
STATUTORY INSTRUMENTS

2014 No. 1506

The International Tax Compliance (United States of America) Regulations 2014

Scope

Meaning of “reporting financial institution”

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

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

(2) But a person who is a non-reporting United Kingdom financial institution may only qualify as a reporting financial institution for the purposes of these Regulations if that person is a registered deemed-compliant financial institution.

Meaning of “depository institution”

4. 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⁽¹⁾ by virtue of article 5 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001⁽²⁾, 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⁽³⁾.

Meaning of “investment entity”

5.—(1) For the purposes of these Regulations a person (person A) carries on business in the United Kingdom as an investment entity if—

- (a) person A undertakes any of the activities referred to in sub-paragraph 1(j)(1) to (3) of Article 1 of the treaty in the course of carrying on business in the United Kingdom, and A’s gross income from that business for the applicable period wholly or mainly derives from those activities, or
- (b) on behalf of person A, a financial institution (person B) undertakes any of the activities referred to in sub-paragraph 1(j)(1) to (3) of Article 1 of the treaty in the course of carrying

⁽¹⁾ 2000 c. 8.

⁽²⁾ S.I. 2001/544, amended by S.I. 2002/682.

⁽³⁾ S.I. 2011/99.

on business in the United Kingdom, and person A's gross income from the activities undertaken on behalf of person A by person B for the applicable period wholly or mainly derives from investing or dealing in financial assets.

- (2) For these purposes—
- (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.
- (3) In paragraph (1) the “applicable period” is the shorter of—
- (a) the three year period—
 - (i) ending with the person's most recent accounting date if that date is no more than twelve months earlier than the next reporting date, or
 - (ii) in any other case, ending on the 31 December immediately before the next reporting date, and
 - (b) the period—
 - (i) starting on the later of the first day of the period determined under sub-paragraph (a) and the date that the person commenced the business, and
 - (ii) ending on the earlier of the last day of the period determined under sub-paragraph (a) and the last day that the person carried on the business,
 and “accounting date” here means the date to which a company makes up its accounts.
- (4) In this regulation—
- “collective investment scheme” means—
- (a) an investment trust within the meaning of the Corporation Tax Acts⁽⁴⁾,
 - (b) a venture capital trust within the meaning of Part 6 of ITA 2007⁽⁵⁾, or
 - (c) any arrangements that are a “collective investment scheme” within the meaning of Part 17 of the Financial Services and Markets Act 2000⁽⁶⁾;
- “financial assets” means—
- (a) assets capable of being the subject-matter of a transaction that is an “investment transaction” within the meaning of the Investment Transactions (Tax) Regulations 2014⁽⁷⁾,
 - (b) insurance or annuity contracts,
 - (c) commodities, or
 - (d) derivative contracts within the meaning of Part 7 of CTA 2009⁽⁸⁾;

(4) The meaning of “investment trust” in the Corporation Tax Acts is given in 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).

(5) 2007 c. 3. The meaning of “venture capital trust” in Part 6 of that Act is given in section 259.

(6) The meaning of “collective investment scheme” is given in section 235 of the Financial Services and Markets Act 2000. 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.

(7) S.I. 2014/685.

(8) 2009 c. 4. The meaning of “derivative contract” in Part 7 of that Act is given in section 576.

Meaning of “custodial institution”

6.—(1) For the purposes of these Regulations a person carries on a business in the United Kingdom as a custodial institution if—

- (a) 20% or more of the gross income of that business as is carried on in the United Kingdom for the applicable period derives from any of—
 - (i) holding financial assets for the account of another person, and
 - (ii) performing related financial services, or
 - (b) the person holds assets in the United Kingdom as a nominee for another person who is a connected person within the meaning of section 1122 of CTA 2010⁽⁹⁾.
- (2) In this regulation—

“applicable period” and “financial assets” have the same meanings as in regulation 5;
“related financial services” means financial services provided by the person that directly relate to that person holding financial assets on behalf of the other person.

Meaning of “relevant holding company”

7.—(1) 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 regulation 3(1)(a) to (d), or
 - (b) a person whose business consists wholly or mainly of holding shares or securities, and who has a qualifying relationship with a qualifying entity (in regulation 8(2)).
- (2) For the purposes of this regulation, a person has a “qualifying relationship” with a qualifying entity if—
- (a) the person is connected (within the meaning in section 1122 of CTA 2010) with the entity, or
 - (b) the person provides services or holds investments on behalf of the entity.

Meaning of “treasury company”

8.—(1) 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⁽¹⁰⁾, 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 regulation 3, 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 regulation 3.

(2) In this regulation—

“qualifying entity” means an entity that is managed by a financial institution and whose income from business in the United Kingdom for the applicable period derives wholly or mainly from investing or dealing in financial assets;

⁽⁹⁾ 2010 c. 4.

⁽¹⁰⁾ 2010 c. 8.

“qualifying relationship” has the same meaning as in regulation 7.

Meaning of “reportable account”

9.—(1) In these Regulations a “reportable account”, in relation to a reporting financial institution, means—

- (a) subject to paragraph (2), a U.S. reportable account maintained by that institution in the United Kingdom for the purposes of its business as described in regulation 3(1), or
- (b) subject to paragraph (3), an account that is—
 - (i) a pre-existing individual account meeting the description at paragraph II.A of Annex I of the treaty,
 - (ii) a new individual account meeting the description at paragraph III.A of Annex I of the treaty, and
 - (iii) a pre-existing entity account meeting the description at paragraph IV.A of Annex I of the treaty.
- (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) An account within any of paragraphs (i) to (iii) of paragraph (1)(b) is not a reportable account for a calendar year if there is an election by the reporting financial institution in force for that year to treat any such account as not being a reportable account.
- (4) An election under paragraph (3) must be made for each calendar year in which the election is to have effect in the return required by regulation 12 for that year.
- (5) The institution must apply the account balance aggregation and currency translation rules at paragraph VI.C of Annex I of the treaty for the purposes of determining—
 - (a) whether or not a financial account maintained by an institution meets any of the descriptions in paragraph (1)(b), and
 - (b) which case in the table in regulation 11(3) applies to an account.

But, in determining the balance or value of an account denominated in a currency other than US dollars, instead of applying the currency translation rule in sub-paragraph VI.C.4 of Annex I, the institution may translate the relevant dollar threshold amounts referred to in Annex 1 and regulation 11(3) into the other currency by reference to the spot rate of exchange on the date for which the institution is determining the threshold amounts.

- (6) For the purposes of these Regulations—
 - (a) any reference to an entity account is to a financial account which is not an account the account holder of which (or, if more than one, each account holder of which) is an individual holding the account otherwise than as a partner of a partnership, and
 - (b) any reference to an individual account is to a financial account held in the name of an individual (whether solely or jointly with another) but not as a partner of a partnership.

Non-resident reporting financial institution's UK representative

10.—(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.