

GUERNSEY STATUTORY INSTRUMENT

2020 No. 21

**The Income Tax (Approved International Agreements)
(Implementation) (Mandatory Disclosure Rules)
Regulations, 2020**

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The Income Tax (Approved International Agreements) (Implementation) (Mandatory Disclosure Rules) Regulations, 2020

THE POLICY & RESOURCES COMMITTEE, in exercise of the powers conferred upon it by sections 75CC(1A) and 203A of the Income Tax (Guernsey) Law, 1975^a, and all other powers enabling it in that behalf, hereby makes the following regulations:-

Introductory

Implementation of the Mandatory Disclosure Rules and Competent Authority Agreements.

1. These Regulations implement –
 - (a) the OECD (2018) Model Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures^b (the “**Mandatory Disclosure Rules**”), approved by the OECD Committee of Fiscal

^a Ordres en Conseil Vol. XXV, p. 124; section 75CC was inserted by the Income Tax (Approved International Agreements) (Implementation) (Guernsey) Ordinance, 2013 (No. I of 2014) and section 203A was inserted by the Income Tax (Guernsey) (Amendment) Law, 2005 (No. XVII of 2005). There are other amendments not material to these Regulations.

^b An international tax measure specified for the purposes of the Law, under section 75CC(1C) thereof, by Resolution of the States of Deliberation of the 12th December, 2019.

Affairs on the 8th March, 2018,

- (b) the Multilateral Competent Authority Agreement on the Automatic Exchange regarding CRS Avoidance Arrangements and Opaque Offshore Structures (the “MCAA”), and
- (c) the Bilateral Competent Authority Agreements.

Meaning of “CRS avoidance arrangement”.

2. (1) A “CRS avoidance arrangement” is any arrangement which, it is reasonable to conclude, is designed to circumvent or is marketed as, or has the effect of, circumventing the CRS Regulations or exploiting an absence of or any omission or deficiency within an enactment implementing the CRS, including through or by means of -

- (a) the use of an account, product or investment that is not, or purports not to be, a financial account, but has features that are substantially similar to those of a financial account,
- (b) the transfer of a financial account, or the monies or financial assets held in a financial account -
 - (i) to a financial institution that is not a reporting financial institution, or

- (ii) to a jurisdiction that does not exchange CRS information with all jurisdictions of tax residence of a reportable taxpayer,
- (c) the conversion or transfer of a financial account, or the monies and/or financial assets held in a financial account, to a financial account that is not a reportable account,
- (d) the conversion of a financial institution into -
 - (i) a financial institution that is not a reporting financial institution, or
 - (ii) a financial institution that is resident in a jurisdiction that does not exchange CRS information with all jurisdictions of tax residence of a reportable taxpayer,
- (e) undermining or exploiting weaknesses in the due diligence procedures used by financial institutions correctly to identify -
 - (i) an account holder and/or controlling person,
 - (ii) all the jurisdictions of tax residence of an account holder and/or controlling person,
- (f) allowing or purporting to allow -

- (i) an entity to qualify as an Active NFE,
 - (ii) an investment to be made through an entity without triggering a reporting obligation under the CRS Regulations, or
 - (iii) a person to avoid being treated as a controlling person, or
- (g) classifying a payment made for the benefit of an account holder or controlling person as a payment that is not reportable under the CRS Regulations.

(2) For the purposes of this regulation, an arrangement is not considered to have the effect of circumventing the CRS Regulations solely because it results in non-reporting under those Regulations, provided that it is reasonable to conclude that such non-reporting does not undermine the policy intent of the CRS Regulations.

Meaning of “opaque offshore structure”.

3. (1) An “**opaque offshore structure**” means a passive offshore vehicle that is held through an opaque structure.

(2) Subject to the provisions of paragraph (3), a “**passive offshore vehicle**” means a legal person or legal arrangement that does not carry on a substantive economic activity supported by adequate staff, equipment, assets and premises in the jurisdiction where it is established or is tax resident.

(3) A **“passive offshore vehicle”** does not include any legal person or legal arrangement -

- (a) that is an institutional investor or wholly-owned by one or more institutional investors, or
- (b) where all beneficial owners of that legal person or legal arrangement are only resident for tax purposes in the jurisdiction of incorporation, residence, management, control and establishment (as applicable) of the legal person or legal arrangement.

(4) **“An opaque structure”** means a structure which, it is reasonable to conclude -

- (a) is designed to have,
- (b) is marketed as having, or
- (c) has the effect of allowing,

a natural person to be a beneficial owner of a passive offshore vehicle while adopting the behaviours or methods described in paragraph (5).

