

MONTSERRAT
STATUTORY RULES AND ORDERS
S.R.O. 45 OF 2016

TAX INFORMATION EXCHANGE (FATCA AGREEMENT)
(UK IGA) (CRS)
(MONTSERRAT) (IMPLEMENTATION) REGULATIONS 2016

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IGA) (CRS) (MONTSERRAT) (IMPLEMENTATION)
REGULATIONS 2016

THE TAX INFORMATION EXCHANGE (FATCA AGREEMENT)
(UK IGA) (CRS) (MONTSERRAT) (IMPLEMENTATION)
REGULATIONS 2016 MADE BY THE GOVERNOR ACTING ON
THE ADVICE OF CABINET UNDER SECTION 5 OF THE TAX
INFORMATION EXCHANGE ACT (CAP. 17.24).

PART 1—PRELIMINARY

1. Citation

These Regulations may be cited as the Tax Information Exchange (FATCA Agreement) (UK IGA) (CRS) (Montserrat) (Implementation) Regulations, 2016.

2. Interpretation

(1) In these Regulations—

“Act” means Tax Information Exchange Act (Cap.17.24);

“Commissioners” means the Commissioners of Income and Corporation Tax appointed under section 41 of the Income and Corporation Tax Act;

“Comptroller” has the same meaning assigned to it under section 2 of the Income and Corporation Tax Act;

“Convention” means the Convention on Mutual Administrative Assistance in Tax Matters done in Strasbourg on 25 January, 1988 as amended by the Protocol done in Paris on 27 May, 2010, signed on behalf of the United Kingdom and extended to Montserrat with effect in respect of Montserrat from 1 October, 2013;

“CRS” means the Common Reporting Standard for the automatic exchange of financial account information in

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tax matters, approved by the Council of the OECD on 15 July, 2014;

“**CRS Commentary**” means explanatory material made and published by the OECD to assist with the interpretation of the CRS;

“**FATCA Agreement**” means the agreement between the Government of Montserrat and the Government of the United States of America to improve international tax compliance and to implement the U.S. Treasury Regulations, signed on 8 September, 2015;

“**Income and Corporation Tax Act**” means the Income and Corporation Tax Act (Cap.17.01);

“**Multilateral Competent Authority Agreement**” means the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information signed by the Government of Montserrat on 29 October, 2014, in relation to agreements with participating jurisdictions listed under Schedule 5, to improve international tax compliance based on the CRS;

“**OECD**” means the Organisation of Economic Co-operation and Development;

“**relevant agreement**” means the UK IGA, the FATCA Agreement or the Multilateral Competent Authority Agreement, as the case may be;

“**reporting year**” means the period of twelve months commencing on 1 January in each calendar year; and

“**UK IGA**” means the agreement between the Government of Montserrat and the United Kingdom of Great Britain and Northern Ireland to improve international tax compliance, signed on 25 November, 2013.

- (2) For the purposes of these Regulations, in relation to the CRS,
- “**pre-existing account**” means a financial account—
- (a) maintained by a reporting financial institution as of 31 December, 2015; or
 - (b) of an account holder, opened on any date if—
 - (i) the account holder also holds with the reporting financial institution or a related entity within the same

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- jurisdiction as the reporting financial institution, a pre-existing financial account under paragraph (a);
- (ii) the reporting financial institution (and if applicable, the related entity within the same jurisdiction as the reporting financial institution), regard a financial account under paragraphs (a), (b)(i), and any other financial account of the account holder that is regarded as a pre-existing account under this subparagraph, as a single financial account in order to—
 - (A) meet the requirements under section VII(A) of the CRS; and
 - (B) determine the balance or value of a financial account by applying an account threshold;
 - (iii) with respect to a financial account that is subject to AML/KYC procedures, the reporting financial institution is permitted to satisfy the AML/KYC procedures for the financial account by relying on the AML/KYC procedures performed for the pre-existing account under paragraph (a); and
 - (iv) the opening of the financial account does not require the provision of new, additional or amended customer information by the account holder other than for the purposes of the CRS.
- (3) Schedule 4 sets out the section or article of a relevant agreement or arrangement under which the meaning of an expression that is not defined in the Act or these Regulations is provided for.
 - (4) An expression that is defined in a relevant agreement or arrangement but not under the Act or these Regulations has the same meaning for the purposes of these Regulations as in the relevant agreement or arrangement.
 - (5) For the purposes of these Regulations—
 - (a) the CRS Commentary is part of the CRS and applies for the purpose of the automatic exchange of financial account information under a relevant agreement; and

