

Base Erosion and Profit Shifting: Introduction of Country-by-Country Reporting

Summary:

Jersey has committed to support the actions being undertaken under the Base Erosion and Profit Shifting (BEPS) project. The aim of this project is to reach a globally fair and modern international tax system, including through the introduction of country-by-country reporting to improve transparency between multinational businesses and tax authorities, and to help identify aggressive tax avoidance. The purpose of this consultation is to invite comments on the UK's draft Regulations on country-by-country reporting under the BEPS project, as it is envisaged that Jersey's Regulations would closely follow UK (and OECD model) legislation.

Date published:
22 January 2016

Closing date:
22 April 2016

Supporting documents attached:

[Annex 1](#) – The Draft UK “Taxes (Base Erosion and Profit Shifting) (Country-By-Country Reporting) Regulations 2015

How we will use your information

The information you provide will be processed for the purpose of consultation. The Department of the Chief Minister will use your information in accordance with the Data Protection (Jersey) Law 2005 and the Freedom of Information Jersey) Law 2011. Please note that we may quote or publish responses to this consultation but we will not publish the names and addresses of individuals. If you do not want any of your response to be published, you should clearly mark it as confidential. Confidential responses will be included in any summary of statistical information received and views expressed.

Overview

This consultation on proposed Regulations forms the next stage in Jersey's commitment to support in general the actions being taken or proposed by OECD Members under the Base Erosion and Profit Shifting (BEPS) project.

The project identified 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.

Jersey's government continues to monitor closely the action being taken by members of the G20, the OECD and the EU, particularly in respect of those parts of the package of measures developed under the BEPS project which are of greatest relevance for the Islands. The recent G20 Antalya Leaders' Summit Communiqué called on all countries and jurisdictions to participate in the timely implementation of the project.

In October 2015, the UK published [draft Regulations](#)¹ to implement the UK's regime for country-by-country reporting under the BEPS project. The UK committed to be among the first countries to implement BEPS and intends to introduce country-by-country reporting for accounting periods which begin on or after 1 January 2016.

The purpose of this consultation is to seek industry views on aspects of the UK's draft Regulations that it is envisaged would be included in Jersey's Regulations. The consultation seeks views on the introduction of country-by-country reporting for accounting periods which begin on or after 1 January 2017. Providing that no major issues are identified, draft Regulations will be presented to Ministers for consideration prior to being presented to the States for approval.

¹ "Taxes (Base Erosion and Profit Shifting) (Country-By-Country Reporting) Regulations 2015"

Ways to respond

This consultation can be responded to electronically by the following link:

Write to: Thomas Le Feuvre
Head of International Agreements
Financial Services Unit
Chief Minister's Department
5th Floor, Cyril Le Marquand House
The Parade, St Helier,
Jersey JE48UL

Telephone: +44 (0) 1534 440428

Email: t.lefeuvre@gov.je

Responses from the finance industry may be sent to Jersey Finance at the address below:

Write to: William Byrne
Head of Technical, Jersey Finance Limited
4th Floor, Sir Walter Raleigh House
48-50 Esplanade
St Helier
Jersey JE2 3QB

Telephone: +44 (0) 1534 836021

Email: william.byrne@jerseyfinance.je

Responses sent to Jersey Finance will, unless otherwise requested or agreed, be shared with Government on an anonymized basis although reference will be made to the type of respondent (individual, law firm, bank, trust company etc.)

This consultation paper has been sent to the Public Consultation Register.

Feedback on this consultation

We value your feedback on how well we consult or seek evidence. If you have any comments on the process of this consultation (as opposed to the issues raised) please contact Communications.Unit@gov.je

Consultation on BEPS Country-By-Country Reporting Regulations

1. The UK draft Regulations require certain multinational enterprises to report annually to the tax authorities with details of revenue, profit, taxes and other measures of economic activity for each tax jurisdiction in which they do business.
2. Following the UK draft, the proposed Jersey Regulations will introduce a new obligation for multinational enterprises with parent entities resident in Jersey 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 return to the Jersey Taxes Office. The Regulations therefore have the potential to affect any regulated business, or individual associated with a regulated business, with parent entities resident in Jersey and which meet the conditions identified in the Regulations.

QUESTION 1: Please identify any issues with the proposed threshold for the filing obligation, making clear why you consider it to be unreasonable or likely to have unacceptable consequences.

