



Jersey

**TAXATION (IMPLEMENTATION)
(INTERNATIONAL TAX COMPLIANCE)
(UNITED STATES OF AMERICA) (JERSEY)
REGULATIONS 2014**

Official Consolidated Version

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TAXATION (IMPLEMENTATION) (INTERNATIONAL TAX COMPLIANCE) (UNITED STATES OF AMERICA) (JERSEY) REGULATIONS 2014

THE STATES, in pursuance of Article 2 of the [Taxation \(Implementation\) \(Jersey\) Law 2004](#), and following the decision of the States, taken on the day these Regulations are made, to adopt P.68 of 2014, have made the following Regulations –

Commencement [[see endnotes](#)]

1 Interpretation and application

(1) In these Regulations, unless the context otherwise requires –

“Agreement” means the agreement between the Government of Jersey and the Government of the United States of America to improve international tax compliance and to implement FATCA signed on 13th December 2013, as that agreement has effect from time to time;

“Annex” means an Annex to the Agreement;

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

“business document” means any document –

(a) that relates to the carrying on of a business, trade, profession or vocation by any person; and

(b) that forms part of any record under any enactment;

“business premises” means premises used in connection with the carrying on of a business, trade, profession or vocation;

“Commission” means a Commission of Appeal constituted under Regulation 8H(3);

“Comptroller” means the Comptroller of Revenue;

“Minister” means the Minister for External Relations and Financial Services;

“U.S. Treasury regulations” means the regulations under chapter 4 of Subtitle A (sections 1471 to 1474) of the Internal Revenue Code of 1986 of the United States 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, such regulations being commonly known as the Foreign Account Tax Compliance Act.¹

- (2) The Schedule sets out words and expressions used in these Regulations which are defined in the Agreement.
- (3) 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 reporting Jersey financial institution may use as an alternative a definition in –
 - (a) the U.S. 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 on 13th February 2014,in so far as such use would not frustrate the purposes of the Agreement.
- (4) In determining whether or not use of a definition referred to in paragraph (3) would frustrate the purposes of the Agreement, a reporting Jersey financial institution shall take account of any guidance issued or approved by the Minister.
- (5) To the extent a specific provision of the Annexes is not referred to in these Regulations, these Regulations shall be applied having regard to the relevant provisions of the Annexes.
- (6) Where a financial account is held jointly by 2 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 as if the holder were entitled to the whole of the balance of value of the account.

2 Elections to treat accounts as U.S reportable accounts

- (1) Subject to paragraph (3), the following accounts maintained by a reporting Jersey financial institution are not U.S reportable accounts for a calendar year unless an election by the reporting Jersey financial institution is in force for that year to treat the accounts as being U.S reportable accounts –
 - (a) pre-existing individual accounts described in paragraph II.A(1), (2), (3) or (4) of Annex I;
 - (b) new individual accounts described as not requiring to be reviewed, identified or reported in paragraph III.A of Annex I;
 - (c) pre-existing entity accounts described as not requiring to be reviewed, identified or reported in paragraph IV.A of Annex I;
 - (d) new entity accounts described as not requiring to be reviewed, identified or reported in paragraph V.A of Annex I subject to the condition stated in that paragraph.
- (2) In determining whether or not an account meets any of the descriptions in paragraph (1), the institution must apply the account balance aggregation and currency translation rules described in paragraph VI.C of Annex I.
- (3) Notwithstanding an election under paragraph (1) in respect of an account described in sub-paragraph (a) of that paragraph, an account shall be treated as a U.S. reportable account in the circumstances described in paragraph II.E.2 of Annex I.
- (4) An election under paragraph (1) may be made –
 - (a) in relation to all accounts of a category described in paragraph (1)(a), (b), (c) or (d);
 - (b) separately in relation to individual accounts; or
 - (c) in relation to a clearly identified group of accounts.

- (5) An election under paragraph (1) –
 - (a) is to be made by being given to the Comptroller;
 - (b) must be in such form as may be determined by the Comptroller;
 - (c) must be made on or before the reporting date under Regulation 6(4).

3 Jersey representative of a non-resident reporting Jersey financial institution

Where a reporting Jersey financial institution is not resident or is not regarded as being resident in Jersey for the purposes of the [Income Tax \(Jersey\) Law 1961](#), any permanent establishment of that institution in Jersey shall, to the extent that it is not itself a reporting Jersey financial institution be deemed to be a reporting Jersey financial institution for the purposes of these Regulations.