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- (b) “**reportable jurisdiction**” means a jurisdiction other than the United States of America and Montserrat.
- (6) For the purposes of the CRS a non-reporting financial institution is—
 - (a) a financial institution as defined under section VIII, B(1)(a),(b),(d) and (e) of the CRS; and
 - (b) an entity listed under Schedule 3.

3. Effect and application

- (1) These Regulations have effect for and in connection with the implementation of Montserrat’s obligations under a relevant agreement.
- (2) Unless the context otherwise requires, these Regulations apply separately in relation to each relevant agreement.

4. Negative resolution

These Regulations are subject to a negative resolution.

PART 2—REPORTABLE ACCOUNTS

Division 1 – FATCA Agreement

5. Reportable account FATCA Agreement

- (1) In this regulation, “**reportable account**” means an account which is a reportable account under the FATCA Agreement.
- (2) Subject to subregulation (3), in relation to a reporting financial institution under the FATCA Agreement, an account is a reportable account if it meets the description under Annex I, paragraphs II.A, III.A or IV.A of the FATCA Agreement.
- (3) An account is not a reportable account under subregulation (2) if—
 - (a) the account holder is deceased or is a personal representative of the estate of a deceased individual;
 - (b) the account holder is holding the account in compliance with a an order of a court; or

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- (c) the funds held in the account are only being held as security for the performance of a party's obligation under a contract for the disposal of an estate or interest in property.
- (4) Accounts under subregulation (2) are not reportable accounts for a particular reporting year if the reporting financial institution elects to treat each of the accounts or a clearly identified subset of the accounts as accounts that are not reportable accounts for that reporting year.

Division 2 – UK IGA

6. Reportable account UK IGA

- (1) In this regulation, “**reportable account**” means an account which is a reportable account under the UK IGA.
- (2) Subject to subregulation (3), in relation to a reporting financial institution under the UK IGA, an account is a reportable account if it is—
 - (a) a pre-existing individual account that meets the description under Annex I, paragraph II.A of the UK IGA;
 - (b) a pre-existing entity account that meets the description under Annex I, paragraph II.A of the UK IGA;
 - (c) a new individual account that meets the description under Annex I, paragraph III.A of the UK IGA; or
 - (d) a new entity account that meets the description under Annex I, paragraph V.A of the UK IGA.
- (3) Accounts under subregulation (2) are not reportable accounts for a particular reporting year if the reporting financial institution elects to treat each of the accounts or a clearly identified subset of the accounts as accounts that are not reportable accounts for that reporting year.

Division 3– CRS

7. Reportable account CRS

- (1) In this regulation, “**reportable account**” means an account which is a reportable account under the CRS.
- (2) Subject to subregulations (3), (4) and (5), in relation to a reporting financial institution under the CRS, an account is a reportable account if it is a pre-existing entity account with an

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account balance or value that does not exceed US\$250,000 as of 31 December, 2015.

- (3) Accounts under subregulation (2) are not reportable accounts for a particular reporting year if the reporting financial institution elects to treat each of the accounts or a clearly identified subset of the accounts as accounts that are not reportable accounts for that reporting year.
- (4) An account under the CRS is not a reportable account if it is listed as an excluded account under Schedule 1.
- (5) For the purposes of the CRS, dormant accounts (other than an annuity contract) with a balance not exceeding US\$1,000 are not reportable accounts for a particular reporting year if the reporting financial institution elects to treat each dormant account or a clearly identified subset of dormant accounts as accounts that are not reportable accounts for that reporting year.

Division 4— General

8. Election not to treat account as a reportable account

- (1) A reporting financial institution shall make an election under this Part as part of an annual return submitted to the Comptroller under regulation 15.
- (2) An election under subregulation (1) shall—
 - (a) be made for each reporting year for which the election is to take effect; and
 - (b) specify the type of account in relation to which it is to take effect.

