



GUERNSEY STATUTORY INSTRUMENT
2016 No. 93

**The Income Tax (Approved International Agreements)
(Implementation) (Country by Country Reporting)
Regulations, 2016**

<i>Made</i>	20 th December, 2016
<i>Coming into operation</i>	1 st January, 2017
<i>Laid before the States</i>	, 2017

THE POLICY & RESOURCES COMMITTEE, in exercise of the powers conferred upon it by sections 75CC and 203A of the Income Tax (Guernsey) Law, 1975, as amended^a, and all other powers enabling it in that behalf, hereby makes the following regulations:-

Implementation of the MCAA.

1. These Regulations implement Article 6 of the Convention on Mutual Administrative Assistance in Tax Matters^b, in accordance with the information exchange procedure agreed under the Multilateral Competent Authority Agreement on the exchange of Country by Country Reports^c ("MCAA").

Information exchange procedure under the MCAA.

2. The MCAA prescribes -

^a Ordres en Conseil Vol. XXV, p. 124; section 75CC was inserted by the Income Tax (Approved International Agreements) (Implementation) (Guernsey) Ordinance, 2013 and section 203A was inserted by the Income Tax (Guernsey) (Amendment) Law, 2005 (No. XVII of 2005).

^b which is an approved international agreement by virtue of the Income Tax (Guernsey) (Approved International Agreements) (Amendment) Ordinance, 2014 (No. XXXI of 2014).

^c which was signed on behalf of Guernsey on 20th October 2016.

- (a) the information to be provided by way of exchange (see regulation 3), and
- (b) the filing and notification obligations, detailing how, when and by whom the information shall be collated and provided (see regulation 4).

Information to be exchanged.

3. (1) The Director shall send a CbC Report received from a Reporting Entity that is resident for tax purposes in Guernsey to all Relevant Competent Authorities in which, on the basis of the information in the CbC Report, one or more Constituent Entities of the MNE Group of that Reporting Entity are -

- (a) resident for tax purposes, or
- (b) subject to tax with respect to the business carried out through a permanent establishment.

(2) In this regulation, "**the Relevant Competent Authority**" means the competent authority of a jurisdiction which, in the opinion of the Director,
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- (a) is a signatory to the Convention on Mutual Administrative Assistance in Tax Matters, and to the MCAA,
 - (b) the MCAA has been given domestic effect in a manner similar to these Regulations,
 - (c) has elected, or is, to receive information under the MCAA, and
 - (d) has appropriate safeguards to protect the confidentiality of the information provided.
- (3) A list of the jurisdictions that satisfy the conditions of paragraph

(2) shall be published by the Director from time to time.

The filing and notification obligations.

4. (1) A Reporting Entity that is resident for tax purposes in Guernsey must, in respect of its Fiscal Years commencing on or after 1 January 2016 and every following Fiscal Year, comply with the filing and notification obligations imposed by, paragraphs 1 and 2 of Schedule 1, by provision of the relevant information ¥

(a) to the Director, or to such other person, body or as the Director may by notice specify, and

(b) in such form and manner and by such means, as the Director may by notice require.

(2) For the purposes of, but without prejudice to the generality of, paragraph (1) -

(a) the notices referred to therein may require a Reporting Entity to register with, to use and to provide information and documents by means of an electronic portal specified in the notices for that purpose,

(b) the notices may be given or published in such form and manner, by such means and at such times or intervals and for such period as the Director thinks fit, including (without limitation) by publication on the official website of the States of Guernsey Income Tax office or by being set out in guidance notes issued under regulation 10.

(3) The CbC Report required by paragraph 1 of Schedule 1 shall be filed, as required by Director under paragraph (1) above, no later than 12 months after the last day of the Reporting Fiscal Year of the MNE Group.

(4) A Reporting Entity which without reasonable excuse fails to

comply with any provision of paragraph (1) or Schedule 1 is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding one year, to a fine not exceeding twice level 5 on the uniform scale, or to both.

Application of information powers.

