



STATUTORY INSTRUMENTS.

S.I. No. 292 of 2014

FINANCIAL ACCOUNTS REPORTING (UNITED STATES OF
AMERICA) REGULATIONS 2014



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FINANCIAL ACCOUNTS REPORTING (UNITED STATES OF AMERICA) REGULATIONS 2014

The Revenue Commissioners, in exercise of the powers conferred on them by section 891E (inserted by section 32 of the Finance Act 2013 (No. 8 of 2013)) of the Taxes Consolidation Act 1997 (No. 39 of 1997), with the consent of the Minister for Finance, hereby make the following regulations:

Citation and commencement

1. (1) These Regulations may be cited as the Financial Accounts Reporting (United States of America) Regulations 2014.

(2) These Regulations come into operation on 1 July 2014.

Interpretation

2. (1) In these Regulations—

“Act” means Taxes Consolidation Act 1997 (No. 39 of 1997);

“account balance or value” includes—

(a) a nil or negative balance or value, and

(b) in the case of a cash value insurance contract or an annuity contract, the cash value or surrender value of that contract;

“account number” includes, in addition to the account number, any code or codes used generally in the financial services industry to identify a reporting financial institution or a branch of a reporting financial institution, and “bank code”, “branch code”, “sorting code” and any other similar terms used to identify a reporting financial institution or a branch of a reporting financial institution shall be construed accordingly;

“Agreement” means the Agreement Between the Government of Ireland and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA, done at Dublin on 21 December 2012;

“authorised officer” means an officer of the Revenue Commissioners authorised by them in writing to exercise the powers conferred by these Regulations;

“deposit” has the same meaning as it has in section 256 of the Act;

“entity” means an entity that is not a natural person;

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 27th June, 2014.

“FATCA” means the provisions commonly known as the Foreign Accounts Tax Compliance Act in the enactment of the United States of America known as Hiring Incentives to Restore Employment Act 2010;

“financial group”, in relation to a relevant company, means a group of entities consisting of the relevant company and the related entities of that company where one or more of those related entities is a custodial institution, depository institution, investment entity or specified insurance company;

“financing or refinancing facilities” has the same meaning as it has in section 488 of the Act;

“G.I.I.N.” means the Global Intermediary Identification Number allocated to a financial institution by the Internal Revenue Service of the United States of America for the purpose of identifying the institution as one whose FATCA obligations are modified by reason of the Agreement;

“high value pre-existing individual account” means a pre-existing individual account which on, or before, 30 June 2014 has an account balance or value that exceeds \$1,000,000;

“investment entity” has the meaning given to it in Article 1(1)(j) of the Agreement;

“investment undertaking” means—

- (a) an investment undertaking within the meaning of section 739B(1) of the Act,
- (b) a common contractual fund within the meaning of section 739I(1)(a) of the Act, or
- (c) an investment limited partnership within the meaning of section 739J(1)(a) of the Act;

“low value pre-existing individual account” means a pre-existing individual account which on, or before, 30 June 2014 has an account balance or value that—

- (a) in the case of a cash value insurance contract, or annuity contract, is greater than \$250,000 but does not exceed \$1,000,000, or
- (b) in any other case, is greater than \$50,000 but does not exceed \$1,000,000;

“new entity account” means a financial account maintained by a reporting financial institution which—

- (a) is opened on, or after, 1 July 2014, and
- (b) is beneficially owned by an entity;

“new individual account” means a financial account maintained by a reporting financial institution which—

- (a) is opened on, or after, 1 July 2014, and
- (b) is beneficially owned by a natural person;

“pre-existing account” means a financial account maintained by a reporting financial institution on 30 June 2014;

“pre-existing entity account” means a financial account that is beneficially owned by an entity and is maintained by a reporting financial institution on 30 June 2014;

“pre-existing individual account” means a financial account that is beneficially owned by a natural person and is maintained by a reporting financial institution on 30 June 2014;

“qualifying activities”, in relation to a relevant treasury company, means activities carried on by that company which consist of one, or more, of the following:

- (a) the making, or receiving, of deposits and the management of those deposits;
- (b) the provision, or management, of financing or refinancing facilities;
- (c) the acquisition of, or the holding of shares in, another company that is a custodial institution, depository institution, investment entity or specified insurance company;
- (d) investing in securities;
- (e) the entering into, or management of, specified agreements;