3. In certain circumstances where the parent entity of a multinational is not resident in Jersey, another member of the group (a Constituent Entity) that is resident in Jersey may voluntarily file a report on the group's behalf. This can only apply where the Constituent Entity is not the Ultimate Parent Entity of the multinational group.

QUESTION 2: Can you foresee any difficulties in implementation for Constituent Entities resident for tax purposes in Jersey? If so, please explain what they are.

QUESTION 3: Are there any contingent issues to arise from the introduction in Jersey of voluntary filing of a country-by-country report by a Constituent Entity? If so, what are they?

4. Multinational enterprises that meet the conditions identified in the Regulations will be required by law to submit a country-by-country report in the correct format and within set limits without prompting or request by the tax authorities.

5. In accordance with the [OECD template](#)², multinational enterprises 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.
6. 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.

QUESTION 4: Can you foresee any issues with the use of the proposed template for country-country reports? If so please explain what they are.

7. A report must be filed no later than 12 months after the end of the accounting period to which it relates.

QUESTION 5: How quickly do you believe Jersey should implement this filing obligation?

QUESTION 6: Do you believe it to be reasonable for reports to be filed which would apply to accounting periods which begin on or after 1 January 2017?

8. Country-by-country reports will be automatically shared by relevant countries in accordance with international agreements governing the exchange of information. This information will help the Jersey authorities 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.

QUESTION 7: Can you foresee any issues with sharing country-country reports with relevant countries? If so please explain what they are.

9. Under the regulations, the tax authorities may require a reporting entity to provide, within a period of no more than 14 days, such information (e.g. copies of relevant books, documents or other records) as may reasonably be required to determine the accuracy of a country-by-country report.

² 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>

QUESTION 8: Please identify any concerns about the 14-day period for the provision of information, or about the type of information that can reasonably be provided, making clear why you consider it to be unreasonable or likely to have unacceptable consequences.

10. Under the regulations, the tax authorities may impose penalties for failure to comply with the Regulations. In Jersey, it is envisaged that the approach to the penalties regime would be similar to that for the Common Reporting Standard: Taxation (Implementation) (International Tax Compliance) (Common Reporting Standard) (Jersey) Regulations 2015. These regulations are available [here](#).

QUESTION 9: Please identify any issues with the proposed penalties and enforcement procedure, making clear why you consider it to be unreasonable or likely to have unacceptable consequences.

11. The Regulations will include a right of appeal and appeals procedure against penalties. It is envisaged that this would be similar to the procedure adopted for the Common Reporting Standard Regulations. These regulations are available [here](#).

QUESTION 10: Can you foresee any difficulties with the proposed appeals procedure? If so, please explain what they are.

Annexe 1

THE UK's "TAXES (BASE EROSION AND PROFIT SHIFTING) (COUNTRY-BY-COUNTRY REPORTING) REGULATIONS 2015"

The Treasury make these Regulations in exercise of the powers conferred by section 136 of the Finance Act 2002(a) and section 122(1), (4), (5) and (6) of the Finance Act 2015(b):

Citation and commencement

1. These Regulations may be cited as the Taxes (Base Erosion and Profit Shifting) (Country-by-Country) Reporting Regulations 2015 and come into force on [insert date].

Interpretation

2.—(1) In these Regulations—

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;

“country-by-country report” means a report containing information about an MNE Group and its Constituent Entities as specified in specific or general directions given by the Commissioners;

“OECD model legislation” means the model legislation in the OECD Country-by-Country Reporting Implementation Package(c);

“reporting entity” has the meaning given to it in regulation 8; and

“the tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.

(2) The following expressions have the same meaning in these Regulations as they do in the OECD model legislation—

“Consolidated Financial Statements” where they are prepared in accordance with generally accepted accounting practice or international accounting standards which have the meaning given to them in section 1127 of the Corporation Tax Act 2010; and
“Constituent Entity”.

(3) “MNE Group” has the same meaning in these Regulations as it does in the OECD model legislation except that paragraph (ii) (Excluded MNE Group) is not part of the definition for the purposes of these Regulations.

(4) “Ultimate Parent Entity” has the same meaning as it does in the OECD model legislation—

(a) in regulation 4; and

(b) in the remainder of these Regulations except that the entity must be resident in the United Kingdom for tax purposes.

