STATUTORY INSTRUMENTS

2023 No. 38

The International Tax Enforcement (Disclosable Arrangements) Regulations 2023

PART 1

Introductory

Citation and commencement

1. These Regulations may be cited as the International Tax Enforcement (Disclosable Arrangements) Regulations 2023 and come into force on 28th March 2023.

Interpretation

2.—(1) In these Regulations—

"the model rules" means the OECD (2018) Model Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures, OECD, Paris, approved by the OECD's Committee of Fiscal Affairs on 8th March 2018(**1**);

"HMRC" means His Majesty's Revenue and Customs;

"partner jurisdiction" means any jurisdiction listed in Schedule 1;

"TCEA 2007" means the Tribunals Court and Enforcement Act 2007(**2**).

(2) Any expression defined in the model rules(**3**) but not in these Regulations has the same meaning in these Regulations as in the model rules.

(3) Schedule 2 contains a table listing places where expressions that are used in these Regulations are defined or otherwise explained in the model rules.

(4) In applying the model rules for the purposes of these Regulations "TIN" means—

(a) the unique taxpayer reference number allocated to a person by HMRC,

(b) if they do not have one, the reference number, if any, allocated to that person by another tax authority, or

(**1**) The model rules are available at https://www.oecd.org/tax/exchange-of-tax-information/model-mandatory-disclosure-rules-for-crs-avoidance-arrangements-and-opaque-offshore-structures.htm and a hard copy is available for inspection at the offices of HMRC, 14 Westfield Avenue, 8th Floor, Stratford, London E20 1HZ.

(**2**) 2007 c. 15.

(**3**) Rule 1.4 of the model rules states that "[c]apitalised terms that are not otherwise defined [in the model rules] shall have the meanings given to them under the relevant CRS Legislation". Rule 1.4(e) states that ""CRS Legislation" means the Standard for Automatic Exchange of Financial Account Information in Tax Matters as implemented in the domestic laws of the jurisdiction where the relevant account, product, investment, or Arrangement is maintained…". In the UK, the Standard for Automatic Exchange of Financial Account Information in Tax matters is implemented by the International Tax Compliance Regulations 2015 (S.I. 2015/878) and is referred to in that instrument as "the CRS". S.I. 2015/878 is amended by S.I. 2022/474, 2020/1300, 2020/438, 2019/881, 2017/598, 2016/899, and 2015/1839. Regulation 24 of S.I. 2015/878 contains a table of terms used in that instrument which are defined in the CRS (see column 4 of that table).

(c) if no such reference number has been allocated, the national insurance number, if any, allocated within the meaning of regulation 9 of the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001(**4**).

PART 2

Requirement to disclose CRS avoidance arrangements and opaque offshore structures

Obligation on intermediary to disclose

3.—(1) Paragraph (2) applies where an intermediary with respect to a CRS avoidance arrangement or opaque offshore structure—

(a) either—

(i) makes that CRS avoidance arrangement or opaque offshore structure available for implementation, or

(ii) provides relevant services in respect of that CRS avoidance arrangement or opaque offshore structure,

through a branch or office located in the United Kingdom,

(b) is resident in the United Kingdom,

(c) has its place of management in the United Kingdom, or

(d) is incorporated in the United Kingdom.

(2) Subject to regulations 5 and 6, the intermediary must make a return setting out the information specified in paragraphs (a) to (c) of Rule 2.3 of the model rules in respect of that arrangement or structure, to the extent that information is within the intermediary's knowledge, possession or control.

When information is required to be disclosed

4. The return required under regulation 3(2) must be made before the end of the period of 30 days beginning with the day after the day on which the intermediary—

(a) makes the CRS avoidance arrangement or opaque offshore structure available for implementation, or

(b) supplies relevant services in respect of the CRS avoidance arrangement or opaque offshore structure.

Legal professional privilege

5.—(1) Nothing in these Regulations requires an intermediary to disclose any information to the extent that it is privileged information.

(2) Subject to paragraph (1), an intermediary must, before the end of the period specified in regulation 4, provide written notice to the client of the client's obligation to make a return under regulation 3(2) or 7(2) in respect of the arrangement or structure to which the privileged information relates.

(3) In this regulation, "privileged information" means information with respect to which a claim to legal professional privilege, or, in Scotland, to confidentiality of communications, could be maintained in legal proceedings.

