



Jersey

**TAXATION (IMPLEMENTATION)
(INTERNATIONAL TAX COMPLIANCE)
(MANDATORY DISCLOSURE RULES FOR CRS
AVOIDANCE ARRANGEMENTS AND OPAQUE
OFFSHORE STRUCTURES) (JERSEY)
REGULATIONS 2020**

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Made

9th September 2020

Coming into force

in accordance with Regulation 20

THE STATES make these Regulations under Article 2 of the Taxation (Implementation) (Jersey) Law 2004¹, and following the decision of the States, taken on the day these Regulations are made, to adopt P.129/2019 –

PART 1

INTERPRETATION PROVISIONS

1 General definitions

- (1) In these Regulations –
- “1961 Law” means the Income Tax (Jersey) Law 1961²;
 - “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;
 - “authorised person” means the Comptroller or any person authorised by the Comptroller to perform the functions under Regulation 18;
 - “basic information” on a legal person includes, at a minimum, information about the legal ownership and control structure of the legal person such as the status and powers of the legal person, its shareholders or members, and its directors;
 - “beneficial ownership” or “beneficial owner” is to be construed in a manner consistent with the latest Financial Action Task Force Recommendations and 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;

(b) a legal arrangement other than a trust, means persons in equivalent or similar positions to those in control of a trust;

“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;

“client”, in respect of an intermediary, means any person –

(a) who requests an 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 an 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;

“client record” means any document kept in respect of a client which records or could reasonably be expected to record any information disclosable under Regulation 8;

“Commission” means a Commission of Appeal constituted under Regulation 16(4);

“Comptroller” means the Comptroller of Revenue within the meaning of the Revenue Administration (Jersey) Law 2019³;

“CRS avoidance arrangement” is construed in accordance with Regulation 2;

“CRS Regulations” means the Taxation (Implementation) (International Tax Compliance) (Common Reporting Standard) (Jersey) Regulations 2015⁴;

“CRS” means the Common Reporting Standard for the Automatic Exchange of Financial Account Information in Tax Matters as approved by the Council of the Organisation for Economic Co-operation and Development (“OECD”) on 15th July 2014 and published on the OECD’s website;

“Financial Action Task Force Recommendations” means the OECD Financial Action Task Force Recommendations on International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation, adopted on 15th February 2012 and published and updated, from time to time, on the Financial Action Task Force website;

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

(a) that is regulated in Jersey or in another jurisdiction as a bank (including a deposit-taking business regulated under the Banking Business (Jersey) Law 1991⁵), insurance company, collective investment vehicle or pension fund;

- (b) that is a custodial institution regulated in Jersey under the Financial Services (Jersey) Law 1998⁶ or any such similar institution regulated under the laws of another jurisdiction;
- (c) the shares or interests of which are regularly traded on an established securities market;
- (d) that is a government entity, central bank, or international or supranational organisation; or
- (e) that is wholly-owned by one or more of the foregoing;

“legal arrangement” means an express trust, partnership or arrangement established in similar form under another jurisdiction;

“legal person” means any entity including an association, a body corporate, company, foundation, or other relevantly similar entity, but does not include a natural person;

“opaque offshore structure” is construed in accordance with Regulation 3;

“partner jurisdiction” means a jurisdiction –

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

“passive offshore vehicle” is construed in accordance with Regulation 3;

“promoter” is construed in accordance with Regulation 5(1)(a);

“relevant services” means, in respect of a CRS avoidance arrangement or opaque offshore structure, providing 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) The Schedule sets out words and expressions used in these Regulations which are defined in the CRS, and a word or expression used in these Regulations which is defined in the CRS has the meaning given in the CRS.

2 Meaning of “CRS avoidance arrangement”

- (1) A “CRS avoidance arrangement” is any arrangement for which it is reasonable to conclude that it is designed to circumvent or is marketed as, or has the effect of, circumventing the CRS Regulations or exploiting an absence of legislative provisions in relation to the CRS, including through or by –
 - (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 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 –
 - (i) into a financial institution that is not a reporting financial institution, or
 - (ii) into 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 to correctly identify –
 - (i) an account holder or controlling person, or
 - (ii) all the jurisdictions of tax residence of an account holder 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.