9. Application of account balance aggregation and currency rules

- (1) In order to determine whether an account maintained by a reporting financial institution is a reportable account under regulations 5(2), 6(2) or 7(2), the reporting financial institution shall apply the following account balance aggregation and currency rules with respect to each relevant agreement or arrangement:
 - (a) Annex I, section VI.C of the FATCA Agreement;
 - (b) Annex I, section VI.C of the UK IGA; and
 - (c) section VII.C of the CRS.

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- (2) In applying the rules under subregulation (1), an account balance that has a negative value is treated as having a nil value.

10. Determination of balance or value of account denominated in currency other than US dollars

In order to determine the balance or value of an account denominated in currency other than US dollars a reporting financial institution shall translate the relevant dollar threshold amounts into the other currency by reference to the spot rate of exchange on the date for which the institution is determining the threshold amounts.

11. Account held by individual as partner of a partnership

For the purposes of these Regulations, an account held by an individual as a partner of a partnership is to be treated as an entity account.

PART 3—OBLIGATIONS IN RELATION TO FINANCIAL ACCOUNTS

Division 1 – Due diligence

12. Due diligence requirements

- (1) Subject to subsection (2), in order to identify a reportable account, a reporting financial institution shall establish and maintain arrangements that—
- (a) identify the jurisdiction in which an account holder or controlling person resides for the purposes of—
 - (i) income tax; or
 - (ii) a tax imposed under the law of that jurisdiction that is similar to income tax;
 - (b) apply the due diligence procedures under a relevant agreement or arrangement, as set out under Schedule 2; and
 - (c) ensure that—
 - (i) the information obtained in accordance with this regulation; or

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(ii) a record of the steps taken to comply with this regulation,

in relation to a financial account, is kept for a period of at least six years commencing on the end of the year in which the arrangement applied to the financial account.

- (2) In applying the due diligence procedures, a reporting financial institution shall treat an account under regulations 5(2), 6(2) and 7(2) in respect of which an election under regulations 5(4), 6(3) and 7(3) is not made, as a new account or a pre-existing account, as the case may be.

13. Modification of due diligence requirements: UK IGA and CRS

- (1) Subject to subregulation (2), a reporting financial institution under the UK IGA or the CRS may—
- (a) apply the due diligence procedures for a new account to a pre-existing account; and
 - (b) apply the due diligence procedures for a high value account to a low value account.
- (2) A reporting financial institution under the UK IGA that elects to modify due diligence requirements may modify the due diligence requirements under Annex I to the UK IGA as follows:
- (a) if the reporting financial institution obtains or is in the process of obtaining evidence of a person's United Kingdom tax status in relation to a pre-existing account, the reporting financial institution may rely on the evidence in relation to a new account unless it has reasonable cause to believe that the person's United Kingdom tax status has changed;
 - (b) if the reporting financial institution or a related entity obtains or is in the process of obtaining evidence of a person's United Kingdom tax status in relation to a financial account, the reporting financial institution may rely on the evidence in relation to the financial accounts maintained by the institution for the account holder, unless it has reasonable cause to believe that the person's United Kingdom tax status has subsequently changed.
- (3) Subregulation 2(a) applies in the case of a pre-existing individual account maintained by a reporting financial institution for an

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account holder only if, in order to establish which procedures under Annex I, paragraph II.B and II.C or paragraph II.D and II.E of the UK IGA apply to the pre-existing individual accounts, the reporting financial institution treats each account as a single pre-existing individual account.

- (4) A reporting financial institution need not meet the due diligence requirements under regulation 12 in relation to a financial account if—
 - (a) the reporting financial institution maintains the financial account, as a result of a merger with or acquisition of a qualifying financial institution that established the United Kingdom status of the account holder and a controlling person; and
 - (b) the reporting financial institution has no reasonable cause to believe that the United Kingdom tax status of the account holder or a controlling person has changed.
- (5) For the purposes of subregulation (4)(a), “**qualifying financial institution**”, in relation to a financial institution, means another financial institution which—
 - (a) has not previously been a related entity of the financial institution; and
 - (b) immediately before the merger or acquisition was a financial institution or a reporting financial institution.
- (6) A reporting financial institution shall make an election under this regulation by submitting the election to the Comptroller in the form the Comptroller determines.
- (7) An election under this regulation takes effect from the day it is made and remains in effect until the reporting financial institution withdraws it.
- (8) A reporting financial institution under the UK IGA may—
 - (a) in the case of a lower value pre-existing individual account, if it has documentary evidence of the individual account holder’s current residential address, treat the individual account holder as a resident for tax purposes of the jurisdiction in which the address is to be found, in order to determine whether the individual account holder is a reportable person; and

