

Statutory Document No. 2015/ 0323



Income Tax Act 1970

INCOME TAX (COMMON REPORTING STANDARD) REGULATIONS 2015

Approved by Tynwald: 21 October 2015
Coming into Operation: 23 October 2015

The Treasury makes the following Regulations under section 104D of the Income Tax Act 1970.

1 Title

These Regulations are the Income Tax (Common Reporting Standard) Regulations 2015.

2 Commencement

If approved by Tynwald¹, these Regulations come into operation on 23 October 2015.

3 Interpretation

(1) In these Regulations —

“**the arrangement**” means—

- (a) the Convention on Mutual Administrative Assistance in Tax Matters signed on behalf of the United Kingdom on the 24th May 2007 as it is extended to the Isle of Man; and
- (b) any international arrangement applying to the Island whenever made which contains a clause providing for automatic exchange of information;

“**the CRS**” means the standard for automatic exchange of financial account information developed by the Organisation for Economic Co-Operation and Development (“the OECD”)²;

“**reportable account**” is to be construed in accordance with regulation 5.

¹ Tynwald approval is required by section 104D(5) of the Income Tax Act 1970

² The CRS is available on the OECD website at <http://www.oecd.org/ctp/exchange-of-tax-information/standard-for-automatic-exchange-of-financial-information-in-tax-matters.htm>

- (2) For the purpose of the CRS an entity is a “related entity” of another entity if –
- (a) one entity controls the other;
 - (b) the two entities are under common control; or
 - (c) the two entities are investment entities described in Section VIII subparagraph A(6)(b) of the CRS, are under common management, and such management fulfils the due diligence obligations of such investment entities.

For the purpose of this paragraph “control” includes direct or indirect ownership of more than 50% of the vote and value in an entity.

- (3) The following table lists the places where defined expressions that apply for purposes of the Regulations are defined or otherwise explained in the CRS –

<i>Expression</i>	<i>Reference</i>
account holder	Section VIII, E.1
annuity contract	Section VIII, C.6
cash value insurance contract	Section VIII, C.7
controlling persons	Section VIII, D.6
documentary evidence	Section VIII, E.6
financial account	Section VIII, C.1
participating jurisdiction	Section VIII, D.5
reportable account	Section VIII, D.1
reportable person	Section VIII, D.2
reporting financial institution	Section VIII, A.1

- (4) In these Regulations, a word or expression which is not defined has the same meaning as it has in the CRS.

4 Purpose of the Regulations etc

The Regulations have effect for, and in connection with, the implementation of the obligations under the arrangement the information from which will be automatically exchanged in accordance with the CRS with participating jurisdictions.

5 Meaning of “Reportable Account”

- (1) In these Regulations a “reportable account” –
- (a) means an account which is a reportable account within the meaning of the CRS; and

- (b) includes an account that is a pre-existing entity account with an account balance or value that does not exceed US\$250,000 as of 31 December 2015.
- (2) Despite paragraph (1) –
 - (a) an account listed as an excluded account in Schedule A is not a reportable account; and
 - (b) an account within paragraph (1)(b) is not a reportable account in relation to a reporting financial institution for a calendar year if there is an election by that institution which has effect for that year to treat all such accounts, or a clearly identified group of such accounts, as not being reportable accounts.
- (3) An election under paragraph (2)(b) –
 - (a) is made by being given to the Assessor;
 - (b) must be in such form as may be prescribed by the Assessor; and
 - (c) must be made on or before the reporting date under regulation 7(4) for the first calendar year to which the exemption is being applied.
- (4) The reporting financial institution must apply the account balance aggregation and currency rules in the CRS for the purposes of determining whether an account maintained by the institution is within paragraph (1).
- (5) The account balance aggregation and currency rules are in Section VII.C of the CRS.
- (6) In applying the account balance aggregation and currency rules for the purposes of the CRS and these Regulations, an account balance that has a negative value is treated as having a nil value.
- (7) In determining the balance or value of an account denominated in a currency other than US dollars for the purposes of the CRS and for the purposes of paragraph (1), the institution must translate the relevant dollar threshold amounts into the other currency by reference to the spot rate of exchange on the date for which the institution is determining the threshold amounts.
- (8) For the purposes of the CRS and these Regulations –
 - (a) any reference to a pre-existing individual account or pre-existing entity account is to a financial account maintained on 31 December 2015; and
 - (b) any reference to a new individual account or a new entity account is to a financial account opened on or after 1 January 2016.
- (9) In a case where a financial account is held jointly by two or more persons (but not where the account is held solely by a partnership), these Regulations are to be applied separately in relation to each account holder and as if the holder were entitled to the whole of the balance or value of the account.

