



Jersey

**TAXATION (IMPLEMENTATION)  
(INTERNATIONAL TAX COMPLIANCE)  
(COUNTRY-BY-COUNTRY  
REPORTING: BEPS) (JERSEY)  
REGULATIONS 2016**

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## **TAXATION (IMPLEMENTATION) (INTERNATIONAL TAX COMPLIANCE) (COUNTRY-BY-COUNTRY REPORTING: BEPS) (JERSEY) REGULATIONS 2016**

**THE STATES**, in pursuance of Article 2 of the Taxation (Implementation) (Jersey) Law 2004<sup>1</sup>, and following the decision of the States taken on the day these Regulations are made to ratify the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports, have made the following Regulations –

Commencement [[see endnotes](#)]

### **1 Interpretation**

In these Regulations, unless the context otherwise requires –

“1961 Law” means the Income Tax (Jersey) Law 1961<sup>2</sup>;

“authorized person” means the Comptroller or any person authorized by the Comptroller to perform the functions under Regulation 17;

“business document” means any document –

- (a) that relates to the carrying on of a business, trade, profession or vocation by any person; and
- (b) that forms part of any record under any enactment;

“business premises” means premises used in connection with the carrying on of a business, trade, profession or vocation;

“CBC report” means a country-by-country report or a Jersey country-by-country report;

“Commission” means a Commission of Appeal constituted under Regulation 13(3);

“Comptroller” means the Comptroller of Taxes;

“consolidated financial statements” has the same meaning as it does in Article 1(12) of the OECD model legislation if such statements are

prepared in accordance with generally accepted accounting practice or international accounting standards;

“constituent entity” has the same meaning as it does in Article 1(4) of the OECD model legislation;

“country-by-country report” has the meaning given by Regulation 2(1);

“exchange arrangements” means arrangements to exchange country-by-country reports or their equivalent;

“file”, except where stated otherwise in relation to filing in a jurisdiction outside Jersey, means file with the Comptroller;

“filing deadline” means 12 months after the end of the accounting period to which a CBC report relates;

“Jersey country-by-country report” has the meaning given by Regulation 2(2);

“Jersey entity” has the meaning given by Regulation 3;

“MNE group” has the same meaning as it does in Article 1(2) of the OECD model legislation except that Article 1(2)(ii) (“Excluded MNE Group”) does not apply;

“OECD Final Report” means the document entitled “Transfer Pricing Documentation and Country-by Country Reporting – Action 13: Final Report” published by the Organisation for Economic Co-operation and Development as part of the OECD/G20 Base Erosion and Profit Shifting Project;

“OECD model legislation” means the “Model legislation related to Country-by-Country Reporting” in Annex IV to Chapter V of the OECD Final Report;

“ultimate parent entity” has the same meaning as it does in Article 1(6) of the OECD model legislation.

## **2 Meaning of “country-by-country report” and “Jersey country-by-country report”**

- (1) For the purpose of these Regulations, “country-by-country report” with respect to an MNE Group means a report which contains the information referred to in Article 4(1) of the OECD model legislation set out in a form which conforms with the model template in Annex III of the OECD Final Report and the general and specific instructions set out in that Annex.
- (2) For the purpose of these Regulations “Jersey country-by-country report” means a report within the meaning of paragraph (1) but only as it applies to –
  - (a) a Jersey entity; and
  - (b) where applicable, the constituent entities in respect of which the Jersey entity is required to prepare consolidated financial

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statements or would be so required if its equity interests were traded on a public securities exchange.

### **3 Meaning of “Jersey entity”**

- (1) For the purpose of these Regulations, “Jersey entity” (“JE”) means a constituent entity in respect of which conditions A and B are satisfied.
- (2) Condition A is satisfied where JE –
  - (a) is resident in Jersey for tax purposes; or
  - (b) has a permanent establishment in Jersey.
- (3) Condition B is satisfied where there is no other constituent entity of the MNE Group –
  - (a) resident in Jersey for tax purposes; or
  - (b) which has a permanent establishment in Jersey,

and which is required to prepare consolidated financial statements or would be so required if its equity interests were traded on a public securities exchange and such statements include or would include JE.

