

STATES OF JERSEY



Jersey

DRAFT TAXATION (COMMON REPORTING STANDARD AND UNITED STATES OF AMERICA) (JERSEY) AMENDMENT REGULATIONS 202-

**Lodged au Greffe on 4th June 2024
by the Minister for External Relations
Earliest date for debate: 16th July 2024**

STATES GREFFE

REPORT

Background

Jersey committed to collect and exchange tax information on financial accounts held in Jersey by residents and nationals of the United States of America under the Foreign Account Tax Compliance Act (FATCA) rules in December 2013. The Organisation for Economic Cooperation and Development (OECD) later introduced a similar regime, the Common Reporting Standard (CRS), which requires jurisdictions to ensure that they have the necessary laws in force to collect and exchange tax information on financial accounts held by residents of jurisdictions participating in the CRS. As of 16 May 2023, 123 jurisdictions had committed to implementing the CRS.

The CRS is considered to be a global minimum standard, and jurisdictions which have committed to implement it are subject to periodic monitoring of their implementation of the regime by the OECD's Global Forum on Transparency and Exchange of Tax Information. The amending Regulation, if approved by the States Assembly, is intended to ensure that Jersey's legislation is fully in line with the CRS standard before the current round of reviews of jurisdictions' legislation is completed later this year.

The CRS is implemented in Jersey through the [Taxation \(Implementation\) \(International Tax Compliance\) \(Common Reporting Standard\) \(Jersey\) Regulations 2015](#) (the CRS Regulations). FATCA is implemented through the [Taxation \(Implementation\) \(International Tax Compliance\) \(United States of America\) \(Jersey\) Regulations 2014](#) (the FATCA Regulations). Collectively, CRS and FATCA are referred to as Automatic Exchange of Information (AEOI) and the two sets of regulations are collectively referred to as the AEOI Regulations.

Given the similarities between the CRS and FATCA Regulations, in all but one case the amendments to the CRS Regulations are also proposed in relation to the FATCA Regulations.

Detail

The amending Regulations are intended to do the following:

1. Ensure that adequate powers exist to ensure compliance with the Regulations by financial institutions which do not carry on a business and do not have business premises;
2. Clarify the obligations of financial institutions without legal personality, and the application of penalties to them;
3. Confirm that the Regulations do not prevent trustees or partners from recovering penalties imposed on them; and
4. Ensure that the anti-avoidance rule in the CRS Regulations is in line with OECD expectations.

Because of the similarities between the CRS and FATCA Regulations, the first three amendments are intended to apply in the same manner to both sets of Regulations. The fourth amendment is proposed to only apply in respect of the CRS Regulations, due to differences in the anti-avoidance provisions between the CRS and FATCA regimes.

Ensuring that adequate powers exist to ensure compliance with the Regulations by financial institutions which do not carry on a business and do not have business premises

Regulation 20 of the CRS Regulations and Regulation 8L of the FATCA Regulations contain the powers to allow Revenue Jersey to ensure compliance with the Regulations. They permit a person authorised by the Comptroller of Revenue to issue a notice requiring any person to produce specified business documents at the business premises in which the documents are located, and

to enter business premises at any reasonable hour to examine and take copies of any business documents located there.

In very limited circumstances the current Regulations could potentially prevent Revenue Jersey from ensuring compliance with the Regulations, if a financial institution did not have a business premises and was not considered to be carrying on a business, so that its documents were not considered to be “business” documents. In practice, this is unlikely to occur.

However, in order to address this potential gap in the enforcement powers, Regulations 1(2) and 2(2) expand the existing access powers only in relation to financial institutions which do not carry on a business, trade, profession or vocation in order to:

1. State that the business premises of a financial institution which does not carry on a business, trade, profession or vocation is the address in Jersey of the financial institution, or in the case of a financial institution which is a trust, the address of its trustees; and
2. Amend the definition of “business documents” to add that that the business documents of a financial institution which does not carry on a business, trade, profession or vocation are documents which are believed to be relevant or potentially relevant to determining the compliance of that financial institution with the CRS or FATCA Regulations, as applicable.

The existing access powers, which apply to the overwhelming majority of financial institutions in Jersey, are unchanged.

Clarifying the obligations of financial institutions without legal personality, and the application of penalties to them

The CRS and FATCA rules class certain types of arrangements without legal personality as entities in their own right and impose obligations on those arrangements on that basis. This could potentially lead to confusion over who is required to fulfil the obligation of the arrangement, or, in the case of a failure to comply, who is required to pay any penalties imposed as a result.

In order to put the question beyond doubt, Regulation 1(3) and 2(3) insert new Regulations to confirm that obligations and penalties which arise under the AEOI Regulations in respect of a trust fall on all Jersey resident trustees, and in respect of a partnership, fall on the person identified as the responsible partner under the [Income Tax Law](#).

Confirming that the Regulations do not prevent trustees or partners from recovering penalties imposed on them

The amending Regulations clarify that if a penalty is imposed on a trustee or partner, nothing in the CRS or FATCA Regulations prevents the trustee or partner from recovering the value of that penalty from the trust or partnership.

Ensuring that the anti-avoidance rule in the CRS Regulations is in line with OECD expectations

Section IX of the CRS requires jurisdictions to have anti-avoidance measures in place to address cases of attempted circumvention of the regime. Regulation 19 of the CRS Regulations is the anti-avoidance rule in Jersey’s CRS Regulations. This provides that if a person enters into arrangements and the main purpose, or one of the main purposes, of this is to avoid the application of the Regulations, then the Regulations will apply as though the arrangements had not been entered into.

Regulation 1(4) amends the anti-avoidance rule in order to clarify that the avoidance arrangements will also be considered not to have taken place, for the purposes of the Regulations.

