

STATES OF JERSEY



DRAFT TAXATION (IMPLEMENTATION) (INTERNATIONAL TAX COMPLIANCE) (UNITED KINGDOM) (AMENDMENT) (JERSEY) REGULATIONS 201-

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

STATES GREFFE



Jersey

DRAFT TAXATION (IMPLEMENTATION) (INTERNATIONAL TAX COMPLIANCE) (UNITED KINGDOM) (AMENDMENT) (JERSEY) REGULATIONS 201-

REPORT

The States, on 1st December 2015, made the Taxation (Implementation) (International Tax Compliance) (Common Reporting Standard) (Jersey) Regulations 2015. The Regulations provide for the automatic exchange of information to the Common Reporting Standard for the more than 90 jurisdictions that are committed to the Standard. In October 2013, Jersey signed an intergovernmental agreement with the United Kingdom which provided for the automatic exchange of information between Jersey and the United Kingdom, and to implement the agreement, the States made the Taxation (Implementation) (International Tax Compliance) (United Kingdom) (Jersey) Regulations 2014. Jersey and the United Kingdom have now agreed that in future, automatic exchange of information between them should be to the Common Reporting Standard. The amending Regulations provide for the transition from the existing 2014 Regulations to the 2015 Common Reporting Standard Regulations.

In making the transition with effect from 1st January 2016, the United Kingdom was concerned that information in respect of some reportable accounts in 2016 that would have been reportable under the intergovernmental agreement would not be reportable under the Common Reporting Standard, and requested that provision be made for this potential gap to be avoided. The amended Regulations provide for this.

The 2014 Regulations also provide for alternative reporting arrangements for financial accounts held in Jersey by those residents of the United Kingdom who are in the “resident non-domiciled” category. The Common Reporting Standard does not provide for such alternative arrangements, and the amended Regulations provide that for reportable accounts in 2016, any election to apply the alternative reporting regime provided for in the 2014 Regulations is of no effect.

For reportable accounts in 2015 which are to be reported to the Comptroller of Taxes by 30th June 2016, the 2014 Regulations continue to apply, and the amending Regulations provide for this.

The penalties for non-compliance in the 2014 Regulations differ from those in the Common Reporting Standard Regulations, and it is considered that the penalties provisions in the 2014 Regulations 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

These Regulations amend the Taxation (Implementation) (International Tax Compliance) (United Kingdom) (Jersey) Regulations 2014 (“principal Regulations” as defined in *Regulation 1*).

Regulation 2 inserts some definitions in Regulation 1 of the principal Regulations that are used in new Regulations inserted by these amending Regulations.

The main effect of *Regulation 2*, however, is to insert in the principal Regulations new provisions to take account of the requirements of the Taxation (Implementation) (International Tax Compliance) (Common Reporting Standard) (Jersey) Regulations 2015 (“CRS Regulations”). The CRS Regulations come into force on 1st January 2016 and give effect to the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information signed by the Government of Jersey on 29th October 2014 (“CRS Agreement”). Under the new provisions inserted by *Regulation 2*, the principal Regulations do not apply to any account to the extent that it is maintained by a reporting Jersey financial institution during 2017 and each subsequent year. To the extent that a reporting Jersey financial institution maintains an account during 2016, the effect of the new provisions is that –

- the principal Regulations do not apply if the account is a reportable account under the CRS Regulations; or
- the principal Regulations do not apply if the account is not a reportable account under the CRS Regulations but is a pre-existing individual low-value or pre-existing entity account referred to in Annex F to the CRS Agreement maintained by a reporting Jersey financial institution on 31st December 2015 and the reporting Jersey financial institution chooses to treat it as a reportable account for the purpose of the CRS Regulations;
- any election to apply the alternative reporting regime provided for in Regulation 7 of the principal Regulations is of no effect.

Regulation 3 deletes the requirement in the principal Regulations for a reporting Jersey financial institution to report information in respect of 2017 and subsequent years.

Regulation 4 amends the principal Regulations so that the date by which certain financial information must be sent to the Comptroller is extended by 13 months.

Regulation 5 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 6 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 7 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 8 inserts in the principal Regulations new Regulations for the imposition of civil penalties for failure to comply with the principal Regulations. *Regulation 8* 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 9A*, the new *Regulations 9B* to *9M* apply in respect of an account maintained during 2016 but only to the extent that it is maintained during that year.

Under the new *Regulation 9B*, a person is liable to a penalty of £300 for failure to comply with any obligation of these Regulations.

Under the new *Regulation 9C*, 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 9B*.

The new *Regulation 9D* 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 9E* provides that no liability under *Regulation 9B* or *9D* arises if a person has a reasonable excuse but this does not include insufficiency of funds or reliance on another person.