### **4 Meaning of “threshold requirement”**

- (1) In Regulation 5, “threshold requirement” means that the MNE Group has a total consolidated group revenue of €750 million or more for an accounting period of 12 months –
  - (a) as shown in its consolidated financial statements; or
  - (b) as would have been shown in its consolidated financial statements had the MNE Group been required to produce them by reason of the trading of equity interests in any of the enterprises in the MNE Group on a public securities exchange.
- (2) Where an MNE group draws up, or would draw up, its consolidated financial statements for an accounting period in a currency other than euros, the reference to “€750 million” in paragraph (1) has effect as if it referred to the equivalent in that currency at the average exchange rate for the accounting period.
- (3) When the accounting period of an MNE Group is a period of less than 12 months, the amount of €750 million in paragraph (1) (or the equivalent under paragraph (2)) is reduced proportionately.

### **5 Filing of CBC reports**

- (1) This Regulation applies where an MNE Group (“G”) meets the threshold requirement in respect of an accounting period (“AP”) where AP –
  - (a) commences before and ends on or after 31st December 2015; or
  - (b) commences on or after 1st January 2016.

- (2) The accounting period immediately following AP is referred to in this Regulation as “AP+1”.
- (3) The ultimate parent entity of G must file a country-by-country report in respect of AP+1 by the filing deadline if the ultimate parent entity is resident in Jersey for tax purposes on the date of the filing deadline.
- (4) Subject to paragraph (5), a Jersey entity of G must file a Jersey country-by-country report by the filing deadline in respect of AP+1 if –
  - (a) the Jersey entity is not required to file a country-by-country report under paragraph (3); and
  - (b) one of the conditions in Regulation 6 is met.
- (5) The duty in paragraph (4) does not apply if exception A or exception B applies.
- (6) Exception A applies where –
  - (a) a constituent entity of G intends to file before the filing deadline a country-by-country report pursuant to paragraph (8) in respect of AP+1 and that report is intended to include the information required to be contained in the Jersey country-by-country report otherwise required to be filed by the Jersey entity under paragraph (3); and
  - (b) on or before the last day of AP+1, the Jersey entity provides to the Comptroller details of the identity of the constituent entity which will file the report.
- (7) Exception B applies where –
  - (a) a constituent entity of G intends to file before the filing deadline in a jurisdiction other than Jersey the equivalent of a country-by-country report in respect of AP+1 and that report is intended to include the information required to be contained in the Jersey country-by-country report otherwise required to be filed by the Jersey entity under paragraph (3);
  - (b) the appropriate authority of that jurisdiction has entered into exchange arrangements with the Comptroller which apply to the filed report and the Comptroller has not notified the Jersey entity before the filing deadline that the arrangements are not operating effectively; and
  - (c) on or before the last day of AP+1 the Jersey entity provides details to the Comptroller of –
    - (i) the identity of the constituent entity which intends to file the report and where it is resident for tax purposes, and
    - (ii) the jurisdiction in which the report is to be filed.
- (8) A constituent entity of G (“CEG”) may file a country-by-country report on behalf of G in respect of AP+1 if –
  - (a) CEG or another constituent entity of G is resident for tax purposes in Jersey or has a permanent establishment in Jersey;
  - (b) CEG –



- (i) is not required to file a country-by-country report under paragraph (3), and
  - (ii) is authorized by the ultimate parent entity of G to file a country-by-country report on behalf of G in respect of AP+1 and the ultimate parent entity has notified the Comptroller of that authority in writing on or before the last day of AP+1; and
  - (c) one of the conditions in Regulation 6 is met.
- (9) A Jersey entity must, whether or not required to do so by another provision in this Regulation, notify the Comptroller on or before the last day of AP+1 of its intention to file any CBC report in respect of AP+1.

