



STATUTORY INSTRUMENTS.

S.I. No. 653 of 2016



TAXES (COUNTRY-BY-COUNTRY REPORTING) REGULATIONS 2016

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The Revenue Commissioners, in exercise of the powers conferred on them by section 891H (as amended by section 24 of the Finance Act 2016) of the Taxes Consolidation Act 1997 (No. 39 of 1997), hereby make the following regulations:

Citation

1. These Regulations may be cited as the Taxes (Country-By-Country Reporting) Regulations 2016.

Definitions

2. In these Regulations—

“country-by-country report”, “domestic constituent entity”, “equivalent country-by-country report”, “EU designated entity” and “fiscal year” have the meanings assigned to them respectively by subsection (1) of the principal section;

“Commissioners” means the Revenue Commissioners;

“electronic means” includes electrical, digital, magnetic, optical, electromagnetic, biometric or photonic means of transmission of data and other forms of related technology by means of which data is transmitted;

“principal section” means section 891H of the Taxes Consolidation Act 1997 (No. 39 of 1997).

Domestic constituent entity reporting

3. (1) Subject to Regulation 4 and paragraph (2) of Regulation 5, a domestic constituent entity of an MNE group shall, in accordance with subparagraphs (b) and (c) of paragraph (2), provide a country-by-country report or equivalent country-by-country report, as the case may be, for a fiscal year where—

- (a) the ultimate parent entity of that MNE group is not required to provide a country-by-country report in its jurisdiction of tax residence,
- (b) the jurisdiction in which the ultimate parent entity of that MNE group is resident for tax purposes does not have in effect, by the latest date specified in Regulation 8, a qualifying competent authority agreement with the State that provides for the exchange of country-by-country reports, or
- (c) there has been a systemic failure by the jurisdiction of tax residence of the ultimate parent entity of that MNE group and the Commissioners have notified the domestic constituent entity that such a failure has occurred.

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 6th January, 2017.

- (2) (a) Where one, or more, of the circumstances mentioned in subparagraph (a), (b) or (c) of paragraph (1) exist, a domestic constituent entity shall request its ultimate parent entity to provide it with all the information required to prepare a country-by-country report with respect to a fiscal year.
- (b) Where the ultimate parent entity provides the domestic constituent entity with all the information required in accordance with subparagraph (a), the domestic constituent entity shall provide a country-by-country report to the Commissioners in accordance with Regulation 8.
- (c) Where the ultimate parent entity has refused to comply with the request for the information required in accordance with subparagraph (a), the domestic constituent entity shall—
- (i) notify the Commissioners in writing of this refusal in accordance with Regulation 6(4), and
 - (ii) provide an equivalent country-by-country report to the Commissioners with respect to the fiscal year in accordance with Regulation 8.

(3) The notification referred to in paragraph (1)(c) may be made by the Commissioners in such form and manner, including by electronic means, as may be specified by the Commissioners from time to time.

(4) Where a domestic constituent entity fails to make a request in accordance with paragraph (2)(a), then subsection (7) of the principal section shall apply as if the failure to make such a request were a failure to provide a country-by-country report in accordance with that subsection.

(5) For the purposes of paragraph (2)(c) an ultimate parent entity shall be deemed to have refused to provide the information referred to in that paragraph where it has failed, within the period specified in Regulation 6(4), to provide such information.

Surrogate parent entity reporting

4. (1) Subject to paragraph (2), Regulation 3 shall not apply where an MNE group appoints a surrogate parent entity in respect of the fiscal year concerned and one, or more, of the circumstances mentioned in subparagraph (a), (b) or (c) of paragraph (1) of that Regulation exist.

(2) Where a surrogate parent entity is resident for tax purposes in a jurisdiction which is not a Member State, paragraph (1) shall apply only where—

- (a) that jurisdiction—
 - (i) requires the filing of country-by-country reports,
 - (ii) has in effect, by the latest date specified in Regulation 8, a qualifying competent authority agreement with the State,

(iii) has not notified the Commissioners that there has been a systemic failure, and

(iv) has been notified of the identity of the surrogate parent entity concerned,

and

(b) a notification has been provided to the Commissioners in accordance with Regulation 6(2).

(3) A surrogate parent entity resident for tax purposes in the State shall provide a country-by-country report to the Commissioners in accordance with Regulation 8.

EU designated entity reporting

5. (1) An EU designated entity resident for tax purposes in the State shall provide a country-by-country report to the Commissioners in accordance with Regulation 8.

(2) Regulation 3 shall not apply to a domestic constituent entity in respect of a fiscal year where—

(a) an EU designated entity of the same MNE group resident for tax purposes in the State provides a country-by-country report for the fiscal year in accordance with paragraph (1), or

(b) an EU designated entity of the same MNE group resident for tax purposes in a Member State, other than the State, provides a country-by-country report in respect of the fiscal year and the domestic constituent entity has made a notification to the Commissioners in accordance with Regulation 6(2).

Notification obligations

6. (1) An ultimate parent entity, surrogate parent entity or EU designated entity shall, where it is resident for tax purposes in the State, not later than the last day of the fiscal year to which a country-by-country report relates, notify the Commissioners in writing that it is such an entity.