4 Due diligence procedures for identifying, reviewing and reporting U.S reportable accounts

- (1) A reporting Jersey financial institution must establish and maintain arrangements which –
 - (a) meet the applicable due diligence requirements set out in paragraph (2) concerning the review, identification and reporting of all the U.S reportable accounts which it maintains; and
 - (b) secure that the evidence used in accordance with this Regulation or, if applicable, Regulation 5, or a record of the steps taken in accordance with this Regulation or if applicable, Regulation 5, is kept for a period of 6 years beginning with the end of the year in which the requirements applied to the U.S. reportable accounts.
- (2) The applicable due diligence requirements are –
 - (a) in relation to –
 - (i) pre-existing individual accounts referred to in Regulation 2(1)(a) in respect of which there is an election under that Regulation, and
 - (ii) lower value accounts,
the requirements set out in paragraphs II.B and II.C of Annex I;
 - (b) in relation to high value accounts, the requirements set out in paragraphs II.D and II.E of Annex I;
 - (c) in relation to –
 - (i) new individual accounts referred to in Regulation 2(1)(b) in respect of which there is an election under that Regulation, and
 - (ii) all other new individual accounts,
the requirements set out in paragraph III.B of Annex I;
 - (d) in relation to –
 - (i) pre-existing entity accounts referred to in Regulation 2(1)(c) in respect of which there is an election under that Regulation, and
 - (ii) pre-existing entity accounts described in paragraphs IV.B and IV.C of Annex I,
the requirements set out in paragraphs IV.D and IV.E of Annex I;

- (e) in relation to –
 - (i) new entity accounts referred to in Regulation 2(1)(d) in respect of which there is an election under that Regulation, and
 - (ii) all other new entity accounts,
the requirements set out in paragraph V.B of Annex I.
- (3) The due diligence requirements referred to in this Regulation must be applied with reference to paragraphs I.B and VI.A to E of Annex I.

5 Modification of due diligence requirements

- (1) As an alternative to the due diligence requirements described in Regulation 4, a reporting Jersey financial institution may, in order to identify whether an account is a U.S. reportable account in respect of a calendar year, apply the procedures in the U.S. Treasury Regulations if an election has been made by the reporting Jersey financial institution to apply such procedures in respect of such an account for that calendar year.
- (2) An election under paragraph (1) may be made –
 - (a) in relation to all accounts; or
 - (b) in relation to a clearly identified group of accounts.
- (3) Regardless of whether or not an election has been made under paragraph (1), a reporting Jersey financial institution may, subject to Regulation 8(4), rely on procedures performed by third parties to the extent provided in the U.S. Treasury regulations in order to comply with its requirements under these Regulations.

6 Content and timing of returns

- (1) A reporting Jersey financial institution must, in respect of 2014 and every following calendar year, prepare a return, in such form and manner as the Comptroller shall determine, setting out the information specified in article 2(2)(a) of the Agreement, subject to articles 3(3)(a) and 4 of the Agreement, in relation to each U.S reportable account that is maintained by the institution at any time during the calendar year in question.
- (2) In respect of 2017 and subsequent years, a reporting Jersey financial institution must report the information described in Article 6(4)(b) of the Agreement.
- (3) Where a reporting Jersey financial institution maintains no U.S reportable accounts no return is required.
- (4) A reporting Jersey financial institution must send a return under this Regulation to the Comptroller by 30th June of the year following the calendar year to which the return relates (“the reporting date”).

6A General provisions relating to compliance²

- (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.

7 Penalty for late delivery of return under Regulation 6

- (1) A reporting Jersey financial institution which fails to deliver to the Comptroller a return under Regulation 6 by the reporting date shall be liable to pay to the Comptroller a penalty of £250.
- (2) The Comptroller shall issue a written notice to a person of the person's liability under paragraph (1).
- (3) A penalty payable under this Regulation shall be recoverable as if it were a civil debt due to the Comptroller.
- (4) This Regulation applies in respect of a return or information relating to a U.S. reportable account maintained by a reporting Jersey financial institution during 2014 or 2015 but only to the extent that such an account is maintained during either or both of those years.³

8 Offences⁴

- (1) A person who knowingly fails to comply with any requirement of these Regulations shall be guilty of an offence and liable to a fine.
- (2) A person who provides information or produces any document when required by or for the purposes of these Regulations which the person believes to be false or misleading in a material particular shall be guilty of an offence and liable to imprisonment of a term of 2 years and to a fine.
- (3) Paragraphs (1) and (2) apply to any requirement which relates to a U.S. reportable account maintained by a reporting Jersey financial institution during 2014 or 2015 but only to the extent that such an account is maintained during either or both of these years.⁵
- (4) ⁶

8A Application of Regulations 8B to 8M⁷

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

8B Penalty for failure to comply with Regulations⁸

A person is liable to a penalty of £300 if the person fails to comply with any obligation under these Regulations.

