
STATUTORY INSTRUMENTS

2013 No. 1962

The International Tax Compliance (United States of America) Regulations 2013

Obligations in relation to financial accounts

Identification obligation

6.—(1) In relation to all financial accounts which a reporting financial institution maintains, the institution must establish and maintain—

- (a) arrangements that are designed to identify reportable accounts, and
- (b) arrangements that are designed to establish the territory in which any account holder is resident for income tax or corporation tax purposes or for the purposes of any tax imposed by the law of the territory that is of a similar character to either of those taxes.

(2) The institution is taken to comply with the obligation to establish and maintain arrangements within paragraph (1)(a) only if—

- (a) the arrangements meet the due diligence requirements as set out in this regulation, and
- (b) the arrangements secure that the evidence used in accordance with this regulation or regulation 7, or a record of the steps taken in accordance with this regulation or regulation 7, is kept for a period of six years beginning with the end of the year in which the arrangements applied to the financial accounts.

(3) The due diligence requirements for a calendar year for which an election under regulation 4(3) is not in force are —

- (a) in the case of 30th June 2014 individual accounts that are lower value accounts within paragraph II.B of Annex I of the treaty or are 30th June 2014 individual accounts that are reportable accounts meeting the description at paragraph II.A of that Annex, the procedures described at paragraph II.B and II.C of that Annex,
- (b) in the case of 30th June 2014 individual accounts with a balance or value that exceeds \$1,000,000 as of 30th June 2014, or 31st December 2015 or 31st December in any subsequent year, the procedures described at paragraphs II.D and II.E of that Annex,
- (c) in the case of post-June 2014 individual accounts, the procedures described at paragraphs III.B to III.D of that Annex,
- (d) in the case of 30th June 2014 entity accounts, the procedures described at paragraphs IV.D and IV.E (1) of that Annex, and
- (e) in the case of post-June 2014 entity accounts, the procedures described at paragraphs V.A to V.C of that Annex.

(4) The due diligence requirements for a calendar year for which an election under regulation 4(3) is in force are—

- (a) in the case of 30th June 2014 individual accounts that are lower value accounts within paragraph II.B of Annex I of the treaty, the procedures described at paragraph II.B and II.C of that Annex,

- (b) in the case of 30th June 2014 individual accounts that are lower value accounts within paragraph II.B of that Annex with a balance or value that exceeds \$1,000,000 as of 31st December 2015 or 31st December in any subsequent year, the procedures described at paragraphs II.D and II.E of that Annex,
- (c) in the case of 30th June 2014 individual accounts within paragraph II.A of that Annex with a balance or value that exceeds \$1,000,000 as of 31st December 2015 or 31st December in any subsequent year, the procedures described at paragraphs II.D and II.E of that Annex,
- (d) in the case of 30th June 2014 individual accounts within paragraph II.D of that Annex, the procedures described at paragraphs II.D and II.E of that Annex,
- (e) in the case of post-June 2014 individual accounts that are not within paragraph III.A of that Annex, the procedures described at paragraphs III.B to III.D of that Annex,
- (f) in the case of 30th June 2014 entity accounts within paragraphs IV.B and IV.C of that Annex, the procedures described at paragraphs IV.D and IV.E (1) of that Annex,
- (g) in the case of 30th June 2014 entity accounts with a balance or value that does not exceed \$250,000 as of 30th June 2014, but with a balance or value that exceeds \$1,000,000 as of 31st December 2015 or 31st December in any subsequent year, the procedures at paragraphs IV.D and IV.E (2) of that Annex, and
- (h) in the case of post-June 2014 entity accounts, the procedures described at paragraphs V.A to V.C of that Annex.

(5) If in the case of an account within either paragraph (3)(a) or (4)(a)—

- (a) an institution has established the account holder's U.S. status from documentary evidence mentioned in paragraph VI.D of Annex I of the treaty, and
- (b) it has done so in order to meet its obligations under a QI agreement as mentioned in that paragraph,

the due diligence requirements in the case of that account do not include the requirement to carry out the electronic search described in paragraph II.B (1) of that Annex of the treaty.

(6) If in the case of an account within any of paragraph (3)(b) or (4)(a) to (c) —

- (a) an institution has established the account holder's U.S. status from documentary evidence mentioned in paragraph VI.D of Annex I of the treaty, and
- (b) it has done so in order to meet its obligations under a QI agreement as mentioned in that paragraph,

the due diligence requirements in the case of that account do not include the requirement to carry out the electronic searches described in paragraph II.B (1) or II.D (1) of Annex I of the treaty or the requirement to carry out the paper record search described in paragraph II.D (2) of that Annex.

(7) If, as a result of this regulation, a person is required to certify their U.S. status, a reporting financial institution may require the person to supply to the institution such documentary evidence mentioned in paragraph VI.D of Annex I of the treaty as the institution considers appropriate in support of the certification.

(8) The due diligence requirements in this regulation must be applied by reference to the special rules and definitions at paragraph I.B (1) to (3) and section VI of Annex I of the treaty.

(9) For the purposes of this regulation references to the documentary evidence set out in paragraph VI.D of Annex I of the treaty are to be treated as if the words "other than a Form W-8 or W-9" were omitted.

(10) Nothing in paragraph (1)(b) applies to accounts maintained before the day on which these Regulations come into force.