3 Meaning of “opaque offshore structure”

- (1) An “opaque offshore structure” means a passive offshore vehicle that is held through an opaque structure.
- (2) Subject to 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 a legal person or legal arrangement –
 - (a) that is an institutional investor or is 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” is a structure for which it is reasonable to conclude that it –
 - (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 acting in a way described in paragraph (5).
- (5) Acting in a way mentioned in paragraph (4) means not allowing the accurate determination of the natural person’s beneficial ownership, or creating the appearance that that person is not a beneficial owner including by or through –
 - (a) the use of nominee shareholders with undisclosed nominators;
 - (b) the use of means of indirect control beyond formal ownership;
 - (c) the use of 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 of such structure;
 - (d) the use of legal persons in a jurisdiction where there is –
 - (i) no requirement to keep, or mechanism to obtain, basic information and beneficial owner information, as defined in the latest Financial Action Task Force Recommendations, on such legal persons that is accurate and up to date,
 - (ii) no obligation on shareholders or members to disclose the names of persons on whose behalf shares are held, or
 - (iii) 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;
 - (e) 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.

4 Power to issue guidance on determining “reasonable to conclude”

- (1) For the purposes of Regulations 2 and 3, the Comptroller may issue guidance on how to determine the expression “reasonable to conclude”.
- (2) Regard must be had to any guidance issued under this Regulation.
- (3) The Comptroller may issue revised guidance, from time to time, and a reference to guidance in this Regulation includes a reference to revised guidance.

- (4) Guidance issued under this Regulation must be published by the Comptroller in a manner which the Comptroller considers will bring it to the attention of those most likely to be affected by it.

5 Meaning of “intermediary”

- (1) An “intermediary” means –
 - (a) any person responsible for the design or marketing of a CRS avoidance arrangement or opaque offshore structure (“promoter”); and
 - (b) any person that provides relevant services in respect of a CRS avoidance arrangement or opaque offshore structure in circumstances where the person providing such services could reasonably be expected to know that the arrangement or structure is a CRS avoidance arrangement or an opaque offshore structure (“service provider”).
- (2) The expression “reasonably be expected to know”, mentioned in paragraph (1)(b), must 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.

PART 2

REQUIREMENT TO DISCLOSE CRS AVOIDANCE ARRANGEMENTS AND OPAQUE OFFSHORE STRUCTURES

6 Obligation on intermediary to disclose

Any person that is an intermediary with respect to a CRS avoidance arrangement or opaque offshore structure, must disclose that arrangement or structure to the Comptroller if that person –

- (a) makes that CRS avoidance arrangement or opaque offshore structure available for implementation, or provides relevant services in respect of that CRS avoidance arrangement or opaque offshore structure, through an office of that intermediary located in Jersey;
- (b) is resident or has their place of management and control in Jersey; or
- (c) is incorporated or established under Jersey law.

7 When information is required to be disclosed

The disclosure required under Regulation 6 must be made not later than 30 days after the intermediary –

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

8 Information required to be disclosed by intermediary

- (1) Subject to Regulation 9, the disclosure required under Regulation 6 must include the following information to the extent that that information is within the knowledge, possession or control of the intermediary –
 - (a) the name, address, jurisdiction and tax identification number of tax residence of the following –
 - (i) the intermediary making the disclosure,
 - (ii) any client of that intermediary in respect of that arrangement or structure (separately identifying any client that 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 that is an intermediary with respect to that arrangement or structure (other than the person making the disclosure);
 - (b) details of that 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 circumvent, 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) the jurisdiction where the CRS avoidance arrangement or opaque offshore structure has been made available for implementation.
- (2) The information that is required to be disclosed under paragraph (1) may be in such form as the Comptroller may prescribe.

9 Exemption from Regulation 8 disclosure requirements

- (1) An intermediary is not subject to the requirement to disclose the information set out in Regulation 8 if that information is in respect of any information or document which a person would, in any court proceedings, be entitled to refuse to disclose or produce on the grounds of legal professional privilege –
 - (a) except if that intermediary is a lawyer, the name and address of his or her client; and
 - (b) only to the extent the disclosure would reveal confidential information held by an advocate, 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).

