

EXPLANATORY MEMORANDUM TO
THE INTERNATIONAL TAX COMPLIANCE (AMENDMENT) (NO. 2) (EU EXIT)
REGULATIONS 2020

2020 No. 1300

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM 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 (S.I. 2015/878) (“principal Regulations”), which came into force on 15 April 2015 and require financial institutions in the United Kingdom (UK) to report information on certain non-resident account holders to HMRC for exchange under international arrangements. This instrument omits references to the European Union (EU) Council Directive on Administrative Cooperation (2011/16/EU) (DAC) which will no longer apply to the UK after the end of the transition period and makes technical amendments to ensure that the principal Regulations continue to operate after that period.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The principal Regulations, which this instrument amends, enable the UK to comply with automatic exchange of information obligations arising under the DAC, international exchange arrangements relating to the Common Reporting Standard for Automatic Exchange of Financial Account Information (CRS) including arrangements

entered into by the EU relating to the implementation of the CRS between member States and other territories, 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).

- 6.2 This instrument amends the principal Regulations to remove references to the DAC and to arrangements entered into by the EU, replace definitions that rely on the DAC with equivalent definitions in the CRS and specify dates that are set out in the DAC but not the CRS, so that the regulations continue to operate as intended following the end of the transition period.

7. Policy background

What is being done and why?

- 7.1 The policy objective, of which this instrument is part, is to increase cooperation between tax administrations in the fight against tax fraud and evasion.
- 7.2 The principal 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.
- 7.3 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 principal Regulations impose obligations on UK financial institutions to carry out due diligence procedures (contained in DAC, CRS and FATCA) 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 Following the end of the transition period, the DAC will no longer be a relevant international agreement for the UK. This instrument removes references to the DAC and replaces them with references to the CRS and removes references to arrangements entered into by the EU.
- 7.6 The due diligence and reporting obligations on UK financial institutions are the same under DAC and CRS, so will not change as a result of this instrument.
- 7.7 The UK will continue to exchange financial account information under the CRS with EU member States and with other territories previously covered by EU arrangements.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because it removes references to an EU Directive from the principal Regulations.

9. Consolidation

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

10. Consultation outcome

- 10.1 There was no consultation since this instrument simply replaces references to the DAC with references to the CRS. It does not change the due diligence and reporting obligations on UK financial institutions.

11. Guidance

- 11.1 HMRC has worked with business and advisers to produce guidance in relation to the principal Regulations, which is accessible at: <https://www.gov.uk/hmrc-internal-manuals/international-exchange-of-information/ieim400000>.
- 11.2 HMRC will amend the guidance to reflect changes made by these regulations at the next annual update.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A Tax Information and Impact Note covering this instrument was published on 18 March 2015 alongside the principal Regulations and is available on the website at <https://www.gov.uk/government/publications/tax-administration-regulations-to-implement-the-uks-automatic-exchange-of-information-agreements>. It remains an accurate summary of the impacts that apply to this instrument.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to fully engage with the Organisation for Economic Cooperation and Development in designing and delivering the CRS. The impact on affected businesses has been reduced by taking certain products that are typical to these financial institutions out of scope of the principal Regulations and by seeking to simplify certain due diligence procedures.
- 13.3 The basis for the final decision on what action to take to assist small businesses is that this instrument does not impose substantive new obligations on them.

14. Monitoring & review

- 14.1 The approach to monitoring this legislation is that HMRC and the 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.
- 14.2 The regulation does not include a statutory review clause. None is required under section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015 because the power by which this instrument is made is being exercised so as to make or amend provisions imposing, abolishing, or varying any tax duty, levy, or other charge or provisions in connection with such provisions.

15. Contact

- 15.1 David Smith at HMRC, telephone: 03000 577521 or email: david.b.smith@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 John Shuker, Deputy Director for International Collaboration and Transparency at HMRC, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.