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STATUTORY INSTRUMENTS

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**2014 No. 1506**

**TAXES**

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

<i>Made</i>	- - - -	<i>9th June 2014</i>
<i>Laid before the House of Commons</i>	- - - -	<i>9th June 2014</i>
<i>Coming into force</i>	- -	<i>30th June 2014</i>

The Treasury make these Regulations in exercise of the powers conferred by section 222(1), (2) and (3) of the Finance Act 2013<sup>(1)</sup>:

*Introductory*

**Citation and commencement**

1.—(1) These Regulations may be cited as the International Tax Compliance (United States of America) Regulations 2014.

(2) These Regulations come into force on 30th June 2014.

**Implementation of the treaty etc**

2.—(1) These Regulations have effect for and in connection with the implementation of obligations arising under the treaty.

(2) In these Regulations “the treaty” means the agreement reached 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<sup>(2)</sup>, as that agreement has effect from time to time.

(3) Any expression which is defined in the treaty but not in section 222 or 235 of FA 2013 or in these Regulations has the same meaning in these Regulations as in the treaty.

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(1) 2013 c. 29.

(2) That agreement, as signed on that date, is contained in a Command Paper published by the Stationery Office Ltd with the title “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” (Cm 8445, 2012); the Command Paper is available on the Official Documents website at <http://www.official-documents.gov.uk/document/cm84/8445/8445.pdf>.

## *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<sup>(3)</sup> by virtue of article 5 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001<sup>(4)</sup>, 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<sup>(5)</sup>.

### **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 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

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<sup>(3)</sup> 2000 c. 8.

<sup>(4)</sup> S.I. 2001/544, amended by S.I. 2002/682.

<sup>(5)</sup> S.I. 2011/99.

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<sup>(6)</sup>,
  - (b) a venture capital trust within the meaning of Part 6 of ITA 2007<sup>(7)</sup>, or
  - (c) any arrangements that are a “collective investment scheme” within the meaning of Part 17 of the Financial Services and Markets Act 2000<sup>(8)</sup>;
- “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<sup>(9)</sup>,
  - (b) insurance or annuity contracts,
  - (c) commodities, or
  - (d) derivative contracts within the meaning of Part 7 of CTA 2009<sup>(10)</sup>;

### 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

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<sup>(6)</sup> 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).

<sup>(7)</sup> 2007 c. 3. The meaning of “venture capital trust” in Part 6 of that Act is given in section 259.

<sup>(8)</sup> 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.

<sup>(9)</sup> S.I. 2014/685.

<sup>(10)</sup> 2009 c. 4. The meaning of “derivative contract” in Part 7 of that Act is given in section 576.

(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<sup>(11)</sup>.

(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<sup>(12)</sup>, 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;

“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—

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(11) 2010 c. 4.

(12) 2010 c. 8.

- (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—

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- (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.

*Obligations in relation to financial accounts*

**Identification obligation**

**11.**—(1) A reporting financial institution must establish and maintain arrangements that are designed to identify reportable accounts.

(2) Such arrangements must—

- (a) identify the territory in which an account holder or a controlling person, as the case may be, is resident for income tax or corporation tax purposes or for the purposes of any tax imposed by the law of that territory that is of a similar character to either of those taxes,
- (b) meet the due diligence procedures set out in this regulation,
- (c) secure that the evidence obtained in accordance with this regulation, or a record of the steps taken to comply with this regulation, in relation to any financial account is kept for a period of six years beginning with the end of the year in which the arrangements applied to the financial accounts.

(3) The due diligence procedures for a calendar year are set out in the following table.

<i>Case</i>	<i>Type of account</i>	<i>Balance or value</i>	<i>Procedure in Annex 1 of the treaty to be applied</i>	<i>Exceptions: accounts to which due diligence procedures do not apply</i>
Case 1	Preexisting individual account	Not exceed \$1,000,000 as of 30 June 2014	Paragraphs II.B and II.C, subject to paragraph (4) of this regulation	Accounts within paragraph II.A of Annex I in relation to which an election under regulation 9(3) is in place
Case 2	Preexisting individual account	Exceeds \$1,000,000 as of 30 June 2014, or 31 December 2015 or 31 December in any subsequent year	Paragraphs II.D and II.E, subject to paragraph (5) of this regulation	None
Case 3	New individual account	Any	Paragraphs III.B, III.C and III.D	Accounts within paragraph III.A of Annex I in relation to which an election under regulation 9(3) is in place
Case 4	Preexisting entity account not within Case 5	Any	Paragraphs IV.D and IV.E (1) and (3)	Accounts within paragraph IV.A of Annex I in relation to which an election under