- (2) An intermediary that is exempted by paragraph (1) from the disclosure requirements set out in Regulation 8, must provide written notice to the client to fulfil the obligations set out in Regulations 6, 7 and 8.

10 No obligation on intermediary to disclose to the extent information has already been disclosed

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

- (a) such information was previously disclosed to the Comptroller;
- (b) the information relates to relevant services supplied, or a CRS avoidance arrangement or opaque offshore structure made available for implementation, through an office maintained by that intermediary in a partner jurisdiction and such information has been disclosed to the tax authority of that partner jurisdiction; or
- (c) the intermediary is required to disclose such information under Regulation 6(c) and such information has been disclosed to the tax authority of a partner jurisdiction where that intermediary is resident or has its place of central management and control.

11 Reportable taxpayer required to disclose in certain circumstances

- (1) Paragraph (2) applies to any reportable taxpayer that is resident in Jersey and is a user of a CRS avoidance arrangement or a beneficial owner under an opaque offshore structure.
- (2) A person to whom this paragraph applies must disclose to the Comptroller any information on the arrangement or structure where such information is not disclosed by an intermediary because that intermediary –
 - (a) is not a person in respect of whom the disclosure requirements under Regulation 6 apply; or
 - (b) is, under Regulation 9, exempted from disclosing the information required under Regulation 8.
- (3) A reportable taxpayer is not required to disclose any information under paragraph (2) to the extent that the reportable taxpayer has received documentation from the intermediary demonstrating that the information has been disclosed by that intermediary to the tax authority of a partner jurisdiction under mandatory disclosure rules that are substantially similar to those set out in these Regulations.
- (4) Disclosure under paragraph (2) must include all the information required to be disclosed under Regulation 8 and be made not later than 30 days after the first step has been taken to implement the CRS avoidance arrangement or opaque offshore structure.

12 Disclosure of arrangements entered into after 29th October 2014 and before the coming into force of these Regulations

- (1) Paragraph (2) applies where a person was a promoter in respect of a CRS avoidance arrangement which was implemented on or after 29th October 2014, but before the coming into force of these Regulations.
- (2) Where this paragraph applies, the promoter must disclose the CRS avoidance arrangement in question, including the information required under Regulation 8, not later than 180 days after the coming into force of these Regulations, irrespective of whether or not that person provides relevant services in respect of that arrangement after the coming into force of these Regulations.
- (3) No disclosure is required under paragraph (2) 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 £600,000.
- (4) Despite the interpretation provisions in Part 1, words or expressions used in this Regulation are to be construed in accordance with the CRS.

PART 3

PENALTIES FOR FAILURE TO COMPLY WITH REGULATIONS, APPEALS, MISCELLANEOUS AND CLOSING PROVISIONS

13 Penalties for failure to provide information or for inaccurate information

- (1) A person is liable to a penalty not exceeding £3,000 if the person fails to –
 - (a) fails to comply with the disclosure required under Regulation 6, 11 or 12;
 - (b) fails to provide the information required under Regulation 8; or
 - (c) fails to comply with the time limits specified in Regulation 7, 11(4) or 12(2).
- (2) A person is liable to a penalty not exceeding £3,000 if –
 - (a) in complying with a requirement under Regulation 6, 8, 11 or 12 the person provides inaccurate information; and
 - (b) condition A or B is met.
- (3) Condition A 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 B 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.
- (5) Liability to a penalty under this Regulation does not arise if the person satisfies the Comptroller or, (on an appeal under Regulation 15), the Commission, that there is a reasonable excuse for the failure.

- (6) 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.

14 Imposition of penalties for failure to provide information or for inaccurate information

- (1) If a person becomes liable to a penalty under Regulation 13 the Comptroller may determine the amount of penalty and impose it on the person.
- (2) If the Comptroller imposes a penalty, the Comptroller must notify the person –
 - (a) of the reasons for imposing the penalty;
 - (b) of the amount of penalty imposed on the person;
 - (c) of the date from which the penalty is due, being not less than 28 days after the issue of the notice; and
 - (d) of the person's right of appeal under Regulation 15.
- (3) A penalty under this Regulation may only be imposed within the period of 6 years beginning with the date on which the person became liable to the penalty and, in the case of a person liable to a penalty under Regulation 13(2), within the period of 12 months beginning with the date on which the inaccuracy first came to the attention of the Comptroller.