5. (1) Section 75A of the Law ("power to call for documents, etc, from taxpayer") applies in respect of these Regulations as if there were added at the end of subsection (1)(a)(iii) the words "and/or compliance with the Income Tax (Approved International Agreements) (Implementation) (Country by Country Reporting) Regulations, 2016", and sections -

- (a) 75D ("sections 75A and 75B: supplementary"),
- (b) 75E ("court orders for delivery of documents, etc, from a taxpayer"),
- (c) 75G ("court orders under sections 75E and 75F: supplementary"),
- (d) 75H ("court orders under sections 75E and 75F: notice and procedure"),
- (e) 75I ("entry with warrant to obtain material"),
- (f) 75J ("procedure where documents etc, are removed"),
- (g) 75K ("right of appeal to Royal Court"), and
- (h) 75L ("offences in relation to falsification, etc, of documents"),

of the Law, apply accordingly.

(2) Section 75B of the Law ("power to call for documents, etc, relating to taxpayer") applies in respect of these Regulations as if there were added

at the end of subsection (2)(c) the words "and/or compliance with the Income Tax (Approved International Agreements) (Implementation) (Country by Country Reporting) Regulations, 2016", and sections -

- (a) 75CB ("notices under section 75B: ancillary provision"),
- (b) 75D ("sections 75A and 75B: supplementary"),
- (c) 75F ("court orders for delivery of documents, etc, relating to a taxpayer"),
- (d) 75G ("court orders under sections 75E and 75F: supplementary"),
- (e) 75H ("court orders under sections 75E and 75F: notice and procedure"),
- (f) 75I ("entry with warrant to obtain material"),
- (g) 75J ("procedure where documents etc, are removed"),
- (h) 75K ("right of appeal to Royal Court"), and
- (i) 75L ("offences in relation to falsification, etc, of documents"),

of the Law, apply accordingly.

(3) Section 75C ("notices under section 75A and 75B: requests for information") also applies by virtue of paragraphs (1) and (2) and, in addition, these Regulations apply as if references to a request for information included references to a notification by a Competent Authority pursuant to section 4 of the MCAA ("Collaboration on Compliance and Enforcement") and references to "requests" and related expressions shall be construed accordingly.

Civil penalties for contravention of Regulations.

6. Section 193 of the Law ("penalties in respect of returns not relating to income") applies in respect of these Regulations as if -

- (a) references in subsections (1) and (2) of that section to a return other than a return of income included references to a return or other document or information required to be provided by or under these Regulations or any other obligation hereunder,
- (b) references in subsection (1) of that section to the time prescribed included references to the time prescribed by or under these Regulations, and
- (c) subsection (3) of that section were omitted.

Criminal penalties for false statements, etc.

7. (1) Section 75M of the Law (duties of confidentiality, liens, and self-incrimination) applies in respect of these Regulations as if in subsection (4)(b)(ii)(A) of that section after the words "section 75L(3)" there was inserted "or section 201(1) by virtue of a contravention of section 201(4)".

(2) Section 201 of the Law ("discretion to prosecute in cases involving fraud, etc.") applies in respect of these Regulations as if -

- (a) references in subsections (4) and (5) to the Director included references to any other person, body or authority (including the Relevant Competent Authorities under the MCAA) upon whom functions corresponding to those of the Director are conferred by or under these Regulations,
- (b) references in those subsections to tax, penalties, surcharges or additional surcharges under the Law included references to tax, penalties and other liabilities imposed by the laws of the other parties to the MCAA.

Offences by legal persons, etc.

8. (1) Where an offence under these Regulations is committed by a legal person and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of ¥

- (a) any director, manager, secretary or other similar officer, or any foundation official, of the legal person, or
- (b) any person purporting to act in any such capacity, that person as well as the legal person is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a legal person are managed by its members, subparagraph (1) applies to a member in connection with his functions of management as if he were a director.

(3) Where an offence under these Regulations is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of ¥

- (a) in the case of a partnership, any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty whereof the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

he as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(4) Where an offence under these Regulations is alleged to have been committed by an unincorporated body, proceedings for the offence shall be brought in the name of that body and not in the name of any of its members.

(5) A fine imposed on an unincorporated body on its conviction of an offence under this Regulation shall be paid from the funds of that body.

Anti-avoidance.

9. (1) If -

(a) a person enters into any transaction or series of transactions, and

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

these Regulations shall have effect as if the transaction or series of transactions had not been entered into.

(2) In paragraph (1) "**transaction**" has the meaning given by subsection (2) of section 67 of the Law (general provision against legal avoidance).

