

2017 No. 598

TAXES

**The International Tax Compliance (Amendment) Regulations
2017**

<i>Made</i>	- - - -	<i>25th April 2017</i>
<i>Laid before the House of Commons</i>		<i>26th April 2017</i>
<i>Coming into force</i>	- -	<i>17th May 2017</i>

The Treasury make these Regulations in exercise of the powers conferred by section 136 of the Finance Act 2002(a) and section 222(1), (2) and (3) of the Finance Act 2013(b):

Citation, commencement and effect

1.—(1) These Regulations may be cited as the International Tax Compliance (Amendment) Regulations 2017 and come into force on 17th May 2017.

(2) Regulation 6(1) applies in respect of the calendar year 2016 and subsequent calendar years for the purposes of the FATCA agreement.

Amendment to the International Tax Compliance Regulations 2015

2. The International Tax Compliance Regulations 2015(c) are amended as follows.

Amendment of regulation 1 (interpretation)

3.—(1) For regulation 1(3)(b) substitute—

“(b) the following arrangements relating to the CRS(d)—

- (i) the arrangements entered into, at the date these Regulations come into force, by the United Kingdom with another territory(e) for the exchange of tax information for the purposes of the adoption and implementation of the CRS; and

(a) 2002 c. 23.

(b) 2013 c. 29; section 222 was amended by section 50 of the Finance (No. 2) Act 2015 (c. 33).

(c) S.I. 2015/878, amended by S.I. 2015/1839 and 2016/899.

(d) The United Kingdom has decided to adopt the common reporting standard for automatic exchange of financial account information developed by the Organisation for Economic Co-operation and Development. The United Kingdom will exchange information received from financial institutions under these Regulations with territories which are defined as a “Reportable Jurisdiction” under the CRS. A Reportable Jurisdiction is one which has agreed to provide the information specified in Section I of the CRS and which is identified in a published list. The list of Reportable Jurisdictions in relation to the United Kingdom is available at <https://www.gov.uk/hmrc-internal-manuals/international-exchange-of-information/ieim402340>.

(e) Various international agreements to which the United Kingdom is a party enable HMRC to enter into competent authority agreements with tax authorities in other territories detailing arrangements for exchange of information relating to the CRS. The arrangements made to date are those made with Reportable Jurisdictions, where the arrangements specify that they are active for a particular year.

- (ii) the arrangements for the exchange of information arising from the agreements entered into by the EU at the date these Regulations come into force, regarding the adoption and implementation of the CRS as between member States and other territories^(a).”
- (2) After regulation 1(3) insert—
 - “(3A) In these Regulations, “the CRS” means the common reporting standard for automatic exchange of financial account information developed by the Organisation for Economic Co-operation and Development^(b).”

Amendment of regulation 2 (meaning of “reportable account”)

- 4.—(1) In regulation 2(1)—
 - (a) at the end of sub-paragraph (b) omit “and”, and
 - (b) after sub-paragraph (b) insert—
 - “(ba) in relation to a reporting financial institution under the CRS, an account meeting the description at Section III(A) of the CRS, and”.
- (2) In regulation 2(2)(c)(ii) for “paragraph (1)(b) or (c)” substitute “paragraph (1)(b), (ba) or (c)”.

Amendment of regulation 3 (due diligence requirements)

- 5.—(1) For regulation 3(1) and (2) substitute—
 - “3.—(1) A reporting financial institution must establish and maintain arrangements that are designed to identify in respect of a financial account—
 - (a) the territory in which an account holder or a controlling person is resident for the purposes of—
 - (i) income tax,
 - (ii) corporation tax, or
 - (iii) any tax imposed by the law of that territory that is of a similar character to either of those taxes, and
 - (b) whether it is a reportable account.
 - (2) A reporting financial institution must comply with paragraph (1) by applying the due diligence procedures set out in the relevant agreement.
 - (2A) A reporting financial institution must keep a record of—
 - (a) the steps taken to comply with this regulation, and
 - (b) the information collected in the course of identifying the matters referred to in paragraph (1).
 - (2B) A reporting financial institution must keep the records required by paragraph (2A) for a period of—
 - (a) in respect of an account identified as a reportable account, five years beginning with the end of the year in which the account is last included in a return made under regulation 6(1), or
 - (b) in respect of an account which is not a reportable account, five years beginning with the end of the last year in which the reporting financial institution relied upon

(a) International agreements entered into by the European Union with other territories require member States to apply arrangements to exchange CRS information with the other territories.

