



Jersey

**TAXATION (IMPLEMENTATION)
(INTERNATIONAL TAX COMPLIANCE)
(COMMON REPORTING STANDARD) (JERSEY)
REGULATIONS 2015**

Arrangement

Regulation

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Made

1st December 2015

Coming into force

1st January 2016

THE STATES, in pursuance of Article 2 of the Taxation (Implementation) (Jersey) Law 2004¹, and following the decision of the States, taken on the day these Regulations are made, to adopt P.117 of 2015, have made the following Regulations –

1 Interpretation

(1) In these Regulations, unless the context otherwise requires –

“1961 Law” means the Income Tax (Jersey) Law 1961²;

“Agreement” means the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information signed by the Government of Jersey on 29th October 2014 in relation to agreements with Parties to the Convention to improve international tax compliance based on CRS;

“authorized person” means the Comptroller or any person authorized by the Comptroller to perform functions under Regulation 20;

“business document” means any document –

(a) that relates to the carrying on of a business, trade, profession or vocation by any person; and

(b) that forms part of any record under any enactment;

“business premises” means premises used in connection with the carrying on of a business, trade, profession or vocation;

“Commission” means a Commission of Appeal constituted under Regulation 16(3);

“Comptroller” means the Comptroller of Taxes;

“Convention” means the Convention on Mutual Administrative Assistance in Tax Matters which, as amended by the Protocol, entered into force on 1st June 2011 and was signed on behalf of the United Kingdom as extended to Jersey, with effect, in respect of Jersey, from 1st June 2014;

“CRS” means the Common Reporting Standard for the Automatic Exchange of Financial Account Information in Tax Matters as approved by the Council of the Organisation for Economic Co-operation and Development (“OECD”) on 15th July 2014 and published on the OECD’s website;

“Minister” means the Minister for External Relations;

“participating jurisdiction” means a country or territory listed in Schedule 2, 3 or 4;

“Party to the Convention” means a country or territory in respect of which the Convention is in force;

“relevant date” has the meaning in Regulation 2(1);

“relevant year” has the meaning in Regulation 2(2).

- (2) These Regulations are to be construed as having effect for and in connection with the implementation of the obligations of Jersey arising under the following agreements –
 - (a) the Agreement;
 - (b) any other international governmental agreement to which Jersey and another participating jurisdiction is a party and which provides for the automatic exchange of tax information.
- (3) These Regulations have effect without prejudice to the Taxation (Implementation) (International Tax Compliance) (United Kingdom) (Jersey) Regulations 2014³.
- (4) Schedule 1 sets out words and expressions used in these Regulations which are defined in the CRS.
- (5) In these Regulations, a word or expression which is defined in the CRS has that meaning except to the extent that a reporting financial institution may use as an alternative a definition in any other international governmental agreement if –
 - (a) Jersey and a participating jurisdiction is, or has been, a party to that other agreement; and
 - (b) that other agreement provides for the automatic exchange of tax information,in so far as such use would not frustrate the purposes of the Agreement.
- (6) The Minister may by Order amend any of Schedules 2, 3 and 4.

2 Meaning of “relevant date” and “relevant year”

- (1) In these Regulations “relevant date” for the purposes of Regulation 3(1) means –

-
- (a) 31st December 2015, in relation to the participating jurisdictions listed in Schedule 2;
 - (b) 31st December 2016, in relation to the participating jurisdictions listed in Schedule 3;
 - (c) such date in relation to a participating jurisdiction listed in Schedule 4 as the Minister may specify by Order under Regulation 1(6) in relation to that participating jurisdiction.
- (2) In these Regulations “relevant year” for the purposes of Regulations 5 and 8(1) means –
- (a) 2016 in relation to the participating jurisdictions listed in Schedule 2;
 - (b) 2017 in relation to the participating jurisdictions listed in Schedule 3;
 - (c) such year in relation to a participating jurisdiction listed in Schedule 4 as the Minister may specify by Order under Regulation 1(6) in relation to that participating jurisdiction.