Filing obligation

3.—(1) Where an MNE Group has a total consolidated group revenue of £586 million or more for an accounting period (“AP”)—

(a) as shown in its Consolidated Financial Statements; or

(b) as would have been shown in its Consolidated Financial Statements had the Group been required to produce them by reason of relevant equity trading,

the Ultimate Parent Entity of that Group must file a country-by-country report in respect of the immediately following accounting period (“AP+1”).

(2) In paragraph 1(b), “relevant equity trading” means the trading of equity interests in any of the enterprises in the MNE Group on a public securities exchange.

(3) Paragraph (1) applies to an accounting period where AP+1 commences on or after 1 January 2016 and AP may be an accounting period the whole or part of which is before 1 January 2016.

(4) The country-by-country report must be filed with Revenue and Customs in accordance with regulation 6 by no later than 12 months after the end of the accounting period to which the report relates.

(5) Where an MNE Group draws up, or would draw up, its Consolidated Financial Statements for an accounting period in a currency other than sterling, for the amount of £586 million in paragraph (1) substitute the equivalent in that currency at the average exchange rate for the accounting period^(a)³.

(6) When the accounting period of an MNE Group is a period of less than 12 months, the amount of £586 million in paragraph (1) (or the equivalent substituted under paragraph (5)) is reduced proportionately.

Voluntary filing by a constituent entity

4.—(1) A Constituent Entity may file a country-by-country report with Revenue and Customs in respect of an accounting period on behalf of an MNE Group if—

(a) the conditions in paragraph (2) are met;

(b) one of the conditions in paragraph (3) is met; and

(c) the report is filed in accordance with regulation 6 by no later than 12 months after the end of the accounting period to which the report relates.

(2) The conditions referred to in paragraph (1)(a) are that—

(a) no obligation to file a country-by-country report with Revenue and Customs in respect of the accounting period applies under regulation 3;

(b) the Constituent Entity is resident for tax purposes in the United Kingdom;

(c) the Constituent Entity is not the Ultimate Parent Entity of the MNE Group;

(d) the Ultimate Parent Entity has notified Revenue and Customs in writing that the Constituent Entity is authorised to file a country-by-country report on behalf of the MNE Group in respect of the accounting period; and

³ (a) See section 10(2) of the Corporation Tax Act 2010.

(e) the notification under sub-paragraph (d) is provided before or at the time of filing.

(3) The conditions referred to in paragraph (1)(b) are—

(a) the Ultimate Parent Entity is not required to file the equivalent of a country-by-country report in its jurisdiction of tax residence in respect of the accounting period to which the report relates;

(b) the appropriate authority of the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has not entered into arrangements with Revenue and Customs regarding the exchange of country-by-country reports or their equivalent in respect of the accounting period to which the report relates; or

(c) at the time the Constituent Entity files a country-by-country report the appropriate authority of the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has entered into arrangements with Revenue and Customs regarding the exchange of country-by-country reports or their equivalent but—

(i) does not do so for reasons that are not in accordance with the terms of that agreement; or

(ii) persistently fails to do so.

Commissioners' directions

5.—(1) The Commissioners must make specific or general directions in respect of—

(a) the content and form of presentation of a country-by-country report; and

(b) the method for filing a country-by-country report.

(2) If the Commissioners specify an electronic method for filing a country-by-country report the directions referred to in paragraph (1) must incorporate an electronic validation process.

Content, form and method of filing of country-by-country reports

6.—(1) This regulation applies in respect of a country-by-country report required to be filed under regulation 3 or which a Constituent Entity files further to regulation 4.

(2) The report must—

(a) include the content;

(b) be presented in the form; and

(c) be filed in accordance with the method, as specified in specific or general directions given by the Commissioners.

Country-by-country report filing presumptions

7.—(1) A country-by-country report which is purported to be filed otherwise than in accordance with regulation 6 is treated as not having been filed.

(2) Where Commissioners direct an electronic method for filing, unless the contrary is proved—

- (a) the use of an electronic system is presumed to have resulted in the filing of the report only if this has been successfully recorded as such by the relevant electronic validation process,
- (b) the time of filing the report is presumed to be the time recorded as such by the relevant electronic validation process, and
- (c) the person delivering the report is presumed to be the person identified as such by any relevant feature of the electronic report system.

Reporting entities

8. For the purposes of section 122(4)(a) of FA 2015, the following are reporting entities—

- (a) an ultimate parent entity required to file a country-by-country report under regulation 3; and
- (b) a Constituent Entity which has filed a country-by-country report further to regulation 4.

