
STATUTORY INSTRUMENTS

2013 No. 1962

TAXES

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

<i>Made</i>	- - - -	<i>6th August 2013</i>
<i>Laid before the House of Commons</i>	- - - -	<i>7th August 2013</i>
<i>Coming into force</i>	- -	<i>1st September 2013</i>

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

Introductory

Citation and commencement

1.—(1) These Regulations may be cited as the International Tax Compliance (United States of America) Regulations 2013.

(2) These Regulations come into force on 1st September 2013.

Implementation of the treaty etc

2.—(1) These Regulations have effect for and in connection with the implementation of obligations arising under the treaty.

(2) In these Regulations “the treaty” means 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 12th September 2012⁽²⁾, as that agreement has effect from time to time.

(3) But the treaty is to be treated as if the following amendments were made—

(1) 2013 c. 29.

(2) That agreement, as signed on that date, is contained in a Command Paper published by the Stationery Office Ltd with the title “Agreement 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” (Cm 8445, 2012); the Command Paper is available on the Official Documents website at <http://www.official-documents.gov.uk/document/cm84/8445/8445.pdf>.

- (a) in sub-paragraph 1(aa) of Article 1 and in each place in Annex I, for “December 31, 2013” substitute “June 30, 2014”,
 - (b) in each place in Annex 1, for “January 1, 2014” substitute “July 1, 2014”,
 - (c) in paragraphs II.C (1) and IV.E (1) of Annex I, for “December 31, 2015” substitute “June 30, 2016”,
 - (d) in paragraph II.E (1) of Annex I, for “December 31, 2014” to the end of sub-paragraph (1) substitute “June 30, 2015. If based on this review such account is identified as a U.S. Reportable Account on or before December 31, 2014, the Reporting U.K. Financial Institution must report the required information about such account with respect to 2014 in the first report on the account and on an annual basis thereafter. In the case of an account identified as a U.S. Reportable Account after December 31, 2014 and on or before June 30, 2015, the Reporting U.K. Financial Institution is not required to report information about such account with respect to 2014, but must report information about the account on an annual basis thereafter.”,
 - (e) in paragraph II.E (2) of Annex I, after “the last day of” where it first appears insert “2015 or any”, and
 - (f) in paragraph IV.B of Annex I—
 - (i) for “initially” substitute “as of 30 June, 2014”, and
 - (ii) for “later” substitute “as of the last day of 2015 or of any subsequent calendar year.”.
- (4) Any expression which is defined in the treaty but not in section 222 or 235 of FA 2013 or in these Regulations has the same meaning in these Regulations as in the treaty.

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 custodial institution,
- (b) a depository institution,
- (c) an investment entity,
- (d) a specified insurance company,
- (e) a relevant holding company, or
- (f) a treasury company.

(2) A non-reporting United Kingdom financial institution may qualify as a reporting financial institution for the purposes of these Regulations only if it is a registered deemed-compliant 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⁽³⁾ by virtue of article 5 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001⁽⁴⁾, or
- (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⁽⁵⁾.

⁽³⁾ 2000 c. 8.

⁽⁴⁾ S.I. 2001/544, amended by S.I. 2002/682.

⁽⁵⁾ S.I. 2011/99.

