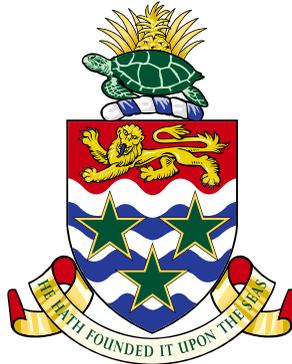


**CAYMAN ISLANDS**



**Tax Information Authority Law**

**TAX INFORMATION AUTHORITY  
(INTERNATIONAL TAX COMPLIANCE)  
(UNITED STATES OF AMERICA)  
REGULATIONS**

**(2018 Revision)**

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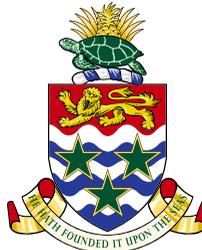
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## CAYMAN ISLANDS



### Tax Information Authority Law

# TAX INFORMATION AUTHORITY (INTERNATIONAL TAX COMPLIANCE) (UNITED STATES OF AMERICA) REGULATIONS (2018 Revision)

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## Citation

1. These Regulations may be cited as the Tax Information Authority (International Tax Compliance) (United States of America) Regulations (2018 Revision).

## Definitions

2. (1) In these regulations —  
“**Active NFFE**” means any NFFE that meets any of the following criteria —
  - (a) less than fifty percent of the NFFE’s gross income for the preceding calendar year or other appropriate reporting period is passive income and less than fifty percent of the assets held by the NFFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;
  - (b) the stock of the NFFE is regularly traded on an established securities market or the NFFE is a related Entity of an Entity the stock of which is traded on an established securities market;
  - (c) the NFFE is organized in a United States territory and all of the owners of the payee are *bona fide* residents of that United States territory;



- (d) the NFFE is a government, other than the United States government, a political subdivision of the government, which for the avoidance of doubt, includes a state, province, county, or municipality, or a public body performing a function of that government or a political subdivision thereof, a government of a United States territory, an international organization, a non-United States central bank of issue, or an Entity wholly owned by one or more of the foregoing;
- (e) substantially all of the activities of the NFFE consist of holding, in whole or in part, the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an NFFE shall not qualify for this status if the NFFE functions, or holds itself out, as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
- (f) the NFFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFFE shall not qualify for this exception after the date that is twenty-four months after the date of the initial organization of the NFFE;
- (g) the NFFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganizing with the intent to continue or recommence operations in a business other than that of a Financial Institution;
- (h) the NFFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any Related Entities is primarily engaged in a business other than that of a Financial Institution;
- (i) the NFFE is an “excepted NFFE” as described in relevant United States Treasury Regulations; or
- (j) the NFFE meets all of the following requirements —
  - (i) it is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organization, business league, chamber of commerce, labour organization, agricultural or horticultural organization, civic league or an organization operated exclusively for the promotion of social welfare;



- (ii) it is exempt from income tax in its jurisdiction of residence;
- (iii) it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
- (iv) the applicable laws of the NFFE's jurisdiction of residence or the NFFE's formation documents do not permit any income or assets of the NFFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFFE has purchased; and
- (v) the applicable laws of the NFFE's jurisdiction of residence or the NFFE's formation documents require that, upon the NFFE's liquidation or dissolution, all of its assets be distributed to a governmental Entity or other non-profit organization, or escheat to the government of the NFFE's jurisdiction of residence or any political subdivision thereof;

“**Agreement**” means the Agreement between the Government of the Islands and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA, signed on 29th November, 2013;

“**Annex**” means an Annex to the Agreement;

“**Competent Authority**” means the Tax Information Authority designated under section 4 of the *Tax Information Authority Law (2017 Revision)*, or a person designated by the Authority to act on behalf of the Authority;

“**Controlling Persons**” means the natural persons who exercise control over an Entity and in the case of a trust, the words mean the settlor, the trustees, the protector, if any, the beneficiaries or class of beneficiaries and any other natural person exercising ultimate effective control over the trust and in the case of a legal arrangement other than a trust, the words mean persons in equivalent or similar positions and the words “**Controlling Persons**” shall be interpreted in a manner consistent with the Financial Action Task Force Recommendations;

“**Entity**” means a legal person or a legal arrangement such as a trust, partnership or limited liability partnership;

“**Financial Institution**” means a person who carries on business in the Islands as —