The new *Regulation 9F* makes provision for the Comptroller to impose a penalty.

The new *Regulation 9G* sets out a right of appeal against a penalty.

The new *Regulation 9H* 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 9I* provides for an increased daily penalty of up to £1,000 each day to be imposed in place of the daily penalty under *Regulation 9C* 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 9J* requires a penalty imposed under these Regulations be paid within 30 days of its imposition (or if applicable, determination of an appeal under *Regulation 9H*).

The new *Regulation 9K* 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 9L* 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 9M* 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 9 amends the CRS Regulations so as to take account of the changes made by *Regulation 2* in respect of accounts maintained during 2016. In relation to pre-existing individual low-value accounts or pre-existing entity accounts which are not reportable accounts under the CRS Agreement but which a reporting Jersey financial institution chooses to treat as reportable accounts for the purpose of exchanging information by September 2017, the CRS Regulations apply as if such accounts were reportable accounts. Provision is also made so that compliance with the due diligence requirements under the principal Regulations in respect of any reportable account maintained during 2016 may be treated as compliance with the due diligence requirements of the CRS Regulations notwithstanding that the principal Regulations do not apply to it.

Regulation 10 sets out the title of these Regulations and provides that they will come into force 7 days after the day they are made.



Jersey

**DRAFT TAXATION (IMPLEMENTATION)
(INTERNATIONAL TAX COMPLIANCE) (UNITED
KINGDOM) (AMENDMENT) (JERSEY)
REGULATIONS 201-**

Arrangement

Regulation

| | | |
|----|---|----|
| 1 | Interpretation | 11 |
| 2 | Regulation 1 amended | 11 |
| 3 | Regulation 6 amended | 12 |
| 4 | Regulation 7 amended | 12 |
| 5 | Regulation 7A inserted | 13 |
| 6 | Regulation 8 amended | 13 |
| 7 | Regulation 9 amended | 13 |
| 8 | Regulations 9A to 9M inserted | 13 |
| 9 | Taxation (Implementation) (International Tax Compliance) (Common Reporting Standard) (Jersey) Regulations 2015 amended | 18 |
| 10 | Citation and commencement | 19 |



Jersey

**DRAFT TAXATION (IMPLEMENTATION)
(INTERNATIONAL TAX COMPLIANCE) (UNITED
KINGDOM) (AMENDMENT) (JERSEY)
REGULATIONS 201-**

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 2004¹, have made the following Regulations –

1 Interpretation

In these Regulations “principal Regulations” mean the Taxation (Implementation) (International Tax Compliance) (United Kingdom) (Jersey) Regulations 2014².

2 Regulation 1 amended

In Regulation 1 of the principal Regulations –

(a) 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 9L;

‘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 14(3);”;

(b) after the definition “Comptroller” there shall be inserted the following definition –

“ ‘CRS Agreement’ has the same meaning as ‘Agreement’ in Regulation 1(2) of the CRS Regulations;

‘CRS Regulations’ means the Taxation (Implementation) (International Tax Compliance) (Common Reporting Standard) (Jersey) Regulations 2015³;”;

(c) after paragraph (6) there shall be added the following paragraphs –

“(7) In relation to any United Kingdom reportable account maintained by a reporting Jersey financial institution during 2016, notwithstanding Regulation 7(3), an election under Regulation 7 is of no effect in relation to the treatment of that account during that year.

(8) In relation to any United Kingdom reportable account maintained by a reporting Jersey financial institution during 2016 which –

(a) is a reportable account for the purpose of the CRS Regulations; or

(b) is a pre-existing low-value account or pre-existing entity account referred to in Annex F to the CRS Agreement which is not identified as a reportable account for the purpose of exchanging information by September 2017 for the purpose of that Agreement but which the reporting Jersey financial institution chooses to treat as if it were such an account,

these Regulations do not apply to the extent that the account is maintained during 2016.

(9) In relation to any United Kingdom reportable account maintained by a reporting Jersey financial institution during 2017 and each following calendar year, notwithstanding Regulation 6(1), these Regulations do not apply to the extent that the account is maintained during those years.

(10) In relation to a United Kingdom reportable account maintained by a reporting Jersey financial institution during 2014 or 2015 or to an account maintained during 2016 to which paragraph (8) does not apply, nothing in those paragraphs shall affect the application of these Regulations to the extent that the account is maintained during 2014, 2015 or 2016, as the case may be.”.

3 Regulation 6 amended

Regulation 6(2) of the principal Regulations shall be deleted.

4 Regulation 7 amended

In Regulation 7(5) of the principal Regulations for the words “on or before 30th May following the end of the relevant tax year” there shall be substituted the words “on or before 30th June in the relevant tax year that begins 12 months after the end of the relevant tax year to which the return relates”.