“registered financial institution”, for the purpose of these Regulations and section 891E of the Act, means a financial institution that registers with the Internal Revenue Service of the United States of America in accordance with Regulation 5(1);

“relevant company” means a relevant holding company or a relevant treasury company, as the case may be;

“relevant holding company” means a person whose business consists wholly or mainly of—

- (a) holding, directly or indirectly, any shares or securities in a related entity that is a custodial institution, depository institution, investment entity or specified insurance company, or
- (b) holding shares or securities where the person has a qualifying relationship with an investment entity;

“relevant treasury company” means a company which exists wholly or mainly for the purpose of carrying on qualifying activities on behalf of—

- (a) a financial group, or
- (b) an investment entity with which it has a qualifying relationship;

“return date”, in relation to a tax year, means a date that is not later than 30 June of the tax year following the tax year for which a return is required;

“specified agreement” has the same meaning as it has in section 110(1) of the Act;

“tax reference number” means a U.S. TIN;

“tax year” means—

- (a) a year of assessment, or
- (b) subject to paragraph (3), where a financial institution has an established practice for the periodic valuation of accounts of a particular description otherwise than at the end of a year of assessment, another appropriate reporting period of 12 months;

“U.S.” means United States of America.

(2) For the purposes of paragraph (1), a person has a qualifying relationship with an investment entity where—

- (a) the investment entity is a related entity, or
- (b) the person provides services to, or holds investments on behalf of, that investment entity.

(3) In the definition of “tax year” in paragraph (1), “another appropriate reporting period” means a period of 12 months ending with the date (or, if more than one, the latest date) in the year of assessment on which the institution has an established practice of valuing accounts of that description.

(4) Subject to paragraph (1), and unless the context otherwise requires, a word or expression used in these Regulations that is also used in the Agreement shall have the same meaning as it has in the Agreement.

(5) For the purposes of these Regulations—

- (a) where an investment undertaking is constituted by a person (other than a trustee) who carries on business in the State, that person is the reporting financial institution in the case of the undertaking and is to be regarded as an investment entity,
- (b) where an investment undertaking is constituted as a trust and the trustee of the trust is a person who carries on business in the State,

the trustee is the reporting financial institution in the case of the undertaking and is to be regarded as an investment entity, and

- (c) where an investment undertaking is constituted otherwise than as described in subparagraph (a) or (b) and the manager of the undertaking is a person who carries on business in the State, that person is the reporting financial institution in the case of the undertaking and is to be regarded as an investment entity.

(6) Where a person is required under these Regulations to—

- (a) deliver a return, or
- (b) make a declaration or election,

the return, declaration, or election shall be delivered, made or given electronically—

- (i) using such technology as may be approved or provided by the Revenue Commissioners, and
- (ii) in such form as the Revenue Commissioners may require.

Reporting financial institutions

3. (1) Subject to paragraph (2), any person that carries on business in the State as—

- (a) a custodial institution,
- (b) a depository institution,
- (c) an investment entity,
- (d) a specified insurance company,
- (e) a relevant holding company, or
- (f) a relevant treasury company,

shall be a reporting financial institution.

(2) Subject to Regulations 4 and 5, paragraph (1) shall not apply to a deemed compliant financial institution.

Deemed compliant financial institutions

4. (1) Where a financial institution—

- (a) is a deemed compliant FFI referred to in Article 1(1)(q) of the Agreement, and
- (b) is required to submit a return of information in relation to an account maintained by it,

the institution shall be a reporting financial institution for the purpose of returning information on that account.

- (2) (a) A financial institution within the meaning of paragraph II.B of Annex II to the Agreement shall not, on or after 1 July 2014, open an account for—
- (i) any specified U.S. person who is not a resident of Ireland,
 - (ii) any non-participating financial institution, or
 - (iii) any passive entity which has a controlling person who is a U.S. person.
- (b) A financial institution referred to in subparagraph (a) shall on, or before, 1 July 2014 implement policies and procedures to monitor whether it maintains an account for—
- (i) any specified U.S. person who is not a resident of Ireland,
 - (ii) any non-participating financial institution, or
 - (iii) any passive entity which has a controlling person who is a U.S. person.
- (c) Where an account referred to in subparagraph (b) is identified, the financial institution concerned shall close the account or report the account as though the institution was a reporting financial institution.