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- (b) in the case of a pre-existing entity account, use as documentary evidence a classification in its records with respect to the account holder that was—
 - (i) determined based on a coding system used to classify establishments by business type for purposes, other than for tax purposes;
 - (ii) recorded by the reporting financial institution in accordance with its normal business practices for the purpose of AML/KYC Procedures or another regulatory purpose (other than for tax purposes); and
 - (iii) implemented by the reporting financial institution before the date used to classify the financial account as a pre-existing account,if it does not know or does not have reason to suspect that the classification is incorrect.

14. Modification of due diligence requirements: FATCA Agreement

- (1) A reporting financial institution under the FATCA Agreement may modify the due diligence requirements as follows:
 - (a) in the case of an account under Annex I, paragraph II.B or C of the FATCA Agreement, the due diligence requirements exclude the requirement to carry out the electronic search under Annex I, paragraph II.B (1) if the reporting financial institution—
 - (i) establishes that the account holder is a specified U.S. person from documentary evidence under Annex I, paragraph VI.D of the FATCA Agreement; and
 - (ii) establishes the status of the account holder in accordance with subparagraph (i) in order to meet its obligations under a Qualifying Intermediary Agreement provided for under Annex I, paragraph VI.D of the FATCA Agreement.
 - (b) in the case of an account under Annex I, paragraph II.D or E of the FATCA Agreement, the due diligence requirements exclude the requirement to carry out the electronic searches provided for under Annex I, paragraph

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II.B (1) or II.D (1) or the requirement to carry out the paper record search under Annex I, paragraph II.D (2) if the reporting financial institution—

- (i) establishes that the account holder is a specified U.S. person from documentary evidence under Annex I, paragraph VI.D of the FATCA Agreement; and
 - (ii) establishes the status of the account holder in accordance with subparagraph (i) in order to meet its obligations under a Qualifying Intermediary Agreement provided for under Annex I, paragraph VI.D of the FATCA Agreement.
- (2) A reporting financial institution may rely on evidence that a person is a specified U.S. person obtained in relation to another financial account if the due diligence procedures in the relevant U.S. Treasury Regulations so allow.
- (3) For the purposes of this regulation, a reference to the documentary evidence set out under Annex I, paragraph VI.D of the FATCA Agreement is to be construed as if the words “other than a Form W-8 or W-9” are omitted.

Division 2 – Reporting

15. Reporting obligations

- (1) A reporting financial institution shall, for the first reporting year and each following reporting year, submit to the Comptroller, a return setting out the information required to be reported under subregulation (2) in relation to a reportable account maintained by the reporting financial institution during that reporting year.
- (2) For the purposes subregulation (1)—
 - (a) in the case of a reportable account for the purposes of the CRS—
 - (i) the first reporting year is 2016; and
 - (ii) a reporting financial institution shall report on the information set out under Schedule 1 of the CRS;
 - (b) in the case of a reportable account for the purposes of the FATCA Agreement—
 - (i) the first reporting year is 2014; and

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- (ii) a reporting financial institution shall report on the information set out under Article 2(2) of the FATCA Agreement; and
- (c) in the case of an reportable account for the purposes of the UK IGA—
 - (i) the first reporting year is 2014; and
 - (ii) a reporting financial institution shall report on the information set out under Article 2(2) of the UK IGA.
- (3) In relation to the information to be reported under a relevant agreement—
 - (a) a reference to the balance or value of an account includes a nil balance or value; and
 - (b) a reference to paying an amount includes crediting an amount.
- (4) A reporting financial institution shall, on or before 30 June of the year following the reporting year to which a return relates, submit the return to the Comptroller electronically using an electronic return system.
- (5) If a reporting financial institution applies the due diligence procedures under Division 1 for a reporting year and the reporting financial institution does not identify an account as a reportable account, the reporting financial institution shall submit to the Comptroller, a return indicating that it did not maintain a reportable account for that reporting year.