3 Elections to treat accounts as reportable accounts

- (1) Subject to paragraph (3), an account which is pre-existing entity account with an account balance or value that does not exceed US \$250,000 as of the relevant date is not a reportable account for a calendar year unless an election by a reporting financial institution is in force for that year to treat the account as being a reportable account.
- (2) In determining whether or not an account meets the description in paragraph (1), the reporting financial institution must apply the account balance aggregation and currency rules described in VII.C of the CRS.
- (3) In applying the rules referred to in paragraph (2), an account balance that has a negative value is treated as having a nil value.
- (4) An election under paragraph (1) may be made –
 - (a) in relation to all accounts described in paragraph (1); or
 - (b) in relation to a clearly identified group of accounts.
- (5) An election under paragraph (1) –
 - (a) must be made by being given to the Comptroller;
 - (b) must be in such form as may be determined by the Comptroller;
 - (c) must be made on or before the reporting date under Regulation 8(2).

4 Jersey representative of a non-resident reporting financial institution

Where a reporting financial institution is not resident or is not regarded as being resident in Jersey for the purposes of the 1961 Law, any permanent establishment of that institution in Jersey shall, to the extent that it is not itself a reporting financial institution be deemed to be a reporting financial institution for the purposes of these Regulations.

5 Due diligence procedures for identifying, reviewing and reporting reportable accounts

- (1) A reporting financial institution must establish and maintain arrangements which, in relation to the relevant year and every following calendar year –
 - (a) meet the applicable due diligence requirements set out Sections II to VII of the CRS concerning the review, identification and reporting of all the reportable accounts which it maintains; and
 - (b) secure that the evidence used in accordance with this Regulation or, if applicable a record of the steps taken in accordance with this Regulation, is kept for a period of 6 years beginning with the end of the year in which the requirements applied to the reportable accounts.
- (2) Paragraph (1) does not apply to an excluded account.

6 Modification of due diligence requirements

A reporting financial institution may do either or both of the following –

- (a) apply the due diligence requirements referred to in Regulation 5 for new accounts to pre-existing accounts; and
- (b) apply the due diligence requirements referred to in Regulation 5 for high value accounts to lower value accounts.

7 Option for reporting financial institutions to comply with Regulations in relation to participating jurisdictions listed in Schedules 3 and 4

- (1) A reporting financial institution may, in relation to a participating jurisdiction listed in Schedule 3 comply with Regulation 5 in relation to reportable accounts of that participating jurisdiction for the year 2016 as if that participating jurisdiction were listed in Schedule 2 and apply Regulations 3, 4 and 6 accordingly.
- (2) A reporting financial institution may, in the absence of a relevant date and relevant year being specified in relation to a participating jurisdiction listed in Schedule 4 comply with Regulation 5 in relation to reportable accounts of that participating jurisdiction as if that participating jurisdiction were listed in Schedule 2 or Schedule 3 and apply Regulations 3, 4 and 6 accordingly.
- (3) Regulation 8 does not apply to a reporting financial institution to the extent that the institution complies with Regulation 5 under paragraph (1) or (2).
- (4) In paragraphs (1) and (2) references to “reportable accounts of that participating jurisdiction” refer to “[Jurisdiction A] reportable accounts” or “[Jurisdiction B] reportable accounts” as the context requires.

8 Content and timing of returns

- (1) A reporting financial institution must, in respect of the relevant year and every following calendar year, prepare a return, in such form and manner as the Comptroller shall determine, setting out the information specified in Section I of the CRS in relation to each reportable account that is maintained by the institution at any time during the calendar year in question.
- (2) A reporting financial institution must send a return under this Regulation to the Comptroller on or before 30th June in the year following the calendar year to which the return relates (the date for return under this paragraph being “the reporting date”).

9 Use of service providers

As referred to in Section II(D) of the CRS, a reporting financial institution may use a service provider to undertake the due diligence requirements under Regulations 5 and 6 and the reporting obligations under Regulation 8 but in such cases those obligations continue to be the obligations of the reporting financial institution.

10 Penalty 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.

11 Daily default penalty

If –

- (a) a penalty under Regulation 10 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 day.

