

Subsidiary Legislation made under s. 23(1).

**INTERNATIONAL CO-OPERATION (IMPROVEMENT
OF INTERNATIONAL TAX COMPLIANCE) (UNITED
KINGDOM) REGULATIONS 2015**

(LN. 2015/200)

Commencement **12.11.2015**

Amending enactments	Relevant current provisions	Commencement date
LN. 2016/053	rr. 7(5), 10(3)	17.3.2016
2017/048	r. 7(4)	23.3.2017
2018/124	r. 16(2)	25.5.2018

ARRANGEMENT OF REGULATIONS

Regulations.

1. Title and commencement.
2. Overview and purpose.
3. Interpretation.
4. Reporting obligations with respect to Reportable Accounts.
5. Reporting obligations of Reporting Financial Institutions.
6. Competent Authority.
7. Time and manner of reporting.
8. Due diligence obligations.
9. Non-Reporting Financial Institutions.
10. Election of alternative reporting regime.
11. Reliance on third party service providers.
12. Retention of records.
13. Privilege.
14. Confidentiality.
15. Overriding instruments.
16. Data protection.
17. Penalties.

2009-50

International Co-Operation (Tax Information)

**Subsidiary
2015/200**

**INTERNATIONAL CO-OPERATION (IMPROVEMENT OF
INTERNATIONAL TAX COMPLIANCE) (UNITED KINGDOM)
REGULATIONS 2015**

18. Assessment of penalties.
19. Right to appeal against penalty.
20. Procedure on appeal against penalty.
21. Enforcement of penalties.
22. Immunity.

Schedule 1

Schedule 2

Schedule 3

**INTERNATIONAL CO-OPERATION (IMPROVEMENT OF
INTERNATIONAL TAX COMPLIANCE) (UNITED KINGDOM)
REGULATIONS 2015**

**Subsidiary
2015/200**

In exercise of the powers conferred on him by section 23(1) of the International Co-Operation (Tax Information) Act 2009 and all other enabling powers, the Minister has made the following regulations>

Title and commencement.

1.(1) These regulations may be cited as the International Co-Operation (Improvement of International Tax Compliance) (United Kingdom) Regulations 2015.

(2) These regulations shall come into operation on the day of publication.

Overview and Purpose.

2.(1) These regulations–

- (a) implement in relevant part reciprocal exchange of information arrangements with the United Kingdom in relation to information that is foreseeably relevant to the administration and enforcement of certain taxes;
- (b) provide for the automatic reporting of financial information that is foreseeably relevant to the administration and enforcement of certain taxes;
- (c) are intended to further the fiscal and economic wellbeing of Gibraltar and of the United Kingdom; and
- (d) are intended to further the prevention of international tax evasion by contributing to the international objective of an international standard on automatic exchange of information.

(2) The purpose of these regulations is to collect data for transmission to the relevant competent authority in the United Kingdom so that the said competent authority can check the accuracy of the tax returns submitted by United Kingdom residents, enforce or collect tax claims in respect of such persons, and investigate or prosecute tax matters in respect of such persons. Interpretation.

3.(1) To the extent that a definition in these regulations differs from a definition in the Agreement, the definition in these regulations shall prevail to the extent of that difference.

(2) A Financial Institution may use as an alternative definition 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 13 February 2014,

insofar as such use would not frustrate the purposes of the Agreement.

(3) Subject to subregulations (1) and (2) of this regulation, in these regulations—

“Account Holder” means the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account. A person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment adviser, or intermediary, is not treated as holding the account for the purposes of this Agreement, and such other person is treated as holding the account. In the case of a Cash Value Insurance Contract or an Annuity Contract, the Account Holder is any person entitled to access the Cash Value or change the beneficiary of the contract. If no person can access the Cash Value or change the beneficiary, the Account Holder is any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract. Upon the maturity of a Cash Value Insurance Contract or an Annuity Contract, each person entitled to receive a payment under the contract is treated as an Account Holder.

“Agreement” means the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Gibraltar to Improve International Tax Compliance, signed on 21 November 2013.

“Annuity Contract” means a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals. The term also includes a contract that is considered to be an Annuity Contract in accordance with the law, regulation, or practice of the

jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years.

“Authority” means the Chief Secretary or such other official as may be appointed by the Minister pursuant to regulation 6.

“Cash Value” means the greater of (i) the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan), and (ii) the amount the policyholder can borrow under or with regard to the contract. Notwithstanding the foregoing, the term “Cash Value” does not include an amount payable under an Insurance Contract as–

- (1) a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;
- (2) a refund to the policyholder of a previously paid premium under an Insurance Contract (other than under a life insurance contract) due to policy cancellation or termination, decrease in risk exposure during the effective period of the Insurance Contract, or arising from a redetermination of the premium due to correction of posting or other similar error; or
- (3) a policyholder dividend based upon the underwriting experience of the contract or group involved.

“Cash Value Insurance Contract” means an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies) that has a Cash Value.

“Controlling Persons” means the natural persons who exercise control over an Entity. In the case of a trust, such term means the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term “Controlling Persons” shall be interpreted in a manner consistent with the Recommendations of the Financial Action Task Force.

“Custodial Account” means an account (other than an Insurance Contract or Annuity Contract) for the benefit of another person that holds any financial instrument or contract held for investment

(including, but not limited to, a share or stock in a corporation, a note, bond, debenture, or other evidence of indebtedness, a currency or commodity transaction, a credit default swap, a swap based upon a nonfinancial index, a notional principal contract, an Insurance Contract or Annuity Contract, and any option or other derivative instrument).

“Custodial Institution” means any Entity that holds, as a substantial portion of its business, financial assets for the account of others. An Entity holds financial assets for the account of others as a substantial portion of its business if the Entity’s gross income attributable to the holding of financial assets and related financial services equals or exceeds 20 percent of the Entity’s gross income during the shorter of–

- (i) the three-year period that ends on 31 December (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or
- (ii) the period during which the Entity has been in existence.

“Depository Account” includes any commercial, chequing, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a Financial Institution in the ordinary course of a banking or similar business. A Depository Account also generally includes an amount held by an insurance company under an agreement to pay or credit interest thereon.

“Depository Institution” means any Entity that accepts deposits in the ordinary course of a banking or similar business.

“Directive on Administrative Cooperation” means Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation, as amended from time to time.

“Entity” means a legal person or a legal arrangement such as a trust, partnership or limited liability partnership. An Entity such as a partnership, limited liability partnership or similar arrangement shall be resident in the United Kingdom or Gibraltar if the control and management of the business takes place there.

“Equity Interest” means, in the case of a partnership that is a Financial Institution, either a capital or profits interest in the partnership. In

the case of a trust that is a Financial Institution, an Equity Interest is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust. A Specified Person shall be treated as being a beneficiary of a trust if such Specified Person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust.

“FATCA” means the Foreign Account Tax Compliance Act under sections 1471 to 1474 of the Internal Revenue Code of the United States of America, as enabled by the Hiring Incentives to Restore Employment Act 2010.

“Financial Account” means an account maintained by a Financial Institution, and includes—

(1) in the case of an Entity that is a Financial Institution solely because it is an Investment Entity, any equity or debt interest (other than interests that are regularly traded on an established securities market) in the Financial Institution;

(2) in the case of a Financial Institution not described in these Regulations, any equity or debt interest in the Financial Institution (other than interests that are regularly traded on an established securities market), if the class of interests was established with a purpose of avoiding reporting in accordance with these Regulations; and

(3) any Cash Value Insurance Contract and any Annuity Contract issued or maintained by a Financial Institution, other than a noninvestment-linked, non-transferable immediate life annuity that is issued to an individual and monetises a pension or disability benefit provided under an account, product, or arrangement that is excluded from the definition of Financial Account in Schedule 2.

“Notwithstanding the foregoing, the term “Financial Account” does not include any account, product, or arrangement that is excluded from the definition of Financial Account in Schedule 2.

“Financial Institution” means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.

“GIIN” means a Global Intermediary Identification Number which has been allocated to a Financial Institution by the Internal Revenue Service of the United States of America for FATCA purposes.

“HMRC” means Her Majesty’s Revenue and Customs.

“Insurance Contract” means a contract (other than an Annuity Contract) under which the issuer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk.

“Investment Entity” means any Entity that conducts as a business (or is managed by an Entity that conducts as a business) one or more of the following activities or operations for or on behalf of a customer–

(1) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;

(2) individual and collective portfolio management; or

(3) otherwise investing, administering, or managing funds or money on behalf of other persons.

This definition shall be interpreted in a manner consistent with similar language set forth in the definition of “financial institution” in the Recommendations of the Financial Action Task Force.

For the purposes of this definition “activities” and “operations” do not include the controlled activities set out in paragraph 1 of Schedule 3 to the Financial Services (Investment and Fiduciary Services) Act.

“Legal Persons” means any entities other than natural persons that can establish a permanent customer relationship with a Financial Institution or otherwise own property. This can include companies, bodies corporate, foundations, anstalt, partnerships, or associations and other relevantly similar entities.”

“Minister” means the Minister with responsibility for the international exchange of information.

“Non-Reporting Financial Institution” means any Financial Institution, or other Entity resident in Gibraltar that is described in Schedule 2 as a Non-Reporting Financial Institution, other than a Sponsored Investment Entity or a Sponsored Closely Held Investment Vehicle where the sponsoring entity has failed to comply with the obligations contained in subparagraph B.2. or C.5. of section III of Schedule 2.