## **6 Conditions for the purposes of Regulation 5(4)(b) and (8)(c)**

The conditions referred to in Regulation 5(4)(b) and (8)(c) are that –

- (a) the ultimate parent entity is not required to file the equivalent of a country-by-country report in the jurisdiction in which it is resident for tax purposes in respect of the accounting period to which the report relates (or, where the ultimate parent entity is resident for tax purposes in more than one jurisdiction, no such requirement to file applies in any of those jurisdictions);
- (b) the appropriate authority of the jurisdiction in which the ultimate parent entity is resident for tax purposes has not entered into exchange arrangements with the Comptroller in respect of the accounting period to which the report relates (or where the ultimate parent entity is resident for tax purposes in more than one jurisdiction, none of the appropriate authorities of those jurisdictions has entered into such arrangements); or
- (c) the appropriate authority of the jurisdiction in which the ultimate parent entity has filed the equivalent of a country-by-country report has entered into exchange arrangements with the Comptroller but –
  - (i) in respect of the obligation on a Jersey entity in Regulation 5(4), the Comptroller has notified the Jersey entity that the arrangements are not operating effectively, or
  - (ii) in respect of a CEG intending to file a country-by-country report further to Regulation 5(8), the CEG has requested the Comptroller to confirm whether or not the arrangements are operating effectively and the Comptroller has indicated that they are not.

## **7 Penalty for failure to comply with Regulations**

A person is liable to a penalty of £300 if the person fails to comply with Regulation 5(3), 5(4) or 5(9).

## **8 Daily default penalty**

If –

- (a) a penalty under Regulation 7 is imposed for failure to comply with Regulation 5(3) or 5(4); and
- (b) the failure in question continues after the person has been notified of the penalty,

the person is liable to a further penalty, for each subsequent day on which the failure continues, of an amount (subject to Regulation 14) not exceeding £60 for each day.

## **9 Penalties for inaccurate information**

- (1) A person is liable to a penalty not exceeding £3,000 if –
  - (a) a person provides inaccurate information when filing a CBC report under Regulation 5; and
  - (b) condition A or B is met.
- (2) Condition A is that the person knows of the inaccuracy at the time the information is provided but does not inform the Comptroller at that time.
- (3) Condition B is that the person –
  - (a) discovers the inaccuracy after the information is provided to the Comptroller; and
  - (b) fails to take reasonable steps to inform the Comptroller.

## **10 Matters to be disregarded in relation to liability to penalties**

- (1) Liability to a penalty under Regulation 7, 8 or 9 does not arise if the person satisfies the Comptroller or (on an appeal notified by the Comptroller to the Commission) the Commission, that there is a reasonable excuse for the failure or the provision of inaccurate information.
- (2) For the purposes of this Regulation, neither of the following is a reasonable excuse –
  - (a) that there is an insufficiency of funds to do something; or
  - (b) that a person relies upon 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 has ceased.

## **11 Imposition of penalties**

- (1) If a person becomes liable to a penalty under any of Regulations 7 to 9 the Comptroller may impose the penalty.

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- (2) If the Comptroller imposes a penalty, the Comptroller must notify the person.
  - (3) A penalty under Regulation 7 or 8 may only be imposed within the period of 6 years beginning with the date on which the person became liable to the penalty.
  - (4) A penalty under Regulation 9 may only be imposed –
    - (a) within the period of 12 months beginning with the date on which the inaccuracy first came to the attention of the Comptroller; and
    - (b) within the period of 6 years beginning with the date on which the person became liable to the penalty.

## **12 Right of appeal against penalty**

A person upon whom a penalty is imposed may appeal against it –

- (a) on the ground that liability to a penalty under any of Regulations 7 to 9 does not arise; or
- (b) as to the amount of a penalty under Regulation 8 or 9.

## **13 Commission of Appeal and procedure on appeal against penalty**

- (1) Notice of an appeal under Regulation 12 must be given to the Comptroller –
  - (a) in writing; and
  - (b) before the end of the period of 30 days beginning with the date on which notification to the person under Regulation 11 was given.
- (2) The notice under paragraph (1) must state the ground of appeal.
- (3) A Commission of Appeal shall be constituted for the purpose of hearing –
  - (a) an appeal under Regulation 12; or
  - (b) an application under Regulation 14(2),as it would be constituted under Article 10(1) of the 1961 Law from the Commissioners of Appeal for the purpose of hearing appeals under the 1961 Law.
- (4) The Comptroller shall notify the Commission of an appeal under Regulation 12.
- (5) On determining an appeal under Regulation 12(a) that is notified to the Commission by the Comptroller, the Commission may confirm or cancel the penalty.
- (6) On determining an appeal under Regulation 12(b) that is notified to the Commission by the Comptroller, the Commission may –
  - (a) confirm the penalty; or