(5) The behaviours or methods referred to in paragraph (4) are -

- (a) not allowing the accurate determination of the natural person’s beneficial ownership, or

- (b) creating the appearance that that person is not a beneficial owner,

and include the use of -

- (i) nominee shareholders with undisclosed nominators,
- (ii) means of indirect control beyond formal ownership,
- (iii) arrangements that provide a reportable taxpayer with access to assets held by, or income derived from, the structure without being identified as a beneficial owner thereof,
- (iv) legal persons in a jurisdiction where there is -
 - (A) no requirement to keep, or mechanism to obtain, basic information and beneficial owner information, as defined in the latest Financial Action Task Force Recommendations, in respect of such legal persons that is accurate and up to date,
 - (B) no obligation on shareholders or members to disclose the names of

persons on whose behalf shares are held, or

- (C) no obligation on, or mechanism for, shareholders or members of such legal persons to notify the legal person of any changes in ownership or control,
- (v) the use of legal arrangements organised under the laws of a jurisdiction that do not require the trustees (or, in case of a legal arrangement other than a trust, the persons in equivalent or similar positions as the trustee of a trust) to hold, or be able to obtain, adequate, accurate and current beneficial ownership information regarding the legal arrangement.

Obligation to disclose

CRS avoidance arrangements and opaque offshore structures

Obligation on intermediary to disclose.

4. A person who is an intermediary in respect of a CRS avoidance arrangement or opaque offshore structure ("**the intermediary**") must disclose that arrangement or structure to the Director if that person -

- (a) makes that arrangement or structure available for implementation, or provides relevant services in respect of that arrangement or structure, through an office or branch located in Guernsey,

- (b) is resident or has its place of management in Guernsey,
or
- (c) is incorporated in or established under the laws of
Guernsey.

When information is required to be disclosed.

5. The disclosure required under regulation 4 shall be made within a period of 30 days after the intermediary -

- (a) makes the CRS avoidance arrangement or opaque offshore structure available for implementation, or
- (b) provides relevant services in respect of that arrangement or structure.

Information required to be disclosed.

6. Subject to the provisions of regulation 7, the information that the intermediary is required to disclose under regulation 4 in respect of a CRS avoidance arrangement or opaque offshore structure includes -

- (a) the name, address, TIN(s) and jurisdiction(s) of tax residence of the following persons -
 - (i) the intermediary making the disclosure,
 - (ii) any client of the intermediary in respect of that

arrangement or structure (separately identifying any client who is a reportable taxpayer, including the date of birth of such a person),

(iii) any actual user of a CRS avoidance arrangement or beneficial owner of an opaque offshore structure,

(iv) any person who is an intermediary in respect of that arrangement or structure (other than the person making the disclosure),

(b) the details of the CRS avoidance arrangement or opaque offshore structure including -

(i) in respect of a CRS avoidance arrangement, a factual description of those features of the arrangement that are designed to have, are marketed as having or have the effect of circumventing the CRS Regulations, and

(ii) in respect of an opaque offshore structure, a factual description of those features that have the effect of not allowing the accurate determination of the reportable taxpayer's beneficial ownership or creating the appearance that the reportable taxpayer is not a beneficial owner of the passive offshore vehicle, and

- (c) any jurisdiction where the arrangement or structure has been made available for implementation,

to the extent that such information is within the knowledge, possession or control of the intermediary.

Exemption from requirement to disclose.

7. (1) An intermediary is not required to disclose any information set out in regulation 6 where the information is contained in a communication or item subject to legal professional privilege and is in the possession of a person who is entitled to possession of it, but only to the extent that the disclosure would reveal confidential information held by an attorney, solicitor or other admitted legal representative with respect to a client, as defined in the Commentary to Article 26 of the OECD Model Tax Convention (as published on the OECD website and as from time to time revised, updated or replaced, with or without modification).

(2) Notwithstanding the provisions of paragraph (1), an advocate or other legal adviser may be required to give the name and address (including an electronic address) of a client.

(3) An intermediary who is not required to disclose information under this regulation shall provide written notice to the client of the client's disclosure obligations under these Regulations within the time limit specified in regulation 5.

No obligation to disclose information already disclosed.

8. An intermediary is not required to disclose any information set out in Regulation 6 to the extent that the intermediary holds documentation demonstrating

that -

- (a) the information was previously disclosed to the Director,
- (b) the information relates to relevant services provided, or a CRS avoidance arrangement or opaque offshore structure made available for implementation, through an office or branch maintained by the intermediary in a partner jurisdiction and the information has been disclosed to the tax authority of that partner jurisdiction, or
- (c) the intermediary is required to disclose such information under regulation 4(c) and the information has been disclosed to the tax authority of a partner jurisdiction where the intermediary is resident or has its place of management.

Reportable taxpayer required to disclose in certain circumstances.

9. (1) A reportable taxpayer resident in Guernsey who is a user of a CRS avoidance arrangement or a beneficial owner under an opaque offshore structure must disclose to the Director any information on the arrangement or structure that is not disclosed by an intermediary because the intermediary -

- (a) is not a person to whom the disclosure requirements of regulation 4 apply, or
- (b) is not required to disclose the information by virtue of

regulation 7.

(2) The reportable taxpayer is not required to disclose any information under paragraph (1) to the extent that the reportable taxpayer has received documentation from the intermediary demonstrating that the information has been disclosed by the intermediary to the tax authority of a partner jurisdiction under mandatory disclosure rules that are substantially similar to those set out in these Regulations.