“Non-United Kingdom Entity” means an Entity that is not a person or Entity who is resident in the United Kingdom for tax purposes.

“Pre-existing Account” means a Financial Account maintained by a Reporting Financial Institution as of 30 June 2014.

“Related Entity” of another Entity occurs if either Entity controls the other Entity, or the two Entities are under common control. For this purpose control includes direct or indirect ownership of more than 50 percent of the vote or value in an Entity. Notwithstanding the foregoing, an Entity is not a related entity if the two Entities are not members of the same affiliated group, as defined in Section 1471(e)(2) of the U.S. Internal Revenue Code.

“Reportable Account” means a Financial Account maintained by a Reporting Financial Institution and held by one or more Specified Persons or by a non-United Kingdom Entity with one or more Controlling Persons that is a Specified Person. Notwithstanding the foregoing, an account shall not be treated as a Reportable Account if such account is not identified as a Reportable Account after application of the due diligence procedures in Schedule 1.

“Reporting Financial Institution” means a Financial Institution that is not a Non-Reporting Financial Institution and that is either—

- (i) a Financial Institution resident in Gibraltar (but excluding any branches of such a Financial Institution that are located outside Gibraltar), or
- (ii) any branch of a Financial Institution not resident in Gibraltar, if such branch is located in Gibraltar.

For purposes of these regulations “resident in Gibraltar” means—

- (a) when applied to a company, “ordinarily resident” as defined in section 74 of the Income Tax Act 2010,

**INTERNATIONAL CO-OPERATION (IMPROVEMENT OF
INTERNATIONAL TAX COMPLIANCE) (UNITED KINGDOM)
REGULATIONS 2015**

(b) when applied to a trust, if the trust is resident in Gibraltar in accordance with section 13 of the Income Tax Act 2010,

(c) when applied to partnerships, when the partnership is managed and controlled in Gibraltar or when its management and control is exercised outside by Gibraltar by persons who are “ordinarily resident” in Gibraltar as defined in section 74 of the Income Tax Act 2010.

“Schedule” means a Schedule to these regulations.

“Specified Insurance Company” means any Entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.

“Specified Person” means a person or Entity who is resident in the United Kingdom for tax purposes, and includes a person or Entity who is resident in both the United Kingdom and Gibraltar under the respective domestic law of each jurisdiction, other than—

- (i) a corporation the stock of which is regularly traded on one or more established securities markets;
- (ii) a corporation that is a member of the same affiliated group, as defined in Section 1471(e)(2) of the U.S. Internal Revenue Code, as a corporation described in (i) above;
- (iii) a Depository Institution; or
- (iv) a broker or dealer in securities, commodities, or derivative financial instruments (including notional principle contracts, futures, forwards, and options) that is registered as such under the laws of the United Kingdom.

“Tribunal” means the Income Tax Tribunal constituted under Schedule 2 of the Income Tax Act 2010.

“United Kingdom” means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the sea bed and sub-soil and their natural resources may be exercised.

“U.S. Treasury Regulations” means the U.S. Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities. In the event that these regulations are amended, then the term “U.S. Treasury Regulations” shall mean the amended Regulations where both Gibraltar and the United Kingdom have agreed that any or all of the amendments should apply.

(2) Any term not otherwise defined in these regulations shall, unless the context otherwise requires, have the meaning under the Income Tax Act 2010 or any other applicable primary or subordinate legislation in force in Gibraltar.

Reporting obligations with respect to Reportable Accounts.

4.(1) Subject to regulation 7, a Financial Institution shall provide the information specified in this regulation with respect to a Reportable Account.

(2) The information to be provided with respect to each Reportable Account of each Reporting Financial Institution is—

- (a) the name, address, date of birth and, where available, the National Insurance or Social Security Number that is allocated by the United Kingdom for each Specified Person that is an Account Holder of such account and, in the case of an Entity that, after application of the due diligence procedures set forth in Schedule 1, is identified as having one or more Controlling Persons that is a Specified Person in the United Kingdom, the name and address of such Entity and the name, address, date of birth and, where available, the National Insurance or Social Security Number that is allocated by the United Kingdom for each such Specified Person;
- (b) the account number (or functional equivalent in the absence of an account number);
- (c) the name of the Reporting Financial Institution and, where provided when registering with the U.S. Internal Revenue Service for FATCA purposes, the Global Intermediary Identification Number (GIIN) (and where the Reporting Financial Institution does not have a GIIN the tax reference

number of the Reporting Financial Institution must be provided instead);

- (d) the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year, immediately before closure.

(3) The information to be provided with respect to a Reportable Account by a Reporting Financial Institution where the Reportable Account is a Custodial Account is—

- (a) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and

- (b) the total gross proceeds from the sale or redemption of property paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder.

(4) The information to be provided with respect to a Reportable Account by a Reporting Financial Institution where the Reportable Account is a Depository Account is the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period.

(5) The information to be provided in the case of a Reportable Account that is not a Custodial Account or a Depository Account is the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

Reporting obligations of Reporting Financial Institutions.

5.(1) Subject to regulation 7, a Reporting Financial Institution shall provide to the Authority the information specified in subregulations 4(2) to 4(5) with respect to a Reportable Account.

(2) In providing the required information to the Authority, the Reporting Financial Institution shall at all times disclose its registered name and, where it has registered with the U.S. Internal Revenue Service for FATCA purposes, its GIIN.

(3) Where the Financial Institution does not have a GIIN it shall instead provide its tax reference number or other unique numerical or alpha-numerical identifier.

(4) (a) A Financial Institution that has no Reportable Account or that does not have any information to provide to the Authority in respect of a Reportable Account need not provide a nil return to the Authority.

(b) Nothing in subregulation (4)(a) shall be construed as altering the obligation of a Reporting Financial Institution to apply due diligence procedures pursuant to regulation 8.

(5) (a) A Reporting Financial Institution that has actual knowledge that a Reportable Account is being reported (whether the Reportable Account is in Gibraltar or otherwise) pursuant to these regulations and the Agreement by another Financial Institution (whether the Financial Institution is a Gibraltar Financial Institution or otherwise), does not have a reporting obligation under these regulations.

(b) For the purposes of subregulation 5(a) a Reporting Financial Institution has actual knowledge where it holds written confirmation from the Financial Institution that a Reportable Account has been reported pursuant to the Agreement.

(c) Nothing in this subregulation removes the obligation of a Reporting Financial Institution to ensure that a report has been made.

Competent Authority.

6.(1) Subject to subregulation (2) of this regulation the Authority is the Chief Secretary, who shall be the competent authority for Gibraltar for the purposes of these regulations.

(2) The Minister may, from time to time by notice in the Gazette, designate such other or additional person or persons as he sees fit to be the Authority.

(3) Appointments under subregulation (2)–

- (a) shall be subject to such terms as the Minister may, from time to time, see fit to impose;
- (b) may be revoked at such time as the Minister deems appropriate.

(4) The Authority shall have a duty to perform the functions assigned to or conferred upon it by or under these regulations and to carry out the obligations undertaken by the Government in connection therewith.

Time and manner of reporting.

7.(1) For purposes of the reporting obligation in regulation 4, the amount and characterisation of payments made with respect to a Reportable Account may be determined by the Financial Institution in accordance with the principles of the Income Tax Act 2010 and other applicable tax laws of Gibraltar.

(2) For purposes of the reporting obligation in regulation 4, the information shall identify the currency in which each relevant amount is denominated.

(3) With respect to regulation 4, information is to be provided with respect to 2014 and all subsequent years, except that–

- (a) the information to be obtained with respect to 2014 is only the information described in subregulation 4(2);
- (b) the information to be obtained and exchanged with respect to 2015 is the information described in subregulations 4(2) to 4(5), except for gross proceeds described in subregulation 4(3)(b); and
- (c) the information to be obtained and exchanged with respect to 2016 and subsequent years is the information described in subregulations 4(2) to 4(5).

(4) Subject to subregulation (5) of this regulation, the information described in regulation 4 shall be reported within seven months after the end of the calendar year to which the information relates.

(5) The information that relates to calendar years 2014 and 2015 shall be reported no later than 1 September 2016.

(6) Without prejudice to subregulation (4) of this regulation, the Authority may specify the format and medium of reporting of the information to be provided by a Reporting Financial Institution.

Due diligence obligations.

8. A Reporting Financial Institution shall apply the due diligence procedures contained in Schedule 1 in order to identify Reportable Accounts.

Non-Reporting Financial Institutions.

9. The Entities in Schedule 2 are treated and shall be regarded as either exempt beneficial owners, as other Non-Reporting Financial Institutions, or as both, as the case may be, and the Exempt Products in Schedule 2 are excluded from the definition of Financial Accounts.

Election of Alternative Reporting Regime.

10.(1) A Reporting Financial Institution may make an election to the Authority to use the Alternative Reporting Regime as set out in paragraph B.1.(a) of Schedule 3 provided that the requirements of paragraph B.1.(b) and (c) of that Schedule are met.

(2) An election under subregulation (1) of this regulation must be made, in such form as is determined by the Authority, on or before 31 August following the end of the Relevant Tax Year as defined in Schedule 3.