- (a) a custodial institution;
- (b) a depository institution;
- (c) an investment Entity; or
- (d) a specified insurance company;

“**Global Intermediary Identification Number**” means a number allocated to a Financial Institution by the Internal Revenue Service of the United States of America for FATCA purposes;

“**NFFE**” means any Non-United States Entity that is not an Financial Institution as defined in relevant United States Treasury Regulations or is an Entity described in paragraph (j) of the definition of the words “Active NFFE” and also includes any Non-United States Entity that is established in the Islands or another partner jurisdiction and that is not a Financial Institution;

“**Non-Reporting Financial Institution**” means any Financial Institution in the Islands, or other Entity organised under the Laws of the Islands, that is described in Annex II as a Non-Reporting Financial Institution or that otherwise qualifies as a deemed compliant foreign Financial Institution or an exempt beneficial owner under relevant United States Treasury Regulations in effect on the date of signature of the Agreement;

“**Passive NFFE**” means any NFFE that is not —

- (i) an Active NFFE; or
- (ii) a withholding foreign partnership or withholding foreign trust,

pursuant to relevant United States Treasury Regulations;

“**Registered Deemed-Compliant Financial Institution**” means a Non-reporting Financial Institution to which a Global Intermediary Identification Number has been properly allocated;

“**Reportable Account**”, in relation to a Reporting Financial Institution, means a United States reportable account maintained by that institution in the Islands for the purposes of its business as —

- (a) a custodial institution;
- (b) a depository institution;
- (c) an investment Entity; or
- (d) a specified insurance company;

“**Reporting Financial Institution**” means a person who carries on business in the Islands as a Financial Institution which is not a Non-Reporting Financial Institution;

“**Specified Person**” means a United States person, other than —

- (i) a corporation the stock of which is regularly traded on one or more established securities markets;
- (ii) any corporation that is a member of the same expanded affiliated group, as defined in section 1471(e)(2) of the *United States Internal Revenue Code*, as a corporation described in clause (i);
- (iii) the United States or any wholly owned agency or instrumentality thereof;



- (iv) any State of the United States of America, any United States territory, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing;
- (v) any organization exempt from taxation under section 501(a) of the *United States Internal Revenue Code* or an individual retirement plan as defined in section 7701(a)(37) of the *United States Internal Revenue Code*;
- (vi) any bank as defined in section 581 of the *United States Internal Revenue Code*;
- (vii) any real estate investment trust as defined in section 856 of the *United States Internal Revenue Code*;
- (viii) any regulated investment company as defined in section 851 of the *United States Internal Revenue Code* or any Entity registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-64);
- (ix) any common trust fund as defined in section 584(a) of the *United States Internal Revenue Code*;
- (x) any trust that is exempt from tax under section 664(c) of the *United States Internal Revenue Code* or that is described in section 4947(a)(1) of the *United States Internal Revenue Code*;
- (xi) a dealer in securities, commodities, or derivative financial instruments, including notional principal contracts, futures, forwards, and options, that is registered as such under the laws of the United States of America or any State;
- (xii) a broker as defined in section 6045(c) of the *United States Internal Revenue Code*; or
- (xiii) any tax-exempt trust under a plan that is described in section 403(b) or section 457(g) of the *United States Internal Revenue Code*; and

“**United States Treasury Regulations**” means the regulations made under chapter 4 of Subtitle A, sections 1471 to 1474, of the *Internal Revenue Code* of 1986 of the United States of America regarding information reporting by foreign Financial Institutions with respect to United States accounts and withholding on certain payments by foreign Financial Institutions to other persons, which are commonly referred to as —

- (a) the Foreign Account Tax Compliance Act; or
- (b) FATCA.

- (2) In these regulations, a word or expression which is defined in the Agreement has the meaning in that Agreement except to the extent that a Financial Institution may use as an alternative a definition in —



- (a) the United States Treasury Regulations; or
- (b) the Common Reporting Standard for the Automatic Exchange of Financial Account Information published by the Organisation for Economic Co-operation and Development,

in so far as the use of the definition would not frustrate the purposes of the Agreement.

- (3) In determining whether or not use of a definition referred to in paragraph (2) would frustrate the purposes of the Agreement, a Financial Institution shall take account of any guidance issued or approved by the Competent Authority.