Financial and staffing implications

This proposition creates no new financial and/or staffing implications.

Children's Rights Impact Assessment

A Children's Rights Impact Assessment (CRIA) has been prepared in relation to this proposition and is available to read on the States Assembly website.

EXPLANATORY NOTE

These Regulations, if made, will amend the Taxation (Implementation) (International Tax Compliance) (Common Reporting Standard) (Jersey) Regulations 2015 (“the 2015 Regulations”) and the Taxation (Implementation) (International Tax Compliance) (United States of America) (Jersey) Regulations 2014 (“the 2014 Regulations”).

Regulation 1 amends the 2015 Regulations to expand the definitions “business document” and “business premises” so that they apply to financial institutions that are not carrying out a business, trade, profession or vocation. It also inserts a new Regulation into the 2015 Regulations to provide for the application of the requirements and penalties in Regulations to trusts and partnerships (which may not be legal persons) and clarifies that penalties imposed on trustees or partners can be recovered from the trust or partnership.

It also substitutes a new Regulation 19 of the 2015 Regulations to make it clear that when a person enters into an arrangement to avoid a requirement of those Regulations, for the purposes of the Regulations the arrangement is taken not to have been entered into, as well as those Regulations having effect as if the arrangement had not been entered into.

Regulation 2 makes similar amendments to the 2014 Regulations, except that it does not include an equivalent to the substitution of Regulation 19 of the 2015 Regulations.

Regulation 3 gives the title of these Regulations and provides that they come into force 7 days after they are made.



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Jersey

DRAFT TAXATION (COMMON REPORTING STANDARD AND UNITED STATES OF AMERICA) (JERSEY) AMENDMENT REGULATIONS 202-

Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES make these Regulations under Article 2 of the [Taxation \(Implementation\) \(Jersey\) Law 2004](#) –

1 [Taxation \(Implementation\) \(International Tax Compliance\) \(Common Reporting Standard\) \(Jersey\) Regulations 2015](#) amended

- (1) This Regulation amends the [Taxation \(Implementation\) \(International Tax Compliance\) \(Common Reporting Standard\) \(Jersey\) Regulations 2015](#).
- (2) In Regulation 1(1) for the definitions “business document” and “business premises” there is substituted –
 - “business document” means –
 - (a) a document that relates to the carrying on of a business, trade, profession or vocation by a person and that forms part of a record under an enactment; or
 - (b) in the case of a financial institution that does not carry on a business, trade, profession or vocation, a document that an authorized person believes to be relevant, or potentially relevant, to determining the compliance of the financial institution with these Regulations;
 - “business premises” means –
 - (a) premises used in connection with the carrying on of a business, trade, profession or vocation; or
 - (b) in the case of a financial institution that does not carry on a business, trade, profession or vocation, the address in Jersey –
 - (i) of the financial institution, or
 - (ii) if the financial institution is a trust, of a trustee;”.
- (3) After Regulation 18 there is inserted –

“18A Requirements and penalties for trusts and partnerships

- (1) If a requirement or penalty under these Regulations applies to a trust or partnership, the requirement or penalty applies to –
 - (a) in the case of a trust, each trustee, jointly and severally;
 - (b) in the case of a partnership, the partner identified as the responsible partner under Article 20E of the [Income Tax \(Jersey\) Law 1961](#).
- (2) These Regulations do not prevent a penalty imposed on a trust or partnership from being recovered from the assets of the trust or partnership.”.
- (4) For Regulation 19 there is substituted –

“19 Anti-avoidance

- (1) This Regulation applies if a person enters into an arrangement and the main purpose, or one of the main purposes, of the person entering into the arrangement is to avoid any requirement of these Regulations.
- (2) If this Regulation applies –
 - (a) for the purposes of these Regulations the arrangement is taken not to have been entered into; and
 - (b) these Regulations have effect as if the arrangement had not been entered into.”.

2 [Taxation \(Implementation\) \(International Tax Compliance\) \(United States of America\) \(Jersey\) Regulations 2014](#) amended

- (1) This Regulation amends the [Taxation \(Implementation\) \(International Tax Compliance\) \(United States of America\) \(Jersey\) Regulations 2014](#).
- (2) In Regulation 1(1) for the definitions “business document” and “business premises” there is substituted –
 - “business document” means –
 - (a) a document that relates to the carrying on of a business, trade, profession or vocation by a person and that forms part of a record under an enactment; or
 - (b) in the case of a financial institution that does not carry on a business, trade, profession or vocation, a document that an authorized person believes to be relevant, or potentially relevant, to determining the compliance of the financial institution with these Regulations;
 - “business premises” means –
 - (a) premises used in connection with the carrying on of a business, trade, profession or vocation; or
 - (b) in the case of a financial institution that does not carry on a business, trade, profession or vocation, the address in Jersey –
 - (i) of the financial institution, or
 - (ii) if the financial institution is a trust, of a trustee;”.
 - (3) After Regulation 8J there is inserted –

“8JA Requirements and penalties for trusts and partnerships

- (1) If a requirement or penalty under these Regulations applies to a trust or partnership, the requirement or penalty applies to –
 - (a) in the case of a trust, each trustee, jointly and severally;
 - (b) in the case of a partnership, the partner identified as the responsible partner under Article 20E of the [Income Tax \(Jersey\) Law 1961](#).
- (2) These Regulations do not prevent a penalty imposed on a trust or partnership from being recovered from the assets of the trust or partnership.”.

3 Citation and commencement

These Regulations may be cited as the Taxation (Common Reporting Standard and United States of America) (Jersey) Amendment Regulations 202- and come into force 7 days after they are made.