

EXPLANATORY MEMORANDUM TO
THE INTERNATIONAL TAX COMPLIANCE REGULATIONS 2015

2015 No. 878

1. This explanatory memorandum has been prepared by HM Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations implement the following Directive, agreements and arrangements, as they have effect from time to time, reached between the Government of the United Kingdom and other jurisdictions to improve international tax compliance –

- the Revised European Union Directive on Administrative Cooperation (Council Directive 2011/16/EU as amended by 2014/107/EU) (“the DAC”);

- the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information signed by the Government of the United Kingdom of Great Britain and Northern Ireland on 29 October 2014, this implements the Common Reporting Standard developed by the Organisation for Economic Co-Operation and Development (“the CRS”);

- the agreement reached between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America to improve international tax compliance and to implement FATCA, signed on 12 September 2012 and amended by an Exchange of Notes between the two governments dated 3 and 7 June 2013 (“the FATCA Agreement”).

2.2 These Regulations replace the provisions made by the International Tax Compliance (United States of America) Regulations 2014 (S.I. 2104/1506) (‘the 2014 Regulations’), which are revoked.

3. Matters of special interest to the Select Committee on Statutory Instruments

None.

4. Legislative Context

4.1 This instrument is being made to enable the UK to comply with automatic exchange of information obligations under the FATCA Agreement, the DAC and the CRS. A transposition note is annexed to this explanatory memorandum to explain how the DAC is implemented by this instrument.

4.2 In relation to UK financial institutions within the scope of the FATCA Agreement, the US has agreed not to impose a withholding tax that it would otherwise seek to apply to UK financial institutions with US source income. Those institutions would, absent the FATCA Agreement, be required to supply the IRS with certain information about account holders who are US taxpayers, or otherwise be subject to withholding tax. However, the Data Protection Act 1998 would preclude financial institutions within the UK's jurisdiction from supplying such information directly to the US.

4.3 The instrument implements the FATCA Agreement, the DAC and the CRS by enabling HM Revenue & Customs (HMRC) to obtain from UK financial institutions the information the UK has agreed to provide to the US, other EU Member States and other territories under Competent Authority Agreements (together the 'partner territories'). This ensures that the UK will receive reciprocal exchange of tax information from all partner territories.

4.4 Information passed by UK financial institutions to HMRC under this instrument will, as required by the FATCA Agreement, the DAC and the CRS, be automatically exchanged annually with partner jurisdictions as envisaged by the Exchange of Information Article in the relevant agreement between the UK and each partner jurisdiction as appropriate.

4.5 This instrument, pursuant to the UK's obligations in the FATCA Agreement, the DAC and the CRS, obliges UK financial institutions to pass to HMRC information about taxpayers resident in partner jurisdictions and includes a requirement to put in place arrangements to obtain details of the country of tax residence of account holders. This allows financial institutions to introduce systems for collecting and maintaining information whilst also enabling compliance with data protection rules.

4.6 The FATCA Agreement includes provisions that certain procedures and definitions set out in US Treasury Regulations (the US Treasury Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities) may be adopted in implementing the FATCA Agreement. Provisions equivalent to the US Treasury Regulations have therefore been included in the Regulations in relation to the rule on currency translation and the rule relating to modification of due diligence requirements.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 The policy objective, of which this instrument is part, is to increase cooperation between tax administrations in the fight against tax fraud and evasion.

7.2 Increased globalisation has made it easier for taxpayers to make, hold and manage investments through financial institutions outside their country of residence. Significant amounts of money are held offshore and go untaxed to the extent that taxpayers fail to comply with their obligations to declare income and gains in the jurisdiction where they reside.

7.3 This instrument enables the UK to fulfil its obligations to report information automatically on accounts held in the UK by persons resident overseas to jurisdictions in accordance either with the relevant EU Directive or agreements in place with the UK. In return the UK will automatically receive information from overseas tax administrations in respect of offshore accounts held by UK residents. Exchanges will occur with all 27 of the other Member States of the European Union. Exchanges will also take place with a further 65 jurisdictions outside of the EU which have committed to exchange of information under the CRS in either 2017 or 2018 of which 24 jurisdictions have signed a Multilateral Competent Authority Agreement. Exchanges with the United States of America will happen under the FATCA agreement. There is an expectation that the number of countries exchanging under the Common Reporting Standard will increase going forward.

7.4 The DAC is the result of the European Union incorporating the Common Reporting Standard into European Law.

7.5 This instrument operates by imposing obligations on UK financial institutions to carry out due diligence procedures contained in the FATCA Agreement, the DAC and the CRS to identify account holders that are resident overseas, to maintain a record of this and to report to HMRC those accounts identified as reportable to a jurisdiction where an exchange requirement exists.

7.6 This policy concerns how the UK will help other jurisdictions to protect the integrity of their tax systems, and in return the UK will receive reciprocal exchange of information which will enable HMRC to combat offshore tax evasion by UK resident taxpayers.

7.7 These Regulations revoke and replace the 2014 Regulations so that the reporting obligations under the three different regimes (the FATCA Agreement, CRS and DAC) are all contained in the same instrument to minimise the administrative burdens on financial institutions subject to these Regulations. The reporting timetable for FATCA is unchanged.

8. Consultation outcome

8.1 A consultation on these Regulations took place over a 12 week period from 31 July 2014 and included a public meeting attended by over 100 interested parties. The technical nature of the consultation meant that the consultation was of most interest to tax professionals in the financial sector, representative bodies for that sector and legal and advisory firms. A Summary of Responses document to this consultation will be published around the date that these Regulations are laid.

8.2 The focus of the consultation was on the obligations of financial institutions and accordingly most of the responses were from such institutions or representative bodies closely connected to the financial sector.

8.3 Respondents were generally supportive of the Government's aim to tackle offshore evasion and increase tax transparency through the use of automatic exchange of information, but wanted additional burdens from implementation of the DAC and CRS to be minimised. The Government has taken account of these comments and its approach is set out in the Summary of Responses.

9. Guidance

9.1 Working with business and advisers HMRC has produced guidance in relation to the 2014 Regulations which is accessible at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/357542/uk-us-fatca-guidance-notes.pdf. HMRC will amend the relevant guidance to reflect changes made by these Regulations at the next update.

10. Impact

10.1 The impact on business, charities or voluntary bodies of these changes is likely to impose additional costs on financial institutions within the scope of the Regulations but otherwise is negligible.

10.2 The impact on the public sector is negligible.

10.3 A Tax Information and Impact Note covering this instrument was published on 18 March 2015 and is available on the HMRC website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

- 11.1 The legislation applies to small business.
- 11.2 Potentially, more small businesses are in scope than under the FATCA agreements because of the widening of the scope of entities that come within the definition of a financial institution and removal of certain de minimis limits for due diligence and reporting purposes. Sole traders are not affected. In order to minimise the impact of the requirements on firms employing up to 20 people, the UK fully engaged with the Organisation for Economic Cooperation and Development in designing and delivering the CRS and the EU in delivering the DAC.
- 11.3 The impact on affected businesses has been reduced by taking certain products that are typical to these financial institutions out of scope of the Regulations and by seeking to simplify certain due diligence procedures.

12. Monitoring & review

- 12.1 HMRC and HM Treasury will continue to liaise with stakeholders from time to time to discuss the implementation of the Regulations as part of continuing engagement with industry.

13. Contact

Chris Orchard or Wayne Strangwood at the HM Revenue and Customs can answer any queries regarding the instrument. Contact details are as follows:

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