16. Electronic return system

- (1) The electronic return system under regulation 15(4) shall—
 - (a) be in the form and operate in the manner the Comptroller directs; and
 - (b) incorporate an electronic validation process.
- (2) Unless the contrary is proven, the Comptroller shall presume that—
 - (a) the use of the electronic return system resulted in a return having been made if the return was recorded by the electronic validation process;

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- (b) a return was made at the time recorded by the electronic validation process; and
- (c) the person who made the return is the person identified as making the return by the electronic validation process.

17. Modifications of reporting requirements: FATCA Agreement

For the purposes of the FATCA Agreement, the information to be reported by a financial institution on a reportable account is modified as follows:

- (a) in the case of a reportable account for the reporting year 2014, a financial institution shall report on the information under Article 3(3)(a)(1) of the FATCA Agreement;
- (b) in the case of a custodial account for the reporting year 2015, a financial institution shall report on the information under Article 3(3)(a)(2) of the FATCA Agreement;
- (c) in the case of a pre-existing account—
 - (i) for a reporting year before 2017—
 - (A) a financial institution is not required to include a U.S. Federal taxpayer identification number if the financial institution does not hold the taxpayer identification number; and
 - (B) if an account holder is an individual and a financial institution holds the individual's date of birth, the financial institution shall include the account holder's date of birth; and
 - (ii) for the reporting year 2017 and a subsequent reporting year, if a financial institution that does not hold a U.S. Federal taxpayer identifying number that it is required to report, the financial institution shall obtain that U.S. Federal taxpayer identifying number from the account holder; and
- (d) despite regulation 15(4), in the case of the reporting years 2014 and 2015, a financial institution shall submit the return under regulation 15(4) before 15 November, 2016 in the form the Comptroller determines.

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18. Modification of reporting requirements: UK IGA

- (1) In relation to a reportable account, a financial institution is not required to include in the return—
 - (a) for the reporting year 2014, information on relevant total gross credits; and
 - (b) for the reporting year 2015, information under Article 2.2(e)(2) of the UK IGA.
- (2) Subject to subregulation (3), in the case of a pre-existing account, a financial institution is not required to include in a return for a reporting year before 2017, information on the account holder's—
 - (a) national insurance number;
 - (b) date of birth; or
 - (c) in the case of an account holder who is a passive NFFE that has a controlling person who is a specified U.K person—
 - (i) the name and address of that specified U.K person; and
 - (ii) if the specified U.K person is an individual, the individual's national insurance number or date of birth.
- (3) Despite regulation 15(4), in the case of the reporting year 2014 and 2015, a financial institution shall submit the return under regulation 15(4) before 15 November, 2016 in the form the Comptroller determines.

Division 3 – General

19. Additional due diligence and reporting obligations in relation to payments to a non-participating financial institution: FATCA

- (1) The due diligence requirements and the information to be reported by a financial institution under the FATCA Agreement in relation to payments to a non-participating financial institution are modified as follows:
 - (a) a reporting financial institution shall establish and maintain arrangements designed to identify a payment that the reporting financial institution made to a non-participating financial institution in the reporting year 2015 or 2016; and

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- (b) a reporting financial institution shall apply the due diligence procedures under Annex I, paragraph IV.D(3) of the FATCA Agreement, in order to determine whether a financial institution is a non-participating financial institution.
- (2) If a reporting financial institution falls within the terms of Article 4(1)(e) of the FATCA Agreement in the reporting years 2015 and 2016, the reporting financial institution shall disclose information in accordance with Article 4(1)(e) of the FATCA Agreement.
- (3) A reporting financial institution shall, in respect of the reporting years 2015 and 2016—
 - (a) prepare a return that sets out the information required under Article 4(1)(b) of the FATCA Agreement; and
 - (b) submit the return under paragraph (a) to the Comptroller electronically, in accordance with regulation 15(4).
- (4) For the purposes of this regulation—
 - (a) **“payment”** does not include consideration a reporting financial institution gives for the provision of goods and services to that reporting financial institution; and
 - (b) **“non-participating financial institution”** includes a person treated as a non-participating financial institution under Article 4(5)(a) of the FATCA Agreement.

