STATUTORY INSTRUMENTS

2016 No. 899

TAXES

The International Tax Compliance (Client Notification) Regulations 2016

Made - - - -	*8th September 2016*
Laid before the House of Commons - - - -	*9th September 2016*
Coming into force - -	*30th September 2016*

These Regulations are made by the Treasury in exercise of the powers conferred by section 222(1), (2), (2A), (2B) and (3) of the Finance Act 2013(**1**).

Citation and commencement

1. These Regulations may be cited as the International Tax Compliance (Client Notification) Regulations 2016 and come into force on 30th September 2016.

Client exchange of tax information notifications

2. The International Tax Compliance Regulations 2015(**2**) are amended as follows.

3. After regulation 12, insert—

"Client notification obligations

Interpretation of regulations 12A to 12F

12A.—(1) In this regulation and regulations 12B to 12F—

"connected person" means a person connected with the specified financial institution, specified relevant person or relevant person in question within the meaning of "connected" given in section 1122 of CTA 2010(**3**);

"officer", in relation to a specified relevant person or a connected person, includes—

(i) where a person is a body corporate, a director, manager or secretary;

(**1**) 2013 c. 29; subsections (2) and (4) were amended, and subsections (2A) and (2B) were inserted, by section 50 of the Finance (No. 2) Act 2015 (c. 33).
(**2**) S.I. 2015/878, amended by S.I. 2015/1839.
(**3**) 2010 c. 4.

(ii) where a person is a partnership, a partner.

"offshore advice or services" has the meaning given in paragraph (2);

"overseas person" means a person who would be a specified financial institution or specified relevant person if they carried on business in the United Kingdom;

"relevant period" means the period of one year ending with 30th September 2016;

"specified client" means an individual who is identified—

(i) as a specified client of a specified financial institution under regulation 12B, or

(ii) as a specified client of a specified relevant person under regulation 12C;

"specified financial institution" has the meaning given in paragraph (3);

"specified relevant person" has the meaning given in paragraph (4).

(2) "Offshore advice or services" means advice or services relating to—

(a) a financial account in a participating jurisdiction or the United States of America;

(b) a source of relevant foreign income, as defined by section 830 of ITTOIA 2005(**4**), arising from a participating jurisdiction or the United States of America;

(c) a source of employment income, as defined by section 7(2) of ITEPA 2003(**5**), arising from a participating jurisdiction or the United States of America;

(d) an asset, as defined by section 21 of TCGA 1992(**6**), which is held or situated in a participating jurisdiction or the United States of America.

(3) "Specified financial institution" means a financial institution under the DAC or the CRS, unless that financial institution is—

(a) a non-reporting financial institution under the DAC or the CRS, or

(b) a financial institution that, if it was an NFE, would be an active NFE under Section VIII(D)(8)(h) of Annex I to the DAC or Section VIII(D)(9)(h) of the CRS (organisations with charitable or other non-profit purposes).

(4) "Specified relevant person" means a relevant person(**7**) who, in the relevant period, has—

(a) provided offshore advice or services in the course of business, or

(b) referred an individual to a connected person outside the United Kingdom for the provision of advice or services relating to the individual's personal tax affairs.

(5) For the purpose of determining whether a person is a specified relevant person—

(a) offshore advice or services must be disregarded if—

(i) they were provided to an individual by the relevant person only in connection with the preparation and delivery on behalf of that individual of returns and accounts, statements and documents required under section 8 of TMA 1970(**8**),

(**4**) 2005 c. 5; section 830(1) and (2) was amended by paragraph 51 of Schedule 7 to the Finance Act 2008 (c. 9). Section 830(4) was amended by paragraphs 156 and 162 of Schedule 7 to the Finance Act 2008 and by S.I. 2009/3001.

(**5**) 2003 c. 1.

(**6**) 1992 c. 12; section 21(1)(b) was amended by paragraph 9 of Schedule 12 to the Finance Act 2006 (c. 25).

(**7**) "Relevant person" is defined in section 222(4) of the Finance Act 2013, as amended by section 50 of the Finance (No. 2) Act 2015.

(**8**) 1970 c. 9; section 8 was substituted by section 90(1) of the Finance Act 1990 (c. 29) and amended by section 178(1) of the Finance Act 1994 (c. 9), section 104(2) and (3) of the Finance Act 1995 (c. 4), section 121(1) and (3) of the Finance Act 1996 (c. 8), paragraph 359 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c.5), section 88 of, and Part 5(3) of Schedule 27 to, the Finance Act 2007 (c. 11), paragraph 9 of Schedule 19 to the Finance Act 2009 (c. 10) and paragraph 12 of Schedule 7 to the Taxation (International and Other Provisions) Act 2010 (c. 8).

(ii) they were provided to an employee or officer of the relevant person, or

(iii) they were provided to an employee or officer of a connected person;

(b) a referral must be disregarded if—

(i) the individual was an employee or officer of the relevant person, or

(ii) the individual was an employee or officer of a connected person.

(6) Where a specified financial institution is also a specified relevant person, regulations 12B to 12F apply as if it were only a specified financial institution.

Identifying specified clients: specified financial institution

12B.—(1) A specified financial institution must identify all of its specified clients.

(2) In order to identify its specified clients, a specified financial institution must use either—

(a) the services approach set out in paragraphs (3) and (4), or

(b) the high value approach set out in paragraph (5).

(3) An individual is a specified client of a specified financial institution under the services approach if—

(a) the specified financial institution reasonably believes that the individual was resident in the United Kingdom for income tax purposes for the tax year 2015-16 or will be so resident for the tax year 2016-17,

(b) the individual is an account holder with the specified financial institution on 30th September 2016, and

(c) in any part of the relevant period, the specified financial institution has—

(i) maintained a financial account in a participating jurisdiction or the United States of America in relation to which the individual is an account holder, or

(ii) referred the individual to another specified financial institution (wherever located) for the other specified financial institution to provide a financial account for the individual in a participating jurisdiction or the United States of America.