- (4) For the purposes of these Regulations “investment entity” means—
- (a) an investment entity within the meaning of the treaty, or
 - (b) an entity that is managed by a financial institution and meets the financial assets test.
- (5) An entity meets the financial assets test for a calendar year if the gross amount of the income of its business as carried on in the United Kingdom for the applicable period wholly or mainly derives from investing or dealing in—
- (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⁽⁶⁾,
 - (b) insurance or annuity contracts,
 - (c) commodities, or
 - (d) derivative contracts within the meaning of Part 7 of CTA 2009⁽⁷⁾.
- (6) In paragraph (5) the “applicable period” is the shorter of—
- (a) the period comprising the previous three calendar years, and
 - (b) the period
 - (i) starting on the later of the first day of the period in sub-paragraph (a) and the date that the entity commenced the business, and
 - (ii) ending on the earlier of the last day of the period in sub-paragraph (a) and the last day that the entity carried on the business.
- (7) 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.
- (8) In paragraph (7) “collective investment scheme” means—
- (a) an investment trust within the meaning of the Corporation Tax Acts⁽⁸⁾,
 - (b) a venture capital trust within the meaning of Part 6 of ITA 2007⁽⁹⁾, or
 - (c) any arrangements that are a “collective investment scheme” within the meaning of Part 17 of the Financial Services and Markets Act 2000⁽¹⁰⁾.
- (9) For the purposes of these Regulations a “relevant holding company” means—
- (a) a person whose business consists wholly or mainly of holding (directly or indirectly) any shares or securities issued by a related entity which is within any of paragraph (1)(a) to (d), or

⁽⁶⁾ S.I. 2006/964. Part 2B was inserted by S.I. 2009/2036.

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

⁽⁸⁾ 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).

⁽⁹⁾ 2007 c. 3. The meaning of “venture capital trust” in Part 6 of that Act is provided at section 259.

⁽¹⁰⁾ 2000.c.8. 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.

- (b) a person whose business consists wholly or mainly of holding shares or securities, and who has a qualifying relationship with a qualifying entity.

(10) For the purposes of these Regulations a “treasury company” means a company whose business consists wholly or mainly in carrying on for a financial group of which it is a member, or for a qualifying entity with whom it has a qualifying relationship, any of the activities within section 316(9) of TIOPA 2010⁽¹¹⁾, and for this purpose—

- (a) the reference in paragraph (d) of that subsection to a UK group company and a group treasury company is to a related entity which is within any of paragraph (1)(a) to (d) of this regulation, and
- (b) “financial group” means a group of entities consisting of the company and its related entities where at least one of those entities falls within any of paragraph (1)(a) to (d) of this regulation.

(11) For the purposes of this regulation—

- (a) a “qualifying entity” means an entity that is, or is formed with a view to its becoming, an entity within paragraph (4)(b), and
- (b) a person has a “qualifying relationship” with a qualifying entity if—
 - (i) the person is connected (within the meaning of section 1122 of CTA 2010) with the entity, or
 - (ii) the person provides services or holds investments on behalf of the entity.

Scope: definition of “reportable account”

4.—(1) In these Regulations a “reportable account”, in relation to a reporting financial institution, means a U.S. reportable account maintained by that institution in the United Kingdom for the purposes of its business as—

- (a) a custodial institution,
- (b) a depository institution,
- (c) an investment entity,
- (d) a specified insurance company,
- (e) a relevant holding company, or
- (f) a treasury company,

but see paragraphs (2) and (3) for exceptions.

(2) A U.S. reportable account is not a reportable account if—

- (a) the account holder is deceased or is a personal representative (within the meaning of section 989 of ITA 2007),
- (b) the account is held to comply with an order or judgment made or given in legal proceedings, or
- (c) the funds held in the account are held solely as security for the performance of a party’s obligation under a contract for the disposal of an estate or interest in land or of tangible moveable property.

(3) The following accounts are not reportable accounts for a calendar year if there is an election by the reporting financial institution in force for that year to treat the accounts as not being reportable accounts—

(11) 2010 c. 8.

- (a) 30th June 2014 individual accounts meeting the description at paragraph II.A of Annex I of the treaty,
 - (b) post-June 2014 individual accounts meeting the description at paragraph III.A of Annex I of the treaty (including an insurance contract that would be a cash value insurance contract for the purposes of these Regulations but for the fact that its value is less than or equal to \$50,000), and
 - (c) 30th June 2014 accounts meeting the description at paragraph IV.A of Annex I of the treaty.
- (4) In determining whether or not a financial account maintained by an institution meets any of the descriptions in paragraph (3), the institution must apply the account balance aggregation and currency translation rules at paragraph VI.C of Annex I of the treaty.
- (5) An election under paragraph (3)—
- (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) must be made on or before the reporting date under regulation 8 for the calendar year in question.
- (6) For the purposes of these Regulations—
- (a) any reference to a 30th June 2014 account is to a financial account maintained on 30th June 2014,
 - (b) 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,
 - (c) 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 of a partnership, and
 - (d) any reference to a post-June 2014 account is to a financial account opened after 30th June 2014.
- (7) In a case where a financial account is held jointly by two or more persons (but not where the account is held solely by a partnership), these Regulations are to be applied separately in relation to each account holder and as if the holder were entitled to the whole of the balance or value of the account.

