

STATES OF JERSEY



DRAFT TAXATION (IMPLEMENTATION) (INTERNATIONAL TAX COMPLIANCE) (UNITED STATES OF AMERICA) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 6th May 2014
by the Chief Minister**

STATES GREFFE



Jersey

**DRAFT TAXATION (IMPLEMENTATION)
(INTERNATIONAL TAX COMPLIANCE) (UNITED
STATES OF AMERICA) (JERSEY)
REGULATIONS 201-**

REPORT

P.68/2014 contains a statement of the purpose of these Regulations and is the proposition and report requesting the States to ratify –

- the signed Agreement between the Government of the United States of America and the Government of Jersey to improve international tax compliance and implement FATCA; and
- the signed Protocol amending the Agreement between the Government of the United States of America and the Government of the States of Jersey for the Exchange of Information Relating to Taxes.

Financial and manpower implications

P.68/2014 contains a statement on the financial and manpower implications of these draft Regulations.

Explanatory Note

The purpose of these Regulations is to give effect to the agreement (“Agreement”) signed on 13th December 2013 between Jersey and the United States of America to improve tax compliance and to implement the Foreign Account Tax Compliance Act (“FATCA”) of the United States.

Regulation 1 is an interpretation and application provision. Generally, words and expressions as specified in *Schedule 1* are given the same meaning as in the Agreement. However it is open to a “reporting Jersey financial institution” (defined in the Agreement) to use alternative definitions in “U.S. Treasury Regulations” (defined in Regulation 1) or in the Common Reporting Standard published by the Organisation for Economic Co-operation and Development, in so far as the purposes of the Agreement would not be frustrated taking into account any Ministerial guidance. Provision is also made in this Regulation for how the Regulations are to apply where a financial account is held jointly by 2 or more persons.

Regulation 2 makes provision for a reporting Jersey financial institution to elect to treat certain specified accounts which would not normally be subject to the due diligence and reporting requirements of the Agreement, to be treated as “U.S reportable accounts” (defined in the Agreement) and therefore subject to the requirements of the Agreement and of these Regulations. Generally the accounts are below a certain monetary threshold specified in the Agreement. The election must be made to the Comptroller.

Regulation 3 makes provision so that where a reporting Jersey financial institution has an establishment in Jersey and (a) the establishment is regarded as permanent for the purposes of the Income Tax (Jersey) Law 1961 and (b) the reporting Jersey financial institution is not itself resident in Jersey, the establishment itself is deemed to be a reporting Jersey financial institution for the purposes of these Regulations.

Regulation 4 specifies the provisions in Annex I of the Agreement relating to the identification, review and reporting of U.S reportable accounts with which a reporting Jersey financial institution must comply.

Regulation 5 makes provision for the due diligence requirements in the U.S. Treasury Regulations to apply instead of the provisions referred to in Regulation 4 if the reporting Jersey financial institution so elects. Regulation 5 also makes provision for such institutions to rely on third parties to the extent provided for in the U.S. Treasury Regulations, regardless of whether or not such an election is in force.

Regulation 6 specifies the information concerning U.S. reportable accounts which must be provided to the Comptroller each year.

Regulation 7 makes provision for a penalty of £250 to be paid to the Comptroller for the late or non-delivery of a return under Regulation 6.

Regulation 8 makes it an offence, subject to an unlimited fine, for any person to knowingly fail to comply with any provision of these Regulations. Regulation 8 also makes it an offence, subject to a maximum term of imprisonment for 2 years and an unlimited fine, to provide for the purpose of these Regulations information or documents which the person knows to be false or misleading in a material particular. In determining whether a person has complied with these Regulations, a court must have regard to any guidance issues or approved by the Minister.

Regulation 9 sets out the title of these Regulations and provides that they will come into force on the day after they are made.



Jersey

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Arrangement

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Jersey

**DRAFT TAXATION (IMPLEMENTATION)
(INTERNATIONAL TAX COMPLIANCE) (UNITED
STATES OF AMERICA) (JERSEY)
REGULATIONS 201-**

Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of 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.68 of 2014, have made the following Regulations –

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;
- “Comptroller” means the Comptroller of Taxes;
- “Minister” means the Minister for External Relations;
- “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;
- (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);

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- (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 1961², 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;

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- (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.

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- (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”).

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.

8 Offences and general provisions relating to compliance

- (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) 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.
- (4) 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.

9 Citation and commencement

These Regulations may be cited as the Taxation (Implementation) (International Tax Compliance) (United States of America) (Jersey) Regulations 201- and shall come into force on the day after they are made.

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)

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- ¹ *chapter 17.850*
² *chapter 24.750*