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<i>Case</i>	<i>Type of account</i>	<i>Balance or value</i>	<i>Procedure in Annex I of the treaty to be applied</i>	<i>Exceptions: accounts to which due diligence procedures do not apply</i>
				regulation 9(3) is in place
Case 5	Preexisting entity account	Not exceed \$250,000 as of 30 June 2014, but exceeds \$1,000,000 as of 31 December 2015 or 31 December in any subsequent year	Paragraphs IV.D and IV.E (2) and (3)	None
Case 6	New entity account	Any	Paragraphs V.A, V.B and V.C	None

(4) In the case of an account within Case 1, the due diligence requirements do not include the requirement to carry out the electronic search described in paragraph II.B (1) of Annex I of the treaty if—

- (a) an institution has established the account holder’s U.S. status from documentary evidence mentioned in paragraph VI.D of Annex I of the treaty, and
- (b) it has done so in order to meet its obligations under a Qualifying Intermediary agreement as mentioned in that paragraph.

(5) In the case of an account within Case 2, the due diligence requirements do not include the requirement to carry out the electronic searches described in paragraph II.B (1) or II.D (1) of Annex I of the treaty or the requirement to carry out the paper record search described in paragraph II.D (2) of that Annex if—

- (a) an institution has established the account holder’s U.S. status from documentary evidence mentioned in paragraph VI.D of Annex I of the treaty, and
- (b) it has done so in order to meet its obligations under a Qualifying Intermediary agreement as mentioned in that paragraph.

(6) If, as a result of this regulation, a person’s U.S. status must be certified, a reporting financial institution may require the person to supply to the institution such documentary evidence mentioned in paragraph VI.D of Annex I of the treaty as the institution considers appropriate in support of the certification.

(7) The due diligence procedures set out in this regulation must be applied by reference to the special rules and definitions at paragraph I.B (1) to (3) and section VI of Annex I of the treaty.

(8) In applying the relevant due diligence procedures, a reporting financial institution may rely on evidence of a person’s U.S. status obtained in relation to another financial account if the due diligence procedures in the relevant U.S. Treasury Regulations would allow such reliance.

(9) For the purposes of this regulation references to the documentary evidence set out in paragraph VI.D of Annex I of the treaty are to be treated as if the words “other than a Form W-8 or W-9” were omitted.

**Reporting obligation**

**12.—**(1) A reporting financial institution must, in respect of 2014 and every following calendar year, prepare a return setting out—

- (a) the required information in relation to every reportable account that is maintained by the institution at any time during the calendar year in question (but this is subject to regulation 13),
  - (b) the institution’s Global Intermediary Identification Number, and
  - (c) a statement of whether paragraph 5 of Article 4 of the treaty applies to the institution and, if it does, whether the requirements in sub-paragraphs (a) to (c) of that paragraph have been met.
- (2) If during the calendar year in question the reporting financial institution maintains no reportable accounts the return must state that fact.
- (3) The institution must send a return under this regulation to an officer of Revenue and Customs on or before 31 May of the year following the calendar year to which the return relates (“the reporting date”).
- (4) The required information is—
- (a) the name and address of the account holder,
  - (b) the account holder’s U.S. federal taxpayer identifying number,
  - (c) if an account is identifiable by an account number, that number or, if not, its functional equivalent,
  - (d) the balance or value of the account (including, in the case of a cash value insurance contract or annuity contract, the cash value or surrender value) as of the end of the calendar year or, if the account was closed during the year, the balance or value on the date that the reporting financial institution closed the account,
  - (e) the relevant total gross credits, or if there are none, a statement of that fact, and
  - (f) if the account holder is a Non-US entity that has a controlling person who is a specified US person, that person’s name, address and US federal taxpayer identification number.
- (5) The “relevant total gross credits” means—
- (a) in the case of a custodial account—
    - (i) the total gross amount of interest, the total gross amount of dividends and the total gross amount of other income generated with respect to assets held in the account which is paid into, or with respect to, the account during the calendar year, and
    - (ii) the total gross proceeds from the sale or redemption of property paid into the account during the calendar year if the institution acted as a custodian, broker, nominee or otherwise as an agent for the account holder,
  - (b) in the case of a depository account, the total gross amount of interest paid into the account during the calendar year, and
  - (c) in the case of any other account, the total gross amount of sums paid by the institution under a legal obligation to the account holder with respect to the account during the calendar year,
- and “interest” here includes any amount that is chargeable as interest under Part 4 of ITTOIA 2005(13).
- (6) For the purposes of this regulation—
- (a) references to the balance or value of an account include a nil balance or value, and
  - (b) references to paying an amount include crediting an amount.
- (7) If a reporting financial institution has an established practice for the periodic valuation of accounts of a particular description otherwise than at the end of a calendar year, the institution may report amounts referred to in paragraph (5)(a) or (c) by reference to a period of 12 months ending



with the date (or, if more than one, the latest date) in the calendar year on which the institution values accounts of that description (instead of by reference to the calendar year).

