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STATUTORY INSTRUMENTS

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**2014 No. 520**

**TAXES**

**The International Tax Compliance (Crown Dependencies and Gibraltar) Regulations 2014**

<i>Made</i>	- - - -	<i>6th March 2014</i>
<i>Laid before the House of Commons</i>	- - - -	<i>7th March 2014</i>
<i>Coming into force</i>	- -	<i>31st March 2014</i>

The Treasury make these Regulations in exercise of the powers conferred by section 222(1)(c), (2) and (3) of the Finance Act 2013<sup>(1)</sup>:

*Introductory*

**Citation and commencement**

1.—(1) These Regulations may be cited as the International Tax Compliance (Crown Dependencies and Gibraltar) Regulations 2014.

(2) These Regulations come into force on 31st March 2014.

**Implementation of the agreements etc**

2.—(1) These Regulations have effect for and in connection with the implementation of obligations arising under each of the Isle of Man agreement, the Guernsey agreement, the Jersey agreement and the Gibraltar agreement and apply separately in relation to each of those agreements.

(2) In these Regulations—

- (a) “the Isle of Man agreement” means the agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Isle of Man to improve international tax compliance, signed on 10th October 2013<sup>(2)</sup>,

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(1) 2013 c. 29.

(2) That agreement, as signed on that date, was deposited in the House of Commons library by Her Majesty’s Treasury on 14th October 2013 under deposit reference DEP2013-1630, and is available from the House of Commons Information Office and on the Parliament UK website at <http://www.parliament.uk/business/publications/business-papers/commons/deposited-papers/>.

- (b) “the Guernsey agreement” means the agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the States of Guernsey to improve international tax compliance, signed on 22nd October 2013(3),
- (c) “the Jersey agreement” means the agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Jersey to improve international tax compliance, signed on 22nd October 2013(4), and
- (d) “the Gibraltar agreement” means the agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Gibraltar to improve international tax compliance, signed on 21st November 2013(5),

as each of those agreements has effect from time to time.

(3) In these Regulations, “the relevant agreement” means—

- (a) the Isle of Man agreement,
- (b) the Guernsey agreement,
- (c) the Jersey agreement, or
- (d) the Gibraltar agreement,

as the context may require.

(4) Any expression which is not defined in section 222 or 235 of FA 2013 or in these Regulations has the same meaning in these Regulations as it has in the relevant agreement.

### *Scope*

#### **Scope: definition of “reporting financial institution”**

**3.—(1)** In these Regulations “reporting financial institution” means a person who carries on business in the United Kingdom as—

- (a) a depository institution,
- (b) an investment entity,
- (c) a custodial institution, or
- (d) a specified insurance company.

(2) But a person is not a reporting financial institution for the purposes of these Regulations if that person is a non-reporting financial institution.

(3) For the purposes of these Regulations “depository institution” means—

- (a) a person carrying on a regulated activity for the purposes of the Financial Services and Markets Act 2000(6) by virtue of article 5 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(7), or

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(3) That agreement, as signed on that date, was deposited in the House of Commons library by Her Majesty’s Treasury on 23rd October 2013 under deposit reference DEP2013-1686, and is available from the House of Commons Information Office and on the Parliament UK website at <http://www.parliament.uk/business/publications/business-papers/commons/deposited-papers/>.

(4) That agreement, as signed on that date, was deposited in the House of Commons library by Her Majesty’s Treasury on 23rd October 2013 under deposit reference DEP2013-1686, and is available from the House of Commons Information Office and on the Parliament UK website at <http://www.parliament.uk/business/publications/business-papers/commons/deposited-papers/>.

(5) That agreement, as signed on that date, was deposited in the House of Commons library by Her Majesty’s Treasury on 22nd November 2013 under deposit reference DEP2013-1856, and is available from the House of Commons Information Office and on the Parliament UK website at <http://www.parliament.uk/business/publications/business-papers/commons/deposited-papers/>.

(6) 2000 c. 8.

(7) S.I. 2001/544, amended by S.I. 2002/682.