### **Scope of a Reporting Financial Institution**

- 3. A Non-Reporting Financial Institution may qualify as a Reporting Financial Institution for the purposes of these regulations only if it is a Registered Deemed-Compliant Financial Institution.

### **Obligation of a Reporting Financial Institution to register**

- 4. (1) Every Reporting Financial Institution and every Registered Deemed-Compliant Financial Institution, shall comply —
  - (a) with the applicable registration requirements of the Internal Revenue Service of the United States of America for the purposes of the Agreement; and
  - (b) in the manner that the Internal Revenue Service of the United States of America may from time to time require which may include by electronic means.
- (2) An application for registration shall be made by a Reporting Financial Institution or Registered Deemed-Compliant Financial Institution as soon as possible but prior to 31st December, 2014 or if the institution has not commenced to carry on a business on that date, not later than 30 days following the date of commencement of that business.

### **Scope of a reportable account**

- 5. (1) A United States reportable account is not a Reportable Account if —
  - (a) the account holder is deceased or is a personal representative of a deceased;
  - (b) the account is held to comply with an order or judgment made or given in legal proceedings; or
  - (c) the funds held in the account are held solely as security for the performance of a party's obligation under a contract for the disposal of an estate or interest in land or of tangible moveable property.



- (2) The following accounts are not Reportable Accounts for a calendar year unless there is an election by the Reporting Financial Institution in force for that year —
  - (a) pre-existing individual accounts meeting the description at paragraph II.A of Annex I of the Agreement;
  - (b) new individual accounts meeting the description at paragraph III.A of Annex I of the Agreement, including an insurance contract that would be a cash value insurance contract for the purposes of these regulations but for the fact that its value is less than or equal to fifty thousand United States dollars; and
  - (c) pre-existing Entity accounts meeting the description at paragraph IV.A of Annex I of the Agreement.
- (3) In determining whether or not a financial account maintained by an institution meets any of the descriptions in paragraph (2), the institution shall apply the account balance aggregation and currency translation rules at paragraph VI.C of Annex I of the Agreement.
- (4) An election under paragraph (2) —
  - (a) is to be made by being given to the Competent Authority;
  - (b) shall be in a form determined by the Competent Authority; and
  - (c) shall be made on or before the reporting date under regulation 8 for the calendar year in question.
- (5) For the purposes of these regulations —
  - (a) any reference to a pre-existing individual account is to a financial account maintained on 30th June, 2014;
  - (b) any reference to a pre-existing Entity account is to a financial account maintained on 30th June, 2014;
  - (c) any reference to an Entity account is to a financial account which is not an account the account holder of which, or, if more than one, each account holder of which, is an individual holding the account otherwise than as a partner of a partnership;
  - (d) any reference to an individual account is to a financial account held in the name of an individual, whether solely or jointly with another, but not as a partner of a partnership;
  - (e) any reference to a new individual account is to a financial account opened after 30th June, 2014; and
  - (f) any reference to a new Entity account is to a financial account opened after 30th June, 2014 except insofar as a Reporting Financial Institution has elected to substitute a date no later than 31st December, 2014 for the 30th June, 2014 date.

- (6) 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.
- (7) Notwithstanding paragraph 5(5)(b), a Reporting Financial Institution may substitute a date no later than 31st December, 2014 for the 30th June, 2014 date in the case of a pre-existing Entity account.

### Identification obligation

6. (1) In relation to all financial accounts maintained by a Reporting Financial Institution, the institution shall establish and maintain —
  - (a) arrangements that are designed to identify reportable accounts; and
  - (b) arrangements that are designed to establish the jurisdictions of residence and where applicable, the United States citizenship of an account holder.
- (2) The institution is taken to comply with the obligation to establish and maintain arrangements within paragraph (1)(a) only if —
  - (a) the arrangements meet the due diligence requirements as set out in this regulation; and
  - (b) the arrangements secure that the evidence used in accordance with this regulation or regulation 7, or a record of the steps taken in accordance with this regulation or regulation 7, 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 requirements for a calendar year for which an election under regulation 5(2) is in force are —
  - (a) in the case of pre-existing individual accounts that are lower value accounts within paragraph II.B of Annex I of the Agreement or are pre-existing individual accounts that are Reportable Accounts meeting the description at paragraph II.A of that Annex, the procedures described at paragraph II.B and II.C of that Annex;
  - (b) in the case of pre-existing individual accounts with a balance or value that exceeds one million United States dollars as of 30th June, 2014 or 31st December, 2015 or 31st December in any subsequent year, the procedures described at paragraphs II.D and II.E of that Annex;
  - (c) in the case of new individual accounts, the procedures described at paragraph III.B of that Annex;
  - (d) in the case of pre-existing Entity accounts, the procedures described at paragraphs IV.D and IV.E (1) of that Annex; and
  - (e) in the case of new Entity accounts, the procedures described at paragraphs V.A to V.B of that Annex.