8C Daily default penalty⁹

If –

- (a) a penalty under Regulation 8B is imposed; and
 - (b) the failure in question continues after the person has been notified of the penalty,
- the person is liable to a further penalty, for each subsequent day on which the failure continues, of an amount not exceeding £60 for each day.

8D Penalties for inaccurate information¹⁰

- (1) A person is liable to a penalty not exceeding £3,000 if –
 - (a) in complying with an obligation under Regulation 6 the person provides inaccurate information; and
 - (b) condition A, B or C is met.
- (2) Condition A is that the inaccuracy is –
 - (a) due to a failure to comply with the due diligence requirements in Regulation 4 (as modified by Regulation 5 where that Regulation applies); or
 - (b) deliberate on the part of the person.
- (3) Condition B is that the person knows of the inaccuracy at the time the information is provided but does not inform the Comptroller at that time.
- (4) Condition C is that the person –
 - (a) discovers the inaccuracy after the information is provided to the Comptroller; and
 - (b) fails to take reasonable steps to inform the Comptroller.

8E Matters to be disregarded in relation to liability to penalties¹¹

- (1) Liability to a penalty under Regulation 8B or 8C does not arise if the person satisfies the Comptroller or, (on an appeal notified by the Comptroller to the Commission) the Commission, that there is a reasonable excuse for the failure.
- (2) For the purposes of this Regulation, neither of the following is a reasonable excuse –
 - (a) that there is an insufficiency of funds to do something;
 - (b) that a person relies upon another person to do something.
- (3) If a person had a reasonable excuse for a failure but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse has ceased.

8F Imposition of penalties¹²

- (1) If a person becomes liable to a penalty under any of Regulations 8B to 8D the Comptroller may impose the penalty.
- (2) If the Comptroller imposes a penalty, the Comptroller must notify the person.
- (3) A penalty under Regulation 8B or 8C may only be imposed within the period of 12 months beginning with the date on which the person became liable to the penalty.
- (4) A penalty under Regulation 8D may only be imposed –
 - (a) within the period of 12 months beginning with the date on which the inaccuracy first came to the attention of the Comptroller; and
 - (b) within the period of 6 years beginning with the date on which the person became liable to the penalty.

8G Right of appeal against penalty¹³

- (1) A person upon whom a penalty is imposed may appeal against it on the ground that liability to a penalty under Regulations 8B to 8D does not arise.
- (2) A person upon whom a penalty is imposed may appeal against its amount.

8H Commission of Appeal and procedure on appeal against penalty¹⁴

- (1) Notice of an appeal under Regulation 8G must be given to the Comptroller –
 - (a) in writing; and
 - (b) before the end of the period of 30 days beginning with the date on which notification to the person under Regulation 8F(2) was given.
- (2) The notice under paragraph (1) must state the ground of appeal.
- (3) A Commission of Appeal under Article 5 of the [Revenue Administration \(Jersey\) Law 2019](#) shall be constituted for the purpose of hearing –
 - (a) an appeal under Regulation 8G; or
 - (b) an application under Regulation 8I(2).¹⁵
- (4) The Comptroller shall notify the Commission of an appeal under Regulation 8G.
- (5) On an appeal under Regulation 8G(1) that is notified to the Commission by the Comptroller, the Commission may confirm or cancel the penalty.
- (6) On an appeal under Regulation 8G(2) that is notified to the Commission by the Comptroller, the Commission may –
 - (a) confirm the penalty; or
 - (b) substitute another penalty that the Comptroller has power to impose under these Regulations.
- (7) Subject to this Regulation and Regulation 8J, the provisions of Part 6 of the [Income Tax \(Jersey\) Law 1961](#) shall have effect in relation to appeals under Regulation 8G as they have effect in relation to an appeal against an assessment to income tax.

8I Increased daily default penalty¹⁶

- (1) This Regulation applies if –
 - (a) a penalty under Regulation 8C is imposed under Regulation 8F;
 - (b) the failure in respect of which that penalty is imposed continues for more than 30 days beginning with the date on which notification of that penalty is given; and
 - (c) the person has been told that an application may be made under this Regulation for an increased daily penalty to be imposed.
- (2) If this Regulation applies, the Comptroller may make an application to the Commission for an increased daily penalty to be imposed on the person.
- (3) If the Commission decides that an increased daily penalty should be imposed then for each applicable day on which the failure continues –
 - (a) the person is not liable to a penalty under Regulation 8C in respect of the failure; and
 - (b) the person is liable instead to a penalty under this Regulation of an amount determined by the Commission.