- (b) a person who is within paragraphs (a) to (e) or (h) to (j) of the definition of “electronic money issuer” in regulation 2(1) of the Electronic Money Regulations 2011<sup>(8)</sup>.
- (4) For the purposes of these Regulations a person (person A) carries on business in the United Kingdom as an investment entity if—
- (a) person A undertakes any of the activities referred to in sub-paragraph 1.j(1) to (3) of Article 1 of the relevant agreement in the course of carrying on business in the United Kingdom, and the gross amount of person A’s income of that business for the applicable period wholly or mainly derives from those activities, or
- (b) on behalf of person A, a financial institution (person B) undertakes any of the activities referred to in sub-paragraph 1.j(1) to (3) of Article 1 of the relevant agreement in the course of carrying on business in the United Kingdom, and the gross amount of person A’s income from the activities undertaken on behalf of person A by person B for the applicable period wholly or mainly derives from investing or dealing in financial assets.
- (5) For the purposes of these Regulations—
- (a) if a collective investment scheme is constituted by a person (other than a trustee), who carries on business in the United Kingdom, that person (and no-one else) is a reporting financial institution in the case of the scheme and is to be regarded as the investment entity, and
- (b) if a collective investment scheme is constituted otherwise than as described in sub-paragraph (a) and the manager, operator or trustee of the scheme is a person who carries on business in the United Kingdom, the manager, operator or trustee of the scheme (and no-one else) is a reporting financial institution in the case of the scheme and is to be regarded as the investment entity.
- (6) In paragraph (5) “collective investment scheme” means—
- (a) an investment trust within the meaning of the Corporation Tax Acts<sup>(9)</sup>,
- (b) a venture capital trust within the meaning of Part 6 of ITA 2007<sup>(10)</sup>, or
- (c) any arrangements that are a “collective investment scheme” within the meaning of Part 17 of the Financial Services and Markets Act 2000<sup>(11)</sup>.
- (7) For the purposes of these Regulations a person carries on a business in the United Kingdom as a custodial institution if—
- (a) more than 20% of the gross amount of the income of that business as is carried on in the United Kingdom for the applicable period derives from any of—
- (i) holding financial assets for the account of another person, and
- (ii) performing related financial services, or
- (b) the person holds assets in the United Kingdom as a nominee for another person who is a connected person within the meaning of section 1122 of CTA 2010<sup>(12)</sup>.
- (8) In paragraph (7)(a)(ii) “related financial services” means financial services provided by the person that directly relate to that person holding financial assets on behalf of the other person.
- (9) In paragraphs (7)(a)(i) and (8) “financial assets” means—

<sup>(8)</sup> S.I. 2011/99.

<sup>(9)</sup> The meaning of “investment trust” in the Corporation Tax Acts is provided at 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).

<sup>(10)</sup> 2007 c. 3. The meaning of “venture capital trust” in Part 6 of that Act is provided at section 259.

<sup>(11)</sup> The meaning of “collective investment scheme” is provided at section 235 of that Act. 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 and 2008/1813.

<sup>(12)</sup> 2010 c. 4.

- (a) assets capable of being the subject-matter of a transaction that is an “investment transaction” within the meaning of regulation 14F of Part 2B of the Authorised Investment Funds (Tax) Regulations 2006<sup>(13)</sup>,
  - (b) insurance or annuity contracts,
  - (c) commodities, or
  - (d) derivative contracts within the meaning of Part 7 of CTA 2009<sup>(14)</sup>.
- (10) In paragraph (4) and sub-paragraph (7)(a) the “applicable period” is the shorter of—
- (a) the three year period—
    - (i) ending with the person’s most recent accounting date if that date is no more than twelve months earlier than the next reporting date, or
    - (ii) in any other case, the 31st December immediately before the next reporting date, and
  - (b) the period—
    - (i) starting on the later of the first day of the period determined under sub-paragraph (a) and the date that the person commenced the business, and
    - (ii) ending on the earlier of the last day of the period determined under sub-paragraph (a) and the last day that the person carried on the business,
- and “accounting date” here has the same meaning as is given to it by section 1119 CTA 2010.