5 Regulation 7A inserted

After Regulation 7 of the principal Regulations there shall be inserted the following Regulation –

“7A 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.”.

6 Regulation 8 amended

In Regulation 8 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 United Kingdom 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.”.

7 Regulation 9 amended

In Regulation 9 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 United Kingdom 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.

8 Regulations 9A to 9M inserted

After Regulation 9 of the principal Regulations there shall be inserted the following Regulations –

9A Application of Regulations 9B to 9M

Regulations 9B to 9M apply in respect of a United Kingdom reportable account maintained by a reporting Jersey financial institution during 2016 but only to the extent that such an account is maintained that year.

9B 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.

9C Daily default penalty

If –

- (a) a penalty under Regulation 9B 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.

9D 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.

9E Matters to be disregarded in relation to liability to penalties

- (1) Liability to a penalty under Regulation 9B or 9C 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.

9F Imposition of penalties

- (1) If a person becomes liable to a penalty under any of Regulations 9B to 9D the Comptroller may impose the penalty.
- (2) If the Comptroller imposes a penalty, the Comptroller must notify the person.
- (3) A penalty under Regulation 9B or 9C 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 9D 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.

9G 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 9B to 9D does not arise.
- (2) A person upon whom a penalty is imposed may appeal against its amount.

9H Commission of Appeal and procedure on appeal against penalty

- (1) Notice of an appeal under Regulation 9G 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 9F(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 9G; or

(b) an application under Regulation 9I(2),
as it would be constituted from the Commissioners of Appeal appointed under Article 10(1) of the Income Tax (Jersey) Law 1961⁴ for the purpose of hearing appeals under that Law.

- (4) The Comptroller shall notify the Commission of an appeal under Regulation 9G.
- (5) On an appeal under Regulation 9G(1) that is notified to the Commission by the Comptroller, the Commission may confirm or cancel the penalty.
- (6) On an appeal under Regulation 9G(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 9J, the provisions of Part 6 of the Income Tax (Jersey) Law 1961 shall have effect in relation to appeals under Regulation 9G as they have effect in relation to an appeal against an assessment to income tax.

9I Increased daily default penalty

- (1) This Regulation applies if –
 - (a) a penalty under Regulation 9C is imposed under Regulation 9F;
 - (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 9C 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.

9J 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 9F or notification under Regulation 9I(5) is given in respect of the penalty; or
 - (b) if notice of appeal under Regulation 9H 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.

9K 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.

9L 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.

9M 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 9L; 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 9L.
- (2) A person who intentionally alters, suppresses or destroys any business document that has been specified in a notice under Regulation 9L(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.”.

9 Taxation (Implementation) (International Tax Compliance) (Common Reporting Standard) (Jersey) Regulations 2015 amended

In the Taxation (Implementation) (International Tax Compliance (Common Reporting Standard) (Jersey) Regulations 2015⁵ after Regulation 7 there shall be inserted the following Regulation –

“7A Transitional provision regarding United Kingdom reportable accounts

- (1) In relation to a United Kingdom reportable account maintained by a reporting Jersey financial institution during 2016 which –
 - (a) is a pre-existing individual low-value account or pre-existing entity account referred to in Annex F to the Agreement;
 - (b) is not identified as a reportable account for the purpose of exchanging information by September 2017, as referred to in that Annex; and
 - (c) is an account which the reporting Jersey financial institution chooses to treat as if it were a reportable account for the purpose of exchanging information by September 2017, as referred to that Annex,

these Regulations shall apply as if the account were identified as a reportable account for the purpose of exchanging information by September 2017.

-
- (2) In relation to a United Kingdom reportable account maintained by a reporting Jersey financial institution during 2016 which is a reportable account under any provision of these Regulations for the purpose of exchanging information by September 2017 under these Regulations, compliance by the reporting Jersey financial institution with the due diligence requirements of the Taxation (Implementation) (International Tax Compliance) (United Kingdom) (Jersey) Regulations 2014⁶ for the year 2016 (notwithstanding Regulation 1(8) of those Regulations) may be treated as compliance with the due diligence requirements of these Regulations.
 - (3) In this Regulation ‘United Kingdom reportable account’ and ‘reporting Jersey financial institution’ have the same meaning as in the Taxation (Implementation) (International Tax Compliance) (United Kingdom) (Jersey) Regulations 2014⁷.”

10 Citation and commencement

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

-
- 1* chapter 17.850
 - 2* chapter 17.850.40
 - 3* R&O.148/2015
 - 4* chapter 24.750
 - 5* R&O.148/2015
 - 6* chapter 17.850.40
 - 7* chapter 17.850.40