(3) The disclosure pursuant to paragraph (1) shall include all the information required to be disclosed under regulation 6 and shall be made within a period of 30 days immediately after the implementation of the first step of the CRS avoidance arrangement or opaque offshore structure.

Disclosure of arrangements entered into before commencement of these Regulations.

10. (1) A person who was a promoter in respect of a CRS avoidance arrangement implemented on or after the 29th October 2014 but before the date of commencement of these Regulations shall disclose the arrangement to the Director within a period of 180 days beginning on the date of commencement of these Regulations.

(2) A disclosure under paragraph (1) shall include the information required under regulation 6.

(3) Paragraph (1) applies irrespective of whether the person provides relevant services in respect of the arrangement after the date of commencement of these Regulations.

(4) No disclosure is required under paragraph (1) where the promoter has documentation to demonstrate that the aggregate balance or value of the financial account subject to the CRS avoidance arrangement immediately prior to its implementation was less than US \$1,000,000.

(5) Notwithstanding the provisions of regulation 31, these Regulations apply for the purposes of this regulation as if the expression “CRS Regulations” meant the Standard for Automatic Exchange of Financial Account Information in Tax Matters as published by the OECD on the 15th July, 2014.

Form and manner of disclosure.

11. (1) Disclosures required to be made and documents and information required to be provided by or under these Regulations must be made or provided in such form and manner, by such means and at such times or intervals as may be prescribed by or under these Regulations or as the Director may by notice require.

(2) For the purposes of, but without prejudice to the generality of, paragraph (1) -

- (a) a notice of the Director referred to therein may require a person to register with, to use and to make disclosures or provide documents and information by means of an electronic portal specified in the notice for that purpose,
- (b) the notice may be given or published in such form and manner, by such means and at such times or intervals and for such period as the Director thinks fit, including

(without limitation) by publication on the official website of the States of Guernsey Revenue Service or by being set out in guidance notes issued under regulation 26.

Exchange of information with competent authorities.

12. (1) Disclosures made and information and documents provided to the Director under or for the purposes of these Regulations by an intermediary, reportable taxpayer, promoter or other person may be provided by the Director to the relevant competent authority of -

- (a) any partner jurisdiction,
- (b) any jurisdiction where a CRS avoidance arrangement or opaque offshore structure has been made available for implementation by the intermediary required to make disclosure thereof under regulation 4 (as read with regulation 6(c)),
- (c) any jurisdiction in which, on the basis of the disclosure, information or documents, any person mentioned in regulation 6(a), the reportable taxpayer or the promoter is -

- (a) resident for tax purposes, or
- (b) subject to tax with respect to a business carried on through a permanent establishment.

(2) In this regulation, the “**Relevant Competent Authority**” means the competent authority of a jurisdiction which, in the opinion of the Director

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- (a) is a signatory to –
 - (i) the Convention on Mutual Administrative Assistance in Tax Matters and to the MCAA, or
 - (ii) a Bilateral Competent Authority Agreement,
- (b) has given domestic effect to the MCAA or Bilateral Competent Authority Agreement (as the case may be) in a manner similar to these Regulations,
- (c) has elected, or is, to receive information under the MCAA or Bilateral Competent Authority Agreement (as the case may be), and
- (d) has adequate data protection safeguards in place to protect the confidentiality of the information provided.

(3) A list of the jurisdictions that satisfy the conditions of paragraph (2) shall be published by the Director in respect of each calendar year.

*Penalties and offences
for breach of obligations, etc*

Civil penalties for contraventions of regulations 4 and 10.

13. Section 193 of the Law ("penalties in respect of returns not relating to income") applies in respect of a failure to make a disclosure, or to provide any document or information, to the Director in accordance with the provisions of regulation 4 or 10 as if -

- (a) references in subsections (1) and (2) of that section -
 - (i) to a return other than a return of income included references to a disclosure required to be made or document or information required to be provided by or under the provisions of these Regulations, and
 - (ii) to the delivery to the Director of a return included references to the making to the Director of such a disclosure or the provision to the Director of any such document or information,
- (b) references in subsection (1) of that section to the time prescribed included references to the time prescribed by or under the provisions of these Regulations,
- (c) for "£50" in subsection (1) there were substituted "£50 (rising to £1,000 after the 30th day of default)",
- (d) the proviso to subsection (1) were omitted,
- (e) subsection (3) of that section were omitted,

- (f) section 200(1) and (4) were not applicable to that section, and
- (g) section 200(5) and (6) were applicable to that section.

Civil penalties for contraventions of regulation 9.

