

Government Notice No. 20 of 2018

THE INCOME TAX ACT

**Regulations made by the Minister under section 76 of
the Income Tax Act**

1. Short title

These regulations may be cited as the Income Tax (Country-by-Country Reporting) Regulations 2018.

2. Interpretation

In these regulations –

“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” –

- (a) means any separate business unit of an MNE Group, the financial statements of which are included in the Consolidated Financial Statements of the MNE Group for financial reporting purposes, or would be so included where the equity interests in the business unit are traded on a securities exchange; and
- (b) includes –
 - (i) any such business unit, the financial statements of which are excluded from the MNE Group’s Consolidated Financial Statements solely on grounds of size or materiality; and

- (ii) any permanent establishment of any separate business unit of an MNE Group referred to in paragraph (a) or subparagraph (i), provided that the business unit prepares separate financial statements for the permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes;

“Country-by-Country Report” means the report referred to in regulation 5;

“Excluded MNE Group”, in relation to any fiscal year of a Group, means a Group having a total consolidated revenue of less than 750 million Euros 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 an MNE Group prepares its financial statements;

“Group” means a collection of enterprises related through ownership or control that is required to prepare Consolidated Financial Statements for financial reporting purposes –

- (a) under applicable accounting principles; or
- (b) where equity interests in any of the enterprises are traded on a public securities exchange;

“International Agreement” means –

- (a) the multilateral Convention for Mutual Administrative Assistance in Tax Matters;
- (b) any bilateral or multilateral Tax Convention, or Tax Information Exchange Agreement, to which Mauritius is a party,

the terms of which provide legal authority for the exchange, or automatic exchange, of tax information between jurisdictions;

“**MNE**” means Multinational Enterprise;

“**MNE Group**” means a Group that –

- (a) includes 2 or more enterprises, the tax residence of which is in different jurisdictions;
- (b) includes an enterprise that is –
 - (i) resident in Mauritius for tax purposes and is subject to tax in respect of the business carried out through a permanent establishment in another jurisdiction; or
 - (ii) resident in another jurisdiction and is subject to tax in respect of the business carried out through a permanent establishment in Mauritius; and
- (c) is not an excluded MNE Group;

“**Qualifying Competent Authority Agreement**” means an agreement –

- (a) between authorised representatives of the jurisdictions that are parties to an International Agreement; and
- (b) which requires the automatic exchange of Country-by-Country Reports between the party jurisdictions;

“**Reporting Entity**” means –

- (a) the Ultimate Parent Entity; or
- (b) where regulation 3(2)(a), (b) or (c) applies, the Surrogate Parent Entity;

“**Reporting Fiscal Year**” means the Fiscal Year in respect of which the financial and operational results are reflected in the Country-by-Country Report;

“Surrogate Parent Entity” means a Constituent Entity of an MNE Group, appointed by the MNE Group, as a sole substitute for the Ultimate Parent Entity, to file the Country-by-Country Report under regulation 3(2);

“Systemic Failure” means –

- (a) suspension of automatic exchange of information by a jurisdiction that has a Qualifying Competent Authority Agreement in force with Mauritius, for reasons other than those that are specified in the Agreement; or
- (b) persistent failure by a jurisdiction to automatically provide Country-by-Country Reports in its possession to Mauritius in respect of MNE Groups having Constituent Entities in Mauritius;

“Ultimate Parent Entity” means a Constituent Entity of an MNE Group that meets the following criteria –

- (a) it owns directly or indirectly a sufficient interest in one or more other Constituent Entities of the 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
- (b) there is no other Constituent Entity of the MNE Group that owns directly or indirectly an interest described in paragraph (a) in the first mentioned Constituent Entity.

3. Filing obligation

(1) The Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Mauritius shall file with the Director-General

a Country-by-Country Report in accordance with regulation 5 in respect of its Reporting Fiscal Year on or before the period referred to in regulation 6.