(3) A Reporting Financial Institution shall, in relation to each Reportable Account that it must report under paragraph D.1. and D.2. of Schedule 3 in respect of which—

- (a) an election under subregulation (1) is in force, and
- (b) the certification requirements in paragraph C.1. and C.2. of Schedule 3 are complied with,

send to the Authority the information described in paragraph D of Schedule 3 on or before 1 September following the end of the Relevant Tax Year defined in Schedule 3 or by such earlier date as is notified to the Account Holder by the Reporting Financial Institution.

(4) A Reporting Financial Institution must retain the information in paragraph D that it has reported to the Authority for a period of 7 years

following the end of the Relevant Tax Year defined in Schedule 3, following which the information shall be destroyed.

(5) A Reporting Financial Institution shall, in relation to each Reportable Account in respect of which—

- (a) an election under subregulation (1) is in force, and
- (b) the certification requirements in paragraph C(1) and (2) of Schedule 3 are not complied with,

send to the Authority the information described in regulations 4 and 5 in accordance with Regulation 7.

Reliance on third party service providers.

11. A Reporting Financial Institution may use third party service providers to fulfil its obligations under these regulations but the obligations shall remain the responsibility of the Financial Institution.

Retention of Records.

12. A Reporting Financial Institution shall retain a complete record of the information it provides to the Authority for a period of one year from the date by which it was required to provide it, following which the information shall be destroyed.

Privilege.

13.(1) No person shall be obliged under these regulations to provide information to the Authority which is an item subject to legal privilege.

(2) No person shall be obliged under these regulations to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process, provided that information required to be provided to the Authority pursuant to these regulations shall not by reason of that fact alone be treated as a secret or trade process.

Confidentiality.

14.(1) Subject to subregulation (2), information obtained by the Authority under these regulations from a Reporting Financial Institution shall be regarded and dealt with as secret and confidential.

(2) Information obtained by the Authority under these Regulations may be transmitted by the Authority in accordance with the Agreement.

(3) The obligation of a Reporting Financial Institution to provide information to the Authority under these regulations shall have effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information contained in any other enactment.

Overriding instruments.

15. These regulations must be construed in accordance with the fundamental right to private life as protected by the following instruments-

- (a) Article 8 of the European Convention on Human Rights;
- (b) Article 7 of the Gibraltar Constitution Order 2006;
- (c) Article 7 of the Charter of Fundamental Rights of the European Union;
- (d) Directive 95/46/EC of the European Parliament and Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (as may be amended from time to time or replaced).

Data protection.

16.(1) Subject to subregulation (2) of this regulation, information processed under these regulations is subject to the relevant law of Gibraltar on data protection, in accordance with Article 25 of Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC.

(2) Notwithstanding the Data Protection Act 2004, for the purposes of these Regulations, the transfer of personal data by a data controller to the United Kingdom is not dependent on any convention or other instrument imposing an international obligation on Gibraltar to transfer the data, and the Data Protection Commissioner may not prohibit such a data transfer.

(3) The processing of data under these regulations, including as between Financial Institutions and the Authority and as between the Authority and the United Kingdom, is subject to the Data Protection Act 2004 as if that Act applied to both legal persons and natural persons.

(4) Reporting Financial Institutions and the Authority are data processors for the purposes of the Data Protection Act 2004.

(5) A Reporting Financial Institution must take all reasonable steps to inform each Account Holder concerned that the information relating to him or it referred to in regulation 4 will be collected and provided to the Authority and shall, upon request, provide to that Account Holder all information that he is entitled to under the Data Protection Act 2004 at least 90 days before the Reporting Financial Institution provides the information referred to in regulation 4 to the Authority.

Penalties.

17. A person is liable to a penalty not exceeding £3,000 if he—
- (a) fails to provide any information required to be provided to the Authority; or
 - (b) provides the Authority with information that is false or misleading in a material particular;
 - (c) without reasonable excuse fails so to do, within such time as may be specified by any notice or order issued under these regulations;
 - (d) alters, suppresses, destroys or places beyond his reach or access any document, including a document in electronic form, which he has been required to produce;
 - (e) by furnishing any estimate, return or other information required of him, or otherwise in purported compliance with a requirement under these regulations, furnishes information or makes any statement which is false or misleading in a material particular, or recklessly furnishes information or makes a statement which is false or misleading in a material particular; or
 - (f) removes from Gibraltar, destroys, conceals or alters any books or papers, including any material held electronically.

Assessment of penalties.

18.(1) If a person becomes liable to a penalty under regulation 17 the Authority may assess the penalty.

- (2) If the Authority does so, it must notify the person.

- (3) An assessment of a penalty under regulation 16 must be made—
- (a) within the period of 12 months beginning with the date on which the contravention first came to the attention of the Authority, and
 - (b) within the period of 6 years beginning with the date on which the person became liable to the penalty.

Right to appeal against penalty.

19.(1) A person may appeal to the Tribunal against a decision by the Authority—

- (a) that a penalty is payable; or
- (b) as to the amount of such a penalty.

(2) The Tribunal shall have the authority to consider appeals under these regulations.

Procedure on appeal against penalty.

20.(1) Notice of an appeal under regulation 18 must be given—

- (a) in writing,
- (b) before the end of the period of 30 days beginning with the date on which notification was given, and
- (c) to the Authority and the Tribunal.

(2) It must state the grounds of appeal.

(3) On an appeal under regulation 19(a) that is notified to the Tribunal, it may confirm or cancel the decision.

(4) On an appeal under regulation 19(b) that is notified to the Tribunal, it may—

- (a) confirm the decision, or
- (b) substitute for the decision another decision that the Authority had the power to make.

Enforcement of penalties.

21.(1) A penalty under these regulations must be paid before the end of the period of 30 days beginning with the date mentioned in paragraph (2).

(2) The date is the date on which notification is given in respect of the penalty or, if a notice of appeal is given, the date on which the appeal is finally determined or withdrawn.

(3) A penalty due under these regulations is a debt due to Government recoverable as a civil debt.

Immunity.

22.(1) Neither the Minister nor the Authority shall be liable in damages for anything done or omitted in the discharge of their functions under these regulations unless it is shown that the act or omission was in bad faith.

(2) A Reporting Financial Institution which pursuant to these regulations provides information that is subject to an obligation of confidentiality shall be immune to suit arising from the provision of such information.

[Schedules follow]

Regulation 8.

SCHEDULE 1

**DUE DILIGENCE OBLIGATIONS FOR IDENTIFYING AND
REPORTING ON REPORTABLE ACCOUNTS**

I. General

A. Pursuant to regulation 8, a Financial Institution shall apply the due diligence procedures contained in this Schedule to identify Reportable Accounts.

B. For purposes of this Schedule—

1. All dollar amounts are US dollars and shall be read to include the equivalent in other currencies.
2. Except as otherwise provided herein, the balance or value of an account shall be determined as of the last day of the calendar year or other appropriate reporting period.
3. Where a balance or value threshold is to be determined as of 30 June 2014 under this Schedule, the relevant balance or value shall be determined as of the last day of the reporting period ending immediately before 30 June 2014, and where a balance or value threshold is to be determined as of the last day of a calendar year under this Schedule, the relevant balance or value shall be determined as of the last day of the reporting period that ends with or within that calendar year.
4. Subject to subparagraph E.1. of section II of this Schedule, an account shall be treated as a Reportable Account beginning as of the date it is identified as such pursuant to the due diligence procedures in this Schedule.
5. Unless otherwise provided, information with respect to a Reportable Account shall be reported annually in the calendar year following the year to which the information relates.

C. As an alternative to the procedures described in this Schedule a Reporting Financial Institution may apply the procedures described in the relevant U.S. Treasury Regulations, to establish whether an account is a Reportable Account. A Financial Institution may make such an election separately either with respect to all relevant Financial Accounts or, separately, with respect to any clearly identified group of such accounts (such as by line of business or the location of where the account is maintained).

II. Pre-existing Individual Accounts

The following rules and procedures apply for identifying Reportable Accounts among Pre-existing Accounts held by individuals (“Pre-existing Individual Accounts”).

A. Accounts Not Required to Be Reviewed, Identified or Reported. Unless the Reporting Financial Institution elects otherwise, either with respect to all Pre-existing Individual Accounts or, separately, with respect to any clearly identified group of such accounts the following accounts are not required to be reviewed, identified, or reported as Reportable Accounts—

1. Subject to subparagraph E.2. of this section, Pre-existing Individual Accounts with a balance or value that does not exceed \$50,000 as of 30 June 2014.
2. Subject to subparagraph E.2. of this section, Pre-existing Individual Accounts that are Cash Value Insurance Contracts and Annuity Contracts with a balance or value of \$250,000 or less as of 30 June 2014.
3. Any Depository Account with a balance or value of \$50,000 or less.

B. Review Procedures for Pre-existing Individual Accounts With a Balance or Value as of 30 June 2014, that Exceeds \$50,000 (\$250,000 for a Cash Value Insurance Contract or Annuity Contract), But Does Not Exceed \$1,000,000 (“Lower Value Accounts”).

1. **Electronic Record Search.** A Reporting Financial Institution must review electronically searchable data maintained by it for any of the following indicia—

- (a) Identification of the Account Holder as tax resident in the United Kingdom;
- (b) Current mailing or residence address (including a post office box, “in-care-of” or “hold mail” address) in the United Kingdom;
- (c) Currently effective power of attorney or signatory authority granted to a person with an address in the United Kingdom; and
- (d) For accounts that are not Depository Accounts a Reporting Financial Institution must also review electronically searchable data maintained by them for standing instructions to transfer funds to an account maintained in the United Kingdom.