15 Right of appeal against penalty

A person upon whom a penalty is imposed by the Comptroller may –

- (a) appeal against it on the ground that liability to that penalty does not arise; and
- (b) appeal against its amount.

16 Commission of Appeal and procedure on appeal against penalty

- (1) Notice of an appeal under Regulation 15 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 was given to the person under Regulation 14(2).
- (2) The notice under paragraph (1) must state the ground of appeal.
- (3) The Comptroller must notify the Commission of an appeal under Regulation 15.
- (4) A Commission of Appeal must be constituted for the purpose of hearing an appeal under Regulation 15 as it would be constituted from the Commissioners of Appeal appointed under Article 10(1) of the 1961 Law for the purpose of hearing appeals under the 1961 Law.
- (5) On an appeal under Regulation 15(a), the Commission may confirm or cancel the penalty.

- (6) On an appeal under Regulation 15(b), the Commission may –
 - (a) confirm the penalty; or
 - (b) substitute another amount for the penalty which the Comptroller would have power to impose.
- (7) Subject to this Regulation and Regulation 17, Part 6 (appeals and relief for mistake) of the 1961 Law has effect in relation to appeals under Regulation 15 as it has effect in relation to an appeal against an assessment to income tax.

17 Enforcement of penalties

- (1) A penalty under these Regulations must be paid before the end of the period of 30 days beginning with the date mentioned in paragraph (2).
- (2) That date is the later of –
 - (a) the date on which the penalty is due under Regulation 14(2)(c); or
 - (b) if notice of appeal under Regulation 15 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.

18 Power to enter business premises and examine business documents or client records

- (1) An authorised person may examine and take copies of any business document or client record 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 authorised person may at any reasonable hour enter business premises for the purpose of exercising the power under paragraph (1).
- (4) An authorised person may by notice require any person to produce any specified business document or client record at the business premises where the business document or client record is located for the purpose of enabling the authorised person to exercise the power under paragraph (1) in relation to that document or record.
- (5) An authorised person must not exercise the powers under this Regulation in respect of any document or record which a person would, in an action in Court, be entitled to refuse to disclose or produce on the grounds of legal professional privilege.

19 Obstructing an authorised person

- (1) A person is guilty of an offence if, without reasonable excuse, the person –
 - (a) obstructs an authorised person in the exercise of the authorised person's powers under Regulation 18; or
 - (b) fails to provide such reasonable assistance as an authorised person may require when the authorised person is exercising his or her powers under Regulation 18.

- (2) A person who intentionally alters, suppresses or destroys any business document that has been specified in a notice under Regulation 18(4) is guilty of an offence.
- (3) A person who is guilty of an offence –
 - (a) under paragraph (1) is liable to imprisonment for a term of 6 months and to a fine;
 - (b) under paragraph (2) is liable to imprisonment for a term of 2 years and to a fine.

20 Citation and commencement

These Regulations may be cited as the Taxation (Implementation) (International Tax Compliance) (Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures) (Jersey) Regulations 2020, and come into force on such day as the Minister for External Relations may by Order appoint.

SCHEDULE

(Regulation 1(2))

WORDS AND EXPRESSIONS DEFINED IN THE CRS

Word or Expression	Reference in CRS
account holder	Section VIII(E)(1)
active NFE	Section VIII(D)(9)
controlling person	Section VIII(D)(6)
entity	Section VIII(E)(3)
financial account	Section VIII(C)(1)
financial asset	Section VIII(A)(7)
financial institution	Section VIII(A)(3)
NFE	Section VIII(D)(7)
reportable account	Section VIII(D)(1)
reporting financial institution	Section VIII(A)(1)

ENDNOTES

Table of Endnote References

<i>1</i>	<i>chapter 17.850</i>
<i>2</i>	<i>chapter 24.750</i>
<i>3</i>	<i>L.13/2019</i>
<i>4</i>	<i>chapter 17.850.35</i>
<i>5</i>	<i>chapter 13.075</i>
<i>6</i>	<i>chapter 13.225</i>