

MONTSERRAT
STATUTORY RULES AND ORDERS
S.R.O. 11 OF 2023

**TAX INFORMATION EXCHANGE (COUNTRY-BY-COUNTRY
REPORTING) REGULATIONS, 2023**

ARRANGEMENT OF REGULATIONS

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**THE TAX INFORMATION EXCHANGE (COUNTRY-BY-COUNTRY
REPORTING) REGULATIONS, 2023 MADE BY THE GOVERNOR
ACTING ON THE ADVICE OF CABINET UNDER SECTION 30 OF
THE TAX INFORMATION EXCHANGE ACT (17.24).**

1. Citation

These Regulations may be cited as the Tax Information Exchange (Country-by-Country Reporting) Regulations, 2023.

2. Interpretation

(1) In these Regulations—

“**Competent Authority**” means the Tax Information Authority designated in section 8 of the Tax Information Exchange Act (Cap. 17.24);

“**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—

- (a) 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 the business unit of an MNE Group were traded on a public securities exchange;
- (b) any business unit that is excluded from the MNE Group’s Consolidated Financial Statements solely on size or materiality grounds; and

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(c) any permanent establishment of any separate business unit of the MNE Group included in paragraph (a) or (b), provided that the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes;

“Country-by-Country Report” means a report described in regulation 3;

“Excluded MNE Group” means, with respect to any fiscal year of the Group, a Group having total consolidated group 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 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;

“International Agreement” means the Multilateral Convention for Mutual Administrative Assistance in Tax Matters, any bilateral or multilateral tax convention or any tax information exchange agreement to which Montserrat is a party and that by its terms provides legal authority for the exchange of tax information between jurisdictions, including the automatic exchange of such information;

“Multinational Enterprise Group” or **“MNE Group”** means any group that—

(a) 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

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(b) is not an Excluded MNE Group;

“OECD Final Report” means the document entitled “Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 – 2015 Final Report” published by the Organisation for Economic Co-operation and Development as part of the OECD/G20 Base Erosion and Profit Shifting Project, as amended from time to time;

“Qualifying Competent Authority Agreement” means an agreement that—

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

“Reporting Entity” means a Constituent Entity that is required by regulation 4 to file a Country-by-Country Report in its jurisdiction of tax residence on behalf of the MNE Group;

“reporting fiscal year” means the fiscal year, the financial and operational results of which are reflected in the Country-by-Country Report for that fiscal year;

“resident in Montserrat”, in respect of a Constituent Entity, means being established in Montserrat; and

“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.

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- (2) In these Regulations, a word or expression used in these Regulations and defined in the OECD Final Report but not in these Regulations has the meaning assigned to it in the OECD Final Report.

3. Country-by-Country report

For the purposes of these Regulations, a Country-by-Country Report with respect to an MNE Group is a report containing—

- (a) aggregate information relating to the amount of revenue, profit (or 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; and
- (b) an identification of each Constituent Entity of the MNE Group setting out the jurisdiction of tax residence of such Constituent Entity and, if 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 of such Constituent Entity.

4. Filing obligation

- (1) An Ultimate Parent Entity of an MNE Group that is resident in Montserrat shall file with the Competent Authority a Country-by-Country Report in accordance with the requirements of these Regulations with respect to each of its fiscal years beginning on or after January 1, 2024.
- (2) A Country-by-Country Report shall be filed in a form identical to and applying the definitions and instructions contained in the standard template set out in Annex III of Chapter V of the OECD Final Report.
- (3) A Country-by-Country Report shall be filed no later than 12 months after the last day of the fiscal year of the MNE Group.

5. Manner of filing

- (1) A Country-by-Country Report shall be filed in the manner specified by the Competent Authority, which may include filing electronically using an electronic filing system.

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- (2) A Country-by-Country Report that is filed otherwise than in accordance with this regulation and regulation 4 is considered not to have been filed for the purposes of these Regulations.
- (3) A Country-by-Country Report filed on behalf of a Reporting Entity is considered to have been filed by that Reporting Entity, unless the Entity proves that the report was filed without the Reporting Entity's authority.