- (10) Where a reporting financial institution, which holds a financial account of a trust which has been classified as a passive non foreign entity, has appropriate procedures in place to require the trustees of a trust to confirm when a distribution has not been made to a discretionary beneficiary of the trust in a given year, the reporting financial institution may align the scope of the beneficiaries of a trust reported as controlling persons of the trust with the scope of the beneficiaries of a trust treated as reportable persons of that trust that is a financial institution.

6 Due Diligence Requirements

- (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 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) apply the due diligence procedures set out in the CRS;
 - (c) secure that the information 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 are set out in Sections II to VII of the CRS.
- (4) In applying the due diligence procedures for pre-existing individual and pre-existing entity accounts within paragraph (3) –
- (a) the review of “high value accounts”, per Section III, D of the CRS must be completed by 31 December 2016;
 - (b) the term “high value account” means a pre-existing individual account with an aggregate balance or value that exceeds US\$1,000,000 as of 31 December 2015 or 31 December of any subsequent year;
 - (c) the review of “lower value accounts”, per Section III, D of the CRS must be completed by 31 December 2017;
 - (d) the term “lower value account” means a pre-existing individual account with an aggregate balance or value as of 31 December 2015 that does not exceed US\$1,000,000;
 - (e) the review of “pre-existing entity accounts”, per Section V, E of the CRS must be completed by 31 December 2017;
 - (f) but –
 - (i) where an election has been made under regulation 5(2)(b), pre-existing entity accounts are not required to be reviewed until

- the aggregate account balance or value exceeds US\$250,000 on the last day of the calendar year;
- (ii) where the aggregate account balance or value exceeds US\$250,000 on the last day of the calendar year the due diligence procedures must be completed within the calendar year that follows.
- (5) In applying the due diligence procedures, accounts within regulation 5(1) in respect of which no election under regulation 5(2)(b) has been made are treated as new accounts or pre-existing accounts as the case may be.
- (6) A reporting financial institution may –
- (a) apply the due diligence procedures for new accounts to pre-existing accounts; and
- (b) apply the due diligence procedures for high value accounts to lower value accounts.
- (7) A reporting financial institution may apply the due diligence procedures for new accounts to pre-existing accounts under paragraph 6(a). Where a reporting financial institution uses new account due diligence procedures for pre-existing accounts, the rules otherwise applicable to pre-existing accounts continue to apply.
- (8) For lower value accounts only if the reporting financial institution has in its records a current residence address for the individual account holder based on documentary evidence, the reporting financial institution may treat the individual account holder as being a resident for tax purposes of the other jurisdiction in which the address is located for purposes of determining whether such individual account holder is a reportable person.
- (9) A reporting financial institution may treat a financial account that is a member's interest in a group cash value insurance contract or group annuity contract as a financial account that is not a reportable account until the date on which an amount is payable to the employee/certificate holder or beneficiary, if the financial account that is a member's interest in a group cash value insurance contract or group annuity contract meets the following requirements:
- (a) the group cash value insurance contract or group annuity contract is issued to an employer and covers 25 or more employees/certificate holders;
- (b) the employee or certificate holders are entitled to receive any contract value related to their interests and to name beneficiaries for the benefit payable upon the employee's death; and
- (c) the aggregate amount payable to any employee/certificate holder or beneficiary does not exceed US\$1,000,000.
- (10) The term "group cash value insurance contract" means a cash value insurance contract that –