12 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 8 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 5 (as modified by Regulation 6 where that Regulation applies); 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 Comptroller at that time.
- (4) Condition C is that the person –
 - (a) discovers the inaccuracy after the information is provided to the Comptroller; and
 - (b) fails to take reasonable steps to inform the Comptroller.

13 Matters to be disregarded in relation to liability to penalties

- (1) Liability to a penalty under Regulation 10 or 11 does not arise if the person satisfies the Comptroller or, (on an appeal notified by the Comptroller to the Commission) the Commission, 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 has ceased.

14 Imposition of penalties

- (1) If a person becomes liable to a penalty under any of Regulations 10 to 12 the Comptroller may impose the penalty.
- (2) If the Comptroller imposes a penalty, the Comptroller must notify the person.
- (3) A penalty under Regulation 10 or 11 may only be imposed within the period of 12 months beginning with the date on which the person became liable to the penalty.
- (4) A penalty under Regulation 12 may only be imposed –
 - (a) within the period of 12 months beginning with the date on which the inaccuracy first came to the attention of the Comptroller; and
 - (b) within the period of 6 years beginning with the date on which the person became liable to the penalty.

15 Right of appeal against penalty

- (1) A person upon whom a penalty is imposed may appeal against it on the ground that liability to a penalty under Regulations 10 to 12 does not arise.
- (2) A person upon whom a penalty is imposed may appeal against its amount.

16 Commission of Appeal and procedure on appeal against penalty

- (1) Notice of an appeal under Regulation 15 must be given to the Comptroller –
 - (a) in writing; and
 - (b) before the end of the period of 30 days beginning with the date on which notification to the person under Regulation 14 was given.
- (2) The notice under paragraph (1) must state the ground of appeal.
- (3) A Commission of Appeal shall be constituted for the purpose of hearing –
 - (a) an appeal under Regulation 15; or
 - (b) an application under Regulation 17(2),as it would be constituted from the Commissioners of Appeal appointed under Article 10(1) of the 1961 Law for the purpose of hearing appeals under the 1961 Law.
- (4) The Comptroller shall notify the Commission of an appeal under Regulation 15.
- (5) On an appeal under Regulation 15(1) that is notified to the Commission by the Comptroller, the Commission may confirm or cancel the penalty.
- (6) On an appeal under Regulation 15(2) that is notified to the Commission by the Comptroller, the Commission may –
 - (a) confirm the penalty; or
 - (b) substitute another penalty that the Comptroller has power to impose under these Regulations.
- (7) Subject to this Regulation and Regulation 18, the provisions of Part 6 of the 1961 Law shall have effect in relation to appeals under Regulation 15 as they have effect in relation to an appeal against an assessment to income tax.

17 Increased daily default penalty

- (1) This Regulation applies if –
 - (a) a penalty under Regulation 11 is imposed under Regulation 14;
 - (b) the failure in respect of which that penalty is 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 Regulation for an increased daily penalty to be imposed.
- (2) If this Regulation applies, the Comptroller may make an application to the Commission for an increased daily penalty to be imposed on the person.
- (3) If the Commission 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 11 in respect of the failure; and

- (b) the person is liable instead to a penalty under this Regulation of an amount determined by the Commission.
- (4) The Commission must not determine an amount exceeding £1,000 for each applicable day.
- (5) If a person becomes liable to a penalty under this Regulation, the Comptroller 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.

18 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 the later of –
 - (a) the date on which the penalty is imposed under Regulation 14 or notification under Regulation 17(5) is given in respect of the penalty; or
 - (b) if notice of appeal under Regulation 16 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.

19 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 those arrangements is to avoid any requirement of these Regulations,
- these Regulations shall have effect as if the arrangements had not been entered into.

20 Power to enter business premises and examine business documents

- (1) An authorized person may examine and take copies of any business document that is located on business premises.
- (2) The power under paragraph (1) may be exercised only for the purpose of investigating any issue relating to compliance with these Regulations.
- (3) An authorized person may at any reasonable hour enter business premises for the purpose of exercising the power under paragraph (1).
- (4) An authorized person may by notice require any person to produce any specified business document at the business premises where the business document is located for the purpose of enabling the authorized person to exercise the power under paragraph (1) in relation to that document.

