

# FEDERAL INLAND REVENUE SERVICE (ESTABLISHMENT) ACT, 2007

## INCOME TAX (COUNTRY-BY-COUNTRY REPORTING) REGULATIONS, 2018

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# FEDERAL INLAND REVENUE SERVICE (ESTABLISHMENT) ACT, 2007

## INCOME TAX (COUNTRY-BY-COUNTRY REPORTING) REGULATIONS, 2018

[1<sup>st</sup> Day of January, 2018]

Commencement

In the exercise of the powers conferred by Section 61 of the Federal Inland Revenue Service (Establishment) Act No. 13 of 2007 (“the Act”) and all other powers enabling it on that behalf, the Federal Inland Revenue Service Board established under Section 3(1) of the Act (“the Board”) with the approval of the Minister, hereby makes the following Regulations:

### PART I

#### PRELIMINARY

##### 1. PURPOSE

These Regulations give effect to the provisions of –

- (a) The Country-by-Country Multilateral Competent Authority Agreement (CbC MCAA) signed by Nigeria on the 27<sup>th</sup> January, 2016 and ratified by the Federal Executive Council (FEC) on the 3<sup>rd</sup> August, 2016;
- (b) Sections 8(1)(i), 8(1)(t), 8(2), 26 and 27(1) of the Federal Inland Revenue Service (Establishment) Act 2007;
- (c) Sections 58 and 60 of the Companies Income Tax Act, CAP C21, Laws of the Federation of Nigeria, 2004 (as amended);
- (d) Sections 31 and 32 of the Petroleum Profits Tax Act, CAP P13, Laws of the Federation of Nigeria, 2004; and
- (e) Regulations 6 of the Income Tax (Transfer Pricing) Regulations No. 1, 2012.

##### 2. OBJECTIVES

The objectives of these Regulations are to-

- (a) provide Tax Authorities with information about Multinational Enterprises' ("MNEs") global activities, profits and taxes;
- (b) provide Tax Authorities with information to better assess international tax avoidance risks;
- (c) improve transparency of MNEs in their tax practices; and
- (d) prevent tax evasion or avoidance through base erosion and profit shifting.

## **PART II**

### **FILING OBLIGATION AND NOTIFICATION OF TAX RESIDENCE OF REPORTING ENTITY**

#### **3. ULTIMATE PARENT ENTITY**

Each Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Nigeria shall file a Country-by-Country Report conforming to the requirements of regulations 7 and 8 of these Regulations with the Federal Inland Revenue Service (hereinafter referred to as "the Service"), with respect to its Reporting Accounting Year on or before the date specified in regulation 9 thereof.

#### **4. CONSTITUENT ENTITY**

(1) A Constituent Entity which is not the Ultimate Parent Entity of an MNE Group shall file with the Service on or before the date specified in regulation 9, a Country-by-Country Report in conformity with the requirements of regulations 7 and 8 of these Regulations with respect to the Reporting Accounting Year of an MNE Group of which it is a Constituent Entity.

(2) The provisions of sub-regulation (1) of this regulation shall apply where-

- (a) the entity is resident for tax purposes in Nigeria; and
- (b) one or more of the following conditions apply –

- (i). the Ultimate Parent Entity of the MNE Group is not obligated to file a Country-by-Country Report in its jurisdiction of tax residence,
  - (ii). the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which Nigeria is a party but does not have a Qualifying Competent Authority Agreement in effect to which Nigeria is a party by the time specified in regulation 9 of these Regulations for filing the Country-by-Country Report for the Reporting Accounting Year, or
  - (iii). there has been a Systemic Failure of the jurisdiction of tax residence of the Ultimate Parent Entity which has been notified by the Service to the Constituent Entity resident for tax purposes in Nigeria.
- (3) Where there are more than one Constituent Entities of the same MNE Group resident for tax purposes in Nigeria and one or more of the conditions set out in paragraph (2)(b) of this regulation apply, the MNE Group may designate one of such Constituent Entities to file the Country-by-Country Report conforming to the requirements of regulations 7 and 8 of these Regulations with the Service with respect to any Reporting Accounting Year on or before the date specified in regulation 9 and to notify the Service 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 Nigeria.