(**4**) S.I. 2001/769. Regulation 9 has been amended by S.I. 2006/2897, 2008/223, 2015/67 and 2015/1828.

No obligation on intermediary to disclose to the extent information has already been disclosed

6. An intermediary is not required to include in a return under regulation 3(2) any information to the extent the intermediary has evidence that—

(a) the information was previously disclosed to HMRC,

(b) the information relates to relevant services supplied, or a CRS avoidance arrangement or an opaque offshore structure made available for implementation, through a branch maintained by that intermediary in a partner jurisdiction and the information has been disclosed to the tax authority of that partner jurisdiction, or

(c) apart from this paragraph, the intermediary would be required to include the information in a return under regulation 3(2) by virtue of the condition in regulation 3(1)(d), and the information has been disclosed to the tax authority of a partner jurisdiction where that intermediary is resident or has its place of management.

Reportable taxpayer required to disclose in certain circumstances

7.—(1) Paragraph (2) applies where a reportable taxpayer is resident in the United Kingdom and is a user of a CRS avoidance arrangement or a beneficial owner under an opaque offshore structure.

(2) Subject to paragraph (3), the reportable taxpayer must make a return setting out the information specified in paragraphs (a) to (c) of Rule 2.3 of the model rules in respect of that arrangement or structure to the extent that—

(a) the information is not included in a return under regulation 3(2) by an intermediary for the reason that—

(i) there is no intermediary in respect of the arrangement or structure,

(ii) the intermediary is not required to make a return under regulation 3(2), or

(iii) the intermediary is not required to disclose the information by virtue of regulation 5(1), and

(b) the information is within the reportable taxpayer's knowledge, possession or control.

(3) A reportable taxpayer is not required to include information in a return under paragraph (2) to the extent that the reportable taxpayer has evidence that the information has been disclosed by an intermediary to the tax authority of a partner jurisdiction under rules that are substantially similar to those set out in these Regulations.

(4) The return required under paragraph (2) must be made before the end of the period of 30 days beginning with the day after the day on which the first step of the CRS avoidance arrangement or opaque offshore structure is implemented.

Disclosure of arrangements entered into on or after 25th June 2018 and before 28th March 2023

8.—(1) Paragraph (2) applies where a person was a promoter in respect of a CRS avoidance arrangement which was implemented on or after 25th June 2018, but before 28th March 2023 irrespective of whether that person provides relevant services in respect of the arrangement on or after 28th March 2023.

(2) Subject to paragraphs (3) and (4), the person must make a return on or before 25th September 2023, setting out the information specified in paragraphs (a) to (c) of Rule 2.3 of the model rules in respect of that arrangement, to the extent the information is within the person's knowledge, possession or control.

(3) A return is not required under paragraph (2) where the promoter has evidence to demonstrate that the aggregate balance or value of the financial account subject to the CRS avoidance arrangement immediately prior to its implementation was less than US$ 1,000,000.

(4) A return is not required under paragraph (2) in respect of an arrangement that has been the subject of a return under the International Tax Enforcement (Disclosable Arrangements) Regulations 2020(**5**).

(5) In applying the threshold amount specified in paragraph (3) to a financial account denominated in a currency other than US dollars, the threshold amount specified in paragraph (3) must be translated into the other currency by reference to an appropriate spot rate of exchange for the date immediately prior to the implementation of the CRS avoidance arrangement to which the financial account is subject.

Notification of disclosure

9.—(1) An intermediary or reportable taxpayer who makes a return under regulation 3(2), 7(2) or 8(2) in respect of an arrangement or structure must give written notice of the fact that a return has been made to any person who the intermediary or reportable taxpayer knows or should reasonably be expected to know is an intermediary or reportable taxpayer in relation to that arrangement or structure.

(2) Notice under paragraph (1) must be given within the period of 30 days beginning with the day on which the return is made.

Electronic return system

10.—(1) A return under regulation 3(2), 7(2) or 8(2) must be made electronically to HMRC using an electronic return system.

(2) The form and manner in which a return is made using an electronic return system is specified in specific or general directions given by the Commissioners for His Majesty's Revenue and Customs.

(3) A return which is made otherwise than in accordance with paragraphs (1) and (2) is treated as not having been made.

(4) An electronic return system must incorporate an electronic validation process.

(5) Unless the contrary is proved—

(a) the use of an electronic return system is presumed to have resulted in the making of a return only if this has successfully been recorded as such by the relevant electronic validation process,

(b) the time of making the return is presumed to be the time recorded as such by the relevant electronic validation process, and

(c) the person delivering the return is presumed to be the person identified as such by any relevant feature of the electronic return system.

