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STATUTORY INSTRUMENTS

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**2013 No. 1962**

**The International Tax Compliance (United States of America) Regulations 2013**

*Scope*

**Scope: definition of “reporting financial institution”**

3.—(1) In these Regulations “reporting financial institution” means a person who carries on business in the United Kingdom 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 treasury company.

(2) A non-reporting United Kingdom financial institution may qualify as a reporting financial institution for the purposes of these Regulations only if it is a registered deemed-compliant financial institution.

(3) For the purposes of these Regulations “depository institution” means—

- (a) a person carrying on a regulated activity for the purposes of the Financial Services and Markets Act 2000<sup>(1)</sup> by virtue of article 5 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001<sup>(2)</sup>, or
- (b) a person who is within paragraphs (a) to (e) or (h) to (j) of the definition of “electronic money issuer” in regulation 2(1) of the Electronic Money Regulations 2011<sup>(3)</sup>.

(4) For the purposes of these Regulations “investment entity” means—

- (a) an investment entity within the meaning of the treaty, or
- (b) an entity that is managed by a financial institution and meets the financial assets test.

(5) An entity meets the financial assets test for a calendar year if the gross amount of the income of its business as carried on in the United Kingdom for the applicable period wholly or mainly derives from investing or dealing in—

- (a) assets capable of being the subject-matter of a transaction that is an “investment transaction” within the meaning of regulation 14F of Part 2B of the Authorised Investment Funds (Tax) Regulations 2006<sup>(4)</sup>,
- (b) insurance or annuity contracts,
- (c) commodities, or

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(1) 2000 c. 8.

(2) S.I. 2001/544, amended by S.I. 2002/682.

(3) S.I. 2011/99.

(4) S.I. 2006/964. Part 2B was inserted by S.I. 2009/2036.

- (d) derivative contracts within the meaning of Part 7 of CTA 2009<sup>(5)</sup>.
- (6) In paragraph (5) the “applicable period” is the shorter of—
- (a) the period comprising the previous three calendar years, and
  - (b) the period
    - (i) starting on the later of the first day of the period in sub-paragraph (a) and the date that the entity commenced the business, and
    - (ii) ending on the earlier of the last day of the period in sub-paragraph (a) and the last day that the entity carried on the business.
- (7) For the purposes of these Regulations—
- (a) if a collective investment scheme is constituted by a person (other than a trustee), who carries on business in the United Kingdom, that person (and no-one else) is a reporting financial institution in the case of the scheme and is to be regarded as the investment entity, and
  - (b) if a collective investment scheme is constituted otherwise than as described in sub-paragraph (a) and the manager, operator or trustee of the scheme is a person who carries on business in the United Kingdom, the manager, operator or trustee of the scheme (and no-one else) is a reporting financial institution in the case of the scheme and is to be regarded as the investment entity.
- (8) In paragraph (7) “collective investment scheme” means—
- (a) an investment trust within the meaning of the Corporation Tax Acts<sup>(6)</sup>,
  - (b) a venture capital trust within the meaning of Part 6 of ITA 2007<sup>(7)</sup>, or
  - (c) any arrangements that are a “collective investment scheme” within the meaning of Part 17 of the Financial Services and Markets Act 2000<sup>(8)</sup>.
- (9) For the purposes of these Regulations a “relevant holding company” means—
- (a) a person whose business consists wholly or mainly of holding (directly or indirectly) any shares or securities issued by a related entity which is within any of paragraph (1)(a) to (d), or
  - (b) a person whose business consists wholly or mainly of holding shares or securities, and who has a qualifying relationship with a qualifying entity.
- (10) For the purposes of these Regulations a “treasury company” means a company whose business consists wholly or mainly in carrying on for a financial group of which it is a member, or for a qualifying entity with whom it has a qualifying relationship, any of the activities within section 316(9) of TIOPA 2010<sup>(9)</sup>, and for this purpose—
- (a) the reference in paragraph (d) of that subsection to a UK group company and a group treasury company is to a related entity which is within any of paragraph (1)(a) to (d) of this regulation, and
  - (b) “financial group” means a group of entities consisting of the company and its related entities where at least one of those entities falls within any of paragraph (1)(a) to (d) of this regulation.

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(5) 2009 c. 4. The meaning of “derivative contract” in Part 7 of that Act is provided at section 576.