Obligation of a reporting financial institution to register

5. (1) Every reporting financial institution shall, for the purposes of complying with Article 4(1)(c) of the Agreement, register with the Internal Revenue Service of the United States of America for the purposes of FATCA in such manner, including by electronic means, as the Internal Revenue Service may require.

(2) An application for registration shall be made by the reporting financial institution not later than 31 December 2014 or, where the institution is not a reporting financial institution on that date, not later than 30 days following the date on which the institution becomes a reporting financial institution.

Reportable accounts

6. (1) Subject to paragraph (2), and notwithstanding—
- (a) paragraph A of section II,
 - (b) paragraph A of section III, or
 - (c) paragraph A of section IV,

of Annex I to the Agreement, a reportable account, in relation to a reporting financial institution, means a U.S. reportable account that is maintained by that institution in the State for the purposes of its business as—

- (i) a custodial institution,
- (ii) a depository institution,
- (iii) an investment entity,
- (iv) a specified insurance company,
- (v) a relevant holding company, or
- (vi) a relevant treasury company,

and that is not an excluded account to which paragraph (3) applies.

- (2) (a) Where a reporting financial institution so elects, an account shall not be a reportable account where it satisfies one of the following conditions:
 - (i) it is a pre-existing individual account—
 - (I) that is a cash value insurance contract, or annuity contract, with an account balance or value that does not exceed \$250,000,
 - (II) that is a cash value insurance contract or annuity contract, where the sale of such contracts to U.S. residents is effectively prevented by law and the contract is maintained by a specified insurance company that is—
 - (A) subject to tax under, and
 - (B) subject to the reporting requirements of,
 - Part 26 of the Act, or
 - (III) that is not a cash value insurance contract, or annuity contract, which has an account balance or value that does not exceed \$50,000;
 - (ii) it is a new individual account that is a depository account the account balance or value of which does not exceed \$50,000 at the end of the tax year concerned;
 - (iii) it is a new individual account that is a cash value insurance contract, which has an account balance or value that does not exceed \$50,000 at the end of the tax year;

- (iv) it is a pre-existing entity account the account balance or value of which does not exceed \$250,000.
 - (b) An election under this paragraph shall be made on, or before, the return date for the tax year in respect of which the return is required to be made and shall be in such form as the Revenue Commissioners may require.
 - (c) The account balance aggregation and currency translation rules set out in paragraph C of section VI of Annex I to the Agreement shall be used to determine whether an account satisfies one of the conditions set out in paragraph (a).
- (3) This Regulation applies to exempt products within the meaning of section III of Annex II to the Agreement.

Identification of reportable accounts

7. (1) Subject to this Regulation, a reporting financial institution shall apply the due diligence rules and procedures specified in Annex I to the Agreement in order to identify the account holder of the reportable accounts maintained by the institution.
- (2) The review of low value pre-existing individual accounts to be carried out by a reporting financial institution in accordance with the procedures set out in paragraph B of section II of Annex I to the Agreement shall be completed on, or before, 30 June 2016.
- (3) Where an account is not a low value pre-existing individual account on 30 June 2014 but has an account value or balance greater than the relevant thresholds set out in the definition of “low value pre-existing individual account” in Regulation 2 on the last day of any subsequent tax year, the review of that account shall be completed not later than 6 months of the end of that tax year.
- (4) The review of high value pre-existing individual accounts to be carried out by a reporting financial institution in accordance with the procedures set out in paragraph D of section II of Annex I to the Agreement shall be completed on, or before, 30 June 2015.
- (5) Where an account is not a high value pre-existing individual account on 30 June 2014 but has an account balance or value that exceeds \$1,000,000 on the last day of any subsequent tax year, the review of that account shall be completed not later than 6 months of the end of that tax year.
- (6) The review of pre-existing entity accounts to be carried out by a reporting financial institution in accordance with the procedures set out in paragraph D of section IV of Annex I to the Agreement shall be completed on, or before, 30 June 2016 where the account balance or value of that account exceeds \$250,000 on 30 June 2014.
- (7) Where the account balance or value of a pre-existing entity account does not exceed \$250,000 on 30 June 2014 but exceeds \$1,000,000 in a subsequent tax

year, the review of that account shall be completed not later than 6 months after the end of the tax year in which the account balance exceeds \$1,000,000.