#### **Scope: definition of “reportable account”**

- 4.—(1) In these Regulations a “reportable account” means—
- (a) an account which is a reportable account for the relevant agreement maintained in the United Kingdom by a reporting financial institution for the purposes of its business as described in regulation 3(1), and
  - (b) an account that is—
    - (i) a preexisting individual account meeting the description at paragraph II.A of Annex I,
    - (ii) a new individual account meeting the description at paragraph III.A of that Annex,
    - (iii) a preexisting entity account meeting the description at paragraph IV.A of that Annex, or
    - (iv) a new entity account meeting the description at paragraph V.A of that Annex.
- (2) But an account in any of paragraphs (i) to (iv) of paragraph (1)(b) is not a reportable account for a calendar year if—
- (a) there is an election by the reporting financial institution in force for that year to treat such accounts as not being a reportable account, and
  - (b) the account meets any further description specified by the institution in its election.
- (3) An election under paragraph (2)—
- (a) is to be made by being given to the Commissioners,
  - (b) must specify the description of accounts in relation to which the election is to have effect, and
  - (c) must be made in the return required by regulation 8.

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<sup>(13)</sup> S.I. 2006/964. Part 2B was inserted by S.I. 2009/2036.

<sup>(14)</sup> 2009 c. 4. The meaning of “derivative contract” in Part 7 of that Act is provided at section 576.

- (4) For the purposes of these Regulations—
- (a) any reference to an entity account is to a financial account which is not an account the account holder of which (or, if more than one, each account holder of which) is an individual holding the account otherwise than as a partner of a partnership, and
  - (b) any reference to an individual account is to a financial account held in the name of an individual (whether solely or jointly with another) but not as a partner or a partnership.
- (5) For the purposes of determining—
- (a) whether or not a financial account maintained by an institution meets any of the descriptions in paragraph (1)(b), and
  - (b) which case in regulation 6(4) applies to an account,

the institution must apply the account balance aggregation and currency translation rules at paragraph VI.C of Annex I.

But, in determining the balance or value of an account denominated in a currency other than US dollars, instead of applying the currency translation rule in sub-paragraph VI.C.4 of Annex I, the institution may translate the relevant dollar threshold amounts referred to in Annex 1 and regulation 6(4) into the other currency by reference to the spot rate of exchange on the date for which the institution is determining the threshold amounts.

#### **Scope: non-resident reporting financial institution's UK representative**

5.—(1) If a reporting financial institution is not resident in the United Kingdom, the obligations of the institution under these Regulations are to be treated as if they were also the obligations of any UK representative of the institution.

- (2) “UK representative” has the same meaning as it has in—
- (a) Chapter 6 of Part 22 of CTA 2010, in relation to a reporting financial institution that is within the charge to corporation tax, and
  - (b) Chapter 2C of Part 14 of ITA 2007(15), in relation to any other reporting financial institution.
- (3) For the purposes of this regulation—
- (a) a reporting financial institution which is a partnership is resident in the United Kingdom if the control and management of the business of the partnership as a reporting financial institution takes place there, and
  - (b) a reporting financial institution which is not a partnership is resident in the United Kingdom if it is resident in the United Kingdom for corporation tax or income tax purposes.

#### *Obligations in relation to financial accounts*

#### **Identification obligations**

6.—(1) A reporting financial institution must establish and maintain arrangements that are designed to identify reportable accounts.

(2) Such arrangements must identify the territory in which either of the following persons is resident for income tax or corporation tax purposes or for the purposes of any tax imposed by the law of that territory that is of a similar character to either of those taxes—

- (a) the account holder, and

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(15) Chapter 2C was inserted by paragraphs 18 to 23 of Schedule 6 to the Taxation (International and Other Provisions) Act 2010 (c. 8).

- (b) any controlling person of the account holder, unless the account holder is either
  - (i) a financial institution, or
  - (ii) an active NFFE.
- (3) The institution is taken to comply with the obligation to establish and maintain arrangements within paragraph (1) only if—
  - (a) the arrangements meet the applicable due diligence requirements as set out in this regulation (as modified by regulation 7 where an election under that regulation is in force), 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.
- (4) The due diligence requirements for a calendar year are set out in the following cases.

*Preexisting individual accounts*

*Case 1*

In the case of preexisting individual accounts with a balance or value that does not exceed \$1,000,000 as of 30 June 2014, the procedures described at paragraphs II.B and II.C of Annex I.

But this does not apply in relation to any preexisting individual account meeting the description at paragraph II.A of Annex I in relation to which an election under regulation 4(2) is in place.

*Case 2*

In the case of preexisting individual accounts with a balance or value that exceeds \$1,000,000 as of 30 June 2014, or 31 December 2015 or 31 December in any subsequent year, the procedures described at paragraphs II.D and II.E of Annex I.