(2) A country-by-country report filed on behalf of a reporting entity is taken to have been filed by that entity, unless the entity proves that the report was made without the entity's authority.

Provision of information

9.—(1) An officer of Revenue and Customs may, by notice in writing, require a reporting entity to provide the officer with such information (including copies of any relevant books, documents or other records) as the officer may reasonably require for the purposes of determining whether information contained in a country-by-country report filed by that entity is accurate.

(2) A notice under paragraph (1) may specify or describe the information to be provided.

(3) Where a person is required to provide information under paragraph (1), the person must do so—

- (a) within such period, being no less than 14 days; and
- (b) at such time, by such means and in such form (if any), as is reasonably specified or described by Revenue and Customs.

Penalties for failure to comply with Regulations

10. A person is liable to a penalty of £300 if the person fails to comply with regulation 3 or regulation 9(1).

Daily default penalty

11. If—

- (a) a penalty under regulation 10 is assessed; and

(b) the failure in question continues after the person has been notified of the assessment,

the person is liable to a further penalty, for each subsequent day on which the failure continues, of an amount (subject to regulation 17) not exceeding £60 for each such day.

Penalties for inaccurate information

12.—(1) Where a person provides inaccurate information—

- (a) when filing a country-by-country report; and
- (b) condition A or B is met,

the person is liable to a penalty not exceeding £3,000 in respect of the report to which the inaccuracy relates.

(2) Where a person provides inaccurate information—

- (a) when responding to a notice under regulation 9(1); and
- (b) condition A or B is met,

the person is liable to a penalty not exceeding £3,000 in respect of each country-by-country report to which the inaccuracy relates.

(3) Condition A is that the person knows of the inaccuracy at the time that the report or information is provided but does not inform Revenue and Customs at that time.

(4) Condition B is that the person—

- (a) discovers the inaccuracy after the information is provided; and
- (b) fails to take reasonable steps to inform Revenue and Customs of that discovery.

Matters to be disregarded in relation to liability to penalties

13.—(1) Liability to a penalty under regulations 10 to 12 does not arise if the person otherwise liable to the penalty satisfies Revenue and Customs or (on an appeal notified to the tribunal) the tribunal that there is a reasonable excuse for the failure.

(2) For the purposes of this regulation it is not a reasonable excuse—

- (a) that there is an insufficiency of funds to do something; or
- (b) that a person relies on another person to do something.

(3) If a person had a reasonable excuse for a failure but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

Assessment of penalties

14.—(1) If a person becomes liable to a penalty under any of regulations 10 to 12, an officer of Revenue and Customs may assess the penalty.

(2) If an officer does so, the officer must notify the person.

(3) An assessment of a penalty under regulation 10 or 11 must be made within the period of—

- (a) 6 years in respect of a failure to comply with regulation 3; or
- (b) 12 months in respect of a failure to comply with regulation 9,

beginning with the date on which the person became liable to the penalty.

(4) An assessment of a penalty under regulation 12 must be made within the period of—

- (a) 12 months beginning with the date on which the inaccuracy first came to the attention of an officer of Revenue and Customs; and
- (b) 6 years beginning with the date on which the person became liable to the penalty.

Right to appeal against penalty

15. A person may by notice appeal against the assessment of a penalty notified to that person—

- (a) on the grounds that liability to the penalty under any of regulations 10 to 12 does not arise; or
- (b) as to the amount of a penalty under regulation 11 or 12.

Procedure on appeal against penalty

16.—(1) Notice of an appeal under regulation 15 must be given—

- (a) in writing;
- (b) before the end of the period of 30 days beginning with the date on which notification under regulation 14 was given;
- (c) to Revenue and Customs.

(2) It must state the grounds of appeal.

(3) On an appeal under regulation 15(a) that is notified to the tribunal^(a)⁴, the tribunal may confirm or cancel the assessment.

(4) On an appeal under regulation 15(b) that is notified to the tribunal, the tribunal may

- (a) confirm the assessment; or
- (b) substitute another assessment that the officer of Revenue and Customs had power to make.

(5) Subject to this regulation and regulation 18, the provisions of Part 5 of TMA 1970^(a)⁵ relating to appeals have effect in relation to appeals under regulation 15 as they have effect in relation to an appeal against an assessment to income tax.

⁴ (a) See section 49A(2)(c) and 49D of TMA 1970.