14. (1) A reportable taxpayer resident in Guernsey who is a user of a CRS avoidance arrangement or a beneficial owner under an opaque offshore structure and who fails to disclose to the Director any document or information on the arrangement or structure in accordance with the provisions of regulation 9 is liable to a penalty not exceeding –

- (a) £5,000 in respect of each arrangement or structure to which the failure relates (but subject to subparagraphs (b) and (c)),
- (b) where there has been a single previous failure to comply with the provisions of regulation 9, £7,500 in respect of each arrangement or structure to which the current failure relates, or
- (c) where there have been two or more previous failures to comply with regulation 9, £10,000 in respect of each arrangement or structure to which the current failure relates.

(2) A penalty under paragraph (1) shall be imposed by notice of the Director.

(3) The notice under paragraph (2) must –

- (a) state the grounds of the Director's decision,
- (b) set out to the best of the Director's knowledge particulars of the CRS avoidance arrangement or opaque offshore structure in respect of which the failure to comply with the provisions of regulation 9 has in the opinion of the Director occurred,
- (c) explain the sanctions (civil or criminal) that may arise or be imposed under these Regulations or the Law in respect of non-compliance or non-fulfilment, and
- (d) set out particulars of any right of appeal that may be applicable.

(4) The notice under paragraph (2) may, without prejudice to the powers conferred by regulation 9, require the provision of such documents or information or class or description of documents or information as the Director may require for the purposes of these Regulations.

Right of appeal against penalties.

15. (1) A person aggrieved by a decision of the Director to impose a penalty under regulation 14 may appeal to the Guernsey Tax Tribunal on giving to the Director notice in writing, stating the grounds of appeal, within a period of 30 days beginning on the date of the notice imposing the penalty.

(2) The Guernsey Tax Tribunal may admit an appeal under paragraph (1) after the expiration of the 30 day period if satisfied that owing to absence, sickness or other reasonable cause a person was prevented from giving notice of appeal within that period.

(3) The sole grounds of appeal are that -

(a) the person on whom the penalty was imposed is not subject to the penalty under the provisions of these Regulations, or

(b) the imposition of, or the amount of, the penalty is unreasonable as a matter of law, having regard to all facts and circumstances of the case.

(4) In disposing of an appeal the Guernsey Tax Tribunal may confirm, annul or reduce the penalty.

(5) Subject to section 80 of the Law, the decision of the Guernsey Tax Tribunal is final and conclusive.

(6) This regulation applies to the exclusion of sections 76 and 79 of the Law.

(7) Sections 77, 78, 78A and 80 of the Law apply in relation to an appeal under this regulation as they apply in relation to an appeal under section 76 of the Law.

Criminal penalties for failure to comply with disclosure requirements.

16. Section 201 of the Law ("discretion to prosecute in cases involving fraud, etc.") applies in respect of these Regulations as if in subsections (4)(a) and (5)(b) after the words "or other document" there were inserted "or disclosure".

Criminal penalties for false statements, etc.

17. (1) Section 75M of the Law (duties of confidentiality, liens, and self-incrimination) applies in respect of these Regulations as if in subsection (4)(b)(ii)(A) of that section after the words "section 75L(3)" there was inserted "or section 201(1) by virtue of a contravention of section 201(4)".

(2) Section 201 of the Law ("discretion to prosecute in cases involving fraud, etc.") applies in respect of these Regulations as if references in subsections (4) and (5) to the Director included references to any other person, body or authority, or any competent authority, specified or designated by the Director for the purposes of these Regulations.

Criminal liability of directors, etc.

18. (1) Where an offence under the provisions of these Regulations is committed by a body corporate or other legal person and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) in the case of a body corporate, any director, manager, secretary or other similar officer thereof,
- (b) in the case of a limited partnership with legal personality, any general partner,
- (c) in the case of a limited liability partnership, any

member,

- (d) in the case of a foundation, any foundation official, or
- (e) any person purporting to act in any capacity described in subparagraph (a), (b), (c) or (d),

he as well as the body corporate or other legal person (as the case may be) is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a company or other legal person are managed by its members, paragraph (1) applies to a member in connection with his functions of management as if he were a director.

Criminal proceedings against unincorporated bodies.

19. (1) Where an offence under the provisions of these Regulations is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) in the case of -
 - (i) a partnership, any partner thereof, but subject to the provisions of subparagraph (ii),
 - (ii) a limited partnership without legal personality, any general partner thereof,
- (b) in the case of any other unincorporated body, any director of that body or other officer thereof who is

bound to fulfil any duty of which the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or

- (c) any person purporting to act in any capacity described in subparagraph (a) or (b),

he as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where an offence under the provisions of these Regulations is alleged to have been committed by an unincorporated body, proceedings for the offence shall, without prejudice to paragraph (1), be brought in the name of that body and not in the name of any of its members.

(3) A fine imposed on an unincorporated body on its conviction of an offence under the provisions of these Regulations shall be paid from the funds of that body.

Powers of entry and inspection, etc

Powers to enter premises and inspect documents.

20. (1) The Director may, during normal business hours or at any other reasonable time, if the Director considers necessary to do so for the prescribed purposes -

- (a) enter any business premises, and
- (b) inspect the premises and any business documents

therein.