(8) For pre-existing accounts, in relation to returns for the calendar year 2017 and subsequent years, if a reporting financial institution does not hold a U.S. federal taxpayer identifying number that it is required to report under paragraph (4)(b) or (f) the institution must obtain that number from the account holder.

### **Modifications for calendar years 2014 to 2016**

**13.**—(1) In the case of custodial accounts—

- (a) there is no requirement to include in the return for the calendar year 2014 information about relevant total gross credits, and
- (b) there is no requirement to include in the return for the calendar year 2015 any information set out in regulation 12(5)(a)(ii).

(2) In the case of pre-existing accounts—

- (a) there is no requirement to include in the return for calendar years before 2017 a U.S. federal taxpayer identifying number if the reporting financial institution does not hold that number, but
- (b) if the account holder is an individual whose date of birth the institution does hold, the institution must include the account holder’s date of birth instead.

### *Obligations in relation to payments to a non-participating financial institution*

### **Identification and disclosure obligations**

**14.**—(1) A reporting financial institution must establish and maintain arrangements that are designed to identify payments made by the institution to a non-participating financial institution in the calendar year 2015 or 2016,

(2) “Payment” here includes amounts credited to a non-participating financial institution but does not include consideration given by the reporting financial institution for the provision of goods or services to it.

(3) A reporting financial institution is entitled to regard a payment made by it to a financial institution as made to someone who is not a non-participating financial institution only if it has, in respect of the payment, taken the steps referred to at paragraph IV.D (3) of Annex I of the treaty.

(4) For the purposes of this regulation a “non-participating financial institution” includes anyone who is required to be treated as a non-participating financial institution as a result of sub-paragraph 5(a) of Article 4 of the treaty.

(5) In respect of any case in the calendar years 2015 and 2016 when a reporting financial institution is within the terms of sub-paragraph 1(e) of Article 4 of the treaty, the institution must make a disclosure of information in accordance with the requirements of that sub-paragraph.

### **Reporting obligation: payments to non-participating financial institutions**

**15.**—(1) A reporting financial institution must in respect of each of the calendar years 2015 and 2016 prepare a return setting out—

- (a) the names of the non-participating financial institutions to whom payments identified in accordance with regulation 14(1) have been made in the year in question, and
- (b) the total amount of those payments made to each of the non-participating financial institutions in question.

(2) In determining the total amount of those payments the special rules and definitions at paragraph I.B (1) and paragraph VI.C of Annex I of the treaty must be applied.

(3) If for a calendar year no payments are identified as referred to in paragraph (1), the reporting financial institution must prepare a return for the calendar year stating that fact.

(4) The financial institution must send a return under this regulation to an officer of Revenue and Customs on or before 31 May of the year following the calendar year to which the return relates.

### *Penalties for breach of obligations*

#### **Penalties for failure to comply with Regulations**

16. A person is liable to a penalty of £300 if the person fails to comply with any obligation under these Regulations otherwise than regulation 15.

#### **Daily default penalty**

17. If—

- (a) a penalty under regulation 16 is assessed, and
- (b) the failure in question continues after the person has been notified of the assessment,

the person is liable to a further penalty, for each subsequent day on which the failure continues, of an amount not exceeding £60 for each such day.

#### **Penalties for inaccurate information: reportable accounts**

18.—(1) A person is liable to a penalty not exceeding £3,000 if—

- (a) in complying with an obligation under regulation 12 the person provides inaccurate information, and
- (b) condition A, B or C is met.

(2) Condition A is that the inaccuracy is—

- (a) due to a failure to comply with regulation 11, or
- (b) deliberate on the part of the person.

(3) Condition B is that the person knows of the inaccuracy at the time the information is provided but does not inform HMRC at that time.

(4) Condition C is that the person—

- (a) discovers the inaccuracy some time later, and
- (b) fails to take reasonable steps to inform HMRC.