(3) Subsection (4) of section 67 of the Law has effect for the purposes of this regulation as if references therein to tax under the Law included references to tax imposed by the laws of the jurisdiction of any Relevant Competent Authority.

(4) Subsection (5) of section 67 of the Law does not have effect for the purposes of this regulation.

Guidance notes.

10. (1) The Director may issue guidance notes for the purpose of providing practical guidance in respect of any provision of, and in connection with

the administration of, these Regulations.

- (2) Such guidance notes -
 - (a) shall come into force on such date as the Director may appoint,
 - (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient,
 - (c) may be revoked or revised, and
 - (d) shall be published in such manner as the Director considers appropriate.

(3) Guidance notes must be taken into account by the Director in exercising his functions under these Regulations, the MCAA and the Law.

(4) In any legal proceedings, criminal or otherwise, whether or not under the Law or these Regulations (including, for the avoidance of doubt, proceedings before the appropriate body under section 76 of the Law), guidance notes are admissible in evidence, and if any provision of guidance notes appears to the court or other tribunal before which the proceedings are being conducted to be relevant to any question arising in the proceedings, then -

- (a) the provision may be taken into account in determining that question, and
- (b) the provision may be relied on as tending to support or, as the case may be, defeat any representation or submission of any party to the proceedings.

(5) The powers conferred by paragraph (1) are without prejudice to any power conferred by the Law to issue statements of practice.

(6) Section 203A(2) of the Law applies in respect of guidance notes as it applies in respect of Regulations.

Use of information by the Director.

11. The Director may only use the information received under the MCAA subject to the constraints set out in section 5 thereof.

Application of provisions as to service of notice.

12. Without prejudice to the provisions of regulation 4(1) and (2), section 68(1AAA) of the Law (giving of notice from the Director) applies in relation to a notice of the Director under regulation 4(1) or (2) or otherwise given by the Director for the purposes of these Regulations, as it applies in relation to a notice of the Director requiring a person to deliver a return as to income, and references (however expressed) in these Regulations to the giving or receipt of such a notice shall be construed accordingly.

Application of duty to submit in electronic form and by electronic means.

13. Section 68AA of the Law ("returns to be submitted in electronic form and by electronic means") applies in respect of these Regulations as if -

- (a) references in subsections (1) and (2) of that section to section 68 included references to these Regulations,
- (b) references in section 68AA(1) to a return as to a person's income included references to a return or other document or information required or authorised to be provided by, under or for the purposes of these Regulations, and
- (c) in, paragraphs (a) and (b) of section 68AA(1), the words "in the case of a company" were omitted.

General modification of provisions of Law.

14. For the purposes of these Regulations, and without prejudice to any other provision of these Regulations -

- (a) any reference in the Law to the Law (whether by use of the expression "**this Law**" or otherwise) or any provision thereof has effect as if the reference were to the Law or that provision as modified in its application by these Regulations, and
- (b) the provisions of the Law shall be construed and shall have effect subject to those modifications.

Interpretation.

15. (1) In these Regulations -

"**CbC Report**" means a country-by-country report in accordance with paragraph 3 of Schedule 1,

"**Consolidated Financial Statements**" means the financial statements of an MNE Group in which the assets, liabilities, income, expenses and cash flows of the Ultimate Parent Entity and the Constituent Entities are presented as those of a single economic entity,

"**Constituent Entity**" means \forall

- (i) any separate business unit of an MNE Group that is included in the Consolidated Financial Statements of the MNE Group for financial reporting purposes, or would be so included if equity interests in such business unit of an MNE Group were traded on a public securities exchange,
- (ii) any such business unit that is excluded from the MNE Groups Consolidated Financial Statements solely on size or materiality grounds, and

- (iii) any permanent establishment of any separate business unit of the MNE Group included in (i) or (ii) above provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes,

"the Convention on Mutual Administrative Assistance in Tax Matters" means the Joint Council of Europe and the Organisation for Economic Co-operation and Development Convention on Mutual Administrative Assistance in Tax Matters (which entered into force on 25th January 1988) as amended by the Amending Protocol (which entered into force on 27th May 2010), which was extended to Guernsey by the United Kingdom on the 17th April 2014 (and which entered into force on 1st August 2014),

"the Director" means the Director of Income Tax,

"Excluded MNE Group" means, with respect to any Fiscal Year of the Group, a Group having total consolidated group revenue of less than €750,000,000 during the Fiscal Year immediately preceding the Reporting Fiscal Year as reflected in its Consolidated Financial Statements for such preceding Fiscal Year,