- (2) The “**prescribed purposes**” are -
 - (a) the purposes of ascertaining whether these Regulations, the CRS or the CRS Regulations are applicable,
 - (b) the purposes of ascertaining compliance with these Regulations, the CRS or the CRS Regulations,
 - (c) otherwise, the purposes of these Regulations, the CRS or the CRS Regulations, or
 - (c) the purposes of the performance of the Director’s functions under these Regulations, the CRS or the CRS Regulations.
- (3) The entry and inspection may only take place if -
 - (a) the occupier of the premises consents,
 - (b) the Director has given the occupier at least 7 days’ written notice of the entry and inspection and when it will take place, or
 - (c) the entry and inspection has been approved by the Bailiff under regulation 21 and the Director complies with regulation 22.

(4) The Director may not inspect -

- (a) any part of the premises used solely as a dwelling,
- (b) items subject to legal professional privilege within the meaning of section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 (but for the purposes of this regulation items held with the intention of furthering a criminal purpose are not items subject to legal professional privilege), or
- (c) a document relating to the conduct of any appeal relating to tax or taxation.

(5) The powers of inspection conferred by this regulation include power to obtain and record information (whether electronically or otherwise) relating to business premises and business documents inspected.

(6) In these Regulations -

"**business documents**" means documents which relate to the carrying on of a business and which -

- (a) are of a class or description required under the Law (or any Ordinance or regulation thereunder) to be kept in respect of the business, or
- (b) contain or may contain information relevant to any of

the prescribed purposes,

"**business premises**" means premises or any parts of premises which the Director has reason to believe are used in connection with the carrying on of a business.

Approval of entry and inspection by Bailiff.

21. (1) The Director shall, where the Director wishes to obtain approval of an entry and inspection for the purposes of regulation 20(3)(c), make a written application accompanied by information on oath to the Bailiff.

(2) The application must specify the reasons for making it and identify the premises, the occupier and the business documents or class or description of business documents to which the application relates.

(3) The application may, with the approval of the Bailiff, and subject to such terms and conditions as he may direct, be made ex parte.

(4) The Bailiff may give approval in writing if he is satisfied that he is reasonably justified in doing so in all the circumstances of the case.

(5) The approval may be given on such terms and conditions (including, without limitation, a term or condition that the Director must or may be accompanied by any person specified, or of a class or description specified, in the approval) and subject to such penalty as the Bailiff thinks just.

(6) In these Regulations the "**Bailiff**" means the Bailiff, Deputy-Bailiff, Judge of the Royal Court, Lieutenant-Bailiff or Juge Délégué and, where the premises in question are in Alderney, includes the Chairman of the Court of

Alderney or, if he is unavailable, a Jurat thereof.

Notice requirement for entry and inspection.

22. The Director must, when entering premises pursuant to the approval of the Bailiff under regulation 21, give notice -

- (a) to the occupier of the premises, if he or she is present,
- (b) if the occupier is not present, to another person who appears to be in charge of the premises, or
- (c) if there is no such person, by leaving the notice in a prominent place in the premises.

Power to require reasonable assistance.

23. (1) This regulation applies if the Director has entered business premises pursuant to the approval of the Bailiff under regulation 21.

(2) The Director may require a person described in paragraph (3) who is present on the premises to give the Director all such assistance as may reasonably be requested to facilitate the execution of the search for, accessing, inspection or removal of any document and otherwise to enable the performance of the Director's functions for the purposes of the entry and inspection (an "**assistance requirement**").

(3) The persons referred to in paragraph (2) are -

- (a) the person whose tax position, business or activities are being examined (the "**investigated person**"),

- (b) a tax adviser of the investigated person,
- (c) anyone employed or engaged by the investigated person or the tax adviser to perform work at the business premises, and
- (d) any other person on the premises appearing to have charge of, or to be otherwise concerned in the operation of, the management, recording or storage of any document which is on or accessible from the premises, whether or not stored or recorded in electronic form, or any system, arrangement or technology in or by virtue of which any such document is stored, recorded or accessed.

(4) When making an assistance requirement of a person, the Director must inform the person in writing that a contravention of the requirement is an offence under these Regulations.

Other provisions in respect of documents.

24. (1) The Director may take copies of or extracts from any business document.

(2) The Director may -

- (a) at any reasonable time, remove any business document and retain it for a reasonable period, or

- (b) take any steps which appear to be necessary for preserving any business document or preventing interference with it.

(3) The Director may require any person who was required to produce a business document –

- (a) to attend at such time and place as may be required and to give an explanation of and to answer questions relating to it or anything in it, and
- (b) if the document is not produced, to state, to the best of his knowledge and belief, where it is.

(4) If a business document is stored or recorded in electronic form, the Director may require the document to be produced in a form -

- (a) in which it can be taken away, and
- (b) in which it is visible and legible or from which it can readily be produced in a visible and legible form.