## **5. EXEMPTIONS FROM FILING**

- (1) Notwithstanding the provisions of regulation 4 of these Regulations, when one or more of the conditions set out in regulation 4(2)(b) apply, an entity described in regulation 4 of these Regulations shall not be required to file a Country-by-Country Report with the Service with respect to any Reporting Accounting Year if the MNE Group of which it is a Constituent Entity has made available a Country-by-Country Report conforming to the requirements of regulations 7 and 8 with respect to such Accounting Year through a Surrogate Parent Entity.
- (2) The provision of regulation 5(1) of these Regulations applies where the Surrogate Parent Entity files the Country-by-Country Report described in regulations 7 and 8 of these Regulations with the tax authority of its jurisdiction of tax residence on or before the date specified in regulation 9 and satisfies the following conditions:

- (a) the jurisdiction of tax residence of the Surrogate Parent Entity requires filing of Country-by-Country Reports conforming to the requirements of regulations 7 and 8;
- (b) the jurisdiction of tax residence of the Surrogate Parent Entity has a Qualifying Competent Authority Agreement in effect to which Nigeria is a party by the time specified in regulation 9 for filing the Country-by-Country Report for the Reporting Accounting Year;
- (c) the jurisdiction of tax residence of the Surrogate Parent Entity has not notified the Service of a Systemic Failure;
- (d) the jurisdiction of tax residence of the Surrogate Parent Entity has been notified in accordance with regulation 6 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 the Service in accordance with regulation 6 of these Regulations.

## **6. NOTIFICATIONS**

- (1) Any Constituent Entity of an MNE Group that is resident for tax purposes in Nigeria shall notify the Service whether it is the Ultimate Parent Entity or the Surrogate Parent Entity, no later than the last day of the Reporting Accounting Year of such MNE Group.
- (2) Where a Constituent Entity of an MNE Group that is resident for tax purposes in Nigeria is neither the Ultimate Parent Entity nor the Surrogate Parent Entity, it shall notify the Service of the identity and tax residence of the Reporting Entity, no later than the last day of the Reporting Accounting Year of such MNE Group.

## **PART III**

## **COUNTRY-BY COUNTRY REPORT**

### **7. CONTENTS**

For purposes of these Regulations, a Country-by-Country Report with respect to an MNE Group shall contain -

- (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 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.

### **8. FORM**

- (1) The Country-by-Country Report shall be filed in a form identical to and applying the definitions and instructions contained in the model template set out in the First Schedule to these Regulations and the Guidelines on Country-by-Country Reporting issued by the Service.
- (2) The model template and the Guidelines on Country-by-Country Reporting mentioned in regulation 8(1) of these Regulations may be modified by the Service from time to time.

### **9. TIME FOR FILING**

The Country-by-Country Report required by these Regulations shall be filed not later than 12 months after the last day of the Reporting Accounting Year of the MNE Group.

### **10. USE AND CONFIDENTIALITY**

- (1) The Service shall -
  - (a) use the Country-by-Country Report for purposes of –

- (i). assessing high-level transfer pricing risks and other base erosion and profit shifting related risks in Nigeria,
  - (ii). assessing the risk of non-compliance by members of the MNE Group with applicable transfer pricing rules, and
  - (iii). economic and statistical analysis, where appropriate.
- (b) not use Country-by-Country Report as a basis for Transfer pricing adjustments.

(2) The Service shall preserve the confidentiality of the information contained in the 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.

## **PART IV**

### **NON-COMPLIANCE AND PENALTIES**

#### **11. LATE FILING OF COUNTRY-BY-COUNTRY REPORT**

Where a Reporting Entity fails to file the Country-by-Country Report to the Service on or before the date specified in regulation 9 of these Regulations, the Service shall impose an administrative penalty of ₦10,000,000.00 in the first instance and ₦1,000,000.00 for every month in which the default continues.

#### **12. FILING AN INCORRECT OR FALSE COUNTRY-BY-COUNTRY REPORT**

Where a Reporting Entity files an incorrect or false Country-by-Country Report, the Service shall impose an administrative penalty of ₦10,000,000.00.

