EXPLANATORY MEMORANDUM TO

THE TAXES (BASE EROSION AND PROFIT SHIFTING) (COUNTRY-BY-COUNTRY REPORTING) REGULATIONS 2015

2015 No. [XXXX]

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations require certain multinational enterprises to report annually to Her Majesty's Revenue and Customs details of revenue, profit, taxes and other measures of economic activity for each tax jurisdiction in which they do business. This information will help Her Majesty's Revenue and Customs and tax administrations in relevant countries to assess whether multinational enterprises may have engaged in actions intended to erode the tax base or shift profits into low-tax environments.

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 These Regulations put into effect the United Kingdom's undertaking to introduce country-by-country reporting for multinational enterprises with effect for accounting periods commencing on or after 1 January 2016 in accordance with guidance published by the Organisation for Economic Co-operation and Development (OECD) in pursuance of Action 13 of their action plan to address base erosion and profit shifting[1].

4.2 The Regulations are made by the Treasury under powers conferred by section 136 of the Finance Act 2002 in relation to the use of electronic communications, and by section 122 of Finance Act 2015 in respect of implementing the OECD's guidance on country-by-country reporting.

4.3 A Tax Information and Impact Note[2], published on 10 December 2014, explained that the obligation to file a country-by-country report would be introduced in two stages. The first stage was the introduction of primary legislation in section 122 of Finance Act 2015 which enabled regulations to be made at a later date once the OECD had completed further work on country-by-country reporting. The second stage is the making of these Regulations to give effect to the scope and detail of the obligation.

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[1] OECD (2013), *Action Plan on Base Erosion and Profit Shifting*, OECD Publishing, Paris.
DOI: http://dx.doi.org/10.1787/9789264202719-en

[2] https://www.gov.uk/government/publications/country-by-country-reporting

4.4 The country-by-country report will be filed electronically and its form and content will follow the template developed by the OECD. This will be specified in directions when work to develop an electronic version of the country-by-country reporting template and a transmission method is complete and in time for reports to be filed in accordance with the time limits set out in the Regulations.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The country-by-country reporting template is intended to improve transparency between multinational businesses and tax authorities and help identify tax avoidance. The UK initiated the country-by-country reporting template during its G8 Presidency in 2013, calling on the OECD to develop the template as part of a joint G20-OECD project to strengthen international tax standards to prevent Base Erosion and Profit Shifting.

7.2 The project was set up to provide a comprehensive coordinated approach to address aggressive tax planning by multinational enterprises that seek to reduce taxes on their profits by exploiting weaknesses in the international tax rules or the rules that exist in different jurisdictions. Across the G20 and OECD, 44 countries worked together to achieve comprehensive and sustainable reform of the international tax rules to restore the coherence of corporate tax at the international level and to better align taxing rights over profits with the economic activity that generates them.

7.3 The project recognised a need to ensure that tax administrations have access to sufficient information to assess whether multinational enterprises may have taken transfer pricing positions or engaged in other actions intended to erode the tax base or shift profits into low-tax environments. The country-by-country report is one element of a new three-tiered standardised approach to transfer pricing documentation consisting of (i) a master file containing information relevant for all members of the multinational enterprise; (ii) a local file containing information about material transactions of the local taxpayer; and (iii) the country-by-country report.

7.4 The UK was one of the first countries to formally commit to implementing the country-by-country reporting template when it was published by the OECD in September

2014[3]. The OECD has subsequently published further guidance on the implementation of country-by-country reporting, including model legislation. These Regulations make reference to the model legislation published by the OECD[4].

7.5 HM Revenue and Customs can require the provision of a master file and local file under existing powers. However, these Regulations mean that multinational enterprises will be required by law to submit a country-by-country report in the correct format and within set time limits when they meet the conditions set out in the Regulations and without prompting or request by HM Revenue and Customs.

7.6 These Regulations introduce a new obligation for multinational enterprises with parent entities resident in the United Kingdom and with consolidated group revenue of £586 million or more in a 12-month accounting period (reduced proportionately for periods of less than 12 months) to make an annual country-by-country report to HM Revenue and Customs for the following period. In accordance with the OECD template, they will have to show for each tax jurisdiction in which they do business

- the amount of revenue, profit before income tax and income tax paid and accrued; and
- their total employment, capital, retained earnings and tangible assets.

They will also be required to identify each entity within the group doing business in a particular tax jurisdiction and to provide an indication of business activities within a selection of broad areas which each entity engages in. Country-by-country reports will be automatically shared by relevant countries in accordance with international agreements governing the exchange of information.

7.8 The obligation to file a report will apply to accounting periods commencing on or after 1 January 2016. A report must be filed no later than 12 months after the end of the accounting period to which it relates.

7.9 In certain circumstances where the parent entity of a multinational is not resident in the United Kingdom, another member of the group that is resident in the United Kingdom may voluntarily file a report on the group's behalf. Broadly speaking, these are circumstances where the group parent is resident in a jurisdiction which is not party to an effective competent authority agreement for the automatic exchange of the country-by-country report between it and the United Kingdom, or where the jurisdiction in which the group parent is resident has either persistently failed to exchange country-by-country reports with the United Kingdom contrary to the terms of a competent authority agreement, or has suspended automatic exchange of information for reasons that are not in accordance with the terms of a competent authority agreement. (A competent authority agreement sets out how the terms of an international agreement such as a bilateral or multilateral tax convention or a tax information exchange agreement are to be applied.) A multinational group may wish to take advantage of this ability to file voluntarily because

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[3] OECD (2014), *Guidance on Transfer Pricing Documentation and Country-by-Country Reporting*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris.
DOI: http://dx.doi.org/10.1787/9789264219236-en

[4] http://www.oecd.org/ctp/transfer-pricing/beps-action-13-country-by-country-reporting-implementation-package.pdf

it means that the UK will be able to exchange their country-by-country report with other relevant tax authorities which may potentially reduce the number of individual information requests they receive from other countries.

7.10 The reporting requirement is supported by a penalty regime in the event that a multinational enterprise does not provide its country-by-country report on time without a reasonable excuse for the failure or knowingly supplies incorrect information.

7.11 If a multinational enterprise enters into arrangements that are intended to allow it to avoid any obligation imposed by these Regulations, those arrangements may be disregarded.

8. Consultation outcome

8.1 *Consultation ends on 16 November 2015*.

9. Guidance

9.1 The OECD has re-written Chapter V of the Transfer Pricing Guidelines to include guidance on the completion of the country-by-country template. The revised text was published in the OECD's Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 – 2015 Final Report on 5 October 2015.

10. Impact

10.1 This measure will impact only UK-headed multinational groups with consolidated group revenue of £586 million or more.

10.2 There is no impact on the public sector.

10.3 A Tax Information and Impact Note covering this instrument was published on 10 December 2014 alongside legislation introduced in section 122 of Finance Act 2015 and is available on the HMRC website at https://www.gov.uk/government/publications/country-by-country-reporting. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The OECD will review the implementation of country-by-country reporting and have committed to reassess no later than the end of 2020 whether any modifications should be made to require reporting of additional or different data.

13. Contact

Anne Stark at HM Revenue & Customs Tel: 03000 585 904 or email: anne.b.stark@hmrc.gsi.gov.uk can answer any queries regarding the instrument.