(2) Where –

- (a) the Ultimate Parent Entity is not resident in Mauritius and is not required to file a Country-by-Country Report in its jurisdiction of tax residence;
- (b) the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which Mauritius is a party but does not have a Qualifying Competent Authority Agreement in force to which Mauritius is a party at the time the Country-by-Country Report is required to be filed pursuant to regulation 6; or
- (c) there has been a Systemic Failure of the jurisdiction of tax residence of the Ultimate Parent Entity that has been notified by the Director-General to the Constituent Entity resident for tax purposes in Mauritius,

the Surrogate Parent Entity shall file with the Director-General a Country-by-Country Report in respect of the Reporting Fiscal Year of the MNE Group on or before the period referred to in regulation 6 and notify the Director-General that the filing is intended to satisfy, in relation to the MNE Group, the filing requirement of the Constituent Entities that are resident for tax purposes in Mauritius.

(3) Notwithstanding paragraph (2), an entity described in that paragraph shall not be required to file a Country-by-Country Report with the Director-General in respect of any Reporting Fiscal Year where the MNE Group has, in respect of a Constituent Entity,

made available a Country-by-Country Report for the Reporting Fiscal Year through a Surrogate Parent Entity which files that Country-by-Country Report with the tax authority of its jurisdiction of tax residence on or before the period referred to in regulation 6, provided that the jurisdiction of tax residence of the Surrogate Parent Entity –

- (a) requires filing of Country-by-Country Reports in accordance with regulation 5;
- (b) has a Qualifying Competent Authority Agreement in force to which Mauritius is a party by the period referred to in regulation 6 for filing the Country-by-Country Report in respect of the Reporting Fiscal Year;
- (c) has not notified the Director-General of a Systemic Failure;
- (d) has been notified, in accordance with regulation 4(1), by the Constituent Entity resident for tax purposes in its jurisdiction that it is the Surrogate Parent Entity; and
- (e) has provided to the Director-General a notification in accordance with regulation 4(2).

4. Notification

(1) Any Constituent Entity of an MNE Group, resident in Mauritius for tax purposes, shall give written notice to the Director-General if it is the Ultimate Parent Entity or the Surrogate Parent Entity, not later than 12 months after the last day of the Reporting Fiscal Year of the MNE Group.

(2) Where a Constituent Entity of an MNE Group, resident in Mauritius for tax purposes, is not the Ultimate Parent Entity nor the Surrogate Parent Entity, it shall give written notice to the Director-General of the identity and tax residence of the Reporting Entity, not

later than 12 months from the last day of the Reporting Fiscal Year of the MNE Group.

5. Country-by-Country Report

For the purpose of these regulations, a Country-by-Country Report in respect of an MNE Group shall contain, in relation to each jurisdiction in which the MNE Group operates –

- (a) aggregate information relating to –
 - (i) the amount of revenue;
 - (ii) profit or loss before income tax;
 - (iii) income tax paid;
 - (iv) income tax accrued;
 - (v) stated capital;
 - (vi) tangible assets other than cash or cash equivalent;
 - (vii) accumulated earnings; and
 - (viii) number of employees;
- (b) identification of each Constituent Entity of the MNE Group setting out the jurisdiction of tax residence of the Constituent Entity, and where the jurisdiction is different, the jurisdiction under the laws of which the Constituent Entity is organised, and the nature of the main business activities of the Constituent Entity; and
- (c) the information set out in the Schedule.

6. Time for filing

The Country-by-Country Report shall be filed not later than 12 months from the last day of the Reporting Fiscal Year of the MNE Group.

7. Use and confidentiality of Country-by-Country Report information

(1) The Director-General shall use the Country-by-Country Report for the purpose of –

- (a) assessing –
 - (i) high-level transfer pricing risks and other base erosion and profit shifting related risks in Mauritius;
 - (ii) the risk of non-compliance by members of an MNE Group with applicable transfer pricing rules;
- (b) economic and statistical analysis, where appropriate.

(2) The Director-General shall maintain the confidentiality of the information contained in a Country-by-Country Report to the same extent that would apply if such information were provided to him under the provisions of the multilateral Convention on Mutual Administrative Assistance in Tax Matters.

8. Offence

Any person who fails to comply with any provision of these regulations shall commit an offence and shall, on conviction, be liable to a fine not exceeding 5,000 rupees and to imprisonment for a term not exceeding 6 months.

9. Effective Date

These regulations shall be effective for Reporting Fiscal Years of MNE Groups beginning on or after 1 July 2018.

Made by the Minister on 19 February 2018.

Table 3. Additional Information

Name of the MNE group: Fiscal year:
<i>Please include any further brief information or explanation you consider necessary or that would facilitate the understanding of the compulsory information provided in the Country-by-Country Report.</i>