

# **STATES OF JERSEY**



## **DRAFT TAXATION (IMPLEMENTATION) (INTERNATIONAL TAX COMPLIANCE) (UNITED STATES OF AMERICA) (AMENDMENT) (JERSEY) REGULATIONS 201-**

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**Lodged au Greffe on 24th December 2015  
by the Minister for External Relations**

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**STATES GREFFE**





Jersey

# **DRAFT TAXATION (IMPLEMENTATION) (INTERNATIONAL TAX COMPLIANCE) (UNITED STATES OF AMERICA) (AMENDMENT) (JERSEY) REGULATIONS 201-**

## **REPORT**

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The States, on 1st December 2015, made the Taxation (Implementation) (International Tax Compliance) (Common Reporting Standard) (Jersey) Regulations 2015, in which provision was made for penalties for non-compliance with the principal Regulations and for obstructing an authorised person. These penalties relate to the automatic exchange of information with over 70 jurisdictions. One jurisdiction, the United States of America, is separate from the implementation of the Common Reporting Standard, and in this case automatic exchange of information is provided for under the Taxation (Implementation) (International Tax Compliance) (United States of America) (Jersey) Regulations 2014. The penalties in these Regulations differ from those in the Common Reporting Standard Regulations, and it is considered that the penalties provisions in the Regulations for the United States of America should be brought into line with those in the Common Reporting Standard Regulations. The amending Regulations provide for this.

### **Financial and manpower implications**

There are no financial or manpower implications for the States arising from the adoption of these draft Regulations.

## Explanatory Note

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These Regulations amend the Taxation (Implementation) (International Tax Compliance) (United States of America) (Jersey) Regulations 2014 (“principal Regulations” as defined in *Regulation 1*). The main effect of the amendments is to introduce civil penalties for breach of the principal Regulations in place of the existing criminal offences.

*Regulation 2* inserts definitions in the principal Regulations which are used in the new Regulations described below.

*Regulation 3* insert a new Regulation which, in effect, renumbers existing provisions in the principal Regulations requiring a court to have regard to any guidance issued or approved by the Minister for External Relations and allowing a reporting Jersey financial institution to use a third party to comply with requirements of the principal Regulations on the basis that these requirements remain the responsibility of the Jersey financial institution itself.

*Regulation 4* amends the provisions in the principal Regulations for a penalty of £250 to the Comptroller of Taxes (“Comptroller”) for a late return or the late provision of information so that these provisions apply only in respect of returns and information relating to accounts maintained during 2014 or 2015 and only to the extent that such accounts are maintained during those years.

*Regulation 5* amends the provisions in the principal Regulations creating criminal offences for failing to comply with the principal Regulations or giving information or documents which are false or misleading in a material particular so that these offences apply only to requirements which relate to accounts maintained during 2014 or 2015 and only to the extent that such accounts are maintained during those years.

*Regulation 6* inserts in the principal Regulations new Regulations for the imposition of civil penalties for failure to comply with the principal Regulations. *Regulation 6* also inserts provisions allowing the Comptroller or a person authorized by the Comptroller to enter business premises and take copies of documents for the purpose of investigating compliance with the principal Regulations. The new provisions are set out in more detail below.

Under the new *Regulation 8A*, the new *Regulations 8B* to *8M* apply in respect of an account maintained during 2016 or any subsequent year but only to the extent that it is maintained during those years.

Under the new *Regulation 8B*, a person is liable to a penalty of £300 for failure to comply with any obligation of these Regulations.

Under the new *Regulation 8C*, a person is liable to a daily penalty of £60 for each day that failure to comply with any obligation of these Regulations continues after the initial imposition of a penalty under *Regulation 8B*.

The new *Regulation 8D* sets out a maximum penalty of £3,000 for providing inaccurate information as a result of failing to comply with the due diligence requirements or where the inaccuracy is deliberate or the person does not inform the Comptroller of the inaccuracy.

The new *Regulation 8E* provides that no liability under *Regulation 8B* or *8D* arises if a person has a reasonable excuse but this does not include insufficiency of funds or reliance on another person.

The new *Regulation 8F* makes provision for the Comptroller to impose a penalty.

The new *Regulation 8G* sets out a right of appeal against a penalty.

The new *Regulation 8H* makes provision for a Commission of Appeal to be appointed to hear an appeal, such Commission being appointed from the Commissioners of Appeal appointed under Article 10(1) of the Income Tax (Jersey) Law 1961.

The new *Regulation 8I* provides for an increased daily penalty of up to £1,000 each day to be imposed in place of the daily penalty under *Regulation 8C* where a failure continues for more than 30 days and the Commission of Appeal has decided to impose an increased daily penalty following an application to it by the Comptroller.

The new *Regulation 8J* requires a penalty imposed under these Regulations to be paid within 30 days of its imposition (or if applicable, determination of an appeal under *Regulation 8H*).

The new *Regulation 8K* makes provision so that these Regulations apply to any arrangements made which are intended to avoid any requirements of these Regulations as if such arrangements had not been entered into.

The new *Regulation 8L* allows the Comptroller or a person authorized by the Comptroller to enter business premises and examine any documents relating to that business.