20. Notification to individual reportable persons

- (1) Subject to subregulation (2), a reporting financial institution shall notify each individual—
 - (a) reportable person;
 - (b) specified U.K person; and
 - (c) specified U.S. person,that information relating to that person which is to be reported under regulation 15—
 - (i) is to be reported to the Comptroller; and
 - (ii) may be transferred by the Comptroller to the government in accordance with a relevant agreement.

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- (2) A reporting financial institution shall submit the notification under subregulation (1) by 31 January in the reporting year following the first year in which the account held by the individual is a reportable account maintained by the reporting financial institution.
- (3) For the purposes of this regulation—
 - (a) in the case of a specified UK person under the UK IGA and a reportable person under the CRS, “**government**” means the government of the jurisdiction of which the reportable person is a tax resident;
 - (b) in the case of a specified U.S person, “**government**” means the government of the United States of America.

21. Non-resident reporting financial institution’s Montserrat representative

- (1) The obligations of a reporting financial institution which is not resident in Montserrat shall also be the obligations of the reporting financial institution’s Montserrat representative.
- (2) For the purposes of this regulation—
 - (a) a reporting financial institution which—
 - (i) is a partnership, is resident in Montserrat if the control and management of the business of the partnership as a reporting financial institution takes place in Montserrat;
 - (ii) is not a partnership, is resident in Montserrat if it is resident in Montserrat for income tax purposes; and
 - (b) “**Montserrat representative**”, includes a trustee, agent, curator, guardian, attorney, branch or manager.

22. Use of service providers

- (1) A reporting financial institution may use a service provider to undertake the due diligence requirements under Division 1 and the reporting obligations under Division 2.
- (2) If a reporting financial institution uses a service provider in accordance with subregulation (1), the obligation to undertake the relevant due diligence requirements remains that of the reporting financial institution.

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PART 4—COMPLIANCE AND ENFORCEMENT

23. Anti-Avoidance

If a person enters into an arrangement, the main purpose of which is to avoid an obligation under these Regulations—

- (a) the person is deemed not to have entered into the arrangement; and
- (b) these regulations have effect as if the arrangement had not been entered into.

24. Penalty for failure to comply with Regulations

Subject to regulation 25, a person who fails to comply with these regulations is liable to a penalty of \$1,000.

25. Daily default penalty

If—

- (a) the Comptroller imposes a penalty under regulation 24; and
- (b) the default continues after the person is notified of the penalty,

the person is liable to a further penalty for each subsequent day on which the default continues, of an amount of \$250 for each day.

26. Submission of inaccurate information

- (1) A person is liable to a penalty of \$10,000 if—
 - (a) with respect to the satisfaction of a reporting requirement under regulation 15, 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 under Part 3, Division 1; 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.

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- (4) Condition C is that the person—
 - (a) discovers the inaccuracy on a date later than the date the information is provided; and
 - (b) fails to take reasonable steps to inform the Comptroller.

27. FATCA Agreement penalty: non-participating financial institutions

- (1) In relation to the payments identified under regulation 19(1)(a), a person is liable to a penalty of \$1,000 for each failure to—
 - (a) report a payment; and
 - (b) set out the payment accurately in a report made under regulation 19.
- (2) A person's liability for penalties under this regulation is limited to \$10,000 in each reporting year.

28. Matters to be disregarded in relation to liability to penalties

- (1) Liability to a penalty under regulation 24, 25 or 27 does not arise if a person satisfies the Comptroller or (on appeal to the Commissioners), the Commissioners, that there is a reasonable excuse for the failure.
- (2) For the purposes of this regulation—
 - (a) a deficiency of funds to do something; or
 - (b) the fact that a person relies on another person to do something,is not a reasonable excuse.
- (3) If a person had a reasonable excuse for a failure but the excuse ceases, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceases.

29. Imposition of penalties

- (1) If a person becomes liable to a penalty under regulations 24 to 27, the Comptroller may impose the penalty.
- (2) If the Comptroller imposes a penalty, the Comptroller shall submit to the person liable to the penalty, a notice that sets out—

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- (a) the circumstances that render the person liable to the penalty;
 - (b) the amount of the penalty imposed; and
 - (c) the person's right to appeal to the Commissioners against the penalty.
- (3) The Comptroller may only impose a penalty under regulation 24, 25 or 27(1)(a) within the period of twelve months from the date on which the person becomes liable to the penalty.
- (4) The Comptroller may only impose a penalty under regulation 26 or 27(1)(b)—
 - (a) within a period of twelve months from the date on which the inaccuracy first came to the attention of the Comptroller; and
 - (b) within a period of six years from the date on which the person becomes liable to the penalty.