- (4) The due diligence requirements for a calendar year for which an election under regulation 5(2) is not in force are —
- (a) in the case of pre-existing individual accounts that are lower value accounts within paragraph II.B of Annex I of the Agreement, the procedures described at paragraph II.B and II.C of that Annex;
  - (b) in the case of pre-existing individual accounts that are lower value accounts within paragraph II.B of that Annex with a balance or value that exceeds one million United States dollars as of 31st December, 2015 or 31st December in any subsequent year, the procedures described at paragraphs II.D and II.E of that Annex;
  - (c) in the case of pre-existing individual accounts within paragraph II.A of that Annex with a balance or value that exceeds one million United States dollars as of 31st December, 2015 or 31st December in any subsequent year, the procedures described at paragraphs II.D and II.E of that Annex;
  - (d) in the case of pre-existing individual accounts within paragraph II.D of that Annex, the procedures described at paragraphs II.D and II.E of that Annex;
  - (e) in the case of new individual accounts that are not within paragraph III.A of that Annex, the procedures described at paragraph III.B of that Annex;
  - (f) in the case of pre-existing Entity accounts within paragraphs IV.B and IV.C of that Annex, the procedures described at paragraphs IV.D and IV.E (1) of that Annex;
  - (g) in the case of pre-existing Entity accounts with a balance or value that does not exceed two hundred and fifty thousand United States dollars as of 30th June, 2014 but with a balance or value that exceeds one million United States dollars as of 31st December, 2015 or 31st December in any subsequent year, the procedures at paragraphs IV.D and IV.E (2) of that Annex; and
  - (h) in the case of new Entity accounts, the procedures described at paragraphs V.A to V.B of that Annex.
- (5) If, in the case of an account within either paragraph (3)(a) or (4)(a) —
- (a) an institution has established the account holder's United States status from documentary evidence mentioned in paragraph VI.D of Annex I of the Agreement; and
  - (b) it has done so in order to meet its obligations under a qualifying intermediary agreement as mentioned in that paragraph,
- the due diligence requirements in the case of that account do not include the requirement to carry out the electronic search described in paragraph II.B (1) of that Annex of the Agreement.

- (6) If, in the case of an account within any of paragraph (3)(b) or (4)(a) to (c) —
- (a) an institution has established the account holder’s United States status from documentary evidence mentioned in paragraph VI.D of Annex I of the Agreement, and
  - (b) it has done so in order to meet its obligations under a qualifying intermediary agreement as mentioned in that paragraph,
- the due diligence requirements in the case of that account do not include the requirement to carry out the electronic searches described in paragraph II.B (1) or II.D (1) of Annex I of the Agreement or the requirement to carry out the paper record search described in paragraph II.D (2) of that Annex.
- (7) If, as a result of this regulation, a person is required to certify their United States status, a Reporting Financial Institution may require the person to supply to the institution the documentary evidence mentioned in paragraph VI.D of Annex I of the Agreement as the institution considers appropriate in support of the certification.
- (8) The due diligence requirements in this regulation shall be applied by reference to the special rules and definitions at paragraph I.B (1) to (3) and section VI of Annex I of the Agreement.
- (9) For the purposes of this regulation references to the documentary evidence set out in paragraph VI.D of Annex I of the Agreement are to be treated as if the words “other than a Form W-8 or W-9” were omitted.
- (10) Nothing in paragraph (1)(b) applies to accounts maintained before the day on which these regulations come into force.