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, 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 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(12).
- (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.

Obligations in relation to payments to a non-participating financial institution

Identification and disclosure obligations

10.—(1) A reporting financial institution must establish and maintain arrangements that are designed to identify payments—

- (a) which are made by the reporting financial institution to a non-participating financial institution, and
- (b) which are made in the calendar year 2015 or 2016,

whether the payment is made to a non-participating financial institution as an account holder or otherwise.

(2) “Payment” here includes amounts credited to a non-participating financial institution but does not include consideration given by the reporting financial institution for the provision of goods or services to it.

(3) A reporting financial institution is entitled to regard a payment made by it to a financial institution as made to someone who is not a non-participating financial institution only if it has, in respect of the payment, taken the steps referred to at paragraph IV.D (3) of Annex I of the treaty.

(4) For the purposes of paragraphs (1) to (3) of this regulation it is to be assumed that a “non-participating financial institution” includes anyone who is required to be treated as a non-participating financial institution as a result of sub-paragraph 5(a) of Article 4 of the treaty.

(5) In respect of any case in the calendar years 2015 and 2016 when a reporting financial institution is within the terms of sub-paragraph 1(e) of Article 4 of the treaty, the institution must make a disclosure of information in accordance with the requirements of that sub-paragraph.

Reporting obligation

11.—(1) A reporting financial institution must in respect of each of the calendar years 2015 and 2016 prepare a return setting out—

- (a) the names of the non-participating financial institutions to whom payments identified in accordance with regulation 10(1) have been made in the year in question, and
- (b) the total amount of those payments made to each of the non-participating financial institutions in question.

(2) In determining the total amount of those payments the special rules and definitions at paragraph I.B (1) and paragraph VI.C of Annex I of the treaty must be applied.

(3) If for a calendar year no payments are identified as referred to in paragraph (1), the reporting financial institution must prepare a return for the calendar year stating that fact.

(4) The financial 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.

Penalties for breach of obligations

Penalties for failure to comply otherwise than with regulation 11

12. A person is liable to a penalty of £300 if the person fails to comply with any obligation under these Regulations other than regulation 11.

Penalties for inaccurate information: reportable accounts

13.—(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.

Penalties for failure to report or accurately report payments to non-participating financial institutions

14.—(1) In relation to payments that are required to be identified under regulation 10(1), a person is liable to—

- (a) a penalty of £300 for each failure to report a payment, and
- (b) a penalty of £300 for each failure to set out a payment accurately in a report made under regulation 11.

(2) But in relation to a calendar year, a person's liability for penalties under this regulation is subject to a limit of £3000.

Matters to be disregarded in relation to liability to penalties

15.—(1) Liability to a penalty under any of regulations 12 to 14 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

16.—(1) If the reporting financial institution becomes liable to a penalty under any of regulations 12 to 14, 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 12 or 14(1)(a) 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 13 or 14(1)(b) 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

17. A person may appeal against a decision by an officer of Revenue and Customs—
- (a) that a penalty is payable under any of regulations 12 to 14, or
 - (b) as to the amount of such a penalty.

Procedure on appeal against penalty

- 18.—(1) Notice of an appeal under regulation 17 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 16 was given, and
 - (c) to HMRC.
- (2) It must state the grounds of appeal.
- (3) On an appeal under regulation 17(a) that is notified to the tribunal, the tribunal may confirm or cancel the decision.
- (4) On an appeal under regulation 17(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 19, the provisions of Part 5 of TMA 1970(13) relating to appeals have effect in relation to appeals under regulation 17 as they have effect in relation to an appeal against an assessment to income tax.