(5) The Director must, if the owner of any business document removed and retained under this regulation so requests at any time, give the owner -

- (a) a receipt for the document, and
- (b) if the owner reasonably requires the document for any immediate purpose, and the Director does not wish to

return it, a copy of the document, which must be given free of charge.

(6) If a business document is lost or damaged before it is returned to the owner, the Director must compensate the owner for any costs reasonably incurred in the document's replacement or repair.

Offences of obstruction, etc.

25. A person who, without reasonable excuse, contravenes an assistance requirement made of him under regulation 23 or otherwise obstructs or fails to comply with any requirement imposed by a person exercising or purporting to exercise any power conferred by or under these Regulations is guilty of an offence and liable on summary conviction to a fine not exceeding twice level 5 on the uniform scale for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989.

*Guidance notes
and application of the Law*

Guidance notes.

26. (1) The Director may issue guidance notes for the purpose of providing practical guidance in respect of any provision of, and in connection with the administration of, these Regulations.

(2) Guidance notes may, without limitation, make provision in respect of the determination of the expression "reasonable to conclude" for the purposes of regulations 2 and 3.

(3) Guidance notes -

- (a) shall come into force on such date as the Director may appoint,
- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient,
- (c) may be revoked or revised by the Director (and the provisions of this paragraph apply to any such revocation or revision), and
- (d) shall be published in such manner as the Director considers appropriate.

(4) Guidance notes must be taken into account by the Director in exercising his or her functions under these Regulations, the CRS Regulations and the Law.

(5) In any legal proceedings, criminal or otherwise, whether or not under the Law, the CRS Regulations or these Regulations (including, for the avoidance of doubt, proceedings before the appropriate body under section 76 of the Law), guidance notes are admissible in evidence, and if any provision of guidance notes appears to the court or other tribunal before which the proceedings are being conducted to be relevant to any question arising in the proceedings, then -

- (a) the provision may be taken into account in determining that question, and

- (b) the provision may be relied on as tending to support or, as the case may be, defeat any representation or submission of any party to the proceedings.

(6) The powers conferred by paragraph (1) are without prejudice to any power conferred by the Law to issue statements of practice.

(7) Section 203A(2) of the Law applies in respect of guidance notes as it applies in respect of Regulations.

Application of provisions as to service of notice.

27. Without prejudice to the provisions of regulation 11, section 68(1AAA) of the Law (giving of notice from the Director) applies in relation to a notice of the Director under regulation 11 or otherwise given by the Director for the purposes of these Regulations, as it applies in relation to a notice of the Director requiring a person to deliver a return as to income, and references (however expressed) in these Regulations to the giving or receipt of such a notice shall be construed accordingly.

Application of duty to submit in electronic form and by electronic means.

28. Section 68AA of the Law ("returns to be submitted in electronic form and by electronic means") applies in respect of these Regulations as if -

- (a) references in subsections (1) and (2) of that section to section 68 included references to these Regulations,
- (b) references in section 68AA(1) to a return as to a person's income included references to a disclosure, or any document or information, required or authorised

to be made or provided by, under or for the purposes of these Regulations, and

- (c) paragraph (a) of subsection (1) of that section and, in paragraph (b) thereof, the words "in the case of a company" were omitted.

Application of information powers.

29. (1) Section 75A of the Law ("power to call for documents, etc, from taxpayer") applies in respect of these Regulations as if there were added at the end of subsection (1)(a)(iii) the words "and/or compliance with the Income Tax (Approved International Agreements) (Implementation) (Mandatory Disclosure Rules) Regulations, 2020", and sections -

- (a) 75D ("sections 75A and 75B: supplementary"),
- (b) 75E ("court orders for delivery of documents, etc, from taxpayer"),
- (c) 75G ("court orders under sections 75E and 75F: supplementary"),
- (d) 75H ("court orders under sections 75E and 75F: notice and procedure"),
- (e) 75I ("entry with warrant to obtain material"),
- (f) 75J ("procedure where documents etc, are removed"),

- (g) 75K ("right of appeal to Royal Court"),
- (h) 75L ("offences in relation to falsification, etc, of documents"), and
- (i) 75N,

of the Law, apply accordingly.

(2) Section 75B of the Law ("power to call for documents, etc, relating to taxpayer") applies in respect of these Regulations as if there were added at the end of subsection (2)(c) the words "and/or compliance with the Income Tax (Approved International Agreements) (Implementation) (Mandatory Disclosure Rules) Regulations, 2020", and sections -

- (a) 75CB ("notices under section 75B: ancillary provision"),
- (b) 75D ("sections 75A and 75B: supplementary"),
- (c) 75F ("court orders for delivery of documents, etc, relating to taxpayer"),
- (d) 75G ("court orders under sections 75E and 75F: supplementary"),
- (e) 75H ("court orders under sections 75E and 75F: notice and procedure"),
- (f) 75I ("entry with warrant to obtain material"),

- (g) 75J ("procedure where documents etc, are removed"),
- (h) 75K ("right of appeal to Royal Court"),
- (i) 75L ("offences in relation to falsification, etc, of documents"),
- (j) 75M(3), and
- (k) 75N,

of the Law, apply accordingly.

