



Jersey

**TAXATION (IMPLEMENTATION)
(INTERNATIONAL TAX COMPLIANCE) (UNITED
KINGDOM) (AMENDMENT) (JERSEY)
REGULATIONS 2016**

Arrangement

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Made

23rd February 2016

Coming into force

1st March 2016

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.

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- (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 2016 and shall come into force 7 days after they are made.

DR. M. EGAN

Greffier of the States

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- 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*