- (a) provides coverage on individuals who are affiliated through an employer, trade association, labour union, or other association or group; and
 - (b) charges a premium for each member of the group (or member of a class within the group) that is determined without regard to the individual health characteristics other than age, gender, and smoking habits of the member (or class of members) of the group.
- (11) The term "group annuity contract" means an annuity contract under which the obligees are individuals who are affiliated through an employer, trade association, labour union, or other association or group.
- (12) With respect to a pre-existing entity account, a reporting financial institution may use as documentary evidence any classification in the reporting financial institution's records with respect to the account holder that –
- (a) was determined based on a standardised industry coding system;
 - (b) was recorded by the reporting financial institution consistent with its normal business practices for purposes of anti-money laundering or "know your customer" procedures or another regulatory purpose (other than for tax purposes); and
 - (c) was implemented by the reporting financial institution prior to the date used to classify the financial account as a pre-existing account, provided that the reporting financial institution does not know or does not have reason to know that such classification is incorrect or unreliable.

In subparagraph (a) "standardised industry coding system" means a coding system used to classify establishments by business type for purposes other than tax purposes.

7 Reporting Obligations

- (1) A reporting financial institution must, in respect of the first reporting year and every following calendar year, make a return setting out the information required to be reported under the CRS in relation to every reportable account that is maintained by the institution at any time during the calendar year in question.
- (2) The first reporting year is the calendar year 2016 in relation to an account identified as a reportable account.
- (3) The information required to be reported is set out in Section I. A to I. E of the CRS.

- (4) The return must be submitted electronically in accordance with regulation 8 on or before 30 June of the year following the calendar year to which the return relates.
- (5) For the purposes of the information required to be reported under the CRS –
 - (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.

8 Prescribed Format of Return

- (1) The return must be made electronically using the Online Information Providers Service, that is to say the Information Providers Service which is accessible through –
 - (a) the Income Tax Services page³ of the Isle of Man Government website (www.gov.im); or
 - (b) such other website as may be made available by the Treasury for use.
- (2) The return must be made in the format prescribed by the Assessor and published from time to time.
- (3) A return which is made otherwise than in accordance with paragraphs (1) and (2) is treated as not having been made.
- (4) A return made on behalf of a reporting financial institution is taken to have been made by that institution, unless the institution proves that the return was made without the institution's authority.

9 Notification to individual Reportable Persons

A reporting financial institution should notify each individual reportable person that information relating to that person which is required to be reported under regulation 8 will be reported to the Assessor and may be transferred to the government of another territory in accordance with the arrangement.

10 Non-resident Reporting Financial Institutions

If a reporting financial institution is not resident in the Isle of Man, the obligations of the institution under these Regulations are to be treated as if they were the obligations of any Isle of Man representative of the institution.

11 Use of Service Providers

A reporting financial institution may use a service provider to undertake the due diligence requirements under regulation 6 and the reporting obligations under

³ www.gov.im/treasury/incometax/services

regulation 7, but in such cases those obligations continue to be the obligations of the institution.

12 Penalties for Failure to Comply with Regulations

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

13 Daily Default Penalty

If —

- (a) a penalty under regulation 12 is imposed; and
- (b) the failure in question continues after the person has been notified of the penalty;

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.

14 Penalties for Inaccurate Information

- (1) A person is liable to a penalty not exceeding £3,000 if —
 - (a) in complying with an obligation under regulation 7 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 the due diligence requirements in regulation 6; 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 the Assessor 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 the Assessor.

15 Penalties - supplementary

- (1) Liability to a penalty under regulation 12 or 13 does not arise if the person satisfies the Assessor or (on an appeal notified to the Income Tax Commissioners) the Income Tax Commissioners 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;

- (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.

16 Imposition of Penalties

- (1) If a person becomes liable to a penalty under regulations 12 to 14 the Assessor may impose the penalty at any time.
- (2) If the Assessor does so, he or she must notify the person.