### **Modification of due diligence requirements**

7. (1) This regulation modifies the due diligence requirements set out in regulation 6 in the case of a Reporting Financial Institution, but only if it makes an election applying those modifications.
- (2) If the institution obtains, or is in the process of obtaining, evidence of a person’s United States status in relation to any pre-existing account, it is entitled to rely on the evidence in relation to any new account unless it has reasonable cause to believe that the person’s United States status has subsequently changed.
- (3) Paragraph (2) has effect in the case of pre-existing individual accounts maintained by the institution for an account holder only if, for the purpose of establishing which of the procedures referred to in regulation 6(3)(a) and (b) or regulation 6(4)(a) to (c) are applicable to those accounts, the institution treats all those accounts as a single pre-existing individual account.
- (4) If the institution or a related Entity obtains, or is in the process of obtaining, evidence of a person’s United States status in relation to a financial account,



the institution is entitled to rely on the evidence in relation to all financial accounts maintained by the institution for the account holder unless the institution has reasonable cause to believe that the person's United States status has subsequently changed.

- (5) The due diligence requirements set out in regulation 6 do not need to be met in relation to a financial account if —
  - (a) the institution maintains the account as a result of a merger with, or acquisition of, a qualifying financial institution which had established the United States status of the account holder and any controlling person; and
  - (b) the institution has no reasonable cause to believe that the United States status of the account holder or any controlling person has changed.
- (6) For the purpose of paragraph (5) a “qualifying financial institution”, in relation to a Financial Institution, means another Financial Institution —
  - (a) which has not previously been a related Entity of the institution; and
  - (b) which immediately before the merger or acquisition was a Reporting Financial Institution or a partner jurisdiction Financial Institution but was neither a Registered Deemed-Compliant Financial Institution nor a non-participating Financial Institution.
- (7) An election under this regulation —
  - (a) is to be made by being given to the Competent Authority;
  - (b) shall be in a form determined by the Competent Authority; and
  - (c) has effect in relation to all times on or after the day on which the election is made, unless subsequently withdrawn.

### **Reporting Obligation**

8. (1) A Reporting Financial Institution shall, in respect of 2014 and every following calendar year, prepare a return setting out —
  - (a) the required information in relation to every Reportable Account that is maintained by the institution at any time during the calendar year in question;
  - (b) the institution's Global Intermediary Identification Number; and
  - (c) a statement of whether paragraph 5 of Article 4 of the Agreement applies to the institution and, if it does, whether the requirements in subparagraphs (a) to (c) of that paragraph have been met.
- (2) Notwithstanding paragraph (1), if during the calendar year in question the Reporting Financial Institution maintains no Reportable Accounts, then the Reporting Financial Institution is not required to file a return but may, at its own option, do so in accordance with paragraphs (3) to (6).

- (3) The Reporting Financial Institution shall send a return under this regulation to the Competent Authority on or before 31st May of the year following the calendar year to which the return relates referred to as “the reporting date”, in the form required by the Competent Authority, whether electronically or otherwise.
- (4) The information required to be in the return is —
  - (a) the name and address of the account holder;
  - (b) subject to regulation 9(2), the account holder’s United States federal taxpayer identifying number;
  - (c) if an account is identifiable by an account number, that number or, if not, its functional equivalent;
  - (d) the balance or value of the account, including, in the case of a cash value insurance contract or annuity contract, the cash value or surrender value, as of the end of the calendar year or, if the account was closed during the year, the balance or value on the date that the Reporting Financial Institution closes the account;
  - (e) the relevant total gross credits, or if there are none, a statement of that fact; and
  - (f) if the account holder is a passive NFFE that has a Controlling Person who is a Specified Person, the name and address of that Specified Person, and, if that person is an individual, that person’s United States federal taxpayer identifying number and date of birth.
- (5) For the purpose of paragraph 4 the “relevant total gross credits” means —
  - (a) in the case of a custodial account —
    - (i) the total gross amount of interest, the total gross amount of dividends and the total gross amount of other income generated with respect to assets held in the account which is paid into, or with respect to, the account during the calendar year; and
    - (ii) the total gross proceeds from the sale or redemption of property paid into the account during the calendar year if the institution acted as a custodian, broker, nominee or otherwise as an agent for the account holder;
  - (b) in the case of a depository account, the total gross amount of interest paid to the account during the calendar year; and
  - (c) in the case of any other account, the total gross amount of sums paid by the institution to the account holder with respect to the account during the calendar year.
- (6) For the purposes of this regulation —



- (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.
- (7) If a Reporting Financial Institution has an established practice for the periodic valuation of accounts of a particular description otherwise than at the end of a calendar year, the institution may report under paragraph (5)(a) or (c) by reference to a period of 12 months ending with the date or, if more than one, the latest date, in the calendar year on which the institution values accounts of that description, instead of by reference to the calendar year.
- (8) Subject to regulation 9(2), if a Reporting Financial Institution does not hold a United States federal taxpayer identifying number that it is required to report under paragraph (4)(b) the institution shall obtain that number from the account holder.