(3) Section 75C of the Law ("notices under section 75A and 75B: requests for information") also applies in respect of these Regulations as if -

- (a) references in that section to an approved international agreement included references to an international tax measure, and
- (b) references to a competent authority of a requesting state included references to a competent authority designated by the Director for the purposes of these Regulations.

General modification of provisions of Law.

30. For the purposes of these Regulations, and without prejudice to any other provision of these Regulations -

- (a) any reference in the Law to the Law (whether by use of the expression "**this Law**" or otherwise) or any provision thereof has effect as if the reference were to the Law or that provision thereof as modified in its application by these Regulations, and
- (b) the provisions of the Law shall be construed and shall have effect subject to those modifications.

Supplementary

Interpretation.

31. (1) In these Regulations, unless the contrary intention appears -

"**arrangement**" includes an agreement, scheme, plan or understanding, whether or not legally enforceable, and includes all the steps and transactions that bring it into effect,

"**assistance requirement**" : see regulation 23(2),

"**Bailiff**" : see regulation 21(6),

"**basic information**" on a legal person includes, at a minimum, information about the legal ownership and control structure of the legal person, including, without limitation, information in respect of its status and powers, its shareholders or members and its directors,

“beneficial ownership” and **“beneficial owner”** are to be construed in a manner consistent with the latest Financial Action Task Force Recommendations and the latter expression includes any natural person who exercises control over a legal person or legal arrangement and, in the case of -

- (a) a trust, means any settlor, trustee, protector (if any), beneficiary or class of beneficiaries and any other natural person exercising ultimate effective control over the trust, and
- (b) a legal arrangement other than a trust, means persons in equivalent or similar positions to those in control of a trust,

“Bilateral Competent Authority Agreement” means a bilateral agreement (however named) on Automatic Exchange regarding CRS Avoidance Arrangements and Opaque Offshore Structures made -

- (a) between the competent authorities of -
 - (i) the States of Guernsey, and
 - (ii) the government of the United Kingdom, the Bailiwick of Jersey, the Isle of Man, a British Overseas Territory or any other jurisdiction designated by the Director for the purposes of these Regulations,
- (b) under the authority of -

- (i) the Convention on Mutual Administrative Assistance in Tax Matters, or
- (ii) a Double Taxation Agreement or Tax Information Exchange Agreement (being in either case an approved international agreement) made between the States of Guernsey and the government concerned,

"body corporate" means a body corporate, of whatever description, incorporated with or without limited liability in any part of the world,

"business document" : see regulation 20(6),

"business premises" : see regulation 20(6),

"client", in respect of an intermediary, means a person -

- (a) who requests the intermediary to make, or on whose behalf or for whose benefit the intermediary makes, a CRS avoidance arrangement or opaque offshore structure available for implementation, or
- (b) who requests the intermediary to provide, or on whose behalf or for whose benefit the intermediary provides, relevant services in respect of a CRS avoidance arrangement or opaque offshore structure,

"**competent authority**" means a person, body or authority designated as a competent authority by the Director for the purposes of these Regulations,

"**Convention on Mutual Administrative Assistance in Tax Matters**" means the Joint Council of Europe and OECD Convention on Mutual Administrative Assistance in Tax Matters (which entered into force on the 25th January, 1988) as amended by the Amending Protocol (which entered into force on the 27th May, 2010), which was extended to Guernsey by the United Kingdom on the 17th April 2014 (and which entered into force in respect of Guernsey on the 1st August, 2014),

"**CRS**" means the Standard for Automatic Exchange of Financial Account Information in Tax Matters approved by the Council of the OECD and published by the OECD on the 15th July, 2014, also known as the Common Reporting Standard, implemented in Guernsey by the CRS Regulations,

"**CRS avoidance arrangement**" : see regulation 2,

"**CRS Regulations**" means the Income Tax (Approved International Agreements) (Implementation) (Common Reporting Standard) Regulations, 2015^c (but see regulation 10(5)),

"**Director**" means the Director of the Revenue Service or such other person, body or authority as the Director may by notice specify for the purposes of these Regulations,

^c Guernsey Statutory Instrument 2015 No. 97.

“Financial Action Task Force Recommendations” means the Financial Action Task Force Recommendations on International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation, adopted on the 15th February, 2012 and published on the Financial Action Task Force website, and as from time to time revised, updated or replaced (with or without modification),

“institutional investor” means a legal person or legal arrangement -

- (a) which is regulated in Guernsey or another jurisdiction as a bank (including a licensed institution within the meaning of the Banking Supervision (Bailiwick of Guernsey) Law, 1994, a depositary or a custodial institution), insurance company, collective investment vehicle or pension fund,
- (b) the shares or interests of which are regularly traded on an established securities market,
- (c) which is a government entity, central bank or international or supranational organisation, or
- (c) which is wholly-owned by one or more of the foregoing,