17 Right to Appeal against Penalty

- (1) A person upon whom a penalty is imposed may appeal against it on the grounds that liability to a penalty under regulations 12 to 14 does not arise.
- (2) A person upon whom a penalty is imposed may appeal against its amount.

18 Procedure on Appeal against Penalty

- (1) Notice of an appeal under regulation 17 must be given to the Assessor –
 - (a) in writing; and
 - (b) before the end of the period of 30 days beginning with the date on which notification under regulation 17 was given.
- (2) It must state the grounds of appeal.
- (3) On an appeal under regulation 17(1) that is notified to the Income Tax Commissioners, the Commissioners may confirm or cancel the penalty.
- (4) On an appeal under regulation 17(2) that is notified to the Income Tax Commissioners, the Commissioners may –
 - (a) confirm the penalty; or
 - (b) substitute another penalty that the Assessor has power to impose.
- (5) Subject to this regulation and regulation 19, the provisions of section 87 of the *Income Tax Act 1970* relating to appeals have effect in relation to appeals under regulation 17 and 18 as they have effect in relation to an appeal against an assessment to income tax.

19 Increased Daily Default Penalty

- (1) This paragraph applies if –
 - (a) a penalty arising under regulation 13 has been imposed under regulation 16;
 - (b) the failure in respect of which that penalty was imposed continues for more than 30 days beginning with the date on which notification of that penalty 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, the Assessor may make an application to the Income Tax Commissioners for an increased daily penalty to be imposed on the person.
- (3) If the Commissioners decide 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 13 in respect of the failure; and
 - (b) the person is liable instead to a penalty under this regulation of an amount determined by the Commissioners.
- (4) The Commissioners may not determine an amount exceeding £1,000 for each applicable day.
- (5) If a person becomes liable to a penalty under this regulation, the Assessor 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.

20 Enforcement of Penalties

- (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 penalty is imposed under regulation 15 or notification under regulation 19(5) is given in respect of the penalty; or
 - (b) if a notice of appeal under regulation 18 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.

21 Supplementary - Anti-avoidance

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.

Schedule A

Excluded accounts

For the purposes of the CRS the following are excluded accounts

- (1) A dormant account (other than an annuity contract) with a balance that does not exceed US \$1,000.
- (2) An account is a dormant account if -
 - a) The account holder has not initiated a transaction with regard to the account or any other account held by the account holder with the reporting financial institution in the previous three years,
 - b) The account holder has not communicated with the reporting financial institution regarding the account or any other account held by the account holder with the reporting institution in the previous six years,
 - c) The account is treated as a dormant account under the reporting financial institutions normal operating procedures, and
 - d) In the case of a cash value insurance contract, the reporting financial institution has not communicated with the account holder regarding the account or any other account held by the account holder with the reporting financial institution in the previous six years.

MADE 23RD SEPTEMBER 2015

W E TEARE

Minister for the Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations give effect to the arrangements reached between Government of the Isle of Man and other jurisdictions to improve international tax compliance.

Regulations 1, 2 and 3 provide the title, commencement and interpretation. They identify the arrangements to which the regulations have effect.

Regulation 4 provides that the purpose of the regulations is to implement the Common Reporting Standard.

Regulation 5 defines a 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 6 provides for due diligence and modifies the requirements in specified cases.

Regulations 7 and 8 make provision as to the form and manner of the return and require financial institutions to make the return electronically in respect of every calendar year.

Regulation 9 concerns notification to individual reportable persons.

Regulation 10 concerns the position of reporting financial institutions that are not resident in the Isle of Man, in such cases the obligations of the institution are to be treated as if they were obligations of an Isle of Man representative.

Regulation 11 permits the use of service providers to undertake the identification and reporting obligations.

Regulations 12 to 20 make provision for penalties for breach of obligations under these Regulations.

Regulation 21 contains an anti-avoidance provision.

Schedule A sets out excluded accounts for the purposes of the CRS.