Provision of information

11.—(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 person who the officer reasonably suspects is an intermediary or a reportable taxpayer to provide such information or documents as the officer reasonably requires as specified by written notice.

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

(**5**) S.I. 2020/25. This S.I. was amended by S.I. 2020/713 and 2020/1649.

(a) within such period, being no less than 30 days, and

(b) by such means and in such form,

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

Employees

12.—(1) A person ("P") is not to be treated as an intermediary in relation to a CRS avoidance arrangement or an opaque offshore structure where—

(a) P is an employee of an employer ("E"), and

(b) E is an intermediary or relevant taxpayer in relation to the CRS avoidance arrangement or opaque offshore structure.

(2) In this regulation, "employee" and "employer" have the meanings given by section 4 of the Income Tax Earnings and Pensions Act 2003(**6**) (as read with section 5(2) of that Act).

(3) For the purposes of this regulation, where E is connected to another person ("F"), P is to be treated as an employee of F as well as being an employee of E.

(4) In this regulation, E is connected to F where E is closely bound to F by financial, economic or organisational links.

PART 3

Penalties for breach of obligations

Penalties for failure to comply with regulations

13.—(1) A person who fails to comply with any of the provisions of these Regulations specified in paragraph (2) is liable—

(a) to a penalty not exceeding

(i) £5,000, or

(ii) in the case of a provision mentioned in sub-paragraphs (a) to (f) and (h), if that amount appears to an officer of Revenue and Customs to be inappropriately low after taking into account all relevant considerations, £600 for each day during the initial period, and

(b) if the failure continues after a penalty is imposed under sub-paragraph (a), to a further penalty or penalties not exceeding £600 for each day on which the failure continues after the day on which the penalty under sub-paragraph (a) was imposed (but excluding any day for which a penalty under this regulation has already been imposed).

(2) The provisions are—

(a) regulation 3(2) (obligation on intermediary to disclose),

(b) regulation 4 (when information is required to be disclosed),

(c) regulation 5(2) (obligation on intermediary to notify client where legal professional privilege exclusion applies),

(d) regulation 7(2) (reportable taxpayer required to disclose in certain circumstances),

(e) regulation 7(4) (time period for reportable taxpayer's disclosure),

(**6**) 2003 c. 1.

(f) regulation 8(2) (disclosure of arrangements entered into on or after 25th June 2018 and before 28th March 2023),

(g) regulation 9 (notification of disclosure), and

(h) regulation 11 (provision of information).

(3) For the purposes of this regulation and regulation 15 "relevant considerations" include—

(a) the desirability of a penalty being set at a level which appears appropriate for deterring the person, or other persons, from similar failures to comply on future occasions having regard (in particular)—

(i) in the case of a penalty for an intermediary's failure to comply with any obligation, to the amount of any fees received, or likely to have been received, by the intermediary in connection with the CRS avoidance arrangement or opaque offshore structure, and

(ii) in the case of a penalty for a reportable taxpayer's failure to comply with any obligation, to the amount of advantage gained, or sought to be gained, by the reportable taxpayer in relation to any tax in relation to the CRS avoidance arrangement or opaque offshore structure,

(b) whether the failure giving rise to the penalty was deliberate,

(c) any procedures maintained by the person liable to the penalty to secure the identification of CRS avoidance arrangements or opaque offshore structures and compliance with obligations under these Regulations, and

(d) the reasonably foreseeable consequences of the failure.

(4) In this regulation "the initial period" means the period—

(a) beginning with the relevant day, and

(b) ending on the earlier of—

(i) the day on which the penalty under paragraph (1)(a)(ii) is determined, and

(ii) the last day before the failure ceases.

(5) For the purpose of paragraph (4), "the relevant day" is the day specified in relation to the failure in the following table.

Failure	*Relevant day*
A failure to comply with regulation 3(2)	The first day after the end of the period specified in regulation 4
A failure to comply with regulation 4	The first day after the end of the period specified in regulation 4
A failure to comply with regulation 5(2)	The first day after the end of the period specified in regulation 4
A failure to comply with regulation 7(2)	The first day after the end of the period specified in regulation 7(4)
A failure to comply with regulation 7(4)	The first day after the end of the period specified in regulation 7(4)
A failure to comply with regulation 8(2)	26th September 2023
A failure to comply with regulation 11	The first day after the latest time by which regulation 11 must be complied with as specified in the notice under that regulation

Determination of penalty by HMRC: initial penalty under regulation 13(1)(a)(i)

14.—(1) Subject to paragraph (2), an officer of Revenue and Customs may make a determination imposing a penalty under regulation 13(1)(a)(i) and setting it at such amount as, in the opinion of that officer, is correct or appropriate.