(8) A reporting financial institution may treat a new account opened by a natural person as a pre-existing individual account where—

- (a) on the account opening date, the institution maintains a pre-existing account for that individual, and
- (b) the institution returns the aggregate account balance or value of—
 - (i) the new account, and
 - (ii) the pre-existing account referred to in subparagraph (a),

and for this purpose the account balance aggregation and currency translation rules set out in paragraph C of section VI of Annex I to the Agreement shall be used to determine the aggregate account balance or value of such accounts.

(9) Notwithstanding the requirements set out in Annex I to the Agreement, where—

- (a) in the case of a low value pre-existing individual account, a reporting financial institution—
 - (i) has established the account holder’s status as neither a U.S. citizen nor a U.S. resident (in this paragraph referred to as the “account holder’s non-U.S. status”) from the documentary evidence referred to in paragraph D of section VI of Annex I to the Agreement, and
 - (ii) has done so in order to meet its obligations under a QI agreement, as referred to in that paragraph,

the due diligence rules and procedures referred to in paragraph (1) in the case of that account shall not include the requirement to carry out the electronic search described in paragraph B.1 of section II of Annex I to the Agreement.

- (b) in the case of a high value pre-existing individual account, a reporting financial institution—
 - (i) has established the account holder’s non-U.S. status from the documentary evidence referred to in paragraph D of section VI of Annex I to the Agreement, and
 - (ii) has done so in order to meet its obligations under a QI agreement as referred to in that paragraph,

the due diligence rules and procedures referred to in paragraph (1) in the case of that account do not include the requirement to—

- (I) carry out the electronic searches described in paragraph B.1 or D.1 of section II of Annex I to the Agreement, or
 - (II) carry out the paper record search described in paragraph D.2 of that section.
- (10) (a) The due diligence rules and procedures referred to in paragraph (1) shall not apply in relation to a financial account where—
- (i) the reporting financial institution concerned maintains the account as a result of a merger with, or acquisition of, a qualifying financial institution which had established whether the account holder and any controlling person of the account holder is a U.S. citizen or a U.S. resident (in this subparagraph referred to as the “U.S. status of the account holder or any controlling person of the account holder”), and
 - (ii) the institution has no reasonable cause to believe that the U.S. status of the account holder or any controlling person of the account holder has changed.
- (b) For the purpose of this paragraph, “qualifying financial institution”, in relation to a financial institution, means another financial institution—
- (i) which has not previously been a related entity of the institution, and
 - (ii) which immediately before the merger or acquisition was a partner jurisdiction financial institution but was neither a registered deemed compliant FFI nor a non-participating financial institution.
- (11) (a) Subject to subparagraph (b), where the due diligence rules and procedures referred to in paragraph (1) require a person to submit evidence of their identity or residence, such evidence shall be in such form as the institution considers reasonable.
- (b) Notwithstanding subparagraph (a) and where requested to do so by an authorised officer, the reporting institution shall obtain such other evidence of the identity or residence of the account holder as may be required by that officer.
- (12) For the purposes of this Regulation, references to the documentary evidence set out in paragraph D of section VI of Annex I to the Agreement are to be treated as if “other than a Form W-8 or W-9” were omitted.