The new *Regulation 8M* makes it an offence to obstruct an authorized person in the exercise of that authorized person's powers under the new *Regulation 9L* or to fail to provide reasonable assistance to that person. A person guilty of such an offence is liable to imprisonment for a maximum term of 6 months and to a fine of an unlimited amount. The new *Regulation 9M* also makes it an offence for a person intentionally to alter, suppress or destroy any business document which an authorized person has required the person to provide to him or her. A person guilty of such an offence is liable to imprisonment for a maximum term of 2 years and to a fine of an unlimited amount.

*Regulation 7* sets out the title of these Regulations and provides that they will come into force 7 days after the day they are made.





Jersey

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(INTERNATIONAL TAX COMPLIANCE) (UNITED  
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**Arrangement**

**Regulation**

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*Made* [date to be inserted]

*Coming into force* [date to be inserted]

**THE STATES**, in pursuance of Article 2 of the Taxation (Implementation) (Jersey) Law 2004<sup>1</sup>, have made the following Regulations –

**1 Interpretation**

In these Regulations “principal Regulations” means the Taxation (Implementation) (International Tax Compliance) (United States of America) (Jersey) Regulations 2014<sup>2</sup>.

**2 Regulation 1 amended**

In Regulation 1 of the principal Regulations after the definition “Annex” there shall be inserted the following definitions –

“ ‘authorized person’ means the Comptroller or any person authorized by the Comptroller to perform functions under Regulation 8L;

‘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 8H(3);”.

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**3 Regulation 6A inserted**

After Regulation 6 of the principal Regulations there shall be inserted the following Regulation –

**“6A General provisions relating to compliance**

- (1) In determining whether a person has complied with any requirement of these Regulations, a court shall have regard to any guidance issued or approved by the Minister.
- (2) A reporting Jersey financial institution may use a third party for the purpose of complying with these Regulations but compliance with such requirements remains the responsibility of the reporting Jersey financial institution.”.

**4 Regulation 7 amended**

In Regulation 7 of the principal Regulations after paragraph (3) there shall be added the following paragraph –

- “(4) This Regulation applies in respect of a return or information relating to a U.S. reportable account maintained by a reporting Jersey financial institution during 2014 or 2015 but only to the extent that such an account is maintained during either or both of those years.”.

**5 Regulation 8 amended**

In Regulation 8 of the principal Regulations –

- (a) in the heading the words “and general provisions relating to compliance” shall be deleted;
- (b) for paragraph (3) there shall be substituted the following paragraph –
  - “(3) Paragraphs (1) and (2) apply to any requirement which relates to a U.S. reportable account maintained by a reporting Jersey financial institution during 2014 or 2015 but only to the extent that such an account is maintained during either or both of these years.”;
- (c) paragraph (4) shall be deleted.

**6 Regulations 8A to 8M inserted**

After Regulation 8 of the principal Regulations there shall be inserted the following Regulations –

**“8A Application of Regulations 8B to 8M**

Regulations 8B to 8M apply in respect of a U.S. reportable account maintained by a reporting Jersey financial institution during 2016 and any subsequent year but only to the extent that such an account is maintained during any such year.

**8B 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.

**8C Daily default penalty**

If –

- (a) a penalty under Regulation 8B 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.

**8D 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 6 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 4 (as modified by Regulation 5 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.

**8E Matters to be disregarded in relation to liability to penalties**

- (1) Liability to a penalty under Regulation 8B or 8C 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.

**8F Imposition of penalties**

- (1) If a person becomes liable to a penalty under any of Regulations 8B to 8D the Comptroller may impose the penalty.
- (2) If the Comptroller imposes a penalty, the Comptroller must notify the person.
- (3) A penalty under Regulation 8B or 8C 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 8D 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.

**8G 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 8B to 8D does not arise.
- (2) A person upon whom a penalty is imposed may appeal against its amount.

**8H Commission of Appeal and procedure on appeal against penalty**

- (1) Notice of an appeal under Regulation 8G 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 8F(2) 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 8G; or
  - (b) an application under Regulation 8I(2),as it would be constituted from the Commissioners of Appeal appointed under Article 10(1) of the Income Tax (Jersey) Law 1961<sup>3</sup> for the purpose of hearing appeals under that Law.
- (4) The Comptroller shall notify the Commission of an appeal under Regulation 8G.

- (5) On an appeal under Regulation 8G(1) that is notified to the Commission by the Comptroller, the Commission may confirm or cancel the penalty.
- (6) On an appeal under Regulation 8G(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 8J, the provisions of Part 6 of the Income Tax (Jersey) Law 1961 shall have effect in relation to appeals under Regulation 8G as they have effect in relation to an appeal against an assessment to income tax.

#### **8I Increased daily default penalty**

- (1) This Regulation applies if –
  - (a) a penalty under Regulation 8C is imposed under Regulation 8F;
  - (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 8C 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.

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**8J 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 8F or notification under Regulation 8I(5) is given in respect of the penalty; or
  - (b) if notice of appeal under Regulation 8G 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.

**8K 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.

**8L 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.

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**8M 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 8L; 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 8L.
- (2) A person who intentionally alters, suppresses or destroys any business document that has been specified in a notice under Regulation 8L(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.”.

**7 Citation and commencement**

These Regulations may be cited as the Taxation (Implementation) (International Tax Compliance) (United States of America) (Amendment) (Jersey) Regulations 201- and shall come into force 7 days after the day they are made.

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- <sup>1</sup> *chapter 17.850*  
<sup>2</sup> *chapter 17.850.41*  
<sup>3</sup> *chapter 24.750*