(b) The standard for automatic exchange of financial account information developed by the Organisation for Economic Co-Operation and Development (“the OECD”) is available on the OECD website at <http://www.oecd.org/ctp/exchange-of-tax-information/standard-for-automatic-exchange-of-financial-account-information-for-tax-matters-9789264216525-en.htm>.

the due diligence procedures to treat the account as not being a reportable account.”.

(2) For regulation 3(3)(b) substitute—

“(b) in relation to a reporting financial institution under the CRS, set out in Sections II to VII of the CRS,”.

(3) For regulation 3(4) substitute—

“(4) A reporting financial institution under the CRS must—

(a) apply the rules in Section VII(B) of Annex I of the DAC instead of the equivalent rules in the CRS treating the reference to “each Member State” in that Section as a reference to “the United Kingdom”, and

(b) also apply the rules in Annex II of the DAC treating the references to “Member State” in that Annex as references to “participating jurisdiction” as defined in the CRS.

(4A) A reporting financial institution under the CRS must in respect of the following terms in the CRS—

(a) “pre-existing account”, and

(b) “related entity”,

apply to those terms the definitions as they appear in Annex I of the DAC instead of the definitions as they appear in the CRS.

(4B) Where a provision of the CRS does not specify a deadline for the requirements of that provision to be satisfied but there is an equivalent provision in Annex I of the DAC which does specify a deadline, then that deadline applies for the purposes of the provision in the CRS(a).”.

(4) In regulation 3(5), for “regulation 2(1)(b) and (c)” substitute “regulation 2(1)(b), (ba) and (c)”.

Amendment of regulation 6 (reporting obligation)

6.—(1) For regulation 6(1) substitute—

“(1) A reporting financial institution must, in respect of the first reporting year and every following calendar year, make a return setting out the information required to be reported under the relevant agreement in relation to—

(a) each reportable account that is maintained by the institution at any time during the calendar year in question, and

(b) each pre-existing account identified as a reportable account by the institution at any time during the calendar year in question.”.

(2) For regulation 6(3)(b) substitute—

“(b) in relation to an account identified as a reportable account for the purposes of the CRS, set out in Section I of the CRS (ignoring paragraph F of Section I),”.

Amendment of regulation 12A (interpretation of regulations 12A to 12F)

7.—(1) In regulation 12A(1)(b) omit the following definitions—

(a) “specified financial institution”

(b) “specified relevant person”.

(2) At the beginning of regulation 12A(3) insert “In these Regulations”.

(a) There are a number of provisions in the CRS where the deadline for a particular action is blank and therefore needs to be specified by member States.

(b) Regulation 12A was inserted by S.I. 2016/899.

- (3) At the beginning of regulation 12A(4) insert “In these Regulations”.

Insertion of regulation 12G (provision of information)

8. After regulation 12F(a) insert—

“Provision of information

12G.—(1) In order to determine whether or not the obligations arising under these Regulations have been complied with, an officer of Revenue and Customs may require a reporting financial institution, UK representative, specified financial institution or specified relevant person to provide such information as the officer reasonably requires as specified by written notice.

(2) The information required by notice under paragraph (1) must be provided—

- (a) within such period, being no less than 14 days, and
- (b) by such means and in such form,

as is reasonably required by the officer of Revenue and Customs.”.

Insertion of regulation 12H (person liable to penalties)

- 9.—(1) Before regulation 13 and after the heading “Penalties for breach of obligations” insert —

“Liable persons

12H.—(1) Where in regulations 13, 14, 15 and 16—

- (a) a reporting financial institution, UK representative or specified financial institution is made liable to a penalty, and
- (b) the institution or representative is a partnership or trust,

the liability to the penalty falls upon a liable person of the institution or representative.

(2) In paragraph (1), “liable person” means, in relation to—

- (a) a partnership, a partner of the partnership,
- (b) a trust which is not a collective investment scheme, a trustee of the trust, or
- (c) a trust which is a collective investment scheme, a trustee, manager or operator of the scheme.

(3) In this regulation “collective investment scheme” means—

- (a) an investment trust within the meaning of the Corporation Tax Acts^(b),
- (b) a venture capital trust within the meaning of Part 6 of ITA 2007^(c), or
- (c) any arrangements that are a “collective investment scheme” within the meaning of the Financial Services and Markets Act 2000^(d).”.