"Fiscal Year" means an annual accounting period with respect to which the Ultimate Parent Entity of the MNE Group prepares its financial statements,

"Group" means a collection of enterprises related through ownership or control such that it is either required to prepare Consolidated Financial Statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange,

"the Law" means the Income Tax (Guernsey) Law, 1975,

"MCAA" has the meaning given in regulation 1,

"MNE Group" means any Group that ¥

- (i) includes two or more enterprises the tax residence for which is in different jurisdictions, or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction, and
- (ii) is not an Excluded MNE Group,

"**Relevant Competent Authority**" has the meaning given in regulation 3(2),

"**Reporting Entity**" means the Constituent Entity that is required to file a CbC Report in its jurisdiction of tax residence on behalf of the MNE Group. The Reporting Entity may be the Ultimate Parent Entity, the Surrogate Parent Entity, or any entity described in paragraph 1(2) of Schedule 1,

"**Reporting Fiscal Year**" means that Fiscal Year the financial and operational results of which are reflected in the CbC Report,

"**Surrogate Parent Entity**" means one Constituent Entity of the MNE Group that has been appointed by such MNE Group, as a sole substitute for the Ultimate Parent Entity, to file the CbC Report in that Constituent Entity's jurisdiction of tax residence, on behalf of such MNE Group, when one or more of the conditions set out in paragraph 1(2)(b) of Schedule 1 applies,

"Ultimate Parent Entity" means a Constituent Entity of an MNE Group that meets the following criteria -

- (i) it owns directly or indirectly a sufficient interest in one or more other Constituent Entities of such MNE Group such that it is required to prepare Consolidated Financial Statements under accounting principles generally applied in its jurisdiction of tax residence, or would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence, and
- (ii) there is no other Constituent Entity of such MNE Group that owns directly or indirectly an interest described in subsection (i) above in the first mentioned Constituent Entity, and

other terms have the meaning given in paragraph 4 of Schedule 1, to the extent they are defined therein, all other terms not so defined have the same respective meanings as in the Law.

(2) The Interpretation (Guernsey) Law, 1948^d applies to the interpretation of these Regulations as it applies to the interpretation of an enactment.

(3) Any reference in these Regulations to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Citation.

16. These Regulations may be cited as the Income Tax (Approved International Agreements) (Implementation) (Country by Country Reporting) Regulations, 2016.

^d Ordres en Conseil Vol. XIII, p. 355.

Commencement.

17. These Regulations shall come into force on the 1st day of January, 2017.

Dated this 20th day of December, 2016

A handwritten signature in black ink, appearing to be 'G. A. St Pier', written in a cursive style.

DEPUTY G. A. ST PIER

President of the Policy & Resources Committee

For and on behalf of the Committee

SCHEDULE 1

COUNTRY-BY-COUNTRY REPORTING

Regulation 4

Filing Obligation

1. (1) Each Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Guernsey shall file a CbC Report with the Director with respect to its Reporting Fiscal Year on or before the date specified in Regulation 4(3).

(2) A Constituent Entity which is not the Ultimate Parent Entity of an MNE Group shall file a CbC Report with the Director with respect to the Reporting Fiscal Year of an MNE Group of which it is a Constituent Entity, on or before the date specified in Regulation 4(3), if the following criteria are satisfied -

(a) the entity is resident for tax purposes in Guernsey, and

(b) one of the following conditions applies ~~¥~~

(i) the Ultimate Parent Entity of the MNE Group is not obligated to file a CbC Report in its jurisdiction of tax residence, or

(ii) the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which Guernsey is a party but does not have a Qualifying Competent Authority Agreement in effect to which Guernsey is a party by the time specified in Regulation 4(4) for filing the CbC Report for the Reporting Fiscal Year, or

(iii) there has been a Systemic Failure of the jurisdiction of tax residence of the Ultimate Parent Entity that has been notified by the

Director to the Constituent Entity resident for tax purposes in Guernsey.

Where there are more than one Constituent Entities of the same MNE Group that are resident for tax purposes in Guernsey and one or more of the conditions set out in subparagraph (b) apply, the MNE Group may designate one of such Constituent Entities to file the CbC Report with the Director with respect to any Reporting Fiscal Year on or before the date specified in Regulation 4(3) and to notify the Director that the filing is intended to satisfy the filing requirement of all the Constituent Entities of such MNE Group that are resident for tax purposes in Guernsey.