⁵ (a) The Taxes Management Act was relevantly amended by sections 45(1) and 67(2) of the Finance (No. 2) Act 1975 (c. 45); section 68 of the Finance Act 1982 (c. 39); section 156(2) and (4) of the Finance Act 1989 (c. 26); section 199 of and paragraphs 18(1) and (2) of Schedule 19 to the Finance Act 1994 (c. 9); paragraph 28 of Schedule 19 to the Finance Act 1998 (c. 36); section 88 of and paragraph 31 of Schedule 29 to the Finance Act 2001 (c. 9); paragraph 21 of Schedule 1 to the Constitutional Reform Act 2005 (c. 4); paragraph 257(a) and (b) of Schedule 1 to and Part 1 of Schedule 3 to the

Application for increased daily default penalty

17.—(1) Paragraph (2) applies if—

(a) a person is liable to a penalty under regulation 11 and a penalty is assessed under regulation 14; and

(b) the failure in respect of which that assessment is made continues for more than 30 days beginning with the date on which notification of that assessment is given.

(2) Where this paragraph applies, an officer of Revenue and Customs may make an application to the tribunal for permission to assess an increased daily penalty under regulation 11 but must notify the person liable to the penalty of the application at the time of making it.

(3) If the tribunal determines that an increased daily penalty may be assessed then for each applicable day on which the failure continues, the person's liability to a penalty under regulation 11 shall be for the increased amount determined by the tribunal.

(4) The tribunal may not determine an amount exceeding £1000 for each applicable day.

(5) If the tribunal determines an increased daily penalty, Revenue and Customs must notify the person.

(6) The notification under paragraph (5) must specify the future day from which the increased penalty is to apply.

(7) That day and any subsequent day is an "applicable day" for the purposes of paragraph (3) and (4).

Enforcement of penalties

18.—(1) A penalty under these Regulations must be paid before the end of the period of 30 days beginning with the date mentioned in paragraph (2).

(2) That date is—

(a) the date on which the assessment of the penalty under regulation 14 is notified in respect of the penalty; or

(b) if a notice of appeal under regulation 15 is given, the date on which the appeal is finally determined or withdrawn.

(3) A penalty under these Regulations may be enforced as if it were income tax charged in an assessment and due and payable.

Anti-avoidance

19. If—

(a) a person enters into any arrangements; and

(b) the main purpose, or one of the main purposes, of the person in entering into the arrangements is to avoid any obligation under these Regulations,

these Regulations are to have effect as if the arrangements had not been entered into.

Income Tax Act 2007 (c. 3); section 119(12)(a) of the Finance Act 2008 (c. 9); paragraph 31 of Schedule 7 to the Taxation (International and Other Provisions) Act 2010 (c. 8); S.I 1994/1813 and 2009/56.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Regulations give effect to the Base Erosion and Profit Shifting Action Plan (<http://www.oecd.org/ctp/BEPSActionPlan.pdf>) adopted by the OECD and G20 countries in respect of the provision of information concerning high-level transfer pricing and other BEPS related matters.

Regulation 1 provides for citation and commencement.

Regulation 2 defines terms used in the Regulations including by reference to definitions in the OECD model legislation contained in "Action 13: Country-by-Country Reporting Implementation Package" in [x] 2015. The document is available on the OECD website at [<http://www.oecd.org/ctp/transfer-pricing/oecd-releases-implementation-package-for-beps-country-by-country-reporting.htm>].

Regulation 3 requires ultimate parent entities of multi-national groups which are resident in the United Kingdom for tax purposes to file a country-by-country report with Her Majesty's Revenue and Customs.

Regulation 4 provides that entities other than the ultimate parent entities to file country-by-country reports with Her Majesty's Revenue and Customs if the specified are met.

Regulation 5 requires the Commissioners for Her Majesty's Revenue and Customs to make specific or general directions regarding the filing of country-by-country reports.

By regulation 6, those reports must be filed in accordance with such directions.

Regulation 7 sets out presumptions that will apply in respect of the filing of country-by-country reports.

Regulation 8 specifies reporting entities for the purposes of section 122(4)(a) of the Finance Act 2015 (c.11).

By regulation 9, Her Majesty's Revenue and Customs may require information to determine the accuracy of a country-by-country report.

By regulations 10 to 18 persons may be liable for penalties for the breach of obligations under the Regulations.

Regulation 19 is an anti-avoidance provision.