#### **Penalties for failure to report or accurately report payments to non-participating financial institutions**

19.—(1) In relation to payments that are required to be identified under regulation 14(1), a person is liable to—

- (a) a penalty of £300 for each failure to report a payment, and
- (b) a penalty of £300 for each failure to set out a payment accurately in a report made under regulation 15.

(2) But in relation to a calendar year, a person's liability for penalties under this regulation is subject to a limit of £3000.

### **Matters to be disregarded in relation to liability to penalties**

**20.**—(1) Liability to a penalty under any of regulations 16, 17 or 19 does not arise if the person satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that there is a reasonable excuse for the failure.

(2) For the purposes of this regulation neither of the following is a reasonable excuse—

- (a) that there is an insufficiency of funds to do something, or
- (b) that a person relies upon another person to do something.

(3) If a person had a reasonable excuse for a failure but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

### **Assessment of penalties**

**21.**—(1) If the reporting financial institution becomes liable to a penalty under any of regulations 16 to 19, an officer of Revenue and Customs may assess the penalty.

(2) If an officer does so, the officer must notify the institution.

(3) An assessment of a penalty under regulation 16, 17 or 19(1)(a) must be made within the period of 12 months beginning with the date on which the person became liable to the penalty.

(4) An assessment of a penalty under regulation 18 or 19(1)(b) must be made—

- (a) within the period of 12 months beginning with the date on which the inaccuracy first came to the attention of an officer of Revenue and Customs, and
- (b) within the period of 6 years beginning with the date on which the person became liable to the penalty.

### **Right to appeal against penalty**

**22.** A person may appeal against a penalty assessment—

- (a) on the grounds that liability to a penalty under any of regulations 16 to 19 does not arise, or
- (b) as to the amount of such a penalty.

### **Procedure on appeal against penalty**

**23.**—(1) Notice of an appeal under regulation 22 must be given—

- (a) in writing,
- (b) before the end of the period of 30 days beginning with the date on which notification under regulation 16 was given, and
- (c) to HMRC.

(2) It must state the grounds of appeal.

(3) On an appeal under regulation 22(a) that is notified to the tribunal, the tribunal may confirm or cancel the assessment.

(4) On an appeal under regulation 22(b) that is notified to the tribunal, the tribunal may—

- (a) confirm the assessment, or
- (b) substitute another assessment that the officer of Revenue and Customs had power to make.

(5) Subject to this regulation and regulation 25, the provisions of Part 5 of TMA 1970(14) relating to appeals have effect in relation to appeals under regulation 22 as they have effect in relation to an appeal against an assessment to income tax.

### **Increased daily default penalty**

**24.**—(1) This paragraph applies if—

- (a) a penalty under regulation 17 is assessed under regulation 21,
- (b) the failure in respect of which that assessment is made continues for more than 30 days beginning with the date on which notification of that assessment is given, and
- (c) the person has been told that an application may be made under this paragraph for an increased daily penalty to be imposed.

(2) If this regulation applies, an officer of Revenue and Customs may make an application to the tribunal for an increased daily penalty to be imposed on the person.

(3) If the tribunal decides that an increased daily penalty should be imposed then for each applicable day on which the failure continues—

- (a) the person is not liable to a penalty under regulation 17 in respect of the failure, and
- (b) the person is liable instead to a penalty under this regulation of an amount determined by the tribunal.

- (4) The tribunal may not determine an amount exceeding £1000 for each applicable day.
- (5) If a person becomes liable to a penalty under this regulation, HMRC must notify the person.
- (6) The notification must specify the day from which the increased penalty is to apply.
- (7) That day and any subsequent day is an “applicable day” for the purposes of this regulation.

### **Enforcement of penalties**

**25.**—(1) A penalty under these Regulations must be paid before the end of the period of 30 days beginning with the date mentioned in paragraph (2).

(2) That date is—

- (a) the date on which the assessment under regulations 21 or notification under 24(5) is given in respect of the penalty, or
- (b) if a notice of appeal under regulation 22 is given, the date on which the appeal is finally determined or withdrawn.

(3) A penalty under these Regulations may be enforced as if it were income tax charged in an assessment and due and payable.