2. If none of the indicia listed in subparagraph B.1. of this section are discovered in the electronic search, then no further action is required until there is a change in circumstances described in subparagraph C.2. of this section with respect to the account that results in one or more indicia being associated with the account.

3. If any of the indicia in subparagraph B.1. of this section are discovered in the electronic search, then the Reporting Financial Institution must treat the account as a Reportable Account unless subparagraph B.4. applies.

4. Notwithstanding a finding of indicia under subparagraph B.1. of this section, a Reporting Financial Institution is not required to treat an account as a Reportable Account if—

- (a) Where Account Holder information contains a current mailing or residence address (including a post office box, “in-care-of” or “hold mail” address) in the United Kingdom, a Reporting Financial Institution obtains or has previously reviewed and maintains a record of—
 - (1) a self-certification that the Account Holder is not resident in the United Kingdom for tax purposes; and
 - (a) a certificate of residence for tax purposes issued by an appropriate official of the country or jurisdiction in which the Account Holder claims to be resident; or

(b) the provision of a local tax identification number of the country or jurisdiction in which the Account Holder claims to be resident, and, a passport issued by the jurisdiction in which the Account Holder claims to be resident.

(b) Where Account Holder information contains a currently effective power of attorney or signatory authority granted to a person with an address in the United Kingdom, or in the case of Financial Accounts other than Depository Accounts where Account Holder information contains standing instructions to transfer funds to an account maintained in the United Kingdom, the Reporting Financial Institution obtains or has previously reviewed and maintains a record of—

(1) a self-certification that the Account Holder is not resident in the United Kingdom for tax purposes;
and

(2) documentary evidence, as defined in subparagraph VI.D. of this Schedule, establishing the Account Holder's non-residence status.

C. Additional Procedures Applicable to Pre-existing Individual Accounts That Are Lower Value Accounts.

1. Review of Pre-existing Individual Accounts that are Lower Value Accounts for indicia must be completed by 30 June 2016.

2. If there is a change of circumstances with respect to a Pre-existing Individual Account that is a Lower Value Account that results in one or more indicia described in subparagraph B.1. of this section being associated with the account, then the Reporting Financial Institution must treat the account as a Reportable Account unless subparagraph B.4. of this section applies.

3. Except for Depository Accounts described in subparagraph A.3. of this section, any Pre-existing Individual Account that has been identified as a Reportable Account under this section shall be treated as a Reportable Account in all subsequent years, unless the Account Holder ceases to be a Specified Person.

D. Enhanced Review Procedures for Pre-existing Individual Accounts With a Balance or Value That Exceeds \$1,000,000 as of 30

June 2014, or 31 December of 2015 or Any Subsequent Year (“High Value Accounts”).

1. **Electronic Record Search.** The Reporting Financial Institution must review electronically searchable data maintained by them for any of the indicia described in subparagraph B.1. of this section.

2. **Paper Record Search.** If the Reporting Financial Institution’s electronically searchable databases include fields for and capture all of the information described in subparagraph D.3. of this section, then no further paper record search is required. If the electronic databases do not capture all of this information, then with respect to High Value Accounts, the Reporting Financial Institution must also review the current customer master file and, to the extent not contained in the current customer master file, the following documents associated with the account and obtained by the Reporting Financial Institution within the last five years for any of the indicia described in subparagraph B.1. of this section—

- (a) the most recent documentary evidence collected with respect to the account;
- (b) the most recent account opening contract or documentation;
- (c) the most recent documentation obtained by the Reporting Financial Institution pursuant to AML/KYC Procedures or for other regulatory purposes;
- (d) any power of attorney or signature authority forms currently in effect; and
- (e) in the case of Financial Accounts other than Depository Accounts, any standing instructions to transfer funds currently in effect.

3. **Exception Where Databases Contain Sufficient Information.** A Reporting Financial Institution is not required to perform the paper record search described in subparagraph D.2. of this section if the Reporting Financial Institution’s electronically searchable information includes the following—

- (a) the Account Holder’s residence address and mailing address currently on file with the Reporting Financial Institution;
- (b) whether there is a current “in-care-of” address or “hold mail” address for the Account Holder;

- (c) whether there is any power of attorney or signatory authority for the account; and
- (d) in the case of Financial Accounts other than Depository Accounts whether there are standing instructions to transfer funds in the account to another account (including an account at another branch of the Reporting Financial Institution or another Financial Institution).

4. **Relationship Manager Inquiry for Actual Knowledge.** In addition to the electronic and paper record searches described above, the Reporting Financial Institution must treat as Reportable Accounts any High Value Accounts assigned to a relationship manager (including any accounts aggregated with such account) if the relationship manager has actual knowledge that the Account Holder is a Specified Person.

5. **Effect of Finding Indicia.**

(a) If none of the indicia listed in subparagraph B.1. of this section are discovered in the enhanced review of High Value Accounts described above, and the account is not identified as held by a Specified Person in subparagraph D.4. of this section, then no further action is required until there is a change in circumstances described in subparagraph E.4. of this section.

(b) If any of the indicia listed in subparagraph B.1. of this section are discovered in the enhanced review of High Value Accounts described above, or if there is a subsequent change in circumstances that results in one or more indicia being associated with the account, then the Reporting Financial Institution must treat the account as a Reportable Account unless it elects to apply subparagraph B.4. of this section and one or more of the exceptions in that subparagraph applies with respect to that account.

(c) Except for Depository Accounts described in subparagraph A.3. of this section, any Pre-existing Individual Account that has been identified as a Reportable Account under this section shall be treated as a Reportable Account in all subsequent years, unless the Account Holder ceases to be a Specified Person.

E. **Additional Procedures Applicable to High Value Accounts.**

1. If a Pre-existing Individual Account is a High Value Account as of 30 June 2014, the Reporting Financial Institution must complete the enhanced review procedures described in paragraph D of this section with respect to

such account by 01 September 2015. If based on this review such account is identified as a Reportable Account on or before 31 December 2014, the Reporting Financial Institution must report the required information about such account with respect to 2014 in the first report on the Account and on an annual basis thereafter. In the case of an account identified as a Reportable Account after 31 December 2014 and on or before 01 September 2015, the Reporting Financial Institution is not required to report information about such account with respect to 2014, but must report information about the account on an annual basis thereafter.

2. If a Pre-existing Individual Account is not a High Value Account as of 30 June 2014, but becomes a High Value Account as of 31 December 2015 or of any subsequent calendar year, the Reporting Financial Institution must complete the enhanced review procedures described in paragraph D of this section with respect to such account within six months after the last day of the calendar year in which the account becomes a High Value Account. If based on this review such account is identified as a Reportable Account, the Reporting Financial Institution must report the required information about such account with respect to the year in which it is identified as a Reportable Account and subsequent years on an annual basis, unless the Account Holder ceases to be a Specified Person.

3. Once a Reporting Financial Institution applies the enhanced review procedures described in paragraph D of this section to a High Value Account, the Reporting Financial Institution shall not be required to re-apply such procedures, other than the relationship manager inquiry in subparagraph D.4. of this section, to the same High Value Account in any subsequent year.

4. If there is a change of circumstances with respect to a High Value Account that results in one or more indicia described in subparagraph B.1. of this section being associated with the account, then the Reporting Financial Institution must treat the account as a Reportable Account unless it elects to apply subparagraph B.4. of this section and one of the exceptions in that subparagraph applies with respect to that account.

5. A Reporting Financial Institution must implement procedures to ensure that a relationship manager identifies any change in circumstances of an account. For example, if a relationship manager is notified that the Account Holder has a new mailing address in the United Kingdom, the Reporting Financial Institution shall be required to treat the new address as a change in circumstances and shall be required to obtain the appropriate documentation from the Account Holder.

III. New Individual Accounts.

The following rules and procedures apply for identifying Reportable Accounts among accounts held by individuals and opened on or after 1 July 2014 (“New Individual Accounts”).

A. Accounts Not Required to Be Reviewed, Identified, or Reported. Unless the Reporting Financial Institution elects otherwise, either with respect to all New Individual Accounts or, separately, with respect to any clearly identified group of such accounts—

1. A New Individual Account that is a Depository Account is not required to be reviewed, identified, or reported as a Reportable Account unless the account balance exceeds \$50,000 at the end of any calendar year or other appropriate reporting period.

2. A New Individual Account that is a Cash Value Insurance Contract is not required to be reviewed, identified, or reported as a Reportable Account unless the Cash Value exceeds \$50,000 at the end of any calendar year or other appropriate reporting period.

B. Other New Individual Accounts. With respect to New Individual Accounts not described in paragraph A of this section, upon account opening, (or within 90 days after the end of the calendar year in which the account ceases to be as described in paragraph A of this section), the Reporting Financial Institution must obtain a self-certification which may be part of the account opening documentation, that allows the Reporting Financial Institution to determine whether the Account Holder is resident in the United Kingdom for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures.

C. If the self-certification establishes that the Account Holder is resident in the United Kingdom for tax purposes, the Reporting Financial Institution must treat the account as a Reportable Account.

D. If there is a change of circumstances with respect to a New Individual Account that causes the Reporting Financial Institution to know or have reason to know that the original self-certification is incorrect or unreliable, the Reporting Financial Institution cannot rely on the original self-certification and must obtain a valid self-certification that establishes whether the Account Holder is a tax resident in the United Kingdom. If the Reporting Financial Institution is unable to obtain a valid self-certification,

the Reporting Financial Institution must treat the account as a Reportable Account.