### **Modifications for calendar years 2014 to 2016**

- 9.** (1) In the case of an account referred to in regulation 8(5) there is no requirement to include in the return for the calendar year 2014 information about relevant total gross credits.
- (1A) In the case of custodial accounts there is no requirement to include in the return for the calendar year 2015 any information set out in regulation 8(5)(a)(ii).
- (2) In the case of pre-existing accounts —
- (a) there is no requirement to include in the return for calendar years before 2017 a United States federal taxpayer identifying number if the Reporting Financial Institution does not hold that number; but
  - (b) if the account holder is an individual whose date of birth the institution does hold, the institution shall include the account holder's date of birth instead.

### **Identification and disclosure obligations: Non-participating Financial Institutions**

- 10.** (1) A Reporting Financial Institution shall establish and maintain arrangements that are designed to identify payments made by the Reporting Financial Institution to a non-participating Financial Institution in the calendar year 2015 or 2016.
- (2) "Payment" in this regulation includes amounts credited to a non-participating Financial Institution but does not include consideration given by the Reporting Financial Institution for the provision of goods or services to it.
- (3) A Reporting Financial Institution is entitled to regard a payment made by it to a Financial Institution as made to someone who is not a non-participating

Financial Institution only if it has, in respect of the payment, taken the steps referred to in paragraph IV.D (3) of Annex I of the Agreement.

- (4) For the purposes of paragraphs (1) to (3) of this regulation a non-participating Financial Institution includes anyone who is required to be treated as a non-participating Financial Institution as a result of subparagraph 5(a) of Article 4 of the Agreement.
- (5) In respect of any case in the calendar years 2015 and 2016 when a Reporting Financial Institution is within the terms of sub-paragraph 1(e) of Article 4 of the Agreement, the institution shall make a disclosure of information in accordance with the requirements of that sub-paragraph.

### **Reporting obligation: Non-participating Financial Institutions**

11. (1) A Reporting Financial Institution shall in respect of each of the calendar years 2015 and 2016 prepare a return setting out —
  - (a) the names of the non-participating Financial Institutions to whom payments identified in accordance with regulation 10(1) have been made in the year in question; and
  - (b) the total amount of those payments made to each of the non-participating Financial Institutions in question.
- (2) In determining the total amount of those payments the special rules and definitions at paragraph I.B (1) and paragraph VI.C of Annex I of the Agreement shall be applied.
- (3) If for a calendar year no payments are identified as referred to in paragraph (1), the Reporting Financial Institution shall prepare a return for the calendar year stating that fact.
- (4) The Financial Institution shall send a return under this regulation to the Competent Authority on or before 31st May of the year following the calendar year to which the return relates referred to as “the reporting date”, in the form the Competent Authority requires, whether electronically or otherwise.

### **Accounts with a negative value**

12. For the purpose of applying paragraph VI. C of Annex I to the Agreement as required by these regulations, an account balance that has a negative value is treated as having a nil value.



## Anti-avoidance

### 13. 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 or circumvent any obligation under these regulations,
- these regulations are to have effect as if the arrangements had not been entered into.

## Notification to the Competent Authority

14. (1) A Financial Institution which has reporting obligations under these regulations shall notify the Competent Authority of that fact and shall provide to the Competent Authority —
- (a) the name of the Financial Institution;
  - (b) the categorization of the Financial Institution as determined in accordance with the Agreement; and
  - (c) where the Financial Institution has registered with the Internal Revenue Service of the United States of America for the purposes of the Agreement in accordance with regulation 4, the Global Intermediary Identification Number allocated to that Financial Institution by the Internal Revenue Service of the United States of America.
- (2) The notification, and the information specified in paragraph (1)(a) to (c) shall be submitted to the Competent Authority electronically in the form that the Competent Authority may require.
- (3) A Financial Institution shall provide the notification and the information specified in paragraphs (1)(a) to (c) to the Competent Authority no later than 30th April in the first calendar year in which it is required to comply with reporting obligations to the Competent Authority under these regulations.
- (4) A Financial Institution which is required to notify the Competent Authority pursuant to this regulation shall, at the time of notification, provide to the Competent Authority the full name, address, designation and contact details of the natural person identified and authorised by the Financial Institution to be the principal point of contact for the Financial Institution for all purposes of compliance with these regulations.
- (5) A Financial Institution shall notify the Competent Authority immediately of any changes to the information provided to the Competent Authority under paragraph (1)(a) to (c) and of any changes to the details of the principal point of contact specified in paragraph (4).