Amendment of regulation 13 (penalties for failure to comply with Regulations)

10. For regulation 13(e) substitute—

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- (a) Regulation 12F was inserted by S.I. 2016/899.
- (b) The meaning of “investment trust” in the Corporation Tax Acts is given in section 1158 of the Corporation Tax Act 2010 (c. 4), section 1158 was substituted by section 49(2) of the Finance Act 2011 (c. 11).
- (c) 2007 c. 3. The meaning of “venture capital trust in Part 6 of that Act is given in section 259.
- (d) 2000 c. 8. The meaning of “collective investment scheme” is given in section 235 of the Financial Services and Markets Act 2000. The power under section 235(5) to provide that arrangements do not amount to a collective investment scheme has been exercised by the Treasury by the following instruments: S.I. 2001/1062, 2001/3650, 2005/57, 2007/800, 2008/1641, 2008/1813, 2015/754 and 2015/2061.
- (e) Regulation 13 was substituted by S.I. 2016/899.

“13.—(1) If a reporting financial institution or UK representative fails to comply with any obligation under regulations 2 to 11 or regulation 12G, the institution or representative is liable to a penalty of £300.

(2) If a specified financial institution or specified relevant person fails to comply with any obligation under regulations 12B to 12E, the institution or person is liable to a penalty of £3,000.

(3) If a specified financial institution or specified relevant person fails to comply with any obligation under regulation 12G, the institution or person is liable to a penalty of £300.”.

Amendment of regulation 14 (daily default penalty)

11. In regulation 14—

- (a) before “If” insert “Subject to regulation 21”,
- (b) for “the person has been notified” substitute “the person liable to the penalty has been notified”, and
- (c) for “the person is liable” substitute “that person is liable”.

Amendment of regulation 15 (penalties for inaccurate information)

12.—(1) In regulation 15(1)—

- (a) for “A person” substitute “A reporting financial institution or UK representative”, and
- (b) for “the person” substitute “the institution or representative”.

(2) In regulation 15(2)(b) omit “on the part of the person”.

(3) In regulation 15(3) and (4) for “person” substitute “reporting financial institution or UK representative”.

Amendment of regulation 16 (FATCA agreement penalty: non-participating financial institutions)

13.—(1) In regulation 16(1) for “a person” substitute “a reporting financial institution or a UK representative”.

(2) In regulation 16(2) for “a person’s” substitute “a reporting financial institution’s or UK representative’s”.

Amendment of regulation 18 (assessment of penalties)

14. In regulation 18(2) after “person” insert “of the assessment”.

Amendment of regulation 19 (right to appeal against penalty)

15. In regulation 19(b) for “such a penalty” substitute “a penalty under regulation 14 or 15”.

Amendment of regulation 21 (increased daily default penalty)

16. For regulation 21 substitute—

“21.—(1) Paragraph (2) applies if—

- (a) a person is liable to a penalty under regulation 14 and a penalty is assessed under regulation 18, and
- (b) the failure in respect of which that assessment is made continues for more than 30 days beginning with the date on which notification of that assessment is given.

(2) Where this paragraph applies, an officer of Revenue and Customs may make an application to the tribunal for permission to assess an increased daily penalty under regulation 14.

(3) An officer of Revenue and Customs must notify the person liable to the penalty of an application under paragraph (2) at the time of making it.

(4) If the tribunal determines that an increased daily penalty may be assessed then for each applicable day on which the failure continues, the person's liability to a penalty under regulation 14 shall be for that increased amount.

(5) The tribunal may not determine that an increased daily penalty may be assessed for an amount exceeding £1000 for each applicable day.

(6) If the tribunal determines that an increased daily penalty may be assessed, HMRC must notify the person liable to the penalty.

(7) The notification under paragraph (6) must specify the future day from which the increased penalty is to apply.

(8) That day and any subsequent day is an "applicable day" for the purposes of paragraph (4) and (5).".

Amendment of regulation 22 (enforcement of penalties)

17. For regulation 22(2)(a) substitute—

"(a) the date on which the assessment of the penalty under regulation 18 is notified in respect of the penalty, or".

Amendment of regulation 23 (anti-avoidance)

18. In regulation 23—

- (a) for "a person" substitute "a reporting financial institution, UK representative, specified financial institution or specified relevant person", and
- (b) for "the person" substitute "the institution or representative".