6. Use and confidentiality of Country-by-Country Reports

- (1) The Competent Authority shall use a Country-by-Country Report—
 - (a) for purposes of assessing high-level transfer pricing risks and other base erosion and profit shifting related risks in Montserrat, including assessing the risk of non-compliance by members of the MNE Group with applicable transfer pricing rules; and
 - (b) where appropriate, for economic and statistical analysis.
- (2) For the purposes of subregulation (1), transfer pricing adjustments by the Competent Authority shall not be based on the Country-by-Country Report.
- (3) The Competent Authority shall preserve the confidentiality of information contained in a Country-by-Country Report at least to the same extent that would apply if such information were provided to it under the provisions of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

7. Records

- (1) A Reporting Entity shall keep records that the Reporting Entity obtains or creates for the purpose of complying with these Regulations.
- (2) A Reporting Entity that is required to keep records and does so electronically shall retain them in an electronically readable format for the retention period referred to in subregulation (4).
- (3) A Reporting Entity that obtains or creates records in a language other than English, shall, upon request, provide an English translation to the Competent Authority.
- (4) A Reporting Entity that is required to keep, obtain or create records shall retain those records for a period of at least six years following

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the end of the last calendar year in respect of which the record is relevant.

8. Inspection of books etc. and provision of information and assistance

- (1) The Competent Authority may require an entity to give the Competent Authority any information that the Competent Authority may reasonably require for any purpose related to the administration or enforcement of these Regulations.
- (2) For the purposes of subregulation (1), the same procedures and limitations apply as for information obtained for the purpose of administering the Income and Corporation Tax Act (Cap. 17.01).
- (3) If any information that is required to be provided to or inspected by the Competent Authority is located outside Montserrat, the entity shall take any necessary steps to bring the information to Montserrat, to enable the entity to comply with requirement of the Competent Authority under this regulation.

9. Offences

- (1) A Reporting Entity that—
 - (a) fails to implement arrangements or procedures in order to comply with these Regulations;
 - (b) fails to keep and maintain books and records as required under regulation 7;
 - (c) fraudulently or negligently makes a false report, whether in its entirety or in any particular part;
 - (d) with intent to avoid the provisions of these Regulations, alters, destroys, mutilates, defaces, hides, or removes any information, including information electronically held;
 - (e) fails to file a Country-by-Country report when required and in the manner specified under these Regulations; or
 - (f) fails in any other way to comply with these Regulations,commits an offence and is liable on summary conviction to a fine of \$10,000.
- (2) A Reporting Entity that wilfully obstructs an inspection by the Competent Authority under regulation 8 commits an offence and is liable on summary conviction to a fine of \$5,000.

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- (3) A person who makes a false statement or omission, in respect of any information that is required to be included in a Country-by-Country Report, or for any other reason under these Regulations, commits an offence and is liable on summary conviction to a fine of \$5,000.

10. Defences

- (1) If a person or Reporting Entity is charged with an offence under regulation 9(1)(a), (b), (e) or (f) or regulation 9(3), it is a defence for the person or Reporting Entity to prove that the person or Reporting Entity had a reasonable excuse for his or its act or omission.
- (2) For the purposes of these Regulations, the following is not a reasonable excuse—
- (a) that the person or the Reporting Entity relies on another person to do something in relation to these Regulations; or
- (b) that there is an insufficiency of funds to comply with these Regulations.

11. Anti-avoidance

- (1) No person shall enter into an arrangement for the purpose of avoiding any obligation under these Regulations.
- (2) If a person enters into an arrangement for the purpose of avoiding any obligation under these Regulations, these Regulations have effect as if the arrangement had not been entered into.

Made by the Governor acting on the advice of Cabinet this 27th day of April,
2023.

(Sgd.) Tanisha Christopher
CLERK OF CABINET

Published by exhibition by the Clerk of Cabinet at the Office of the Legislature,
Farara Plaza, Brades, Montserrat, MSR1110, this 5th day of May, 2023.

(Sgd.) Tanisha Christopher
CLERK OF CABINET