#### **13. FAILURE TO PROVIDE NOTIFICATION**

Where a Constituent Entity of an MNE Group that is resident for tax purposes in Nigeria fails to provide the notification specified under regulations 6 of these Regulations, the Service shall impose an administrative penalty of ₦5,000,000.00 in the first instance and ₦10,000.00 for every day in which the default continues.

## **PART V SUPPLEMENTARY AND GENERAL PROVISIONS**

### **14. OFFICIAL LANGUAGE OF COUNTRY-BY-COUNTRY REPORT**

The official language for filing a Country-by-Country Report under these Regulations shall be the English Language.

### **15. ANTI-AVOIDANCE**

Where a person enters into any arrangements and 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 shall have effect as if the arrangements had not been entered into.

### **16. INTERPRETATION**

In these Regulations, unless the context otherwise requires -

*“Accounting Year”* means an annual accounting period with respect to which the Ultimate Parent Entity of the MNE Group prepares its financial statements;

*“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 -

- (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 Group’s Consolidated Financial Statements solely on size or materiality grounds, or
- (iii) any permanent establishment of any separate business unit of the MNE Group included in (i) or (ii) above 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;

*“Excluded MNE Group”* means, with respect to any Accounting Year of the Group, a Group having total consolidated group revenue of less than ₦160,000,000,000.00 during the Accounting Year immediately preceding the Reporting Accounting Year as reflected in its Consolidated Financial Statements for such preceding Accounting Year;

*“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 Nigeria 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;

*“Minister”* means the Minister charged with responsibility for finance;

*“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;

*“Qualifying Competent Authority Agreement”* means an agreement that-

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

*“Reporting Accounting Year”* means the accounting year of which its financial and operational results are reflected in the Country-by-Country Report for a particular year as defined in regulation 7 of these Regulations;

*“Reporting Entity”* means the Constituent Entity that is required to file a country-by-country report conforming to the requirements in regulations 7 and 8 of these Regulations 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 regulations 3 and 4;

*“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 Country-by-Country 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 (2) (b) of regulation 4 applies;

“*Systemic Failure*” with respect to a jurisdiction means that a jurisdiction has a Qualifying Competent Authority Agreement in effect with Nigeria, 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 Nigeria Country-by-Country Reports in its possession of MNE Groups that have Constituent Entities in Nigeria;

“*tax authority*” means any government institution authorised by law to administer taxes in a jurisdiction and to exchange the Country-by-Country Reports;

“*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 sub-paragraph (i) above in the first mentioned Constituent Entity.

## **17. EFFECTIVE DATE**

These Regulations shall be effective for Reporting Accounting Years of MNE Groups beginning on or after 1<sup>st</sup> January 2018.

## **18. CITATION**

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

**Made this 1<sup>st</sup> day of January, 2018.**

**Tunde Fowler  
Executive Chairman  
Federal Inland Revenue Service**

### **EXPLANATORY MEMORANDUM**

(This memorandum does not form part of these Regulations, but is intended to explain its purport)

These Regulations seek to provide Tax Authorities with information about Multinational Enterprises' global activities, profit and taxes.

**SCHEDULE**

**FIRST SCHEDULE**

**[Regulations 8]**

***Model Template for the Country-by-Country Report***



**Table 2. List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction**

		Name of the MNE group: Fiscal year concerned:															
Tax Jurisdiction	Constituent Entities Resident in the Tax Jurisdiction	Tax Jurisdiction of Organisation or Incorporation if Different from Tax Jurisdiction of Residence	Main Business Activity(ies)														
			Research and Development	Holding or Managing Intellectual Property	Purchasing or Procurement	Manufacturing or Production	Sales, Marketing or Distribution	Administrative, Management or Support Services	Provision of Services to Unrelated Parties	Internal Group Finance	Regulated Financial Services	Insurance	Holding Shares or Other Equity Instruments	Dormant	Other		
	1.																
	2.																
	3.																
	1.																
	2.																
	3.																

1. Please specify the nature of the activity of the Constituent Entity in the “Additional Information” section.

**Table 3: Additional Information**

Name of the MNE group:
Year of Assessment Concerned:
<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>