- (4) The Commission must not determine an amount exceeding £1,000 for each applicable day.
- (5) If a person becomes liable to a penalty under this Regulation, the Comptroller must notify the person.
- (6) The notification must specify the day from which the increased penalty is to apply.
- (7) That day and any subsequent day is an ‘applicable day’ for the purposes of this Regulation.

8J Enforcement of penalties¹⁷

- (1) A penalty under these Regulations must be paid before the end of the period of 30 days beginning with the date mentioned in paragraph (2).
- (2) That date is the later of –
 - (a) the date on which the penalty is imposed under Regulation 8F or notification under Regulation 8I(5) is given in respect of the penalty; or
 - (b) if notice of appeal under Regulation 8G is given, the date on which the appeal is finally determined or withdrawn.
- (3) A penalty under these Regulations may be enforced as if it were income tax charged in an assessment and due and payable.

8K Anti-avoidance¹⁸

If –

- (a) a person enters into any arrangements; and
- (b) the main purpose, or one of the main purposes, of the person in entering into those arrangements is to avoid any requirement of these Regulations,

these Regulations shall have effect as if the arrangements had not been entered into.

8L Power to enter business premises and examine business documents¹⁹

- (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.

8M Obstructing an authorized person²⁰

- (1) A person shall be guilty of an offence if, without reasonable excuse, the person –

- (a) obstructs an authorized person in the exercise of the authorized person's powers under Regulation 8L; or
 - (b) fails to provide such reasonable assistance as an authorized person may require when the authorized person is exercising his or her powers under Regulation 8L.
- (2) A person who intentionally alters, suppresses or destroys any business document that has been specified in a notice under Regulation 8L(4) shall be guilty of an offence.
- (3) A person who is guilty of an offence under paragraph (1) shall be liable to imprisonment for a term of 6 months and to a fine.
- (4) A person who is guilty of an offence under paragraph (2) shall be liable to imprisonment for a term of 2 years and to a fine.

9 Citation

These Regulations may be cited as the Taxation (Implementation) (International Tax Compliance) (United States of America) (Jersey) Regulations 2014.

SCHEDULE

(Regulation 1(2))

WORDS AND EXPRESSIONS DEFINED IN THE AGREEMENT

Word or Expression	Reference in Agreement
entity	Article 1(1)(gg)
financial account	Article 1(1)(s)
financial institution	Article 1(1)(g)
high value accounts	Annex I, paragraph II.D
lower value accounts	Annex I, paragraph II.B
new entity account	Annex I, paragraph V
new individual account	Annex I, paragraph III
pre-existing account	Annex I, paragraph VI.B(5)
pre-existing individual account	Annex I, paragraph II
reporting Jersey financial institution	Article 1(1)(o)
U.S. reportable account	Article 1(1)(cc)

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement
Taxation (Implementation) (International Tax Compliance) (United States of America) (Jersey) Regulations 2014	R&O.69/2014	18 June 2014
Taxation (Implementation) (International Tax Compliance) (United States of America) (Amendment) (Jersey) Regulations 2016	R&O.23/2016	1 March 2016
Revenue Administration (Jersey) Law 2019	L.13/2019	1 January 2020 (R&O.136/2019)
States of Jersey (Minister for Children and Education, Minister for Housing and Communities and Minister for External Relations and Financial Services) (Jersey) Order 2021	R&O.29/2021	2 March 2021

Table of Endnote References

¹ Regulation 1(1)	amended by R&O.23/2016, L.13/2019, R&O.29/2021
² Regulation 6A	inserted by R&O.23/2016
³ Regulation 7(4)	added by R&O.23/2016
⁴ Regulation 8	heading amended by R&O.23/2016
⁵ Regulation 8(3)	substituted by R&O.23/2016
⁶ Regulation 8(4)	deleted by R&O.23/2016
⁷ Regulation 8A	inserted by R&O.23/2016
⁸ Regulation 8B	inserted by R&O.23/2016
⁹ Regulation 8C	inserted by R&O.23/2016
¹⁰ Regulation 8D	inserted by R&O.23/2016
¹¹ Regulation 8E	inserted by R&O.23/2016
¹² Regulation 8F	inserted by R&O.23/2016
¹³ Regulation 8G	inserted by R&O.23/2016
¹⁴ Regulation 8H	inserted by R&O.23/2016
¹⁵ Regulation 8H(3)	amended by L.13/2019
¹⁶ Regulation 8I	inserted by R&O.23/2016
¹⁷ Regulation 8J	inserted by R&O.23/2016
¹⁸ Regulation 8K	inserted by R&O.23/2016
¹⁹ Regulation 8L	inserted by R&O.23/2016
²⁰ Regulation 8M	inserted by R&O.23/2016