(2) Notice of a determination of a penalty under this regulation must be given to the person liable to the penalty and must state the date on which it is issued and the time within which an appeal against the determination may be made.

(3) After the notice of determination under this regulation has been given the determination must not be altered except on appeal.

Determination of penalty by First-tier Tribunal: daily penalty under regulation 13(a)(ii)

15.—(1) An officer of Revenue and Customs may commence proceedings before the First-tier Tribunal for a penalty under regulation 13(1)(a)(ii).

(2) The person liable to the penalty must be a party to the proceedings.

(3) The First-tier Tribunal may determine a penalty in proceedings under this regulation.

(4) The amount of a penalty under regulation 13(1)(a)(ii) is to be arrived at after taking account of all relevant considerations.

(5) If the maximum penalty under regulation 13(1)(a)(ii) appears inappropriately low after taking account of those considerations, the penalty is to be of such amount not exceeding £1 million as appears appropriate having regard to those considerations.

(6) Where it appears to an officer of Revenue and Customs that a penalty under regulation 13(1)(a)(ii) has been determined on the basis that the initial period begins with a day later than that which the officer considers to be the relevant day, an officer of Revenue and Customs may commence proceedings for a re-determination of the penalty.

(7) In addition to any right of appeal on a point of law under section 11(2) of TCEA 2007(**7**), the person liable to the penalty may appeal to the Upper Tribunal against the determination of a penalty in proceedings under paragraph (1), but not against any decision which falls under section 11(5)(d) and (e) of that Act and was made in connection with the determination of the amount of the penalty.

(8) Section 11(3) and (4) of TCEA 2007 applies to the right of appeal under paragraph (7) as it applies to the right of appeal under section 11(2) of that Act.

(9) On any such appeal the Upper Tribunal may—

(a) if it appears that no penalty has been incurred, set the determination aside,

(b) if the amount determined appears to be appropriate, confirm the determination,

(c) if the amount determined appears to be excessive, reduce it to such other amount (including nil) as the Upper Tribunal considers appropriate, or

(d) if the amount determined appears to be insufficient, increase it to such amount not exceeding the permitted maximum as the Upper Tribunal considers appropriate.

Determination of penalty by HMRC: further daily penalty under regulation 13(1)(b)

16.—(1) An officer of Revenue and Customs may make a determination imposing a penalty under regulation 13(1)(b) and setting it at such amount as, in the opinion of that officer, is correct or appropriate.

(**7**) Section 11 of TCEA 2007 was amended by paragraph 5 of Schedule 2 to the Crime and Security Act 2010 (c. 17), paragraph 130 and 131 of Schedule 19 to the Data Protection Act 2018 (c. 12) and sections 116(1) and 181I(1) of the Tax Collection and Management (Wales) Act 2016 (2016 anaw 6).

(2) Notice of a determination of a penalty under this regulation must be given to the person liable to the penalty and must state the date on which it is issued and the time within which an appeal against the determination may be made.

(3) After the notice of determination under this regulation has been given the determination must not be altered except in accordance with paragraph (4) or on appeal.

(4) If it is discovered by an officer of Revenue and Customs that the amount of a penalty determined under this regulation is or has become insufficient, the officer may make a determination in a further amount so that the penalty is set at the amount which, in the opinion of that officer, is correct or appropriate.

Time limits and treatment of penalties

17.—(1) Proceedings in relation to a penalty under regulation 13(1)(a)(ii) must be commenced, or a determination of a penalty under regulation 13(1)(a)(i) or 13(1)(b) must be made, before the latest of the following dates—

(a) the date 24 months after the date on which the inaccuracy or failure first came to the attention of an officer of Revenue and Customs,

(b) the date six years after the date on which the person became liable to the penalty, and

(c) in the case of a determination of a penalty under regulation 13(1)(b), the date three years after the date of determination of a penalty under regulation 13(1)(a).

