

**EXPLANATORY MEMORANDUM TO
THE INTERNATIONAL TAX COMPLIANCE (UNITED STATES OF AMERICA)
REGULATIONS 2013**

2013 No. 1962

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

This memorandum contains information for the Select Committee on Statutory Instruments.

- 2. Purpose of the instrument**

- 2.1 The instrument implements the 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, signed on 12 September 2012 (“the Agreement”), as that Agreement has effect from time to time. The Agreement was amended by an Exchange of Notes between the two governments dated 3rd of June and 7th June 2013.

- 2.2 The Agreement, as amended will come into force when the necessary internal procedures for entry into force have been completed and written notification is provided to the other party.

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

- 3.1 Since the UK and the US signed the Agreement, the US’s domestic legislation has been the subject of some revisions and recently the US has formally announced by Notice their intention to make a change to the implementation time line in coming months (the first reports required under that legislation will be for 2014 rather than 2013, with additional consequential changes).

- 3.2 The combined effects of all of these changes are: less burdensome due diligence procedures required to ascertain if accounts are reportable to the US; some additional but very specific exemptions from reporting; no reporting is now required in respect of 2013; fewer accounts are subject to reporting and review in respect of 2014 onwards.

- 3.3 The intention of the Agreement is to ensure that the US receives information about US taxpayers’ accounts that is similar in nature to what would be required under its domestic FATCA law. The US Treasury has advised HMRC that it is content if the UK does not wholly implement the Agreement, but does so only to the extent that implementation mirrors US FATCA law with the revisions referred to above.

As a result, the Agreement has not been formally amended but the Regulations (including regulation 2(3)) reflect the extent to which implementation is required, and ensure that unnecessary administrative burdens are not imposed on UK business.

4. Legislative Context

- 4.1 The Agreement provides for mutual exchange of tax information between the tax authorities of the two States. (The UK has agreed to provide the US with certain information about the accounts of US taxpayers who hold accounts in UK financial institutions, and about certain payments made by UK financial institutions to financial institutions in other jurisdictions that do not have an agreement with the US).
- 4.2 Further, in relation to UK financial institutions within the scope of the 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 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 Agreement, by enabling HM Revenue & Customs (HMRC) to obtain from UK financial institutions the information the UK has agreed to provide to the US, and so ensures that UK will receive reciprocal exchange of tax information from the US.
- 4.4 Information passed by UK financial institutions to HMRC under this instrument will, as required by the Agreement, be automatically exchanged annually with the United States Internal Revenue Service (IRS) as envisaged by Article 27 of the Convention between the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains.
- 4.5 This instrument, pursuant to the UK's obligations in the Agreement, only obliges UK financial institutions to pass to HMRC information about US taxpayers. In anticipation of the future agreements with other jurisdictions, the requirement to ascertain whether an account is held by a US taxpayer (and so subject to reporting under these Regulations) has been framed in terms of financial institutions being required to put in place arrangements to obtain details of the country of tax residence of all account holders within scope of future agreements. This allows financial institutions to introduce systems for collecting and maintaining information and to minimise implementation costs whilst also enabling compliance with data protection rules.

- 4.6 This requirement will relate only to accounts opened on or after the date that these Regulations come into force and has been added to the instrument following a Government Amendment to clause 222 of the Finance Bill at Report Stage.

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

- 7.1 The Foreign Account Tax Compliance Act (FATCA), which is part of the US Hiring Incentives to Restore Employment Act of 2010, aims to combat tax evasion by US tax residents using foreign accounts.
- 7.2 It includes certain provisions on withholding taxes and requires financial institutions outside the US to pass information about their US customers to the US tax authorities, the Internal Revenue Services (IRS). Failure to meet these new reporting obligations would result in a 30 per cent withholding tax on any US source income held by the financial institutions. Draft US regulations setting out the implementation details were published in February 2012.
- 7.3 The FATCA provisions potentially imposed new and substantial burdens on UK businesses in identifying US taxpayers, and registering and reporting information to the IRS. Significantly for UK institutions the Data Protection Act precludes financial institutions from passing on such information.
- 7.4 The UK Government (along with France, Germany, Italy, and Spain) and with the support of the European Commission took part in joint discussions with the US Government to explore an intergovernmental approach to FATCA, supporting the overall aim to combat tax evasion, while reducing risks and burdens on financial institutions. A model intergovernmental agreement (IGA) was developed and published in July 2012.
- 7.5 The UK and the US subsequently signed an agreement based on the IGA - the 'UK-US Agreement to Improve International Tax Compliance and to Implement FATCA' - in September 2012 (the "Agreement").
- 7.6 On 9 April 2013 the Government - along with France, Germany, Italy and Spain - also announced an agreement to develop and pilot multilateral tax information exchange based on the Model Intergovernmental Agreement to Improve

International Tax Compliance and to Implement FATCA. The model will therefore form the basis of a new international standard of automatic exchange of information.

8. Consultation outcome

- 8.1 Following the publication of the draft US FATCA regulations in February 2012 HMRC, in line with the Government's Tax Consultation Framework, has undertaken extensive stakeholder engagement with representative bodies and businesses to better understand the scale of impact of FATCA and how the key issues and sector specific concerns of the various impacted stakeholder groups could be implemented through an intergovernmental approach to FATCA.
- 8.2 A formal consultation was run for 10 weeks from 18 September to 23 November 2012. The consultation was run for 10 weeks, as opposed to the normal 12 weeks to allow HMRC sufficient time to consider the responses in advance of publishing draft regulations later in 2012. To ensure that people were able to contribute as fully as possible HMRC also met individual companies, representative bodies and held a "Town Hall" open event on 25 September 2012.
- 8.3 A summary of the responses to the draft regulations and draft guidance was published on 18 December 2012, and is available on the HMRC website.
- 8.4 Final US regulations were published in January 2013. Since then HMRC has continued to consult on the draft UK guidance and regulations and considered the impacts of changes contained in the final US regulations.
- 8.5 In July 2013 the US announced a six month delay to the implementation of FATCA. The UK regulations align with the revised U.S. timetable.

9. Guidance

- 9.1 Working with business and advisers HMRC has produced guidance which is accessible at <http://www.hmrc.gov.uk/fatca/index.htm>. Copies of the guidance have been placed in libraries of both Houses.

10. Impact

- 10.1 A Tax Information and Impact Note covering the instrument was published on 31 May 2013 alongside a draft of the 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.

11. Regulating small business

- 11.1 The legislation applies to small business.

- 11.2 To minimise the impact of the requirements on firms employing up to 20 people, HMRC are taking steps to deliver eased reporting requirements and, through negotiation with the US, have effectively removed the smallest financial institutions (for example Credit Unions and Community Investment Companies) from reporting completely. Sole traders are not affected.
- 11.3 Affected businesses have confirmed that these exemptions will reduce the impact on small business, carving out certain products that are typical to these financial institutions (for example ISA's) and reducing the level of reporting for those at lower risk of having access to evasion.
- 11.4 However the size of the business is not in itself a key determinant of the risk of tax evasion. As such any financial institution can be a reporting entity if it has US account holders of its products. For example a large "business" can have many financial institutions within its structure as reporting is on an entity by entity basis and large UK banking groups will have potentially thousands of financial institutions to report on within their business.
- 11.5 Therefore each financial institution may be a small entity, but the business in which they sit may not.

12. Monitoring & review

- 12.1 Both the Government of the United Kingdom and the Government of the United States will consult in good faith to amend the Agreement as necessary in order to ensure that it meets the policy objectives set out above in section 7.

13. Contact

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