- (5) An authorized person shall not exercise the powers under this Regulation in respect of any document which a person would, in an action in Court, be entitled to refuse to disclose or produce on the grounds of legal professional privilege.

21 Obstructing an authorized person

- (1) A person shall be guilty of an offence if, without reasonable excuse, the person –
- (a) obstructs an authorized person in the exercise of the authorized person's powers under Regulation 20; or
 - (b) fails to provide such reasonable assistance as an authorized person may require when the authorized person is exercising his or her powers under Regulation 20.
- (2) A person who intentionally alters, suppresses or destroys any business document that has been specified in a notice under Regulation 20(4) shall be guilty of an offence.
- (3) A person who is guilty of an offence under paragraph (1) shall be liable to imprisonment for a term of 6 months and to a fine.
- (4) A person who is guilty of an offence under paragraph (2) shall be liable to imprisonment for a term of 2 years and to a fine.

22 Citation and commencement

These Regulations may be cited as the Taxation (Implementation) (International Tax Compliance) (Common Reporting Standard) (Jersey) Regulations 2015 and shall come into force on 1st January 2016.

L.-M. HART

Deputy Greffier of the States

SCHEDULE 1

(Regulation 1(4))

WORDS AND EXPRESSIONS DEFINED IN THE CRS

Word or Expression	Reference in CRS
entity	Section VIII(E)(3)
excluded accounts	Section VIII(C)(17)
financial account	Section VIII(C)(1)
financial institution	Section VIII(A)(3)
high value account	Section VIII(C)(15)
[jurisdiction A] reportable account	Section 1(1)(h)
[jurisdiction B] reportable account	Section 1(1)(i)
lower value account	Section VIII(C)14
new account	Section VIII(C)(10)
participating jurisdiction	Section VIII(D)(5)
pre-existing account	Section VIII(C)(9)
pre-existing entity account	Section VIII(C)(13)
reportable account	Section VIII(D)(1)
reporting financial institution	Section VIII(A)(1)

SCHEDULE 2

(Regulation 2(1)(a) and (2)(a))

PARTICIPATING JURISDICTIONS

Anguilla	Italy
Argentina	Korea
Belgium	Latvia
Bermuda	Liechtenstein
British Virgin Islands	Lithuania
Cayman Islands	Luxembourg
Colombia	Malta
Croatia	Mauritius
Curaçao	Mexico
Cyprus	Montserrat
Czech Republic	Netherlands
Denmark	Norway
Estonia	Poland
Faroe Islands	Portugal
Finland	Romania
France	San Marino
Germany	Seychelles
Gibraltar	Slovak Republic
Greece	Slovenia
Guernsey	South Africa
Hungary	Spain
Iceland	Sweden
India	Turks & Caicos Islands
Ireland	United Kingdom
Isle of Man	

SCHEDULE 3

(Regulation 2(1)(b) and (2)(b))

PARTICIPATING JURISDICTIONS

Albania
Aruba
Australia
Austria
Canada
Chile
Costa Rica
Ghana
Indonesia
New Zealand
Switzerland

SCHEDULE 4

(Regulation 2(1)(c) and (2)(c))

PARTICIPATING JURISDICTIONS

Participating Jurisdiction	Relevant Date	Relevant Year
Andorra		
Antigua and Barbuda		
The Bahamas		
Barbados		
Belize		
Brazil		
Brunei Darussalam		
Bulgaria		
China		
Dominica		
Greenland		
Grenada		
Hong Kong (China)		
Israel		
Japan		
Macao (China)		
Malaysia		
Marshall Islands		
Monaco		
Niue		
Qatar		
Russian Federation		
Saint Kitts and Nevis		
Saint Lucia		

Saint Vincent and the Grenadines		
Samoa		
Saudi Arabia		
Singapore		
Sint Maarten		
Trinidad and Tobago		
Turkey		
United Arab Emirates		
Uruguay		

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- ¹ *chapter 17.850*
² *chapter 24.750*
³ *chapter 17.850.40*