Enforcement of penalties

- 19.—(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 16 is given in respect of the penalty, or
 - (b) if a notice of appeal under regulation 17 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

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

(13) 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

21. If—

- (a) a person enters into any arrangements, and
- (b) the main purpose, or one of the main purposes, of the person in entering into the arrangements is to avoid any obligation under these Regulations,

these Regulations are to have effect as if the arrangements had not been entered into.

Supplementary

Definitions

22.—(1) In these Regulations—

“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 FATCA purposes,

“registered deemed-compliant financial institution” means a non-reporting United Kingdom Financial Institution to which a Global Intermediary Identification Number has been properly allocated, 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 U.S. status are to whether or not the person is a specified U.S. person.

(3) 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>
30th June 2014 account	regulation 4(6)(a)
account holder	regulation 2(4) with sub-paragraph 1(ee) of Article 1 of the treaty
annuity contract	regulation 2(4) with sub-paragraph 1(x) of Article 1 of the treaty
the Commissioners	regulation 22(1)
cash value insurance contract	regulation 2(4) with sub-paragraph 1(y) of Article 1 of the treaty
controlling person	regulation 2(4) with sub-paragraph 1(mm) of Article 1 of the treaty
custodial account	regulation 2(4) with sub-paragraph 1(u) of Article 1 of the treaty
custodial institution	regulation 2(4) with sub-paragraph 1(h) of Article 1 of the treaty
depository account	regulation 2(4) with sub-paragraph 1(t) of Article 1 of the treaty
depository institution	regulation 3(3)

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<i>Expression</i>	<i>Reference</i>
entity	regulation 2(4) with sub-paragraph 1(hh) of Article 1 of the treaty
entity account	regulation 4(6)(b)
FATCA	section 222(4) FA 2013(14)
financial account	regulation 2(4) with sub-paragraph 1(s) of Article 1 of the treaty
financial institution	regulation 2(4) with sub-paragraph 1(g) of Article 1 of the treaty
Global Intermediary Identification Number	regulation 22(1)
HMRC	section 222(4) FA 2013
individual account	regulation 4(6)(c)
insurance contract	regulation 2(4) with sub-paragraph 1(w) of Article 1 of the treaty
investment entity	regulation 3(4) and (7) and sub-paragraph 1(j) of Article 1 of the treaty
non-participating financial institution	regulation 2(4) with sub-paragraph 1(r) of Article 1 of the treaty
non-reporting United Kingdom financial institution	regulation 2(4) with sub-paragraph 1(q) Article 1 of the treaty
partner jurisdiction financial institution	regulation 2(4) with sub-paragraph 1(m) of Article 1 of the treaty
post-June 2014 account	regulation 4(6)(d)
related entity	regulation 2(4) with sub-paragraph 1(kk) of Article 1 of the treaty
relevant holding company	regulation 3(9)
relevant total gross credits	regulation 8(5)
registered deemed-compliant financial institution	regulation 22(1)
reportable account	regulation 4
reporting financial institution	regulation 3
specified insurance company	regulation 2(4) with sub-paragraph 1(k) of Article 1 of the treaty
specified U.S. person	regulation 2(4) with sub-paragraph 1(gg) of Article 1 of the treaty
the treaty	regulation 2(2) and (3)
treasury company	regulation 3(10)
the tribunal	regulation 22(1)

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<i>Expression</i>	<i>Reference</i>
United Kingdom financial institution	regulation 2(3) with sub-paragraph 1(l) of Article 1 of the treaty
U.S. reportable account	regulation 2(3) with sub-paragraph 1(dd) of Article 1 and paragraph I.B (4) of Annex I of the treaty, and regulation 2(4)
U.S. status	regulation 22(2)

6th August 2013

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

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

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”.

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.