Amendment of regulation 24 (definitions)

19. In the table in regulation 24(2)—

- (a) for the following entries substitute—

"CRS	regulation 1(3A)"			
"custodial account		Section VIII(C)(3) of Annex I	Section VIII(C)(3) of the CRS	Article 1(1)(u)"

- (b) insert at the appropriate place—

"related entity	regulation 3(4A)	Section VIII(E)(4) of Annex I	Section VIII(E)(4) of the CRS"	
"reportable jurisdiction			Section VIII(D)(4) of the CRS"	
"specified financial	regulation 12A(3)			

institution				
specified relevant person	regulation 12A(4) ”			

“UK representative	regulation 11(2)”			
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and,

(c) for the following entries substitute—

“pre-existing account	regulation 3(4A)	Section VIII(C)(9) of Annex I	Section VIII(C)(9) of the CRS	Article 1(1)(aa)
pre-existing entity account		Section VIII(C)(13) of Annex I	Section VIII(C)(13) of the CRS	Section IV of Annex I”

Omission of Schedule 1 (participating jurisdictions)

20. Omit Schedule 1.

*David Evennett
Andrew Griffiths*

25th April 2017

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Regulations amend the International Tax Compliance Regulations 2015 (S.I. 2015/878) (“the principal Regulations”) which give effect to agreements and arrangements reached between United Kingdom and other jurisdictions to improve international tax compliance.

Regulation 3 extends the application of the principal Regulations to international agreements entered into by the European Union by virtue of which the United Kingdom is required to apply arrangements to exchange information with the jurisdictions which are party to the agreements. The principal Regulations also apply in relation to arrangements entered into by the United Kingdom for the exchange financial account information with other jurisdictions. Exchanges will take place pursuant to arrangements agreed between competent authorities of the relevant jurisdictions which are underpinned by international agreements such as the Multilateral Convention on Mutual Administrative Assistance in Tax Matters – http://www.keepeek.com/Digital-Asset-Management/oecd/taxation/the-multilateral-convention-on-mutual-administrative-assistance-in-tax-matters_9789264115606-en#.WKHVu-81x9A.

Regulation 4 amends regulation 2 of the principal Regulations to provide for some types of insurance contracts to be treated as reportable accounts for the purposes of the common reporting standard for automatic exchange of information (“CRS”) unless reporting financial institutions elect otherwise.

Regulation 5 amends regulation 3 of the principal Regulations such that financial institutions are required to identify the territory of tax residence of account holders or controlling persons and also identify which accounts are reportable accounts. Regulation 3(2)(b) provides for the period for which records are to be kept. Regulation 3(4A) and (4B) provide for the application of definitions

and deadlines as they appear in the Directive on administrative co-operation in the field of taxation (2011/16/EU) for CRS purposes.

Regulation 6 amends regulation 6 of the principal Regulations to provide for financial institutions to report on pre-existing accounts identified as reportable in a particular year whether or not they are maintained.

Regulation 7 amends regulation 12A of the principal Regulations to extend the application of definitions to the Regulations as a whole.

Regulation 8 inserts regulation 12G into the principal Regulations. This provides for a power for HMRC to require information to enable HMRC to determine whether obligations in the principal Regulations have been complied with.

Regulations 9 to 12 amend the penalty provisions in regulations 13 to 15 of the principal Regulations to identify the person who may be penalised for failure to comply with the obligations imposed on financial institutions in cases where the financial institution is a partnership, trust or collective investment scheme. Regulations 13, 14 and 18 make consequential amendments to regulations 16, 18 and 23 of the principal Regulations respectively.

Regulation 15 amends regulation 19 of the principal Regulations to clarify the right to appeal against penalties. Regulations 16 and 17 amend the provisions in regulations 21 and 22 of the principal Regulations relating to increased daily default penalties and notification of these to persons subject to such penalties.

Regulation 19 updates the list and table of definitions in regulation 24 of the principal Regulations.

Regulation 20 omits the list of participating jurisdictions in Schedule 1 of the principal Regulations. The list, referenced in the due diligence procedures referred to in regulation 3 and in regulations 12A, 12B and 12E is available at <https://www.gov.uk/hmrc-internal-manuals/international-exchange-of-information/ieim400090>.

A Tax Information and Impact Note covering the International Tax Compliance Regulations 2015 was published on 18th March 2015 and is available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>. It remains an accurate summary of the impacts that apply to this instrument.

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