(6) The meaning of “investment trust” in the Corporation Tax Acts is provided at section 1158 of the Corporation Tax Act 2010 (c. 4). Section 1158 was substituted by section 49 (2) of the Finance Act 2011 (c. 11).

(7) 2007 c. 3. The meaning of “venture capital trust” in Part 6 of that Act is provided at section 259.

(8) 2000.c.8. The meaning of “collective investment scheme” is provided at section 235 of that Act. The power under section 235(5) to provide that arrangements do not amount to a collective investment scheme has been exercised by the Treasury by the following instruments: S.I. 2001/1062, 2001/3650, 2005/57, 2007/800, 2008/1641 and 2008/1813.

(9) 2010 c. 8.

(11) For the purposes of this regulation—

- (a) a “qualifying entity” means an entity that is, or is formed with a view to its becoming, an entity within paragraph (4)(b), and
- (b) a person has a “qualifying relationship” with a qualifying entity if—
  - (i) the person is connected (within the meaning of section 1122 of CTA 2010) with the entity, or
  - (ii) the person provides services or holds investments on behalf of the entity.

**Scope: definition of “reportable account”**

4.—(1) In these Regulations a “reportable account”, in relation to a reporting financial institution, means a U.S. reportable account maintained by that institution in the United Kingdom for the purposes of its business 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 treasury company,

but see paragraphs (2) and (3) for exceptions.

(2) A U.S. reportable account is not a reportable account if—

- (a) the account holder is deceased or is a personal representative (within the meaning of section 989 of ITA 2007),
- (b) the account is held to comply with an order or judgment made or given in legal proceedings, or
- (c) the funds held in the account are held solely as security for the performance of a party’s obligation under a contract for the disposal of an estate or interest in land or of tangible moveable property.

(3) The following accounts are not reportable accounts for a calendar year if there is an election by the reporting financial institution in force for that year to treat the accounts as not being reportable accounts—

- (a) 30th June 2014 individual accounts meeting the description at paragraph II.A of Annex I of the treaty,
- (b) post-June 2014 individual accounts meeting the description at paragraph III.A of Annex I of the treaty (including an insurance contract that would be a cash value insurance contract for the purposes of these Regulations but for the fact that its value is less than or equal to \$50,000), and
- (c) 30th June 2014 accounts meeting the description at paragraph IV.A of Annex I of the treaty.

(4) In determining whether or not a financial account maintained by an institution meets any of the descriptions in paragraph (3), the institution must apply the account balance aggregation and currency translation rules at paragraph VI.C of Annex I of the treaty.

(5) An election under paragraph (3)—

- (a) is to be made by being given to the Commissioners,
- (b) must be in such form as may be determined by the Commissioners, and

- (c) must be made on or before the reporting date under regulation 8 for the calendar year in question.
- (6) For the purposes of these Regulations—
  - (a) any reference to a 30th June 2014 account is to a financial account maintained on 30th June 2014,
  - (b) any reference to an entity account is to a financial account which is not an account the account holder of which (or, if more than one, each account holder of which) is an individual holding the account otherwise than as a partner of a partnership,
  - (c) any reference to an individual account is to a financial account held in the name of an individual (whether solely or jointly with another) but not as a partner of a partnership, and
  - (d) any reference to a post-June 2014 account is to a financial account opened after 30th June 2014.
- (7) In a case where a financial account is held jointly by two 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 and as if the holder were entitled to the whole of the balance or value of the account.

**Scope: non-resident reporting financial institution's UK representative**

- 5.—**(1) If a reporting financial institution is not resident in the United Kingdom, the obligations of the institution under these Regulations are to be treated as if they were also the obligations of any UK representative of the institution.
- (2) “UK representative” has the same meaning as it has in—
    - (a) Chapter 6 of Part 22 of CTA 2010, in relation to a reporting financial institution that is within the charge to corporation tax, and
    - (b) Chapter 2C of Part 14 of ITA 2007, in relation to any other reporting financial institution.
  - (3) For the purposes of this regulation—
    - (a) a reporting financial institution which is a partnership is resident in the United Kingdom if the control and management of the business of the partnership as a reporting financial institution takes place there, and
    - (b) a reporting financial institution which is not a partnership is resident in the United Kingdom if it is resident in the United Kingdom for corporation tax or income tax purposes.