- (b) substitute another penalty that the Comptroller has power to impose under these Regulations.
- (7) Subject to this Regulation and Regulation 15, the provisions of Part 6 of the 1961 Law shall have effect in relation to appeals under Regulation 12 as they have effect in relation to an appeal against an assessment to income tax.

#### **14 Increased daily default penalty**

- (1) This Regulation applies if –
  - (a) a penalty under Regulation 8 is imposed under Regulation 11;
  - (b) the failure in respect of which that penalty is imposed continues for more than 30 days beginning with the date on which notification of that penalty is given; and
  - (c) the person has been notified that an application may be made under this Regulation for an increased daily penalty to be imposed.
- (2) If this Regulation applies, the Comptroller may make an application to the Commission for an increased daily penalty to be imposed on the person.
- (3) If the Commission decides that an increased daily penalty should be imposed then for each applicable day on which the failure continues –
  - (a) the person is not liable to a penalty under Regulation 8 in respect of the failure; and
  - (b) the person is liable instead to a penalty under this Regulation of an amount determined by the Commission.
- (4) The Commission must not determine an amount exceeding £1,000 for each applicable day.
- (5) If a person becomes liable to a penalty under this Regulation, the Comptroller must notify the person.
- (6) The notification 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 this Regulation.

#### **15 Payment and enforcement of penalties**

- (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 the later of –
  - (a) the date on which the penalty is imposed under Regulation 11 or notification under Regulation 14(5) is given in respect of the penalty; or
  - (b) if notice of appeal under Regulation 12 is given, the date on which the appeal is finally determined or withdrawn.

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

## **16 Anti-avoidance**

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 those arrangements is to avoid any requirement of these Regulations, these Regulations shall have effect as if the arrangements had not been entered into.

## **17 Power to enter business premises and examine business documents**

- (1) An authorized person may examine and take copies of any business document that is located on business premises.
- (2) The power under paragraph (1) may be exercised only for the purpose of investigating any issue relating to compliance with these Regulations.
- (3) An authorized person may at any reasonable hour enter business premises for the purpose of exercising the power under paragraph (1).
- (4) An authorized person may by notice require any person to produce any specified business document at the business premises where the business document is located for the purpose of enabling the authorized person to exercise the power under paragraph (1) in relation to that document.
- (5) An authorized person shall not exercise the powers under this Regulation in respect of any document which a person would, in an action in Court, be entitled to refuse to disclose or produce on the grounds of legal professional privilege.

## **18 Obstructing an authorized person**

- (1) A person shall be guilty of an offence if, without reasonable excuse, the person –
- (a) obstructs an authorized person in the exercise of the authorized person's powers under Regulation 17; or
- (b) fails to provide such reasonable assistance as an authorized person may require when the authorized person is exercising his or her powers under Regulation 17.
- (2) A person who intentionally alters, suppresses or destroys any business document that has been specified in a notice under Regulation 17(4) shall be guilty of an offence.
- (3) A person who is guilty of an offence under paragraph (1) shall be liable to imprisonment for a term of 6 months and to a fine.

- (4) A person who is guilty of an offence under paragraph (2) shall be liable to imprisonment for a term of 2 years and to a fine.

**19 Citation**

These Regulations may be cited as the Taxation (Implementation) (International Tax Compliance) (Country-by-Country Reporting: BEPS) (Jersey) Regulations 2016.

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## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement
Taxation (Implementation) (International Tax Compliance) (Country-by-Country Reporting: BEPS) (Jersey) Regulations 2016	R&O.128/2016	21 December 2016

### Table of Renumbered Provisions

Original	Current
None	

### Table of Endnote References

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<sup>1</sup>	<i>chapter 17.850</i>
<sup>2</sup>	<i>chapter 24.750</i>