
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made to give effect to the agreement reached between the Government of the United Kingdom and the Government of the United States of America to improve international tax compliance and to implement FATCA (the provisions commonly known as the Foreign Account Tax Compliance Act in the enactment of the United States of America called the Hiring Incentives to Restore Employment Act), signed on 12th September 2012 (“the agreement”).

Regulation 1 provides for citation and commencement.

Paragraph (1) of regulation 2 explains the purpose of the Regulations and the meaning of the term “the treaty”. Paragraph (2) explains that references to “the treaty” are references to how the agreement takes effect from time to time. Information about changes in the effect of the agreement since it was signed is available on the HMRC website at <http://www.hmrc.gov.uk/fatca/index.htm>. These Regulations require an application of provisions of the treaty for certain purposes; regulation 2(3) provides that when applying the treaty for those purposes certain amendments to it are to be treated as having been made. Regulation 2(4) provides that any expression defined in the treaty but not in the Regulations or relevant sections of the Finance Act 2013 is to have its treaty meaning.

Regulations 3 to 5 explain the scope of the Regulations, which apply to “reporting financial institutions” in relation to “reportable accounts” that those institutions maintain; a UK representative of a non-UK resident institution also has obligations under the Regulations.

Regulation 3(1) contains the basic definition of a “reporting financial institution” as a person carrying on business in the United Kingdom as a custodial institution, a depository institution, an investment entity, a specified insurance company, a relevant holding company or a treasury company. “Depository institution” is defined at paragraph (3), and “investment entity” at paragraph (4) (with subsidiary parts of that definition at paragraphs (5) and (6)), “relevant holding company” at paragraph (8), and “treasury company” at paragraph (9) (with subsidiary parts of those definitions at paragraph (10)). Paragraph (7) makes particular provision for collective investment schemes to be treated as investment entities (as defined at paragraph (8)); paragraph (7) also specifies the person who is to be regarded as a reporting financial institution in the case of such schemes. Paragraph (2) makes provision for a registered deemed-compliant financial institution (as defined at regulation 22(1)) to qualify as a reporting financial institution, if the institution meets the terms of paragraph (1).

Regulation 4 defines “reportable account”. Under paragraph (1) a reportable account is a U.S. reportable account maintained by a reporting financial institution in the United Kingdom for its purposes as such an institution. However, there are two exceptions. First, paragraph (2) lists three types of account that are not reportable accounts for the purposes of the Regulations. Secondly, paragraphs (3) to (5) make provision for a reporting financial institution to elect for a calendar year to treat a further three listed categories of account as if they were not reportable accounts. Paragraph (6) contains relevant definitions and paragraph (7) makes special provision for treatment of joint accounts under the Regulations.

Regulation 5 is concerned with the position of reporting financial institutions that are not resident in the United Kingdom. Paragraph (1) provides that in such a case the obligations of an institution are to be treated as if they were also the obligations of its UK representative. Paragraph (2) defines “UK representative” and paragraph (3) explains the concept of “resident”.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Regulations 6 and 7 require reporting financial institutions to establish and maintain arrangements to identify reportable accounts (regulation 6(1)(a)), and tax residence of holders of accounts maintained on or after the date these Regulations come into force (regulation 6(2)(b)). Paragraphs (3) to (9) of regulation 6 establish what a reporting financial institution has to do to meet the obligations at paragraph (1)(a). Regulation 7 modifies, in the case of the situations specified, the “due diligence requirements” at regulation 6(3) and (4), but only if a reporting financial institution elects under regulation 7(7) that those modifications are to apply.

Regulation 8 requires reporting financial institutions to make a return to an officer of Revenue and Customs in respect of every calendar year from 2014 onwards of “the required information” as specified at paragraph (4) and further described at paragraphs (5) to (8) (see paragraph (1) (a)), an institution’s Global Intermediary Identification Number as defined at regulation 22(1) (see paragraph (1)(b)), and the statement required by paragraph (1)(c). Paragraph (2) requires a reporting financial institution that maintains no reportable accounts to report that fact in its return. Paragraph (3) makes provision for the date by which an annual return must be made.

Regulation 9 modifies the information required under regulation 8(4) about certain accounts, for the calendar years 2014 to 2016.

Regulation 10(1) requires reporting financial institutions to establish and maintain arrangements that are designed to identify payments which are made in calendar years 2015 or 2016 to a non-participating financial institution, or, by virtue of regulation 10(4), an institution treated as such under sub-paragraph 5(a) of Article 4 of the treaty. Paragraphs (2) and (3) make additional provision in respect of the obligation at paragraph (1). Paragraph (5) requires reporting financial institutions to make disclosures of information in accordance with the requirements of sub-paragraph 1(e) of Article 4 of the treaty, in respect of the calendar years 2015 and 2016.

Regulation 11 requires information about payments identified pursuant to regulation 10(1), as specified at regulation 11(1)(a) and (b) (or a statement that no such payments have been identified), to be returned to an officer of Revenue and Customs for the calendar year in question, by the date referred to at paragraph (4).

Regulations 12 to 19 make provision for penalties for breach of obligations under these Regulations.

Regulations 20 to 22 deal with miscellaneous and supplementary matters.

A Tax Information and Impact Note covering this instrument was published on 31st May 2013 alongside a draft of these Regulations 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.