*New individual accounts*

*Case 3*

In the case of new individual accounts, the procedures described at paragraphs III.B to III.D of Annex I.

But this does not apply in relation to any new individual account meeting the description at paragraph III.A of Annex I in relation to which an election under regulation 4(2) is in place.

*Preexisting entity accounts*

*Case 4*

In the case of preexisting entity accounts, the procedures described at paragraphs IV.D and IV.E (1) and (3) of Annex I.

But this does not apply in relation to any preexisting entity account meeting the description at paragraph IV.A of Annex I in relation to which an election under regulation 4(2) is in place.

*Case 5*

In the case of preexisting entity accounts with a balance or value that does not exceed \$250,000 as of 30 June 2014, but with a balance or value that exceeds \$1,000,000 as of 31 December 2015 or 31 December in any subsequent year, the procedures at paragraphs IV.D and IV.E (2) and (3) of Annex I.

*New entity accounts*

*Case 6*

In the case of new entity accounts, the procedures described at paragraphs V.B to V.D of Annex I.

But this does not apply in relation to any new entity account meeting the description at paragraph V.A of Annex I in relation to which an election under regulation 4(2) is in place.

- (5) If in the case of an account within Case 1—
- (a) an institution has established the account holder’s relevant tax status from documentary evidence mentioned in paragraph VI.D (4) of Annex I, and
  - (b) it has done so in order to meet its obligations under a Qualifying Intermediary 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 Annex I.

- (6) If in the case of an account within Case 2—
- (a) an institution has established the account holder’s relevant tax status from documentary evidence mentioned in paragraph VI.D (4) of Annex I, and
  - (b) it has done so in order to meet its obligations under a Qualifying Intermediary 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 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’s relevant tax status is required to be certified, a reporting financial institution may require the person to supply to the institution such documentary evidence mentioned in paragraph VI.D of Annex I as the institution considers appropriate in support of the certification.

(8) The due diligence requirements in this regulation must be applied in relation to each category of reportable account by reference to the special rules and definitions at paragraph I.D (1) to (3) and section VI of Annex I.

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

### **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 relevant tax status in relation to any preexisting account, it is entitled to rely on the evidence in relation to any account opened after 30 June 2014 unless it has reasonable cause to believe that the person’s relevant tax status has subsequently changed.

(3) Paragraph (2) has effect in the case of preexisting individual accounts maintained by the institution for an account holder only if, for the purpose of establishing which of the cases in regulation 6(4) are applicable to those accounts, the institution treats all those accounts as a single preexisting individual account.

(4) If the institution or a related entity obtains, or is in the process of obtaining, evidence of a person’s relevant tax 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 relevant tax 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 relevant tax status of the account holder and any controlling person, and
  - (b) the institution has no reasonable cause to believe that the relevant tax 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 either a reporting financial institution for the purposes of these Regulations or a financial institution described under sub-paragraph 1(p) of Article 1 of the relevant agreement.
- (7) An election under this regulation—
- (a) is to be made by being given to the Commissioners,
  - (b) must be made in the return required under regulation 8, and
  - (c) has effect in relation to the calendar year in respect of which the return is made and all later calendar years (unless subsequently withdrawn).

### **Reporting obligations**

**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 of that category that is maintained by the institution at any time during the calendar year in question, and
  - (b) the institution’s Global Intermediary Identification Number (or, if it has not been allocated such a number, the Unique Taxpayer Reference number allocated to the institution by HMRC).
- (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 social security number,
  - (c) if an account is identifiable by an account number, that number or, if not, any functional equivalents,
  - (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 closed the account,
  - (e) the relevant total gross credits, or if there are none, a statement of that fact,
  - (f) if the account holder is an individual, that person’s date of birth, and
  - (g) if the account holder is a passive NFFE that has a controlling person who is a specified person, the name and address of that specified person, and, if that person is an individual, that person’s—
    - (i) social security number, and



- (ii) date of birth.
- (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(16).
- (6) For the purposes of this regulation—
  - (a) references to the balance or value of an account include a nil balance or value,
  - (b) references to paying an amount include crediting an amount,
  - (c) “social security number” means—
    - (i) in relation to the Isle of Man agreement, either the number allocated to a person for the social security purposes or a person’s United Kingdom National insurance number,
    - (ii) in relation to any other relevant agreement, the number allocated to a person for the social security purposes of Guernsey, Jersey or Gibraltar as the case may be.
- (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 the information that it is required to report under paragraph (4)(b), (f) and (g), the institution must obtain that information from the account holder.