IV. **Pre-existing Entity Accounts.**

The following rules and procedures apply for purposes of identifying Reportable Accounts (“Pre-existing Entity Accounts”).

A. Entity Accounts Not Required to Be Reviewed, Identified, or Reported. Unless the Reporting Financial Institution elects otherwise, either with respect to all Pre-existing Entity Accounts or, separately, with respect to any clearly identified group of such accounts, where the implementing rules in the jurisdiction provide for such an election, Pre-existing Entity Accounts with account balances that do not exceed \$250,000 as of 30 June 2014, are not required to be reviewed, identified, or reported as Reportable Accounts until the account balance exceeds \$1,000,000.

B. Entity Accounts Subject to Review. Pre-existing Entity Accounts that have an account balance or value that exceeds \$250,000 as of 30 June 2014, and Pre-existing Entity Accounts that do not exceed \$250,000 as of 30 June 2014 but the account balance of which exceeds \$1,000,000 as of the 31 December 2015 or any subsequent calendar year, must be reviewed in accordance with the procedures set forth in paragraph C of this section.

C. Entity Accounts With Respect to Which Reporting is Required. With respect to Pre-existing Entity Accounts described in paragraph B of this section, only accounts that are held by one or more Entities that are Specified Persons or by Passive NFFEs with one or more Controlling Persons who are Specified Persons, shall be treated as Reportable Accounts.

D. Review Procedures for Identifying Entity Accounts With Respect to Which Reporting is Required. For Pre-existing Entity Accounts described in paragraph B of this section, the Reporting Financial Institution must apply the following review procedures to determine whether the account is held by one or more Specified Persons, or by Passive NFFEs with one or more Controlling Persons who are Specified Persons—

1. Determine Whether the Entity is a Specified Person.

- (a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures) to determine whether the information

**INTERNATIONAL CO-OPERATION (IMPROVEMENT OF
INTERNATIONAL TAX COMPLIANCE) (UNITED KINGDOM)
REGULATIONS 2015**

indicates that the Entity Account Holder is a Specified Person. For this purpose, information indicating that the Entity is a Specified Person includes the place of incorporation or organisation, or an address in the United Kingdom.

- (b) If the information indicates that the Entity Account Holder is a Specified Person, the Reporting Financial Institution must treat the account as a Reportable Account unless it obtains a self-certification from the Account Holder, or reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Specified Person.

2. **Determine Whether a Non-Resident Entity is a Financial Institution.**

- (a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures) to determine whether the information indicates that the Non-Resident Entity Account Holder is a Financial Institution.
- (b) If the information indicates that the Non-Resident Entity Account Holder is a Financial Institution, then the account is not a Reportable Account.

3. **Determine Whether an Account Held by an NFFE is a Reportable Account.** With respect to an Entity Account Holder of a Pre-existing Entity Account that is not identified as either a Specified Person or a Financial Institution, the Reporting Financial Institution must identify (i) whether the Entity has Controlling Persons, (ii) whether the Entity is a Passive NFFE, and (iii) whether any of the Controlling Persons of the Entity is a Specified Person. In making these determinations the Reporting Financial Institution should follow the guidance in a) through d) of this subparagraph in the order most appropriate under the circumstances.

- (a) For purposes of determining the Controlling Persons of an Entity, a Reporting Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures.
- (b) For purposes of determining whether the Entity is a Passive NFFE, the Reporting Financial Institution must obtain a self-certification from the Entity Account Holder to establish its status, unless it has information in its possession or that is

**INTERNATIONAL CO-OPERATION (IMPROVEMENT OF
INTERNATIONAL TAX COMPLIANCE) (UNITED KINGDOM)
REGULATIONS 2015**

**Subsidiary
2015/200**

publicly available, based on which it can reasonably determine that the Entity is an Active NFFE.

- (c) For purposes of determining whether a Controlling Person of a Passive NFFE is a Specified Person, a Reporting Financial Institution may rely on—

(1) Information collected and maintained pursuant to AML/KYC Procedures in the case of a Pre-existing Entity Account held by one or more NFFEs with an account balance that does not exceed \$1,000,000; or

(2) A self-certification from the Entity Account Holder or such Controlling Person in the case of a Pre-existing Entity Account held by one or more NFFEs with an account balance that exceeds \$1,000,000.

- (d) If any Controlling Person of a Passive NFFE is a Specified Person in the other jurisdiction, the account shall be treated as a Reportable Account.

E. Timing of Review and Additional Procedures Applicable to Pre-existing Entity Accounts.

1. Review of Pre-existing Entity Accounts with an account balance or value that exceeds \$250,000 as of 30 June 2014, must be completed by 30 June 2016.
2. Review of Pre-existing Entity Accounts with a balance or value that does not exceed \$250,000 as of 30 June 2014, but exceeds \$1,000,000 as of 31 December 2015 or any subsequent year, must be completed within six months after the end of the calendar year in which the account balance exceeds \$1,000,000.
3. If there is a change of circumstances with respect to a Pre-existing Entity Account that causes the Reporting Financial Institution to know or have reason to know that the self-certification or other documentation associated with an account is incorrect or unreliable, the Reporting Financial Institution must re-determine the status of the account in accordance with the procedures set forth in paragraph D of this section.

V. New Entity Accounts.

The following provisions apply to accounts held by Entities and opened on or after 1 July 2014 (“New Entity Accounts”) –

A. Entity Accounts Not Required to Be Reviewed, Identified or Reported. Unless the Reporting Financial Institution elects otherwise, either with respect to all New Entity Accounts or, separately, with respect to any clearly identified group of such accounts, where the implementing rules in both jurisdictions provide for such election, a revolving credit facility treated as a New Entity Account is not required to be reviewed, identified, or reported, provided that the Reporting Financial Institution maintaining such account, in each case applying the rules at paragraph C of section VI of this Schedule 1, for account aggregation and currency translation, implements policies and procedures to prevent an account balance owed to the Account Holder that exceeds \$50,000.

B. Other New Entity Accounts. With respect to New Entity Accounts not described in paragraph A of this section, the Reporting Financial Institution must determine whether the Account Holder is— (i) a Specified Person; (ii) a Non-Resident Entity which is a Financial Institution; (iii) a Non-Reporting Financial Institution; (iv) an exempt beneficial owner; (v) an Active NFFE or Passive NFFE.

C. A Reporting Financial Institution may determine that an Account Holder is an Active NFFE or a Non-Resident Entity which is a Financial Institution in the United Kingdom, if the Reporting Financial Institution reasonably determines that the Entity has such status on the basis of information that is publicly available or in the possession of the Reporting Financial Institution.

D. In all other cases, a Reporting Financial Institution must obtain a self-certification from the Entity Account Holder to establish the Account Holder’s status. Based on the self-certification, the following rules apply—

1. If the Entity Account Holder is a Specified Person, the Reporting Financial Institution must treat the account as a Reportable Account.
2. If the Entity Account Holder is a Passive NFFE, the Reporting Financial Institution must identify the Controlling Persons as determined under AML/KYC Procedures, and must determine whether any such person is a tax resident in the United Kingdom on the basis of a self-certification from the Account Holder or

such person. If any such person is a tax resident of the United Kingdom, the account shall be treated as a Reportable Account.

3. If the Entity Account Holder is— (i) a Person resident in the United Kingdom that is not a Specified Person; (ii) a Non-Resident Entity which is a Financial Institution; (iii) a Non-Reporting Financial Institution; (iv) an exempt beneficial owner; (v) an Active NFFE; or, (vi) a Passive NFFE where none of the Controlling Persons of which is a Specified Person, then the account is not a Reportable Account and no reporting is required with respect to the account.

VI. Special Rules and Definitions.

The following additional provisions apply in implementing the due diligence procedures described above—

A. Reliance on Self-Certifications and Documentary Evidence. A Reporting Financial Institution may not rely on a self-certification or documentary evidence if the Reporting Financial Institution knows or has reason to know that the self-certification or documentary evidence is incorrect or unreliable.

B. Definitions. The following definitions apply for purposes of this Schedule.

“AML/KYC Procedures” means the customer due diligence (CDD) procedures of a Reporting Financial Institution pursuant to the anti-money laundering or similar requirements of the jurisdiction concerned to which such Reporting Financial Institution is subject

“Resident Entity” means an Entity that is resident in the United Kingdom for the purposes of these Regulations and includes an Entity that is resident in both the United Kingdom and Gibraltar under the respective domestic law of each.

“Non-Resident Entity” means an Entity that is not resident in the United Kingdom for the purposes of these Regulations.

“NFFE” means any Non-Resident Entity that is not a Financial Institution as defined in these Regulations.

“Passive NFFE” means any NFFE that is not an Active NFFE.

“Active NFFE” means any NFFE that meets any of the following criteria—

- (a) Less than 50 percent of the NFFE’s gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50 percent of the assets held by the NFFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;
- (b) The stock of the NFFE is regularly traded on an established securities market or the NFFE is a Related Entity of an Entity the stock of which is traded on an established securities market;
- (c) The NFFE is a government, a political subdivision of such government or a public body performing a function of such government or a political subdivision thereof, or an Entity wholly owned by one or more of the foregoing;
- (d) Substantially all of the activities of the NFFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an NFFE shall not qualify for this status if the NFFE functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
- (e) The NFFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution; provided, that the NFFE shall not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFFE;
- (f) The NFFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganising with the intent to continue or recommence operations in a business other than that of a Financial Institution; or
- (g) The NFFE primarily engages in financing and hedging transactions with or for Related Entities that are not Financial

Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution.