(2) Subject to paragraph (3), a domestic constituent entity shall, not later than the last day of the fiscal year to which a country-by-country report relates, notify the Commissioners in writing of the—

(a) identity,

(b) jurisdiction of tax residence, and

(c) type,

of the reporting entity.

(3) (a) Where there is more than one domestic constituent entity of the same MNE group, that MNE group may, where Regulation 3(1) does not apply, nominate one such domestic constituent entity for the purposes of paragraph (2).

(b) Where an ultimate parent entity, surrogate parent entity or EU designated entity of an MNE group makes a notification in accordance with paragraph (1) that entity may specify that such notification satisfies the notification requirements of paragraph (2) for each domestic constituent entity of that MNE group.

(4) Where paragraph (2)(c)(i) of Regulation 3 applies, a domestic constituent entity shall, not later than 12 months after the last day of the fiscal year to which an equivalent country-by-country report relates, notify the Commissioners in writing that its ultimate parent entity has refused to provide it with all information required to enable the domestic constituent entity to prepare and provide a country-by-country report.

(5) In paragraph (2), “type” means an ultimate parent entity, a surrogate parent entity, an EU designated entity or a domestic constituent entity.

Form and manner of delivery

7. Information required to be provided or notifications required to be made to the Commissioners under the principal section or these Regulations shall be delivered in such form and manner, including by electronic means, as may be specified by the Commissioners from time to time and to such office of the Commissioners as is so specified.

Time by which country-by-country reports are to be provided

8. Country-by-country reports and equivalent country-by-country reports required to be provided under these Regulations shall be provided to the Commissioners not later than 12 months after the last day of the fiscal year to which the country-by-country report or equivalent country-by-country report, as the case may be, relates, in either case being a fiscal year commencing on or after 1 January 2016.

Delegation

9. The Commissioners may nominate, in writing, any of their officers to perform any acts and discharge any functions authorised by these Regulations to be performed or discharged by them.

Revocation

10. The Taxes (Country-By-Country Reporting) Regulations 2015 (S.I. No. 629 of 2015) are revoked.

6 [653]

GIVEN under my hand,
28 December 2016.

LIAM IRWIN,
Revenue Commissioner.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

Country-by-Country (CbC) reporting requires certain multinational enterprises (“MNEs”) to file a CbC report that will provide a breakdown of the amount of revenue, profits, taxes and other indicators of economic activities for each tax jurisdiction in which the MNE group does business. The ultimate parent entity of an MNE group has primary responsibility for filing the CbC report on behalf of the MNE group. However, in certain circumstances, a surrogate parent entity or an entity resident in a Member State (an EU designated entity) may be appointed to file the CbC report on behalf of the MNE group. In certain cases, entities within an MNE group which are resident in the State may have an obligation to provide either a CbC report or an equivalent CbC report through a secondary reporting mechanism.

The CbC reporting requirements are based on guidance published by the Organisation for Economic Co-operation and Development (OECD) on 5 October 2015 in its report on Action 13 of the OECD/G20 Base Erosion and Profit Shifting (BEPS) Action Plan, the “Transfer Pricing Documentation and Country-by-Country Reporting Final Report” as well as Council Directive (EU) 2016/881 of 25th May 2016, which amends Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (known as “DAC 4”). DAC 4 brings the OECD BEPS recommendations for CbC reporting into EU legislation.

These Regulations are the second stage in implementing the requirement under DAC 4 and the OECD recommendations to provide country-by-country reports. The first stage, contained in section 891H of the Taxes Consolidation Act 1997, requires an Irish resident company of certain MNE groups to provide, annually, a CbC report to the Revenue Commissioners. These Regulations give effect to a number of other requirements set out in the final OECD/BEPS report and DAC 4 including, in certain circumstances, local filing of a full CbC report or information possessed, obtained or acquired in an equivalent CbC report through a secondary reporting mechanism. The Regulations also make provision for the options to appoint a surrogate parent entity or EU designated entity to provide the CbC report on behalf of the MNE group. The manner and form in which CbC reports are to be provided are also set out in the Regulations.

These Regulations replace S.I. No. 629 of 2015, The Taxes (Country-By-Country Reporting) Regulations 2015.

Regulation 1 provides for the citation of the Regulations.

Regulation 2 defines terms used in the Regulations. Where a term is used, but is not defined, it has the same meaning as in Article 1 of the OECD model legislation related to country-by-country reporting contained in the OECD/G20 “Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 — 2015 Final Report” published by the OECD on 5 October 2015.

Regulations 3, 4 and 5 provide for entities other than the ultimate parent entity of MNE groups to provide country-by-country reports or equivalent country-by-country reports, as the case may be.

Regulation 6 sets out the notification obligations for the ultimate parent entity, surrogate parent entity, EU designated entity and constituent entities of a multinational group that are resident in the State for purposes of tax.

Regulation 7 allows the Revenue Commissioners to specify the manner, form and means of delivery of information and notifications.

Regulation 8 sets out the return filing date for country-by-country reports and equivalent country-by-country reports.

Regulation 9 allows the Revenue Commissioners to delegate the acts and functions authorised by the Regulations to any of their officers.

Regulation 10 revokes the Taxes (Country-By-Country Reporting) Regulations 2015 (S.I. No. 629 of 2015).

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2
(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)
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