(2) A penalty determined under this Part is due and payable at the end of the period of 30 days beginning with the date of determination of the penalty by the First-tier Tribunal or issue of the notice of determination, as the case may be.

(3) A penalty determined under this Part is to be treated for all purposes as if it were tax charged in an assessment and due and payable.

Appeals against penalty determinations by HMRC

18.—(1) An appeal may be brought against the determination of a penalty under regulation 14 or 16 and, subject to the following provisions of this regulation, the provisions of the Taxes Management Act 1970(**8**) relating to appeals have effect in relation to an appeal against such a determination as they have effect in relation to an appeal against an assessment to tax, except that references to the tribunal shall be taken to be references to the First-tier Tribunal.

(2) On any such appeal, section 50(6) to (8) of the Taxes Management Act 1970(**9**) does not apply but the First-tier Tribunal may—

(a) if it appears that no penalty has been incurred, set the determination aside,

(b) if the amount determined appears to be appropriate, confirm the determination,

(c) if the amount determined appears to be excessive, reduce it to such other amount (including nil) as the First-tier Tribunal considers appropriate, or

(d) if the amount determined appears to be insufficient, increase it to such amount not exceeding the permitted maximum as the First-tier Tribunal considers appropriate.

(3) In addition to any right of appeal on a point of law under section 11(2) of TCEA 2007, the person liable to the penalty may appeal to the Upper Tribunal against the amount of the penalty which has been determined under paragraph (2), but not against any decision which falls under

(**8**) 1970 c. 9. Part 5 of the Act contains provisions relating to appeals.
(**9**) Section 50(6) to (8) of the Taxes Management Act 1970 was amended by section 67(2) of the Finance (No. 2) Act 1975 (c. 45), paragraph 17 of Schedule 19 to Finance Act 1994 (c. 9), paragraph 7 of Schedule 19 to the Finance Act 1996 (c. 8), paragraph 30 of Schedule 29 to the Finance Act 2001 (c. 9) and S.I. 1994/1813 and 2009/56.

section 11(5)(d) and (e) of that Act and was made in connection with the determination of the amount of the penalty.

(4) Section 11(3) and (4) of TCEA 2007 applies to the right of appeal under paragraph (3) as it applies to the right of appeal under section 11(2) of that Act.

(5) On an appeal under this regulation the Upper Tribunal has the same powers as are conferred on the First-tier Tribunal by virtue of this regulation.

Special Reduction

19.—(1) If an officer of Revenue and Customs thinks it right because of special circumstances, the officer may reduce a penalty under this Part.

(2) In paragraph (1), "special circumstances" does not include—

(a) ability to pay, or

(b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

(3) In paragraph (1), the reference to reducing a penalty includes a reference to—

(a) staying a penalty, and

(b) agreeing a compromise in relation to proceedings for a penalty.

Matters to be disregarded in relation to liability to penalties

20.—(1) Liability to a penalty under regulation 13 does not arise if the person satisfies an officer of Revenue and Customs or, on a determination by the First-tier Tribunal or an appeal notified to the tribunal, the tribunal that there is a reasonable excuse for a failure to do anything required to be done under these Regulations.

(2) For the purposes of this regulation none of the following is a reasonable excuse—

(a) that there is an insufficiency of funds to do something,

(b) that the person relies on legal advice if—

(i) the advice was given or procured by a person who is an intermediary within Rule 1.3(a) of the model rules in relation to the CRS avoidance arrangement or opaque offshore structure to which the failure relates,

(ii) the advice was not based on a full and accurate description of the facts, or

(iii) the conclusions in the advice that the person relied upon were unreasonable.

(3) In considering whether a person had a reasonable excuse, the officer of Revenue and Customs or the tribunal must consider whether the person maintains such procedures as it is reasonable in all the circumstances to have in place to secure the identification of CRS avoidance arrangements or opaque offshore structures and compliance with obligations under these Regulations.

(4) 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.

PART 4

Revocations

Revocation of regulations

21. The following Regulations are revoked—

(a) the International Tax Enforcement (Disclosable Arrangements) Regulations 2020,

(b) the International Tax Enforcement (Coronavirus) (Amendment) Regulations 2020(**10**), and

(c) the International Tax Enforcement (Amendment) (No. 2) (EU Exit) Regulations 2020(**11**).

Nigel Huddleston
Steve Double
Two of the Lords Commissioners of His Majesty's Treasury

16th January 2023

(**10**) S.I. 2020/713.
(**11**) S.I. 2020/1649.