C. **Account Balance Aggregation and Currency Translation Rules.**

1. **Aggregation of Individual Accounts.** For purposes of determining the aggregate balance or value of accounts held by an individual, a Reporting Financial Institution shall be required to aggregate all accounts maintained by the Reporting Financial Institution, or Related Entities, but only to the extent that the Reporting Financial Institution's computerised systems link the accounts by reference to a data element such as client number or taxpayer identification number, and allow account balances to be aggregated. Each holder of a jointly held account shall be attributed the entire balance or value of the jointly held account for purposes of applying the aggregation requirements described in this paragraph.

2. **Aggregation of Entity Accounts.** For purposes of determining the aggregate balance or value of accounts held by an Entity, a Reporting Financial Institution shall be required to take into account all accounts held by Entities that are maintained by the Reporting Financial Institution, or Related Entities, to the extent that the Reporting Financial Institution's computerised systems link the accounts by reference to a data element such as client number or taxpayer identification number and allow account balances or values to be aggregated.

3. **Special Aggregation Rule Applicable to Relationship Managers.** For purposes of determining the aggregate balance or value of accounts held by a person to determine whether an account is a High Value Account, a Reporting Financial Institution shall also be required, in the case of any accounts that a relationship manager knows or has reason to know are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person, to aggregate all such accounts.

4. **Currency Translation Rule.** For purposes of determining the balance or value of accounts denominated in a currency other than the U.S. dollar, a Reporting Financial Institution must convert the dollar threshold amounts described in this Schedule into such currency using a published spot rate determined as of the last day of the calendar year preceding the year in which the Reporting Financial Institution is determining the balance or value.

**INTERNATIONAL CO-OPERATION (IMPROVEMENT OF
INTERNATIONAL TAX COMPLIANCE) (UNITED KINGDOM)
REGULATIONS 2015**

D. **Documentary Evidence.** For purposes of this Schedule, acceptable documentary evidence includes any of the following—

1. A certificate of residence for tax purposes issued by an appropriate official of the country or jurisdiction in which the Account Holder claims to be resident.
2. With respect to an individual, any valid identification issued by an authorised government body (for example, a government or agency thereof, or a municipality), that includes the individual's name and is typically used for identification purposes.
3. With respect to an Entity, any official documentation issued by an authorised government body (for example, a government or agency thereof, or a municipality) that includes the name of the Entity and either the address of its principal office in the country in which it claims to be a resident or the country in which the Entity was incorporated or organised.
4. With respect to an account maintained in a jurisdiction with anti-money laundering rules that have been approved by the U.S. Internal Revenue Service in connection with a Qualifying Intermediary agreement (as described in relevant U.S. Treasury Regulations), any of the documents other than a Form W-8 or W-9 referenced in the jurisdiction's attachment to the Qualifying Intermediary agreement for identifying individuals or Entities.
5. Any financial statement, third-party credit report, bankruptcy filing.

E. Alternative Procedures for Financial Accounts Held by Individual Beneficiaries of a Cash Value Insurance Contract. A Reporting Financial Institution may presume that an individual beneficiary (other than the owner) of a Cash Value Insurance Contract receiving a death benefit is not a Specified Person and may treat such Financial Account as other than a Reportable Account unless the Reporting Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Specified Person. A Reporting Financial Institution has reason to know that a beneficiary of a Cash Value Insurance Contract is a Specified Person if the information collected by the Reporting Financial Institution and associated with the beneficiary contains indicia as described in subparagraph B.1. of section II of this Schedule 1. If a Reporting Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Specified Person, the

International Co-Operation (Tax Information)

2009-50

INTERNATIONAL CO-OPERATION (IMPROVEMENT OF INTERNATIONAL TAX COMPLIANCE) (UNITED KINGDOM) REGULATIONS 2015

**Subsidiary
2015/200**

Reporting Financial Institution must follow the procedures in subparagraph B.3. of section II of this Schedule.

F. Reliance on Third Parties. Subject to regulation 11, regardless of whether an election is made under paragraph C of section I of this Schedule, a Reporting Financial Institution may rely on due diligence procedures performed by third parties to the extent provided in the U.S. Treasury Regulations.

Regulation 9.

SCHEDULE 2**NON-REPORTING FINANCIAL INSTITUTIONS AND EXEMPT
PRODUCTS**

Pursuant to regulation 9 the following Entities are treated as either exempt beneficial owners, and/or as other Non-Reporting Financial Institutions, as the case may be, and the following Exempt Products are excluded from the definition of Financial Accounts.

I. Exempt Beneficial Owners.

The following Entities are exempt beneficial owners and are treated as Non-Reporting Financial Institutions.

A. Governmental Entity. The Government of Gibraltar, any political subdivision of Gibraltar whatsoever, or any wholly owned agency or instrumentality of Gibraltar or any one or more of the foregoing (each, a “Gibraltar Governmental Entity”). This category is comprised of the integral parts, controlled entities, and political subdivisions of Gibraltar.

1. An integral part of Gibraltar means any person, organisation, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of Gibraltar. The net earnings of the governing authority must be credited to its own account or to other accounts of a Gibraltar Governmental Entity, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity.

2. A controlled entity means an Entity that is separate in form from Gibraltar or that otherwise constitutes a separate juridical entity, provided that—

- (a) The Entity is wholly owned and controlled by one or more Gibraltar Governmental Entities directly or through one or more controlled entities;
- (b) The Entity’s net earnings are credited to its own account or to the accounts of one or more Gibraltar Governmental Entities, with no portion of its income inuring to the benefit of any private person; and

- (c) The Entity's assets vest in one or more Gibraltar Governmental Entities upon dissolution.

3. Income does not inure to the benefit of private persons if such persons are the intended beneficiaries of a governmental program, and the program activities are performed for the general public with respect to the common welfare or relate to the administration of some phase of government. Notwithstanding the foregoing, however, income is considered to inure to the benefit of private persons if the income is derived from the use of a governmental entity to conduct a commercial business, such as a commercial banking business, that provides financial services to private persons.

B. International Organisation. Any international organisation or wholly owned agency or instrumentality thereof. This category includes any intergovernmental organisation (including a supranational organisation) (1) that has in effect a headquarters agreement with Gibraltar; and (2) the income of which does not inure to the benefit of private persons.

C. Broad Participation Retirement Fund. A fund established in Gibraltar to provide retirement, disability, or death benefits, or any combination thereof, to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that the fund—

1. Does not have a single beneficiary with a right to more than five percent of the fund's assets;
2. Is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in Gibraltar; and
3. Satisfies at least one of the following requirements—
 - a) The fund is generally exempt from tax in Gibraltar on investment income under the laws of Gibraltar due to its status as a retirement or pension plan;
 - b) The fund receives at least 50 percent of its total contributions (other than transfers of assets from other plans described in paragraphs C through F of this section or from retirement and pension accounts described in subparagraph B.1. of section IV of this Schedule) from the sponsoring employers;

**INTERNATIONAL CO-OPERATION (IMPROVEMENT OF
INTERNATIONAL TAX COMPLIANCE) (UNITED KINGDOM)
REGULATIONS 2015**

- c) Distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability, or death (except rollover distributions to other retirement funds described in paragraphs C through F of this section or retirement and pension accounts described in subparagraph B.1. of section IV of this Schedule), or penalties apply to distributions or withdrawals made before such specified events; or
- d) Contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed \$50,000 annually, applying the rules set forth in paragraph C of section IV Schedule 1 for account aggregation and currency translation.

D. Narrow Participation Retirement Fund. A fund established in Gibraltar to provide retirement, disability, or death benefits to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that—

1. The fund has fewer than 50 participants;
2. The fund is sponsored by one or more employers that are not Investment Entities or Passive NFFEs;
3. The employee and employer contributions to the fund (other than transfers of assets from retirement and pension accounts described in subparagraph B.1. of section IV of this Schedule) are limited by reference to earned income and compensation of the employee, respectively;
4. Participants that are not residents of Gibraltar are not entitled to more than 20 percent of the fund's assets; and
5. The fund is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in Gibraltar.

E. Pension Fund of an Exempt Beneficial Owner. A fund established in Gibraltar by an exempt beneficial owner to provide retirement, disability, or death benefits to beneficiaries or participants that are current or former employees of the exempt beneficial owner (or persons designated by such

employees), or that are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the exempt beneficial owner.

F. Investment Entity Wholly Owned by Exempt Beneficial Owners. An Entity that is a Financial Institution solely because it is an Investment Entity, provided that each direct holder of an Equity Interest in the Entity is an exempt beneficial owner, and each direct holder of a debt interest in such Entity is either a Depository Institution (with respect to a loan made to such Entity) or an exempt beneficial owner.

G. Additional Entities. Any additional entities agreed between the United Kingdom and Gibraltar.

H. Limited Capacity Exempt Beneficial Owners. The Controlling Persons of an NFFE that meets all of the following requirements shall be treated as an Exempt Beneficial Owner solely in their capacity as a Controlling Person of that NFFE-

- i. It is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organization, civic league or an organisation operated exclusively for the promotion of social welfare;
- ii. It is exempt from income tax in its jurisdiction of residence;
- iii. It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
- iv. The applicable laws of the NFFE's jurisdiction of residence or the NFFE's formation documents do not permit any income or assets of the NFFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFFE has purchased; and

- v. The applicable laws of the NFFE's jurisdiction of residence or the NFFE's formation documents require that, upon the NFFE's liquidation or dissolution, all of its assets be distributed to a governmental entity or other non-profit organisation, or escheat to the government of the NFFE's jurisdiction of residence or any political subdivision thereof.