(4) In paragraph (3)(c)(i), "financial account" does not include a financial account which the specified financial institution is prevented by legal or regulatory obligations in force on 30th September 2016 from providing as a new account.

(5) An individual is a specified client of a specified financial institution under the high value approach if—

(a) the specified financial institution reasonably believes that the individual was resident in the United Kingdom for income tax purposes for the tax year 2015-16 or will be so resident for the tax year 2016-17, and

(b) the individual is an account holder of a high value account maintained by the specified financial institution on 30th September 2016.

Identifying specified clients: specified relevant person

12C.—(1) A specified relevant person must identify all of that person's specified clients.

(2) In order to identify its specified clients, a specified relevant person must use either—

(a) the specific approach set out in paragraphs (3) and (4), or

(b) the general approach set out in paragraphs (5) and (6).

(3) An individual is a specified client of a specified relevant person under the specific approach if—

(a) at any time in the relevant period, the specified relevant person has—

(i) provided the individual with offshore advice or services relating to the individual's personal tax affairs, or

(ii) referred the individual to a connected person outside the United Kingdom for the provision of such advice or services, and

(b) paragraph (4) does not apply to the individual.

(4) This paragraph applies to an individual if—

(a) the specified relevant person reasonably believes that the individual was not resident in the United Kingdom for income tax purposes for the tax year 2015-16 and will not be so resident for the tax year 2016-17,

(b) on 30th September 2016 the specified relevant person has no reasonable expectation of providing further advice or services to the individual, or

(c) the specified relevant person has prepared and delivered, or reasonably expects to prepare and deliver, a return under section 8 of TMA 1970 on behalf of the individual disclosing the effect of the offshore advice or services referred to in paragraph (3)(a).

(5) An individual is a specified client of a specified relevant person under the general approach if—

(a) the specified relevant person has provided the individual with any advice or services relating to the individual's personal tax affairs in the relevant period, and

(b) paragraph (6) does not apply to the individual.

(6) This paragraph applies to an individual if—

(a) the specified relevant person reasonably believes that the individual was not resident in the United Kingdom for income tax purposes for the tax year 2015-16 and will not be so resident for the tax year 2016-17, or

(b) on 30th September 2016 the specified relevant person has no reasonable expectation of providing further advice or services to the individual.

(7) A specified relevant person may choose to exclude an individual from being a specified client under the general approach if the specified relevant person has prepared and delivered, or reasonably expects to prepare and deliver, a return under section 8 of TMA 1970 on behalf of the individual in respect of the tax year to which the advice or services relate.

Client exchange of tax information notifications

12D.—(1) A specified financial institution or specified relevant person must make client exchange of tax information notifications to all of its specified clients on or before 31st August 2017.

(2) Paragraph (1) does not apply in relation to a specified client if—

(a) a specified financial institution or specified relevant person is aware that a connected person, who is not an overseas person, has already made a client exchange of tax information notification to that specified client, or

(b) despite maintaining proper records, a specified financial institution or specified relevant person holds insufficient information on 30th September 2016 to be able to contact the specified client.

Client exchange of tax information notifications: overseas persons

12E.—(1) A specified financial institution or specified relevant person having control(**9**) of an overseas person must take all such steps as are reasonably open to it to ensure that the overseas person makes a client exchange of tax information notification on or before 31st August 2017 to all individuals to whom paragraph (2) applies.

(2) This paragraph applies to an individual who—

(a) the overseas person reasonably believes to have been resident in the United Kingdom for income tax purposes at any time in the relevant period, and

(b) either—

(i) was an account holder in relation to a financial account maintained by the overseas person in a participating jurisdiction or the United States of America in the relevant period, or

(ii) was provided with offshore advice or services relating to the individual's personal tax affairs by the overseas person in the relevant period.

Making client exchange of tax information client notifications

12F.—(1) A client exchange of tax information notification is made to a specified client or an individual to whom regulation 12E(2) applies if—

(a) it is in the form set out in Part 1 of Schedule 3,

(b) it is accompanied by a covering message which includes—

(i) the name of the specified client, and

(ii) the statement set out in the relevant paragraph of Part 2 of that Schedule, and

(c) it is given in accordance with paragraph (3) or (4).

(2) The relevant paragraph in Part 2 of Schedule 3 is—

(a) paragraph 2 in the case of a client exchange of tax information notification made by a specified financial institution or an overseas person who would be a specified financial institution if they carried on business in the United Kingdom, or

(b) paragraph 3 in the case of a client exchange of tax information notification made by a specified relevant person or an overseas person who would be a specified relevant person if they carried on business in the United Kingdom.

(3) A client exchange of tax information notification is given in accordance with this paragraph if it is sent or supplied in a paper copy.

(4) A client exchange of tax information notification is given in accordance with this paragraph if it is given by email by a specified relevant person who—

(a) wholly or mainly communicated with individuals by e-mail when providing advice or services to them in the relevant period, and

(b) reasonably believes that the specified client will become aware of the content of a client exchange of tax information notification given to them by e-mail.

(5) If it appears appropriate to a specified financial institution, a specified relevant person or an overseas person, the client exchange of tax information notification and covering message set out in Schedule 3 may be translated into a language other than English or produced in a Braille or audible form.".

(**9**) Section 222(4) of the Finance Act 2013, as amended by section 50 of the Finance (No. 2) Act 2015, provides that "control" is to be construed in accordance with section 1124 of the Corporation Tax Act 2010.