30. Right to appeal against penalty

A person may appeal against a penalty—

- (a) on the ground that liability to the penalty does not arise; or
- (b) as to the amount of the penalty.

31. Procedure on appeal against a penalty

- (1) A person who wishes to appeal against a penalty shall, before the end of the period of thirty days from the date on which notification under regulation 29 was given to him, submit to the Commissioners a notice in writing setting out the grounds for the appeal.
- (2) On an appeal under regulation 30(a) the Commissioners may confirm or cancel the penalty.
- (3) On an appeal under regulation 30(b) the Commissioners may—
 - (a) confirm the penalty; or
 - (b) substitute another penalty that the Comptroller is empowered to impose.
- (4) Subject to this regulation and regulation 33, Part 10 of the Income and Corporation Tax Act applies with the necessary modifications, to an appeal under these Regulations.

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32. Increased daily default penalty

- (1) This regulation applies if—
 - (a) a penalty under regulation 25 is imposed under regulation 29;
 - (b) the failure in respect of which the penalty is imposed continues for more than thirty days from the date on which notification of the penalty is given to a person; and
 - (c) the Comptroller informs the person that he may make an application under this paragraph for the imposition of an increased daily default penalty.
- (2) If this regulation applies, the Comptroller may apply to the Commissioners for an increased daily default penalty to be imposed on the person notified under regulation 29(2).
- (3) If the Commissioners decide that an increased daily default penalty be imposed on a person, for each applicable day on which the failure continues—
 - (a) the person is not liable to a penalty under regulation 25 in respect of the failure; and
 - (b) the person is liable to a penalty under this regulation of an amount determined by the Commissioners.
- (4) The Commissioners shall not determine an amount exceeding \$2,000 for each applicable day.
- (5) If a person is liable to a penalty under this regulation, the Comptroller shall—
 - (a) notify the person; and
 - (b) specify in the notice, the date from which the increased penalty applies.
- (6) For the purposes of this regulation, “**applicable day**” means the date specified under subregulation 5(b) and any subsequent day on which the increased penalty applies.

33. Enforcement of penalties

- (1) A penalty under these Regulations shall be paid before the end of the period of thirty days, beginning with the date under subregulation (2).
- (2) The date referred to under subregulation (1) is—

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- (a) the date on which the penalty is imposed under regulation 29 or notification under regulation 32(5) is given in respect of the penalty; or
 - (b) if a notice of appeal under regulation 31 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 which is due and payable.
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SCHEDULE 1

Regulation 7(4)

Excluded accounts

For the purposes of the CRS, a pension arrangement for which—

- (a) the annual contributions do not exceed EC\$200,000; and
- (b) funds contributed cannot be accessed by a member of the arrangement before the age of 55 except in a case of serious ill health,

is an excluded account.

SCHEDULE 2

(Regulation 12 (1)(b))

Due Diligence procedures for reporting financial institutions	
Relevant agreement	Due diligence procedure
Reporting financial institution under the UK IGA	Annex I, UK IGA
Reporting financial institution under the FATCA Agreement	Annex I, FATCA Agreement
Reporting financial institution under the CRS	Sections II to VII, CRS

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SCHEDULE 3

Regulation 2(6)(b)

Non-reporting financial institutions
Montserrat Building Society Limited
St. Patrick's Co-operative Credit Union Ltd.