II. **Small or Limited Scope Financial Institutions that Qualify as Non-Reporting Financial Institutions.**

The following Financial Institutions are Non-Reporting Financial Institutions.

A. **Local Credit Unions.** A Financial Institution satisfying all of the following requirements—

1. The Financial Institution carries on business solely as a Credit Union;
2. It is licensed and regulated under the laws of Gibraltar;
3. It has no fixed place of business outside of Gibraltar; and
4. All accounts maintained by the Financial Institution are held by residents of Gibraltar.

B. **Financial Institution with Only Low-Value Accounts.** A Financial Institution satisfying the following requirements—

1. The Financial Institution is not an Investment Entity;
2. No Financial Account maintained by the Financial Institution or any Related Entity has a balance or value in excess of \$50,000, applying the rules set forth in paragraph C of section VI Schedule 1 for account aggregation and currency translation; and
3. The Financial Institution does not have more than \$50 million in assets on its balance sheet, and the Financial Institution and any Related Entities, taken together, do not have more than \$50 million in total assets on their consolidated or combined balance sheets.

C. **Qualified Credit Card Issuer.** A Financial Institution satisfying the following criteria—

1. The Financial Institution is a Financial Institution solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the card and the overpayment is not immediately returned to the customer; and
2. Beginning on or before 1 July, 2014, the Financial Institution implements policies and procedures to either prevent a customer deposit in excess of \$50,000, or to ensure that any customer deposit in excess of \$50,000, in each case applying the rules set forth in Schedule 1 for account aggregation and currency translation, is refunded to the customer within 60 days. For this purpose, a customer deposit does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

III. Investment Entities that Qualify as Non-Reporting Financial Institutions and Other Special Rules.

The Financial Institutions described in paragraphs A through E of this section are Non-Reporting Financial Institutions. In addition, paragraph F of this section provides special rules applicable to an Investment Entity.

A. Trustee-Documented Trust. A trust resident in Gibraltar to the extent that the trustee of the trust is a Reporting Financial Institution and reports all information required to be reported pursuant to the Agreement with respect to all Reportable Accounts of the trust.

B. Sponsored Investment Entity. A Financial Institution described in subparagraph B.1. of this section having a sponsoring entity that complies with the requirements of subparagraph B.2. of this section.

1. A Financial Institution is a sponsored investment entity if (a) it is an Investment Entity established in Gibraltar; and (b) an Entity has agreed with the Financial Institution to act as a sponsoring entity for the Financial Institution;
2. The sponsoring entity is authorised to act on behalf of the Financial Institution (such as fund manager, trustee, corporate director, or managing partner) and complies with the following requirements—

- (a) The sponsoring entity is a Financial Institution;

**INTERNATIONAL CO-OPERATION (IMPROVEMENT OF
INTERNATIONAL TAX COMPLIANCE) (UNITED KINGDOM)
REGULATIONS 2015**

- (b) The sponsoring entity performs, on behalf of the Financial Institution, all due diligence, reporting and other requirements that the Financial Institution would have been required to perform if it were a Reporting Financial Institution;
- (c) The sponsoring entity identifies the Financial Institution in all reporting completed on the Financial Institution's behalf; and
- (d) The sponsoring entity has notified the Authority of its status as a sponsor in respect of the Financial Institution and has not had its status as a sponsor revoked by the Authority.

C. Sponsored, Closely Held Investment Vehicle. A Financial Institution satisfying the following requirements—

- 1. The Financial Institution is a Financial Institution solely because it is an Investment Entity;
- 2. The sponsoring entity is a Reporting Financial Institution, is authorised to act on behalf of the Financial Institution (such as a professional manager, trustee, or managing partner), and agrees to perform, on behalf of the Financial Institution, all due diligence, reporting and other requirements that the Financial Institution would have been required to perform if it were a Reporting Financial Institution;
- 3. The Financial Institution does not hold itself out as an investment vehicle for unrelated parties;
- 4. Twenty or fewer individuals own all of the debt interests and Equity Interests in the Financial Institution (disregarding debt interests owned by Financial Institutions and Equity Interests owned by an Entity if that Entity owns 100 per cent of the Equity Interests in the Financial Institution and is itself a sponsored Financial Institution described in this paragraph C); and
- 5. The sponsoring entity complies with the following requirements—
 - (a) The sponsoring entity is a Financial Institution;
 - (b) The sponsoring entity agrees, [whether in writing or otherwise], to perform, on behalf of the Financial Institution, all due diligence, reporting and other

requirements that the Financial Institution would have been required to perform if it were a Reporting Financial Institution and retains documentation collected with respect to the Financial Institution for a period of six years;

- (c) The sponsoring entity identifies the Financial Institution in accordance with the applicable registration requirements of the Authority in all reporting completed on the Financial Institution's behalf; and
- (d) The sponsoring entity has notified the Authority of its status as a sponsor in respect of the Financial Institution and has not had its status as a sponsor revoked by the Authority.

D. Investment Advisors and Investment Managers. An Investment Entity established in Gibraltar the sole activity of which is (1) to render investment advice to, and act on behalf of, or (2) to manage portfolios for, and act on behalf of, a customer for the purposes of investing, managing, or administering funds deposited in the name of the customer with a Financial Institution.

E. Collective Investment Vehicle. An Investment Entity established in Gibraltar that is regulated as a collective investment vehicle, provided that all of the interests in the collective investment vehicle (including debt interests in excess of \$50,000) are held by or through one or more exempt beneficial owners or Active NFFEs described in subparagraph B of section VI of Schedule 1.

F. Special Rules for reporting interests of Investment entities in Collective Investment Vehicles. The following rules apply to an Investment Entity—

1. Where an Investment Entity (other than a Financial Institution through which interests in the collective investment vehicle are held) has an interest in a collective investment vehicle as described in paragraph E of this section, the reporting obligations of that Investment Entity in respect of its interest in that collective investment vehicle shall be deemed to have been met.
2. Consistent with paragraph 3 of Section 4 of the Agreement (third-party service providers), for interests held in an Investment Entity established in Gibraltar that is not as

**INTERNATIONAL CO-OPERATION (IMPROVEMENT OF
INTERNATIONAL TAX COMPLIANCE) (UNITED KINGDOM)
REGULATIONS 2015**

described in paragraph E of this section, the reporting obligations of all Investment Entities with respect to their interests in that Gibraltar Investment Entity shall be deemed to be satisfied if the information required to be reported under the Agreement with respect to all such interests is reported by the Gibraltar Investment Entity itself or another person.

IV. Exempt Products.

The following accounts are excluded from the definition of Financial Accounts and therefore are not treated or regarded as Reportable Accounts.

A. Qualifying Credit Cards.

Unless the Reporting Financial Institution elects otherwise, either with respect to all accounts or, separately, with respect to any clearly identified group of such accounts, where the implementing rules in both jurisdictions provide for such election, a credit card account is not required to be reviewed, identified, or reported, provided that the Reporting Financial Institution maintaining such account, in each case applying the rules set forth in paragraph C of section VI of this Schedule 1, for account aggregation and currency translation—

1. implements policies and procedures to prevent an account balance owed to the Account Holder that exceeds \$50,000; or,
2. has policies and procedures in place to ensure that any customer deposit in excess of \$50,000 is refunded to the customer within 60 days. For this purpose, a customer deposit does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

B. Certain Savings Accounts.

1. *Retirement and Pension Account.* A retirement or pension account maintained in Gibraltar that satisfies the following requirements under the laws of Gibraltar.

- (a) Annual contributions into the scheme are not more than £50,000;
- (b) The scheme is tax-favoured (i.e. contributions to the scheme that would otherwise be subject to tax laws of Gibraltar are deductible or excluded from the gross income of the scheme or

**INTERNATIONAL CO-OPERATION (IMPROVEMENT OF
INTERNATIONAL TAX COMPLIANCE) (UNITED KINGDOM)
REGULATIONS 2015**

**Subsidiary
2015/200**

taxed at a reduced rate, or taxation on investment income from the scheme is deferred or taxed at a reduced rate);

- (c) Funds contributed cannot be accessed before the age of 55 except in circumstances of serious ill health.

2. *Non-Retirement Savings Accounts.* An account maintained in Gibraltar (other than an insurance or Annuity Contract) that satisfies the following requirements under the laws of Gibraltar.

- (a) The account is subject to regulation as a savings vehicle for purposes other than for retirement;
- (b) The account is tax-favoured (i.e. contributions to the account that would otherwise be subject to tax under the laws of Gibraltar are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);
- (c) Annual contributions are limited to £15,000 or less, applying the rules set forth in paragraph C of section VI of Schedule 1 for account aggregation and currency translation;
- (d) Contributions into the account can only be made by a resident of Gibraltar.

C. **Account Held by an Estate.** An account maintained in Gibraltar that is held solely by an estate if the documentation for such account includes a copy of the deceased's will or death certificate.