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(14) 1970 c. 9. The Taxes Management Act 1970 was relevantly amended by sections 45(1) and 67(2) of the Finance (No. 2) Act 1975 (c. 45); section 68 of the Finance Act 1982 (c. 39); section 156(2) and (4) of the Finance Act 1989 (c. 26); section 199 of and paragraphs 18(1) and (2) of Schedule 19 to the Finance Act 1994 (c. 9); paragraph 28 of Schedule 19 to the Finance Act 1998 (c. 36); section 88 of and paragraph 31 of Schedule 29 to the Finance Act 2001 (c. 9); paragraph 21 of Schedule 1 to the Constitutional Reform Act 2005 (c. 4); paragraph 257(a) and (b) of Schedule 1 to and Part 1 of Schedule 3 to the Income Tax Act 2007 (c. 3); section 119(12)(a) of the Finance Act 2008 (c. 9); paragraph 31 of Schedule 7 to the Taxation (International and Other Provisions) Act 2010 (c. 8); S.I. 1994/1813 and 2009/56.

### Miscellaneous

#### Accounts with a negative value

26. For the purpose of applying paragraph VI.C of Annex I of the treaty as required by these Regulations, an account balance that has a negative value is treated as having a nil value.

#### Anti-avoidance

27. If—

- (a) a person enters into any arrangements, and
- (b) the main purpose, or one of the main purposes, of the person in entering into the arrangements is to avoid any obligation under these Regulations,

these Regulations are to have effect as if the arrangements had not been entered into.

### Supplementary

#### Definitions

28.—(1) In these Regulations—

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs,

“Global Intermediary Identification Number” means a number allocated to a financial institution by the Internal Revenue Service in the United States of America for FATCA purposes,

“registered deemed-compliant financial institution” means a non-reporting United Kingdom Financial Institution to which a Global Intermediary Identification Number has been properly allocated,

“the tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal,

“US Treasury Regulations” mean the US Regulations Relating to Information Reporting by Foreign Financial Institutions and Other Foreign Entities(15).

(2) In these Regulations references to a person’s U.S. status are to whether or not the person is a specified U.S. person.

(3) The following table lists the places where expressions that apply for the purposes of these Regulations are defined or otherwise explained—

<i>Expression</i>	<i>Reference</i>
account holder	regulation 2(3) with sub-paragraph 1(ee) of Article 1 of the treaty
annuity contract	regulation 2(3) with sub-paragraph 1(x) of Article 1 of the treaty
the Commissioners	regulation 28(1)
cash value insurance contract	regulation 2(3) with sub-paragraph 1(y) of Article 1 of the treaty

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(15) The Regulations can be found on the US Department of the Treasury website at <http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx>.

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<i>Expression</i>	<i>Reference</i>
controlling person	regulation 2(3) with sub-paragraph 1(mm) of Article 1 of the treaty
custodial account	regulation 2(3) with sub-paragraph 1(u) of Article 1 of the treaty
custodial institution	regulation 6
depository account	regulation 2(3) with sub-paragraph 1(t) of Article 1 of the treaty
depository institution	regulation 4
entity	regulation 2(3) with sub-paragraph 1(hh) of Article 1 of the treaty
entity account	regulation 9(6)(a)
FATCA	section 222(4) FA 2013(16)
financial account	regulation 2(3) with sub-paragraph 1(s) of Article 1 of the treaty
financial institution	regulation 2(3) with sub-paragraph 1(g) of Article 1 of the treaty
Global Intermediary Identification Number	regulation 28(1)
HMRC	section 222(4) FA 2013
individual account	regulation 9(6)(b)
insurance contract	regulation 2(3) with sub-paragraph 1(w) of Article 1 of the treaty
investment entity	regulation 5 and sub-paragraph 1(j) of Article 1 of the treaty
new entity account	regulation 2(3) and paragraph V of Annex 1 of the treaty
new individual account	regulation 2(3) and paragraph III of Annex 1 of the treaty
non-participating financial institution	regulation 2(3) with sub-paragraph 1(r) of Article 1 of the treaty
non-reporting United Kingdom financial institution	regulation 2(3) with sub-paragraph 1(q) Article 1 of the treaty
partner jurisdiction financial institution	regulation 2(3) with sub-paragraph 1(m) of Article 1 of the treaty
passive NFFE	regulation 2(3) and sub-paragraph VI.B.3 of Annex 1 of the treaty
preexisting account	regulation 2(3) and sub-paragraph 1(aa) of Article 1 of the treaty