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SCHEDULE 4

(Regulation 2(3))

Expression	The UK IGA	The CRS	The FATCA Agreement
account holder	Article 1(1)(v)	Section VIII(E)(1)	Article 1(1)(ee)
AML/KYC Procedures	Annex I, VI. B	Section VIII (E)(2)	
annuity contract	Article 1(1)(q)	Section VIII(C)(6)	
CRS			
cash value insurance contract	Article 1(1)(r)	Section VIII(C)(7)	
controlling person	Article 1(1)(aa)	Section VIII(D)(6)	Article 1(1)(mm)
custodial account	Article 1(1)(q)	Section VIII(A)(3)	Article 1(1)(u)
entity	Article 1(1)(x)	Section VIII(E)(3)	Article 1(1)(hh)
excluded account		Section VIII(C)(17)	
the FATCA Agreement			

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financial account	Article 1(1)(o)	Section VIII(C)	Article 1(1)(s)
financial institution	Article 1(1)(1)	Section VIII(A)(3)	Article 1(1)(g)
Investment Entity	Article 1(1)(j)	Section VIII(A)(6)	
new account		Section VIII(C)(10)	
non-participating financial institution			Article 1(1)(r)
Participating jurisdiction		Section VIII(D)(5)	
pre-existing account	Article 1(1)(t)		
pre-existing entity account	Section IV of Annex I	Section VIII(C)(13)	Section IV of Annex I
related entity	Article 1(1)(z)	Section VIII(E)(4)	
reportable account	Article 1(1)(u)	Section VIII(D)(1)	Article 1(1)(bb)
reporting financial institution	Article 1(1)(m)	Section VIII(A)(1)	Article 1(1)(n)
reportable person		Section VIII(D)(2)	

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relevant agreement			
specified U.K person	Article 1(1)(w)		
specified U.S person			Article 1(1)(gg)
UK IGA			
U.S. reportable account			Article 1(1)(dd) and paragraph I.B of Annex I
US Treasury Regulations			

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SCHEDULE 5

(Regulation 2(1))

Participating jurisdictions

Participating jurisdiction	Intended first information exchange by:
Albania	September 2018
Andorra	September 2018
Anguilla	September 2017
Antigua and Barbuda	September 2018
Argentina	September 2017
Aruba	September 2018
Australia	September 2018
Austria	September 2018
Barbados	September 2017
Belgium	September 2017
Belize	September 2018
Bermuda	September 2017
British Virgin Islands	September 2017

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Bulgaria	September 2017
Canada	September 2018
Cayman Islands	September 2017
Chile	September 2018
China (People's Republic of)	September 2018
Colombia	September 2017
Cook Islands	September 2018
Costa Rica	September 2018
Croatia	September 2017
Curacao	September 2017
Cyprus	September 2017
Czech Republic	September 2017
Denmark	September 2017
Estonia	September 2017
Faroe Islands	September 2017
Finland	September 2017
France	September 2017

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Germany	September 2017
Ghana	September 2018
Gibraltar	September 2017
Greece	September 2017
Greenland	September 2017
Grenada	September 2018
Guernsey	September 2017
Hungary	September 2017
Iceland	September 2017
India	September 2017
Indonesia	September 2018
Ireland	September 2017
Israel	September 2018
Isle of Man	September 2017
Italy	September 2017
Japan	September 2018
Jersey	September 2017

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Korea	September 2017
Kuwait	September 2018
Latvia	September 2017
Liechtenstein	September 2017
Lithuania	September 2017
Luxembourg	September 2017
Malaysia	September 2018
Malta	September 2017
Marshall Islands	September 2018
Mauritius	September 2018
Mexico	September 2017
Monaco	September 2018
Montserrat	September 2017
Nauru	September 2018
Netherlands	September 2017
New Zealand	September 2018
Niue	September 2017

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Norway	September 2017
Poland	September 2017
Portugal	September 2017
Romania	September 2017
Russian Federation	September 2018
Saint Kitts and Nevis	September 2018
Saint Lucia	September 2018
Saint Vincent and the Grenadines	September 2018
Samoa	September 2018
San Marino	September 2017
Sint Maarten	September 2018
Slovak Republic	September 2017
Slovenia	September 2017
South Africa	September 2017
Spain	September 2017
Sweden	September 2017
Switzerland	September 2018

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Turks & Caicos Islands	September 2017
United Kingdom	September 2017

Made by the Governor acting on the advice of Cabinet this 10th day of March, 2016.

(Sgd.) Marjorie Smith
CLERK OF CABINET

Published by exhibition by the Clerk of Cabinet at the Office of the Legislature, Farara Plaza, Brades, MSR1110, this 5th day of October, 2016.

(Sgd.) Marjorie Smith
CLERK OF CABINET