Modification of due diligence requirements

7.—(1) This regulation modifies the due diligence requirements set out in regulation 6 in the case of a reporting financial institution but only if it makes an election applying those modifications.

(2) If the institution obtains, or is in the process of obtaining, evidence of a person's U.S. status in relation to any 30th June 2014 account, it is entitled to rely on the evidence in relation to any post-June 2014 account unless it has reasonable cause to believe that the person's U.S. status has subsequently changed.

(3) Paragraph (2) has effect in the case of 30th June 2014 individual accounts maintained by the institution for an account holder only if, for the purpose of establishing which of the procedures referred to in regulation 6(3)(a) and (b) or regulation 6(4)(a) to (c) are applicable to those accounts, the institution treats all those accounts as a single 30th June 2014 individual account.

(4) If the institution or a related entity obtains, or is in the process of obtaining, evidence of a person's U.S. status in relation to a financial account, the institution is entitled to rely on the evidence in relation to all financial accounts maintained by the institution for the account holder unless the institution has reasonable cause to believe that the person's U.S. status has subsequently changed.

(5) The due diligence requirements set out in regulation 6 do not need to be met in relation to a financial account if—

- (a) the institution maintains the account as a result of a merger with, or acquisition of, a qualifying financial institution which had established the U.S. status of the account holder and any controlling person, and
- (b) the institution has no reasonable cause to believe that the U.S. status of the account holder or any controlling person has changed.

(6) For this purpose “qualifying financial institution”, in relation to a financial institution, means another financial institution—

- (a) which has not previously been a related entity of the institution, and
- (b) which immediately before the merger or acquisition was a partner jurisdiction financial institution but was neither a registered deemed-compliant financial institution nor a non-participating financial institution.

(7) An election under this regulation—

- (a) is to be made by being given to the Commissioners,
- (b) must be in such form as may be determined by the Commissioners, and
- (c) has effect in relation to all times on or after the day on which the election is made (unless subsequently withdrawn).

Reporting obligation

8.—(1) A reporting financial institution must, in respect of 2014 and every following calendar year, prepare a return setting out—

- (a) the required information in relation to every reportable account that is maintained by the institution at any time during the calendar year in question,
- (b) the institution's Global Intermediary Identification Number, and
- (c) a statement of whether paragraph 5 of Article 4 of the treaty applies to the institution and, if it does, whether the requirements in sub-paragraphs (a) to (c) of that paragraph have been met.

(2) If during the calendar year in question the reporting financial institution maintains no reportable accounts the return must state that fact.

(3) The institution must send a return under this regulation to an officer of Revenue and Customs on or before 31st May of the year following the calendar year to which the return relates (“the reporting date”).

(4) The required information is—

- (a) the name and address of the account holder,
- (b) the account holder’s U.S. federal taxpayer identifying number (but see regulation 9(2)),
- (c) if an account is identifiable by an account number, that number or, if not, its functional equivalent,
- (d) the balance or value of the account (including, in the case of a cash value insurance contract or annuity contract, the cash value or surrender value) as of the end of the calendar year or, if the account was closed during the year, the balance or value on the date that the reporting financial institution closes the account, and
- (e) the relevant total gross credits, or if there are none, a statement of that fact.

(5) The “relevant total gross credits” means—

- (a) in the case of a custodial account—
 - (i) the total gross amount of interest, the total gross amount of dividends and the total gross amount of other income generated with respect to assets held in the account which is paid into, or with respect to, the account during the calendar year, and
 - (ii) the total gross proceeds from the sale or redemption of property paid into the account during the calendar year if the institution acted as a custodian, broker, nominee or otherwise as an agent for the account holder,
- (b) in the case of a depository account, the total gross amount of interest paid to the account during the calendar year, and
- (c) in the case of any other account, the total gross amount of sums paid by the institution under a legal obligation to the account holder with respect to the account during the calendar year,

and “interest” here includes any amount that is chargeable as interest under Part 4 of ITTOIA 2005(1).

(6) For the purposes of this regulation—

- (a) references to the balance or value of an account include a nil balance or value, and
- (b) references to paying an amount include crediting an amount.

(7) If a reporting financial institution has an established practice for the periodic valuation of accounts of a particular description otherwise than at the end of a calendar year, the institution may report under paragraph (5)(a) or (c) by reference to a period of 12 months ending with the date (or, if more than one, the latest date) in the calendar year on which the institution values accounts of that description (instead of by reference to the calendar year).

(8) If a reporting financial institution does not hold a U.S. federal taxpayer identifying number that it is required to report under paragraph (4)(b) the institution must obtain that number from the account holder.

Modifications for calendar years 2014 to 2016

9.—(1) In the case of custodial accounts—

- (a) there is no requirement to include in the return for the calendar year 2014 information about relevant total gross credits, and

- (b) there is no requirement to include in the return for the calendar year 2015 any information set out in regulation 8(5)(a)(ii).
- (2) In the case of 30th June 2014 accounts—
 - (a) there is no requirement to include in the return for calendar years before 2017 a U.S. federal taxpayer identifying number if the reporting financial institution does not hold that number, but
 - (b) if the account holder is an individual whose date of birth the institution does hold, the institution must include the account holder's date of birth instead.