(3) Notwithstanding subparagraph (2) when one or more of the conditions set out in subparagraph (2)(b) apply, an entity described in subparagraph (2) shall not be required to file a CbC Report with respect to any Reporting Fiscal Year if the MNE Group of which it is a Constituent Entity has made available a CbC Report with respect to such Fiscal Year through a Surrogate Parent Entity that files that CbC Report with the tax authority of its jurisdiction of tax residence on or before the date specified in Regulation 4(3) and that satisfies the following conditions -

- (a) the jurisdiction of tax residence of the Surrogate Parent Entity requires filing of CbC Reports,
- (b) the jurisdiction of tax residence of the Surrogate Parent Entity has a Qualifying Competent Authority Agreement in effect to which Guernsey is a party by the time specified in Regulation 4(3) for filing the CbC Report for the Reporting Fiscal Year,
- (c) the jurisdiction of tax residence of the Surrogate Parent Entity has not notified the Director of a Systemic Failure,
- (d) the jurisdiction of tax residence of the Surrogate Parent Entity has been notified in accordance with paragraph 2(1) of this Schedule by the Constituent Entity resident

for tax purposes in its jurisdiction that it is the Surrogate Parent Entity, and

- (e) a notification has been provided to Guernsey in accordance with paragraph 2(2) of this Schedule.

Notification

2. (1) Any Constituent Entity of an MNE Group that is resident for tax purposes in Guernsey shall notify the Director whether it is the Ultimate Parent Entity or the Surrogate Parent Entity, no later than 6 months after the last day of the Reporting Fiscal Year of such MNE Group.

(2) Where a Constituent Entity of an MNE Group that is resident for tax purposes in Guernsey is not the Ultimate Parent Entity nor the Surrogate Parent Entity, it shall notify the Director of Income Tax of the identity and tax residence of the Reporting Entity, no later than the 30th November in the year after the last day of the Reporting Fiscal Year of such MNE Group.

CbC Report

3. (1) For purposes of these Regulations, a CbC Report with respect to an MNE Group is a report containing ¥

- (a) aggregate information relating to the amount of revenue, profit (loss) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees, and tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the MNE Group operates,
- (b) an identification of each Constituent Entity of the MNE Group setting out the jurisdiction of tax residence of such Constituent Entity, and where different from such jurisdiction of tax residence, the jurisdiction under the laws of which such Constituent Entity is organised, and the nature of the main business activity or activities of such Constituent Entity.

(2) The CbC Report shall be filed in a form identical to and applying the definitions and instructions contained in the standard template as set out in the guidance in respect of the relevant Fiscal Year, issued by the Director under this paragraph.

Interpretation

4. In this Schedule ¥

"**International Agreement**" shall mean the Convention for Mutual Administrative Assistance in Tax Matters, any bilateral or multilateral Tax Convention, or any Tax Information Exchange Agreement to which Guernsey is a party, and that by its terms provides legal authority for the exchange of tax information between jurisdictions, including automatic exchange of such information.

"**Qualifying Competent Authority Agreement**" means an agreement

- (i) that is between authorised representatives of those jurisdictions that are parties to an International Agreement and
- (ii) that requires the automatic exchange of CbC Reports between the party jurisdictions. reports between the party jurisdictions, and

"**Systemic Failure**" with respect to a jurisdiction means that a jurisdiction has a Qualifying Competent Authority Agreement in effect with Guernsey, but has suspended automatic exchange (for reasons other than those that are in accordance with the terms of that Agreement) or otherwise persistently failed to automatically provide to Guernsey CbC Reports in its possession, of MNE Groups that have Constituent Entities in Guernsey.

EXPLANATORY NOTE
(This note is not part of the regulations)

These Regulations implement and enable the administration and enforcement in domestic law of Article 6 of the Convention on Mutual Administrative Assistance in Tax Matters (an approved international agreement providing for the obtaining, furnishing and exchanging of information in relation to tax), in accordance with the information exchange procedure agreed under the Multilateral Competent Authority Agreement on the exchange of Country by Country Reports signed on behalf of the States of Guernsey on 20th October 2016.