#### **Modifications for calendar years 2014 to 2016**

- 9.—(1) In relation to any reportable account—
  - (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 preexisting accounts there is no requirement to include in the return for calendar years before 2017 any information set out in regulation 8(4)(b), (f) and (g) if the reporting financial institution does not hold that information.
- (3) In the case of the calendar year 2014 the reporting date is 31st May 2016.

### *Penalties for breach of obligations*

#### **Penalties for failure to comply**

**10.** A person is liable to a penalty of £300 if the person fails to comply with any obligation under these Regulations.

#### **Penalties for inaccurate information**

- 11.**—(1) A person is liable to a penalty not exceeding £3,000 if—
- (a) in complying with an obligation under regulation 8 the person provides inaccurate information, and
  - (b) condition A, B or C is met.
- (2) Condition A is that the inaccuracy is—
- (a) due to a failure to comply with regulation 6, or
  - (b) deliberate on the part of the person.
- (3) Condition B is that the person knows of the inaccuracy at the time the information is provided but does not inform HMRC at that time.
- (4) Condition C is that the person—
- (a) discovers the inaccuracy some time later, and
  - (b) fails to take reasonable steps to inform HMRC.

#### **Matters to be disregarded in relation to liability to penalties**

- 12.**—(1) Liability to a penalty under regulation 10 or 11 does not arise if the person satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that there is a reasonable excuse for the failure.
- (2) For the purposes of this regulation neither of the following is a reasonable excuse—
- (a) that there is an insufficiency of funds to do something, or
  - (b) that a person relies upon another person to do something.
- (3) If a person had a reasonable excuse for a failure but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

#### **Assessment of penalties**

- 13.**—(1) If the reporting financial institution becomes liable to a penalty under regulation 10 or 11, an officer of Revenue and Customs may assess the penalty.
- (2) If an officer does so, the officer must notify the institution.
- (3) An assessment of a penalty under regulation 10 must be made within the period of 12 months beginning with the date on which the person became liable to the penalty.
- (4) An assessment of a penalty under regulation 11 must be made—
- (a) within the period of 12 months beginning with the date on which the inaccuracy first came to the attention of an officer of Revenue and Customs, and
  - (b) within the period of 6 years beginning with the date on which the person became liable to the penalty.

### **Right to appeal against penalty**

14. A person may appeal against a decision by an officer of Revenue and Customs—
- (a) that a penalty is payable under regulation 10 or 11, or
  - (b) as to the amount of such a penalty.

### **Procedure on appeal against penalty**

- 15.—(1) Notice of an appeal under regulation 14 must be given—
- (a) in writing,
  - (b) before the end of the period of 30 days beginning with the date on which notification under regulation 13 was given, and
  - (c) to HMRC.
- (2) It must state the grounds of appeal.
- (3) On an appeal under regulation 14(a) that is notified to the tribunal, the tribunal may confirm or cancel the decision.
- (4) On an appeal under regulation 14(b) that is notified to the tribunal, the tribunal may—
- (a) confirm the decision, or
  - (b) substitute for the decision another decision that the officer of Revenue and Customs had power to make.
- (5) Subject to this regulation and regulation 16, the provisions of Part 5 of TMA 1970<sup>(17)</sup> relating to appeals have effect in relation to appeals under regulation 14 as they have effect in relation to an appeal against an assessment to income tax.

### **Enforcement of penalties**

- 16.—(1) A penalty under these Regulations must be paid before the end of the period of 30 days beginning with the date mentioned in paragraph (2).
- (2) That date is—
- (a) the date on which notification under regulation 13 is given in respect of the penalty, or
  - (b) if a notice of appeal under regulation 14 is given, the date on which the appeal is finally determined or withdrawn.
- (3) A penalty under these Regulations may be enforced as if it were income tax charged in an assessment and due and payable.

### *Miscellaneous*

### **Accounts with a negative value**

17. For the purpose of applying paragraph VI.C of Annex I as required by these Regulations, an account balance that has a negative value is treated as having a nil value.