<i>Expression</i>	<i>Reference</i>
preexisting entity account	regulation 2(3) and paragraph IV of Annex 1 of the treaty
preexisting individual account	regulation 2(3) and paragraph II of Annex 1 of the treaty
relevant total gross credits	regulation 12(5)
related entity	regulation 2(3) with sub-paragraph 1(kk) of Article 1 of the treaty
relevant holding company	regulation 7
registered deemed-compliant financial institution	regulation 28(1)
reportable account	regulation 9
reporting financial institution	regulation 3
specified insurance company	regulation 2(3) with sub-paragraph 1(k) of Article 1 of the treaty
specified U.S. person	regulation 2(3) with sub-paragraph 1(gg) of Article 1 of the treaty
the treaty	regulation 2(2)
treasury company	regulation 8
the tribunal	regulation 28(1)
United Kingdom financial institution	regulation 2(3) with sub-paragraph 1(l) of Article 1 of the treaty
U.S. reportable account	regulation 2(3) with sub-paragraph 1(dd) of Article 1 and paragraph I.B (4) of Annex I of the treaty
U.S. status	regulation 28(2)
U.S, Treasury Regulations	regulation 28(1)

## **Revocation**

**29.** The International Tax Compliance (United States of America) Regulations 2013(17) are revoked.

9th June 2014

*Mark Lancaster*  
*Sam Gyimah*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made to give effect to the agreement reached between the Government of the United Kingdom and the Government of the United States of America to improve international tax compliance and to implement FATCA (the provisions commonly known as the Foreign Account Tax Compliance Act in the enactment of the United States of America called the Hiring Incentives to Restore Employment Act), signed on 12th September 2012 (“the agreement”).

Regulation 1 provides for citation and commencement.

Paragraph (1) of regulation 2 explains the purpose of the Regulations and the meaning of the term “the treaty”. Paragraph (2) explains that references to “the treaty” are references to how the agreement takes effect from time to time. Information about changes in the effect of the agreement since it was signed is available on the HMRC website at <http://www.hmrc.gov.uk/fatca/index.htm>. Regulation 2(3) provides that any expression defined in the treaty but not in the Regulations or relevant sections of the Finance Act 2013 is to have its treaty meaning.

Regulations 3 to 10 explain the scope of the Regulations, which apply to “reporting financial institutions” in relation to “reportable accounts” that those institutions maintain; a UK representative of a non-UK resident institution also has obligations under the Regulations.

Regulation 3 contains the basic definition of a “reporting financial institution” as a person carrying on business in the United Kingdom as a depository institution, an investment entity, a custodial institution, a specified insurance company, a relevant holding company or a treasury company. Regulations 4 to 8 define those institutions.

Regulation 9 defines “reportable account” and makes provision for a reporting financial institution to elect for a calendar year to treat certain accounts as if they were not reportable accounts.

Regulation 10 is concerned with the position of reporting financial institutions that are not resident in the United Kingdom. Paragraph (1) provides that in such a case the obligations of an institution are to be treated as if they were also the obligations of its UK representative. Paragraph (2) defines “UK representative” and paragraph (3) explains the concept of “resident”.

Regulation 11 requires reporting financial institutions to establish and maintain arrangements to identify reportable accounts and the tax residence of holders of accounts maintained on or after the date these Regulations come into force and sets out the due diligence requirements in relation to different classes of account.

Regulation 12 requires reporting financial institutions to make a return to an officer of Revenue and Customs in respect of every calendar year from 2014 onwards of “the required information” as specified in that regulation and requires a reporting financial institution that maintains no reportable accounts to report that fact in its return. Paragraph (3) makes provision for the date by which an annual return must be made.

Regulation 13 modifies the information required under regulation 12 about certain accounts, for the calendar years 2014 to 2016.

Regulation 14 requires reporting financial institutions to establish and maintain arrangements that are designed to identify payments which are made in calendar years 2015 or 2016 to a non-participating financial institution, or an institution treated as such under sub-paragraph 5(a) of Article 4 of the treaty and requires reporting financial institutions to make disclosures of information in accordance



with the requirements of sub-paragraph 1(e) of Article 4 of the treaty, in respect of the calendar years 2015 and 2016.

Regulation 15 requires information about payments identified pursuant to regulation 14 (or a statement that no such payments have been identified), to be returned to an officer of Revenue and Customs for the calendar year in question, by the date referred to at paragraph (4).

Regulations 16 to 25 make provision for penalties for breach of obligations under these Regulations.

Regulation 26 makes provision for the treatment of accounts with a negative value.

Regulation 27 makes provision for the treatment of acts done for the purpose of avoiding obligations under the Regulations.

Regulation 28 contains definitions.

Regulation 29 revokes the International Tax Compliance (United States of America) Regulations 2013.

A Tax Information and Impact Note covering this instrument was published on 31st May 2013 alongside a draft of these 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.