

EXPLANATORY MEMORANDUM TO
THE INTERNATIONAL TAX COMPLIANCE (AMENDMENT) REGULATIONS
2017

2017 No. 598

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs ("HMRC") on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument amends the International Tax Compliance Regulations 2015, which came into force on 15 April 2015. It brings into scope additional international exchange arrangements equivalent to those included in the original Regulations, addresses identified gaps in the earlier provisions and clarifies the application of penalties.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The International Tax Compliance Regulations 2015 (S.I. 2015/878) ("the 2015 Regulations"), which this instrument amends, enable the UK to comply with automatic exchange of information obligations under the amended European Union Directive on Administrative Cooperation (2011/16/EU), international exchange arrangements relating to the Common Reporting Standard for Automatic Exchange of Financial Account Information ("CRS") and the Intergovernmental Agreement with the United States of America to Improve International Tax Compliance and to Implement FATCA (the Foreign Account Tax Compliance Act).
- 4.2 This instrument amends the 2015 Regulations concerning the international exchange arrangements in scope, clarifies some of the due diligence and reporting requirements placed on financial institutions, inserts information gathering powers, clarifies the application of penalties and makes other minor and consequential changes.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

- 7.1 On 23 June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.
- 7.2 The policy objective, of which this instrument is part, is to increase cooperation between tax administrations in the fight against tax fraud and evasion.
- 7.3 The International Tax Compliance Regulations 2015 (“the 2015 Regulations”) enable the UK to fulfil its obligations to automatically exchange information with other jurisdictions on accounts held in the UK by persons resident overseas. These obligations arise from:

- the EU Directive on Administrative Co-operation in the field of taxation (“DAC”),
- arrangements the UK has in place with other jurisdictions to adopt and implement the CRS; and
- the agreement the UK has in place with the United States of America to implement FATCA.

In return the UK will automatically receive information from overseas tax administrations in respect of offshore accounts held by UK tax residents.

- 7.4 The 2015 Regulations impose obligations on UK financial institutions to carry out due diligence procedures (contained in the DAC, the CRS and the FATCA agreement) to identify account holders that are resident overseas, to maintain a record of relevant information and to report accounts identified as reportable to HMRC.
- 7.5 This instrument makes a number of amendments to the 2015 Regulations:
- A number of jurisdictions including the United Kingdom have signed up to the Multilateral Competent Authority Agreement on Automatic Exchange of Information (“MCAA”) developed by the Organisation for Economic Co-operation and Development which signals a commitment to adopt the CRS and exchange information with other jurisdictions which have adopted the CRS. The MCAA itself does not require or enable jurisdictions to exchange information with each other, so this instrument amends the operative exchange arrangements under which the UK will exchange information received from financial institutions. CRS exchanges will take place with a jurisdiction defined as a “Reportable Jurisdiction” under section VIII(D)(4) of the CRS. A Reportable Jurisdiction for the UK is one to which the UK has agreed to provide the information specified in Section I of the CRS and which is identified in a published list. HMRC has published its list of Reportable

Jurisdictions at <https://www.gov.uk/hmrc-internal-manuals/international-exchange-of-information/ieim402340>.

- Given that the MCAA is not the mechanism through which the UK will exchange tax information, the instrument omits reference to it and the associated list of participating jurisdictions which was in Schedule 1. The concept of “Participating Jurisdiction” is relevant for financial institutions undertaking due diligence for the purposes of the CRS and DAC because additional due diligence is required for some account holders in Non-Participating Jurisdictions. A Participating Jurisdiction for the UK is one with which an agreement is in place for that jurisdiction to provide CRS information to the UK. A list of Participating Jurisdictions in relation to the UK is available at <https://www.gov.uk/hmrc-internal-manuals/international-exchange-of-information/ieim400090>.
- Since the 2015 Regulations were made, the EU has made agreements with five non-EU states (Andorra, Liechtenstein, Monaco, San Marino, and Switzerland) requiring the UK to exchange CRS information with these non-EU states. The amendments incorporate these agreements.
- Certain insurance contracts can be treated as non-reportable under the CRS but are reportable under the DAC. HMRC considers it appropriate to align the DAC and CRS reporting requirements for consistency and therefore the amendments allow financial institutions to report such contracts.
- There was uncertainty amongst financial institutions about whether the obligation to retain tax residence information applied to all account holders or just account holders of reportable accounts. To address this, the amendments clarify that the obligation to retain tax residence information applies to all account holders.
- The retention period for information collected to establish an account holder’s tax residence is aligned to match the CRS requirement (five years from the date the information is last relied upon to support a decision not to report a particular account to HMRC rather than six years from obtaining it).
- The CRS has various options or is silent on some aspects of timing and other implementation. The DAC, which was adopted by the EU after the CRS, fills these gaps or selects a particular option. The amendments align the CRS requirements with DAC requirements to provide financial institutions with a single due diligence standard to apply as far as possible, thereby ensuring consistency.
- Pre-existing accounts may be closed during one calendar year but not identified as reportable until a subsequent calendar year due to the due diligence timelines in DAC, CRS and FATCA. The 2015 Regulations could be read as only requiring financial institutions to report pre-existing accounts that are still open in the calendar year they are identified as reportable, which does not reflect the policy intention. The amendments address this unintended gap by requiring financial institutions to include all pre-existing accounts identified as reportable in their return to HMRC, whether or not they are still maintained.
- The provision of new information gathering powers is necessary in order to ensure HMRC can check whether the obligations in the 2015 Regulations have been complied with.

- The CRS, DAC and FATCA requirements apply to partnerships and trusts as well as to bodies corporate. The amendments clarify that a partner or trustee respectively will be liable to penalties in the event a partnership or trust fails to comply with obligations under the 2015 Regulations. For trusts that are collective investment schemes, the manager or operator of the scheme will normally have responsibility for fulfilling regulatory obligations and so are included in these provisions.
- There are additions and amendments to the cross-references in the table of defined terms to implement the other changes and correct minor typographical errors.

7.6 This instrument confirms that for FATCA purposes, the amendments relating to reportable pre-existing accounts which are closed apply from the 2016 calendar year onwards. The effect is to confirm that closed pre-existing accounts identified during 2016 as being reportable are to be included in a return of reportable accounts to be made to HMRC by 31 May 2017.

Consolidation

7.7 HMRC has no current plans to consolidate but will keep this under review.

8. Consultation outcome

8.1 HMRC holds monthly working group meetings with representative bodies of financial institutions and a wide range of individual businesses regarding the CRS, FATCA, and related rules. Representations were made for changes to clarify the retention of all account holders' tax residence, to allow for extra reporting, and to extend retention periods; which this instrument addresses. The other amendments have also been discussed and stakeholders understand the nature of the changes.

9. Guidance

9.1 Working with business and advisers HMRC has produced guidance in relation to the Regulations which is accessible at <https://www.gov.uk/hmrc-internal-manuals/international-exchange-of-information/ieim400000>

HMRC will amend the guidance to reflect changes made by these Regulations at the next update.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

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

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 Sole traders are not affected. To minimise the impact of the requirements on small businesses (employing up to 50 people), the UK fully engaged with the Organisation for Economic Cooperation and Development in designing and delivering the CRS and the EU in delivering the DAC. The impact on affected businesses has been reduced by taking certain products that are typical to these financial institutions out of scope of the Regulations and by seeking to simplify certain due diligence procedures.

12. Monitoring & review

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

13. Contact

13.1 David Smith or James Konya at HMRC can answer any queries regarding the instrument. Contact details are as follows:

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