- (6) Where a Financial Institution ceases to be registered with the Internal Revenue Service of the United States of America for whatever reason, it shall notify the Competent Authority.

### **Inspection and Compliance**

- 15.** (1) For the purposes of determining whether any information submitted by a Reporting Financial Institution in furtherance of the requirements of these regulations, was correct and complete, the Competent Authority may require a Reporting Financial Institution —
- (a) to provide to the Competent Authority, within a time specified by the Competent Authority, the information, including copies of any relevant books, documents or other records, or any electronically stored information, that the Competent Authority may reasonably require; or
  - (b) to make available to the Competent Authority for inspection, at the time specified by the Competent Authority, all copies of books, documents or other records, or any electronically stored information, in the Reporting Financial Institution's possession or under its control.
- (2) Where any information which is required to be provided to, or inspected by, the Competent Authority is located outside of the Islands in any manner whatsoever, the Reporting Financial Institution shall take all necessary steps to bring the information to the Islands within the time specified by the Competent Authority in writing to enable the Reporting Financial Institution to comply with the requirements of the Competent Authority under this regulation.
- (3) A Reporting Financial Institution shall retain for a period of six years all books, documents and other records, including those stored by electronic means, which relate to the information required to be reported to the Competent Authority for the purposes of these regulations.

### **Offences**

- 16.** (1) A Reporting Financial Institution which —
- (a) without reasonable excuse, fails to comply with a requirement of the Competent Authority under regulation 15;
  - (b) without reasonable cause, fails to make a report required under these regulations;
  - (c) fraudulently or negligently makes a false report, whether in its entirety or in any particular part;
  - (d) fails to implement arrangements or procedures in order to comply with these regulations;
  - (e) with intent to avoid the provisions of these regulations, alters, destroys, mutilates, defaces, hides or removes any document or information, including documents or information electronically held ; or



(f) wilfully obstructs an inquiry by the Competent Authority under regulation 15,

commits an offence and is liable on summary conviction to a fine of five thousand dollars, or in the case of subparagraphs (a), (c), (d), (e) and (f) to imprisonment for a term of 2 years, or to both.

- (2) Where an offence under this regulation is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in the capacity of director, manager, secretary or other similar officer of the body corporate, that individual, as well as the body corporate, is considered to have committed that offence and is liable to be proceeded against and punished accordingly.
- (3) Where the affairs of the Financial Institution, in cases where it is not a body corporate, are managed or controlled by its partners, members, trustees or other persons purporting to act in the capacity of a partner, member or trustee, paragraph (2) shall apply in relation to the acts and defaults of that person in connection with the person's functions of management or control as if that individual were a director of a body corporate.

### **Appointment of Third Parties**

17. (1) A Reporting Financial Institution may appoint a person as its agent to carry out the duties and obligations imposed on it by these regulations, or the Agreement.
- (2) Where a person is appointed under paragraph (1) —
  - (a) the Financial Institution shall, at all times, have access to and be able to produce, where so requested by the Competent Authority, the records and documentary evidence used to identify and report on reportable accounts; and
  - (b) the Financial Institution is responsible for any failure of that person to carry out its obligations notwithstanding that the actions were the actions of that person or that the failure to act was the failure by that person to act.

### **Issue of Guidance**

18. The Competent Authority shall issue guidance from time to time and in a form considered appropriate by the Competent Authority for the purposes of aiding compliance with these regulations.

**Obligations of Reporting Financial Institutions to obtain taxpayer identifying number**

19. (1) A Reporting Financial Institution shall implement arrangements to obtain the taxpayer identifying number of every United States specified person who is the account holder of a Reportable Account.
- (2) Paragraph (1) has effect —
- (a) from 1st January, 2017 in the case of pre-existing accounts and
  - (b) from 1st July, 2014 in the case of new accounts opened on or after that date.

**Publication in consolidated and revised form authorised by the Cabinet this 13th of March, 2018.**

**Kim Bullings**  
*Clerk of the Cabinet*

