
STATUTORY INSTRUMENTS

2023 No. 38

**The International Tax Enforcement
(Disclosable Arrangements) Regulations 2023**

PART 2

Requirement to disclose CRS avoidance arrangements and opaque offshore structures

Obligation on intermediary to disclose

3.—(1) Paragraph (2) applies where an intermediary with respect to a CRS avoidance arrangement or opaque offshore structure—

- (a) either—
 - (i) makes that CRS avoidance arrangement or opaque offshore structure available for implementation, or
 - (ii) provides relevant services in respect of that CRS avoidance arrangement or opaque offshore structure,
through a branch or office located in the United Kingdom,
- (b) is resident in the United Kingdom,
- (c) has its place of management in the United Kingdom, or
- (d) is incorporated in the United Kingdom.

(2) Subject to regulations 5 and 6, the intermediary must make a return setting out the information specified in paragraphs (a) to (c) of Rule 2.3 of the model rules in respect of that arrangement or structure, to the extent that information is within the intermediary's knowledge, possession or control.

When information is required to be disclosed

4. The return required under regulation 3(2) must be made before the end of the period of 30 days beginning with the day after the day on which the intermediary—

- (a) makes the CRS avoidance arrangement or opaque offshore structure available for implementation, or
- (b) supplies relevant services in respect of the CRS avoidance arrangement or opaque offshore structure.

Legal professional privilege

5.—(1) Nothing in these Regulations requires an intermediary to disclose any information to the extent that it is privileged information.

(2) Subject to paragraph (1), an intermediary must, before the end of the period specified in regulation 4, provide written notice to the client of the client's obligation to make a return under

regulation 3(2) or 7(2) in respect of the arrangement or structure to which the privileged information relates.

(3) In this regulation, “privileged information” means information with respect to which a claim to legal professional privilege, or, in Scotland, to confidentiality of communications, could be maintained in legal proceedings.

No obligation on intermediary to disclose to the extent information has already been disclosed

6. An intermediary is not required to include in a return under regulation 3(2) any information to the extent the intermediary has evidence that—

- (a) the information was previously disclosed to HMRC,
- (b) the information relates to relevant services supplied, or a CRS avoidance arrangement or an opaque offshore structure made available for implementation, through a branch maintained by that intermediary in a partner jurisdiction and the information has been disclosed to the tax authority of that partner jurisdiction, or
- (c) apart from this paragraph, the intermediary would be required to include the information in a return under regulation 3(2) by virtue of the condition in regulation 3(1)(d), and the information has been disclosed to the tax authority of a partner jurisdiction where that intermediary is resident or has its place of management.

Reportable taxpayer required to disclose in certain circumstances

7.—(1) Paragraph (2) applies where a reportable taxpayer is resident in the United Kingdom and is a user of a CRS avoidance arrangement or a beneficial owner under an opaque offshore structure.

(2) Subject to paragraph (3), the reportable taxpayer must make a return setting out the information specified in paragraphs (a) to (c) of Rule 2.3 of the model rules in respect of that arrangement or structure to the extent that—

- (a) the information is not included in a return under regulation 3(2) by an intermediary for the reason that—
 - (i) there is no intermediary in respect of the arrangement or structure,
 - (ii) the intermediary is not required to make a return under regulation 3(2), or
 - (iii) the intermediary is not required to disclose the information by virtue of regulation 5(1), and
- (b) the information is within the reportable taxpayer’s knowledge, possession or control.

(3) A reportable taxpayer is not required to include information in a return under paragraph (2) to the extent that the reportable taxpayer has evidence that the information has been disclosed by an intermediary to the tax authority of a partner jurisdiction under rules that are substantially similar to those set out in these Regulations.

(4) The return required under paragraph (2) must be made before the end of the period of 30 days beginning with the day after the day on which the first step of the CRS avoidance arrangement or opaque offshore structure is implemented.

Disclosure of arrangements entered into on or after 25th June 2018 and before 28th March 2023

8.—(1) Paragraph (2) applies where a person was a promoter in respect of a CRS avoidance arrangement which was implemented on or after 25th June 2018, but before 28th March 2023

irrespective of whether that person provides relevant services in respect of the arrangement on or after 28th March 2023.

(2) Subject to paragraphs (3) and (4), the person must make a return on or before 25th September 2023, setting out the information specified in paragraphs (a) to (c) of Rule 2.3 of the model rules in respect of that arrangement, to the extent the information is within the person's knowledge, possession or control.

(3) A return is not required under paragraph (2) where the promoter has evidence to demonstrate that the aggregate balance or value of the financial account subject to the CRS avoidance arrangement immediately prior to its implementation was less than US\$ 1,000,000.

(4) A return is not required under paragraph (2) in respect of an arrangement that has been the subject of a return under the International Tax Enforcement (Disclosable Arrangements) Regulations 2020(1).

(5) In applying the threshold amount specified in paragraph (3) to a financial account denominated in a currency other than US dollars, the threshold amount specified in paragraph (3) must be translated into the other currency by reference to an appropriate spot rate of exchange for the date immediately prior to the implementation of the CRS avoidance arrangement to which the financial account is subject.

Notification of disclosure

9.—(1) An intermediary or reportable taxpayer who makes a return under regulation 3(2), 7(2) or 8(2) in respect of an arrangement or structure must give written notice of the fact that a return has been made to any person who the intermediary or reportable taxpayer knows or should reasonably be expected to know is an intermediary or reportable taxpayer in relation to that arrangement or structure.

(2) Notice under paragraph (1) must be given within the period of 30 days beginning with the day on which the return is made.

Electronic return system

10.—(1) A return under regulation 3(2), 7(2) or 8(2) must be made electronically to HMRC using an electronic return system.

(2) The form and manner in which a return is made using an electronic return system is specified in specific or general directions given by the Commissioners for His Majesty's Revenue and Customs.

(3) A return which is made otherwise than in accordance with paragraphs (1) and (2) is treated as not having been made.

(4) An electronic return system must incorporate an electronic validation process.

(5) Unless the contrary is proved—

- (a) the use of an electronic return system is presumed to have resulted in the making of a return only if this has successfully been recorded as such by the relevant electronic validation process,
- (b) the time of making the return is presumed to be the time recorded as such by the relevant electronic validation process, and
- (c) the person delivering the return is presumed to be the person identified as such by any relevant feature of the electronic return system.

Provision of information

11.—(1) In order to determine whether or not the obligations arising under these Regulations have been complied with, an officer of Revenue and Customs may require a person who the officer reasonably suspects is an intermediary or a reportable taxpayer to provide such information or documents as the officer reasonably requires as specified by written notice.

(2) The information or documents required by notice under paragraph (1) must be provided—

(a) within such period, being no less than 30 days, and

(b) by such means and in such form,

as is reasonably required by the officer of Revenue and Customs.

Employees

12.—(1) A person (“P”) is not to be treated as an intermediary in relation to a CRS avoidance arrangement or an opaque offshore structure where—

(a) P is an employee of an employer (“E”), and

(b) E is an intermediary or relevant taxpayer in relation to the CRS avoidance arrangement or opaque offshore structure.

(2) In this regulation, “employee” and “employer” have the meanings given by section 4 of the Income Tax Earnings and Pensions Act 2003(2) (as read with section 5(2) of that Act).

(3) For the purposes of this regulation, where E is connected to another person (“F”), P is to be treated as an employee of F as well as being an employee of E.

(4) In this regulation, E is connected to F where E is closely bound to F by financial, economic or organisational links.