) reports under legislation introduced in Finance Act 2015. An [Explanatory Note](#) and Tax Information and Impact Note were published with the regulations.

The regulations give effect to the G20/OECD's minimum standard for CbC information to be provided to the tax authorities. The G20/OECD minimum standard was published on October 5, 2015, as part of the final package of recommendations under the base erosion and profit shifting (BEPS) project in the report on action 13: [Transfer Pricing Documentation and Country-by-Country Reporting](#). The UK regulations draw on definitions from the model legislation published by the OECD, but with a variation in respect of local filing requirements for UK subgroups in some circumstances.

An MNE group is defined by reference to the OECD definition as a collection of enterprises related through ownership or control that either are required to prepare consolidated financial reporting statements or would be so required if "equity interests in any of the enterprises" were publically traded on a stock exchange. To be an MNE group, the group also must operate internationally, that is, it must have resident entities or permanent establishments in more than one jurisdiction, so that wholly UK groups are excluded.

MNE groups will be required to submit information as follows:

The UK resident ultimate parent entity (generally the company that prepares the consolidated financial statements for the group) of an MNE group with a consolidated group turnover of EUR 750 million or more in the previous accounting report (reduced proportionately for accounting periods of less than 12 months) will be required to prepare a CbC report (on a global basis).

UK entities of a non-UK-headed MNE group will be required to file a UK CbC report covering all entities within the subgroup of which it is head (the entities in respect of which the UK entity is required to prepare consolidated financial reporting statements, or would be so required if equity interests in any of the enterprises were publically traded on a stock exchange). UK permanent establishments also are subject to this requirement. An exception is available when another member of the MNE group files either a CbC report with HMRC or in another jurisdiction where the report is exchanged with HMRC. Details of the entity that filed the report, the date the report was filed, and the jurisdiction in which the report was filed must be provided to HMRC before the filing deadline.

Non-UK-headed MNE groups with a UK presence (i.e., a UK tax resident entity or a permanent establishment in the UK) can voluntarily file a CbC report with HMRC when the ultimate parent entity is resident in a country that does not require CbC reporting or does not effectively share information in accordance with international agreements. The filing of a report in the UK would allow HMRC to exchange this information with other relevant tax authorities. The ultimate parent entity must notify HMRC in writing on or before the filing deadline that the entity with the UK presence is authorized to file a CbC report for the MNE group.

Reports should be completed in accordance with the G20/OECD template. The OECD currently is developing a suitable XML schema to allow for electronic tagging of reports for automatic exchange by tax authorities. The G20/OECD template specifies that the following financial data must be included (on an aggregated basis by country):

- Turnover (split between related-party and third-party sales, but excluding dividends received)
- Profit before tax
- Cash tax paid (including withholding tax paid in other jurisdictions)
- Current year tax accrual
- Stated capital
- Accumulated earnings
- The number of full-time equivalent employees
- The net book value of tangible assets, excluding cash and cash equivalents
- A list of constituent entities by country of residence and an indication of their activities.

A penalty regime will apply when there is a failure to comply or when inaccurate information is submitted. The penalties start at GBP 300 for failure to comply (and increase for persistent failure) and GBP 3,000 for the provision of inaccurate information.

An anti-avoidance measure applies to disregard arrangements when the main purpose, or one of the main purposes, of entering into the arrangements is to avoid a CbC reporting obligation.

Comments and next steps

A number of changes have been made to the [draft regulations](#) published in October 2015 for consultation. The most significant of these is that the final regulations include a requirement for a “local filing” in the UK, which means that subgroups headed by a UK entity may need to prepare and file CbC reports in respect of entities they control. This will be relevant to subgroups in which a non-UK parent does not file a CbC report, and is likely to be of particular concern for first year (2016) filings for groups in which the jurisdiction where the parent company is resident has deferred the introduction of legislation for CbC reporting (such as Germany and the United States). In some cases, it may be necessary to file more than one report when there is more than one UK-headed subgroup. Groups potentially affected by the local filing requirements—especially for their first year—may wish to consider filing their group CbC report voluntarily with the UK tax authorities to allow it to be shared automatically with other tax authorities, some of which also may have local filing requirements. HMRC estimates that 100 UK entities of non-UK-headed MNEs will be required to file locally for their subgroups, and another 100 will be required to complete a CbC report for a short period until other jurisdictions start to require filing. In addition, HMRC estimate that 300 UK-headed MNE groups will be required to file CbC reports.

As expected, the UK’s requirements apply to large groups with effect for accounting periods beginning on or after January 1, 2016, and follow the agreed G20/OECD common template for reporting by country on an aggregated basis. The threshold for turnover has been set as EUR 750 million, as per the G20/OECD recommendations, but this now will have to be translated into sterling at the average rate for the previous accounting period. This means businesses that are on the verge of the revenue threshold will need to take care with exchange rate volatility; for example, the October 2015 draft regulations included the revenue threshold in sterling at GBP 586 million, but based on average rates for 2015 for a December year-end group, the sterling equivalent is reduced to about GBP 545 million.

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