D. **Escrow Accounts.** An account maintained in Gibraltar established in connection with any of the following—

- 1. A court order or judgment.
- 2. A sale, exchange, or lease of real or personal property, provided that the account satisfies the following requirements—
 - (a) The account is funded solely with a deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a financial asset that is deposited in the account in connection with the sale, exchange, or lease of the property;

- (b) The account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease;
 - (c) The assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee (including to satisfy such person's obligation) when the property is sold, exchanged, or surrendered, or the lease terminates;
 - (d) The account is not a margin or similar account established in connection with a sale or exchange of a financial asset; and
 - (e) The account is not associated with a credit card account.
3. An obligation of a Financial Institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time.
4. An obligation of a Financial Institution solely to facilitate the payment of taxes at a later time.
- E. **Partner Jurisdiction Accounts.** An account or product that would be excluded from the definition of Financial Account under an Agreement to Improve International Tax Compliance (or similar Arrangement) between the UK and another Jurisdiction (Jurisdiction X) where—
- 1. the account or product is established in Jurisdiction X but is maintained in Gibraltar; and
 - 2. the account or product maintained in Gibraltar is subject to the same requirements and oversight under the laws of Jurisdiction X, as it would be if that account or product was maintained by a Financial Institution in Jurisdiction X.
- F. **Agreed Products.** Any additional products agreed between the UK Government and Gibraltar.

Regulation 10.

SCHEDULE 3

**ALTERNATIVE REPORTING REGIME FOR CERTAIN
REPORTABLE ACCOUNTS**

The Alternative Reporting Regime.

A. Relationship between this Schedule and the Articles of the Agreement—

1. In relation to a Reportable Account and for a Relevant Reporting Period, subject to subparagraph B.3.—

(a) if the criteria at subparagraph B.1.(a) to (c) are all met with respect to the Reportable Account for a Relevant Reporting Period, then paragraph 4 of Article 3 to the Agreement shall not apply to those Reportable Accounts; and

(b) if the certification procedure at subparagraphs C.1 and C.2 is complied with, then

(1) subparagraph F.2 of Annex IV to the Agreement shall apply instead of paragraph 4 of Article 3 of the Agreement; and

(2) paragraph D of this Schedule shall apply instead of paragraph 2 of Article 2 of the Agreement; but

(c) if the certification procedure at subparagraph C.1. is not complied with, then subparagraph F.3. of Annex IV to the Agreement shall apply instead of paragraph 4 of Article 3 of the Agreement.

B. Reportable Accounts Eligible for the Alternative Reporting Regime.

1. In order for the Alternative Reporting Regime to apply to a Reportable Account for any Relevant Reporting Period all of the following criteria must be met—

**INTERNATIONAL CO-OPERATION (IMPROVEMENT OF
INTERNATIONAL TAX COMPLIANCE) (UNITED KINGDOM)
REGULATIONS 2015**

- (a) the Reporting Financial Institution must have made an election to the Authority in order to offer the Alternative Reporting Regime in relation to the Reportable Accounts of those Specified Persons that have elected for it to apply, and provided the required certification;
- (b) the Specified Person must have made an election for reporting under the Alternative Reporting Regime, to the Reporting Financial Institution, for the Relevant Reporting Period; and
- (c) where an election is made by any Specified Person for reporting under the Alternative Reporting Regime for a Relevant Reporting Period, it must be applied to all Reportable Accounts held with the Reporting Financial Institution by that Specified Person, including the accounts of an Entity of which the Specified Person is a Controlling Person.

2. For the Alternative Information to be provided under paragraph D, the Specified Person who has made an election under subparagraph B.1.(b) must also provide certification to the Reporting Financial Institution by following the procedures set out in paragraph C of this Schedule.

3. In cases where not all Account Holders of a Reportable Account that are Specified Persons have made a certified election under subparagraph B.2. for the Relevant Reporting Period, or, in the case of an Entity, not all of those Controlling Persons that are Specified Persons have made a certified election under subparagraph B.2. for the Relevant Reporting Period, the Reporting Financial Institution must obtain and provide the following information—

- (a) With respect to those Specified Persons that have made a certified election under subparagraph B.2. for the Relevant Reporting Period, the Alternative Information under paragraph D, with respect to the Reportable Account as provided for in regulation 10(3);
- (b) With respect to those Specified Persons that have elected for the Alternative Reporting Regime to apply under subparagraph B.1.(b) but have not provided the required certification under subparagraph B.2, the information in relation to the Reportable Account in accordance with regulations 4 and 5 in full, as provided for in regulation 10(5);
- (c) With respect to those Specified Persons that have not elected for the Alternative Reporting Regime to apply, the information in

relation to the Reportable Account in accordance with the provisions of regulations 4 and 5 in full, as provided for in regulation 7.

C. Alternative Reporting Regime Certification Procedure.

For each Relevant Reporting Period, in order for paragraph D to apply to the Reportable Account, the Specified Person who has made an election under subparagraph B.1.(b) must also provide certification to the Reporting Financial Institution in accordance with subparagraph C.1.

1. No later than 28 February following the end of the Relevant Tax Year, the Specified Person must provide to the Reporting Financial Institution written verification, confirming the following information—

(a) the Specified Person's United Kingdom tax return for the Relevant Tax Year

(1) contains a claim or statement that the Specified Person is not domiciled anywhere within the United Kingdom; and

(2) includes a claim to be taxed under the remittance basis under Part 14 Chapter A1 Income Tax Act 2007(UK) and, if appropriate, the tax chargeable under section 809H Income Tax Act 2007 (UK) has been paid, or any such equivalent sections in any successor legislation;

(b) to the best of their knowledge, the domicile status and claim to be taxed on the remittance basis is not being formally disputed by HMRC.

2. The Reporting Financial Institution must retain in their records both the election made by the Specified Person and the written verification for each Relevant Reporting Period for a period of 6 years following the end of the Relevant Tax Year.

3. Where the written verification is not provided, or for any reason the certification process cannot be completed, the information to be reported by the Reporting Financial Institution and the timescale for the provision of the information to the Authority shall be as set out in regulation 10(5).

D. Alternative Information to be Provided.

**INTERNATIONAL CO-OPERATION (IMPROVEMENT OF
INTERNATIONAL TAX COMPLIANCE) (UNITED KINGDOM)
REGULATIONS 2015**

1. Where for a Relevant Reporting Period the criteria in paragraph B of this Schedule are met in relation to a Reportable Account, and certification within paragraph C is obtained, the information to be provided to the Authority in relation to that Reportable Account for the Relevant Reporting Period shall be—

- (a) the Gross Payments and Movements of Assets from an originating United Kingdom source into the Reportable Account during the Relevant Tax Year;
- (b) the Gross Payments and Movements of Assets from an originating source territory or jurisdiction which cannot be determined, into the Reportable Account during the Relevant Tax Year;
- (c) the Gross Payments from the Reportable Account to an ultimate United Kingdom destination, during the Relevant Tax Year; and
- (d) the Gross Payments from the Reportable Account to an ultimate territory or jurisdiction destination which cannot be determined, during the Relevant Tax Year.

2. Where any Gross Payments and Movements of Assets within the scope of any of subparagraphs D.1.(a) to d) of this Schedule have been made during the Relevant Tax Year, then the additional information set out in subparagraphs D.2 (a) to (c) is also required to be provided relating to the Reportable Account.

- (a) the name, address, date of birth and, where available, the National Insurance Number of each Specified Person that is an Account Holder of such an account and, in the case of an Entity that, after application of the due diligence procedures set forth in Schedule 1, is identified as having one or more Controlling Persons that is a Specified Person, the name and address of such Entity and the name, address, date of birth and, where available, the National Insurance Number of each such Specified Person;
- (b) the account number (or functional equivalent in the absence of an account number); and
- (c) the name of the Reporting Financial Institution and, where provided when registering with the U.S. Internal Revenue Service for FATCA purposes, the GIIN.

E. Gibraltar Retention and Exchange of Alternative Reporting Regime User Information.

For each Reportable Account to which the Alternative Reporting Regime is applied a Financial Institution shall retain or have access to the following information for a period of 6 years following the end of each Relevant Tax Year—

- (a) the name, address, date of birth and, where available, the National Insurance Number for each Specified Person that holds the Reportable Account and, in the case of an Entity having one or more Controlling Persons that is a Specified Person, the name and address of that Entity and the name, address, date of birth and, where available, the National Insurance Number of each such Specified Person;
- (b) the account number (or functional equivalent in the absence of account number); and
- (c) the name of the Reporting Financial Institution and, where provided when registering with the U.S. Internal Revenue Service for FATCA purposes, the GIIN.

F. Definitions.

The following definitions apply for purposes of this Schedule—

1. “Alternative Reporting Regime” means the reporting regime set out in this Schedule.
2. “Relevant Reporting Period” means the calendar year to which all the information required to be reported under the Agreement would relate in the absence of the Alternative Reporting Regime.
3. “Relevant Tax Year” means the period from 30 June 2014 to the 5 April 2015 for Relevant Reporting Period 2014, and for all other years means the period from 6 April following the start of the Relevant Reporting Period to the following 5 April.
4. “Gross Payments” means the sum total of monies that are transferred.

2009-50

International Co-Operation (Tax Information)

**Subsidiary
2015/200**

**INTERNATIONAL CO-OPERATION (IMPROVEMENT OF
INTERNATIONAL TAX COMPLIANCE) (UNITED KINGDOM)
REGULATIONS 2015**

5. “Gross Payments and Movements of Assets” means the sum total of monies and property (both tangible and intangible), that are transferred.