“intermediary” means -

- (a) a person responsible for the design or marketing of a CRS avoidance arrangement or opaque offshore structure (a “**promoter**”), and
- (b) a person who provides relevant services in respect of a CRS avoidance arrangement or opaque offshore structure in circumstances where the person providing the services could reasonably be expected to know that the arrangement or structure is a CRS avoidance arrangement or an opaque offshore structure (a “**service provider**”); and for the purposes of this definition the question of whether a service provider could “reasonably be expected to know” shall be determined by reference to the service provider’s actual knowledge based on readily available information and the degree of expertise and understanding required to provide the relevant services,

“**the Law**” means the Income Tax (Guernsey) Law, 1975,

“**legal arrangement**” means an express trust, partnership or other similar legal arrangement wherever established, including without limitation a fiducie, treuhand and fideicomiso,

“**legal person**” means any entity including a company, body corporate, foundation, anstalt, partnership, association and other relevantly similar entity wherever established, but does not include a natural person,

“legal professional privilege”, and communications or items subject thereto : see section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003^d,

“Mandatory Disclosure Rules” : see regulation 1,

“MCAA” means the Multilateral Competent Authority Agreement on the Automatic Exchange regarding CRS Avoidance Arrangements and Opaque Offshore Structures,

“OECD” means the Organisation for Economic Co-operation and Development,

“opaque offshore structure” : see regulation 3,

“partner jurisdiction” means a jurisdiction -

- (a) which has introduced rules that are substantially similar to those set out in these Regulations, and
- (b) which, in respect of the particular CRS avoidance arrangement or opaque offshore structure in question, has international exchange of information instruments in effect with all jurisdictions of residence of the reportable taxpayer,

“passive offshore vehicle” : see regulation 3,

^d Ordres en Conseil Vol. XLIII, p. 617.

“prescribed purposes” : see regulation 20(2),

“promoter” : see paragraph (a) of the definition of “intermediary”,

“Relevant Competent Authority” : see regulation 12(2),

“relevant services” means, in respect of a CRS avoidance arrangement or opaque offshore structure, the provision of assistance or advice in respect of the design, marketing, implementation or organisation of that arrangement or structure,

“reportable taxpayer” means, in respect of a CRS avoidance arrangement, any actual or potential user of that arrangement and, in respect of an opaque offshore structure, a natural person whose identity as a beneficial owner cannot be accurately determined due to the opaque offshore structure,

“structure” means an arrangement concerning the direct or indirect ownership or control of a person or asset.

(2) Other expressions, to the extent that they are defined therein, have the meanings respectively given in the CRS or CRS Regulations; and all other expressions not defined in the CRS or CRS Regulations or in this regulation have the same respective meanings as in the Law.

Citation.

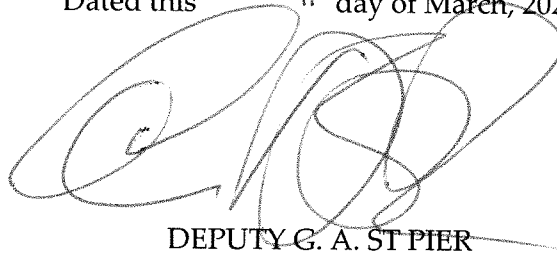
32. These Regulations may be cited as the Income Tax (Approved International Agreements) (Implementation) (Mandatory Disclosure Rules)

Regulations, 2020.

Commencement.

33. These Regulations shall come into force on the day appointed by the Policy & Resources Committee by regulations under sections 75CC(1A) and 203A of the Law; and different days may be appointed for different provisions and different purposes.

Dated this 11th day of March, 2020

A large, stylized handwritten signature in black ink, appearing to be 'G. A. St Pier', is written over the printed name.

DEPUTY G. A. ST PIER

President of the Policy & Resources Committee

For and on behalf of the Committee

EXPLANATORY NOTE

(This note is not part of the regulations)

These Regulations implement and enable the administration and enforcement in domestic law of the OECD (2018) Model Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures (the “Mandatory Disclosure Rules”), approved by the OECD Committee of Fiscal Affairs on the 8th March, 2018.

The Rules supplement the Common Reporting Standard on the Automatic Exchange

of Financial Account Information in Tax Matters ("the CRS") approved by the Council of the OECD and published by the OECD on the 15th July, 2014

The CRS was implemented in Guernsey by the Income Tax (Approved International Agreements) (Implementation) (Common Reporting Standard) Regulations, 2015 following the signing on behalf of the States of Guernsey at Berlin on the 29th October, 2014 of the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information.

The Mandatory Disclosure Rules and these Regulations in particular focus on the use of CRS avoidance arrangements and opaque offshore structures as a means of avoiding the reporting obligations of the CRS by requiring intermediaries in respect of such arrangements or structures to disclose them to the Director if they make the arrangement or structure available for implementation, or provides relevant services in respect of the arrangement or structure, through an office or branch located in Guernsey; or are resident or have their place of management in Guernsey; or if they are incorporated in, or established under the laws of, Guernsey.