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(17) 1970 c. 9. The Taxes Management Act 1970 was relevantly amended by sections 45(1) and 67(2) of the Finance (No. 2) Act 1975 (c. 45); section 68 of the Finance Act 1982 (c. 39); section 156(2) and (4) of the Finance Act 1989 (c. 26); section 199 of and paragraphs 18 (1) and (2) of Schedule 19 to the Finance Act 1994 (c. 9); paragraph 28 of Schedule 19 to the Finance Act 1998 (c. 36) section 88 of and paragraph 31 of Schedule 29 to the Finance Act 2001 (c. 9); paragraph 21 of Schedule 1 to the Constitutional Reform Act 2005 (c. 4); paragraph 257(a) and (b) of Schedule 1 to and Part 1 of Schedule 3 to the Income Tax Act 2007 (c. 3); section 119(12)(a) of the Finance Act 2008 (c. 9); paragraph 31 of Schedule 7 to the Taxation (International and Other Provisions) Act 2010 (c. 8); S.I. 1994/1813 and 2009/56.

## Anti-avoidance

18. If a person does things wholly or mainly for the purpose of avoiding any obligation under these Regulations, these Regulations are to have effect as if those things had not been done.

## *Supplementary*

## Definitions

19.—(1) In these Regulations—

“Annex 1” means Annex 1 of the relevant agreement,

“the Commissioners” means the Commissioners for her Majesty’s Revenue and Customs,

“Global Intermediary Identification Number” means a number allocated to a Financial Institution by the Internal Revenue Service in the United States of America for the purposes of the part of the law of that territory commonly known as the Foreign Account Tax Compliance Act, and

“the tribunal” means the first tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.

(2) In these Regulations references to a person’s relevant tax status are to whether or not that person is—

- (a) in relation to the Isle of Man agreement, a specified Isle of Man person,
- (b) in relation to the Guernsey agreement, a specified Guernsey person,
- (c) in relation to the Jersey agreement, a specified Jersey person, and
- (d) in relation to the Gibraltar agreement, a specified Gibraltar person.

(3) In these Regulations references to a value in dollars are references to a value in the currency of the United States of America.

(4) The following table lists the places where expressions that apply for the purposes of these Regulations are defined or otherwise explained—

<i>Expression</i>	<i>Reference</i>
account holder	regulation 2(4) and sub-paragraph 1(dd) of Article 1 of the relevant agreement
Active NFFE	regulation 2(4) and paragraph VI.B (6) of Annex 1
Annex 1	regulation 19(1)
annuity contract	regulation 2(4) and sub-paragraph 1(w) of Article 1 of the relevant agreement
the Commissioners	regulation 19(1)
cash value insurance contract	regulation 2(4) and sub-paragraph 1(x) of Article 1 of the relevant agreement
controlling person	regulation 2(4) and sub-paragraph 1(ll) of Article 1 of the relevant agreement
custodial account	regulation 2(4) and sub-paragraph 1(t) of Article 1 of the relevant agreement

<i>Expression</i>	<i>Reference</i>
custodial institution	regulation 3(7)
depository account	regulation 2(4) and sub-paragraph 1(s) of Article 1 of the relevant agreement
depository institution	regulation 3(3)
entity account	regulation 4(4)(a)
financial account	regulation 2(4) and sub-paragraph 1(r) of Article 1 of the relevant agreement
financial institution	regulation 2(4) and sub-paragraph 1(g) of Article 1 of the relevant agreement
the Gibraltar agreement	regulation 2(2)
Global Intermediary Identification Number	regulation 19(1)
the Guernsey agreement	regulation 2(2)
HMRC	section 222(4) FA 2013(18)
individual account	regulation 4(4)(b)
insurance contract	regulation 2(4) and sub-paragraph 1(v) of Article 1 of the relevant agreement
investment entity	regulation 3(4)
the Isle of Man agreement	regulation 2(2)
the Jersey agreement	regulation 2(2)
new entity account	regulation 2(4) and paragraph V of Annex 1
new individual account	regulation 2(4) and paragraph III of Annex 1
non-reporting financial institution	regulation 2(4) and sub-paragraph 1(q) of Article 1 of the relevant agreement
passive NFFE	regulation 2(4) and sub-paragraph VI.B.5 of Annex 1 of the relevant agreement
preexisting account	regulation 2(4) and sub-paragraph 1(z) of Article 1 of the relevant agreement
preexisting entity account	regulation 2(4) and paragraph IV of Annex 1
preexisting individual account	regulation 2(4) and paragraph II of Annex 1