Obligation to submit returns of reportable accounts

8. (1) A reporting financial institution shall—

- (a) as respects the tax year 2014 and each subsequent tax year, make and deliver to the appropriate Revenue officer on, or before, the return date, a return in respect of all reportable accounts maintained by the institution in that year, and
 - (b) as respects the tax years 2015 and 2016, make and deliver to the appropriate Revenue officer on, or before, the return date, a return of payments made to non-participating financial institutions in those years.
- (2) The return referred to in paragraph (1)(a) shall include, as respects—
- (a) the financial institution, the details set out in paragraph (3), and
 - (b) each reportable account, the details set out in paragraph (4).
- (3) The details relating to the financial institution referred to in paragraph (2) are the following:
- (a) the name of the institution;
 - (b) the address of the registered office of the institution;
 - (c) the G.I.I.N. allocated to the institution.
- (4) Subject to paragraph (5), the details relating to each reportable account referred to in paragraph (2) are the following:
- (a) the name, address, and tax reference number of—
 - (i) each specified U.S. person that is an account holder,
 - (ii) each passive entity that is the holder of a reportable account, and
 - (iii) each specified U.S. person that controls the passive entity referred to in clause (ii);
 - (b) the account number or, where there is no account number, information capable of identifying the asset giving rise to the payment;
 - (c) the account balance or value as of the end of the tax year or, if the account was closed during such year, the account balance or value on the day on which the account was closed;
 - (d) in the case of any custodial account—
 - (i) the total gross amount of interest,
 - (ii) the total gross amount of dividends,
 - (iii) the total gross amount of other income arising from the assets held in the account, and

- (iv) the total gross proceeds from the sale or redemption of any property where the financial institution acted as a custodian, broker, nominee, or otherwise as an agent, for the account holder in relation to that sale or redemption,

which has been paid or credited in respect of such account during the tax year;

- (e) in the case of any depository account, the total gross amount of interest paid or credited to the account during the tax year;
- (f) in the case of any account not described in subparagraph (d) or (e), the total gross amount paid or credited to the account holder with respect to the account during the tax year, where the financial institution is the obligor or debtor including the aggregate amount of any redemption payments made to the account holder during the tax year.

(5) The return, referred to in paragraph (1)(a), shall include the following:

- (a) for the tax year 2014, the details set out in subparagraphs (a) to (c) of paragraph (4);
- (b) for the tax years 2015 and 2016, the details set out in subparagraphs (a) to (f) of paragraph (4) (other than the details set out in subparagraph (d)(iv));
- (c) for the tax year 2017 and all subsequent tax years, the details set out in subparagraphs (a) to (f) of paragraph (4).

(6) In the case of a pre-existing account of a specified U.S. person (in this paragraph referred to as the “account holder”), where the tax reference number of the account holder is not available from the records of the financial institution, the financial institution shall, in the return referred to in paragraph (1)(a), report the date of birth of the account holder where this information is available from the records of the financial institution.

(7) An account balance that has a negative value shall be treated as having a nil value for the purpose of applying paragraph C of section VI of Annex I to the Agreement.

(8) The return, referred to in paragraph (1)(b), shall include the following:

- (a) as regards the reporting financial institution, the details set out in paragraph (3);
- (b) the name and address of each non-participating financial institution;
- (c) the aggregate amounts of payments made to the non-participating financial institution in the tax year or, where no such payments were made in a tax year, a statement to that effect.

Obligation to submit returns where there are no reportable accounts

9. (1) Where a reporting financial institution has no reportable accounts in a tax year, the institution shall make and deliver a nil return for that year.

(2) The return referred to in paragraph (1) shall include the details set out in Regulation 8(3).

Appointment of third parties

10. (1) A reporting financial institution may appoint another person as its agent to carry out the duties and obligations imposed on it by these Regulations or the Agreement.

(2) Where another person is appointed, in accordance with paragraph (1)—

(a) the financial institution shall, at all times, have access to and be able to produce, where so requested by an authorised officer, the records and documentary evidence used to identify and report on reportable accounts, and

(b) the financial institution is responsible for any failure of that other person to carry out its obligations and subsections (7) and (8) of section 891E of the Act will apply to the institution notwithstanding that—

(i) the actions were the actions of that other person, or

(ii) the failure to act was the failure by that other person to act.

Obligations of reporting financial institutions to obtain tax reference numbers

11. (1) A reporting financial institution shall implement arrangements to obtain the tax reference number of every U.S. Specified Person who is the account holder of a reportable account.

(2) Paragraph (1) has effect—

(a) from 1 January 2017, in the case of pre-existing accounts, and

(b) from 1 July 2014, in the case of new accounts opened on, or after, that date.

The Minister for Finance consents to the making of the foregoing Regulations.



GIVEN under my Official Seal,
20 June 2014.

MICHAEL NOONAN,
Minister for Finance.



GIVEN under my hand,
20 June 2014.

NIALL CODY,
Revenue Commissioner.

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