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<i>Expression</i>	<i>Reference</i>
related entity	regulation 2(4) and sub-paragraph 1(kk) of Article 1 of the relevant agreement
the relevant agreement	regulation 2(3)
relevant tax status	regulation 19(2)
relevant total gross credits	regulation 8(5)
reportable account	regulation 4
reporting date	regulations 8(3) and 9(3)
reporting financial institution	regulation 3
specified Gibraltar person	regulation 2(4) and sub-paragraph 1(gg) of Article 1 of the Gibraltar agreement
specified Guernsey person	regulation 2(4) and sub-paragraph 1(gg) of Article 1 of the Guernsey agreement
specified insurance company	regulation 2(4) and sub-paragraph 1(k) of Article 1 of the relevant agreement
specified Isle of Man person	regulation 2(4) and sub-paragraph 1(gg) of Article 1 of the Isle of Man agreement
specified Jersey person	regulation 2(4) and sub-paragraph 1(gg) of Article 1 of the Jersey agreement
specified person	regulation 2(4) and sub-paragraph 1(ee) of Article 1 of the relevant agreement
the tribunal	regulation 19(1)
United Kingdom financial institution	regulation 2(4) and sub-paragraph 1(l) of Article 1 of the relevant agreement

6th March 2014

*Mark Lancaster*  
*Anne Milton*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made to give effect to four agreements to improve international tax compliance. The agreements are those made between the Government of the United Kingdom of Great Britain and Northern Ireland, and each of the Government of the Isle of Man (agreement signed on 10th October 2013), the States of Guernsey (agreement signed on 22 October 2013), the Government of Jersey (agreement signed on 22nd October 2013) and the Government of Gibraltar (agreement signed on 21st November 2013).

Regulation 1 provides for citation and commencement.

In regulation 2, paragraph (1) explains the purpose of the Regulations, and that the Regulations apply separately in relation to each of “the Isle of Man agreement”, “the Guernsey agreement”, “the Jersey agreement” and the Gibraltar agreement”; paragraph (2) defines those four terms, and explains that references to any of the agreements are to them as they take effect from time to time. Paragraph (3) defines the term “the relevant agreement” as it is used for the purpose of the Regulations, as referring to whichever of the four agreements referred to at paragraph (2) as the context may require. Regulation 2(4) provides that any expression defined in the relevant agreement but not in the Regulations or relevant sections of the Finance Act 2013 is to have the meaning that is has in that agreement.

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 any of the following: a depository institution; an investment entity; a custodial institution; a specified insurance company. Paragraph (2) provides that, notwithstanding, an institution that is a “non-reporting financial institution” (as that term is defined in the relevant agreement – see regulations 2(4) and 19(4)) is not a reporting financial institution for the purposes of the Regulations. “Depository institution” is defined at paragraph (3), “investment entity” at paragraph (4) and “custodial institution” at paragraph (7) (with subsidiary parts of that definition at paragraphs (8) and (9)). Paragraph (5) makes particular provision for the treatment of collective investment schemes (as defined in paragraph (6)).

Regulation 4 defines “reportable account”. Paragraph (1) contains the basic definition of that term. Paragraphs (2) to (4) make provision for a reporting financial institution to elect for a calendar year to treat certain accounts as if they were not reportable accounts. Paragraph (5) 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”.

Regulation 6 requires reporting financial institutions to establish and maintain arrangements to identify reportable accounts. Paragraphs (1) and (2) contain the main obligation. Paragraphs (3) to (9) prescribe what a reporting financial institution has to do to meet the obligation (“the due diligence requirements”).

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Regulation 7 modifies, in the case of the situations specified, the due diligence requirements at regulation 6, 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)), and of the institution’s Global Intermediary Identification Number as defined at regulation 19(1) (see paragraph (1)(b)). 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.

Regulations 10 to 16 make provision for penalties for breach of obligations under the Regulations.

Regulation 17 makes provision for the treatment of accounts with a negative value.

Regulation 18 makes provision for the treatment of acts done for the purpose of avoiding obligations under the Regulations.

Regulation 19 is concerned with definitions to be used for the purposes of the Regulations.

A Tax Information and Impact Note covering this instrument will be published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.