

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4408 of 09 November, 2017

LEGAL NOTICE NO. 219 OF 2017.

**TAXATION (MUTUAL ADMINISTRATIVE ASSISTANCE) ACT
2014**

**INTERNATIONAL CO-OPERATION (IMPROVEMENT OF
INTERNATIONAL TAX COMPLIANCE) (AMENDMENT No. 2)
REGULATIONS 2017**

In exercise of the powers conferred upon it by section 27 of the Taxation (Mutual Administrative Assistance) Act 2014, and in order to further transpose into the law of Gibraltar Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, and to give further effect to the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information, signed by the Competent Authority of Gibraltar on 29 October 2014, the Government has made the following Regulations-

Title.

1. These Regulations may be cited as the International Co-operation (Improvement of International Tax Compliance) (Amendment No. 2) Regulations 2017.

Commencement.

2. These Regulations come into operation on the day of publication.

Amendment of Regulations.

3.(1) The International Co-operation (Improvement of International Tax Compliance) Regulations 2016 are amended in accordance with this regulation.

(2) In the definition of “the CRS” in regulation 3(1), delete “and reproduced in Schedule 4”.

(3) In regulation 7(2)(c), for “six years beginning with the end of the year in which the arrangements applied to the financial accounts” substitute “not less than five years after the end of the period within which the reporting financial institution must report the information required under the Directive or the CRS as relevant”.

(4) In Schedule 1-

- (a) after the entry “Australia”, insert “Azerbaijan”;
- (b) for “Brunei Darssalam”, substitute “Brunei Darussalam”;
- (c) for “Curacao”, substitute “Curaçao”;
- (d) after the entry “Niue”, insert “Nigeria”; and
- (e) after the entry “Norway”, insert “Pakistan”.

(5) In Schedule 4-

- (a) in Section I-
 - (i) in paragraph A(5)(b), for “property” substitute “Financial Assets”; and
 - (ii) in paragraph C, insert “or with respect to each Financial Account that is opened prior to becoming a Reportable Account,” after “that is a Preexisting Account.”;
- (b) in Section II-
 - (i) after paragraph A, insert-
 - “B. A Reporting Financial Institution, which pursuant to the procedures described in Sections II through VII, identifies any account as a Foreign Account that is not a Reportable Account at the time the due diligence is performed, may rely on the outcome of such procedures to comply with future reporting obligations.”; and

(ii) rename paragraphs B, C, D and E as C, D, E and F respectively;

(c) in Section III-

(i) in the frontispiece, for “for purposes of identifying Reportable Accounts among”, substitute “with respect to”;

(ii) in paragraph B(2)(a) to (f), for “Reportable”, substitute “Foreign” wherever it appears;

(iii) in paragraph B(4), for “Reportable”, substitute “Foreign”;

(iv) in paragraph B(6)-

A. for “Reportable”, substitute “Foreign” wherever it appears, and

B. in subparagraphs (a)(ii) and (b)(ii) for “non-reportable status”, substitute “residence for tax purposes other than such Foreign Jurisdiction”;

(i) in paragraph C(5)-

(A) in subparagraph (a), for “Reportable Person” substitute “resident for tax purposes in a Foreign Jurisdiction”,

(B) in subparagraph (b), for “account as a Reportable Account with respect to each Reportable Jurisdiction” substitute “Account Holder as a resident for tax purposes for each Foreign Jurisdiction”, and

(C) in subparagraph (c), for “electronic search” substitute “enhanced review of High Value Accounts described above,”;

(ii) in paragraph C(8), for “Reportable Jurisdiction”, substitute “Foreign Jurisdiction”;

- (iii) in paragraph C(9), for “Reportable Jurisdiction”, substitute “Foreign Jurisdiction”; and
- (iv) delete paragraph E;
- (a) in the frontispiece of Section IV, for “for the purposes of identifying Reportable Accounts among”, substitute “with respect to”;
- (b) in Section V-
 - (i) in the frontispiece, for “for purposes of identifying Reportable Accounts among” substitute “with respect to”;
 - (ii) in paragraph B-
 - (A) before “account balance” insert “aggregate” wherever it appears, and
 - (B) for “paragraph D”, substitute “paragraph C”;
 - (iii) delete paragraph C;
 - (iv) rename paragraph D as paragraph C;
 - (v) in the new paragraph C-
 - (A) in the title, for “Is” substitute “may be”, and
 - (B) in the frontispiece delete “to determine whether the account is held by one or more Reportable Persons, or by Passive NFEs with one or more Controlling Persons who are Reportable Persons”;
 - (vi) in the new paragraph C(1)-
 - (A) in the title, for “Whether the Entity Is a Reportable Person” substitute “the Residence of the Entity”,

- (B) in subparagraph (a), for “whether the information indicates that the Account Holder is resident in a Reportable Jurisdiction. For this purpose, information indicating that the Account Holder is resident in a Reportable Jurisdiction includes a place of incorporation or organisation, or an address in a Reportable Jurisdiction”, substitute “the Account Holder’s residence. For this purpose, information indicating the Account Holder’s residence includes a place of incorporation or organisation, or an address in a Foreign Jurisdiction”, and
- (C) in subparagraph (b), for “resident in a Reportable Jurisdiction” substitute “a Reportable Person”;
- (vii) in the title of the new paragraph C(2) for “Whether the Entity is a Passive NFE with One or More Controlling Persons Who Are Reportable Persons” substitute “the Residence of the Controlling Person of a Passive NFE”;
- (viii) in the frontispiece of the new paragraph C(2)-
 - (A) for “must determine”, substitute “must identify”,
 - (B) for “who are Reportable Persons”, substitute “and determine the residence of such Controlling Persons”,
 - (C) for “must be” substitute “is”, and
 - (D) for “D(2)(a)” substitute “C(2)(a)”;
- (ix) in the new paragraph C(2)(c)-
 - (A) in the frontispiece, for the two times the phrase “whether a Controlling Persons of a Passive NFE is a Reportable Person” appears, substitute

- “the residence of a Controlling Person of a Passive NFE”,
- (B) in subparagraph (i), for “account balance” substitute “aggregate account balance or value”, and
 - (C) in subparagraph (ii), after “is resident for tax purposes.” insert “ If a self-certification is not provided, the Reporting Financial Institution will establish such residence(s) by applying the procedures described in paragraph C of Section III.”;
- (x) rename paragraph E as paragraph D; and
- (xi) in the new paragraph D(3), for “paragraph D”, substitute “paragraph C”;
- (c) in Section VI-
- (i) in the frontispiece, for “for purposes of identifying Reportable Accounts among”, substitute “with respect to”;
 - (ii) in the frontispiece of paragraph A-
 - (A) in the title, for “Is”, substitute “may be”, and
 - (B) delete “to determine whether the account is held by one or more Reportable Persons, or by Passive NFEs with one or more Controlling Persons who are Reportable Persons”;
 - (iii) in the title of paragraph A(1), for “Whether the Entity is a Reportable Person”, substitute “the Residence of the Entity”;
 - (iv) in the title of paragraph A(2), for “Whether the Entity is a Passive NFE with One or More Controlling Persons Who Are Reportable Persons”, substitute “the

Residence of the Controlling Persons of a Passive NFE”;

- (v) in the frontispiece of paragraph A(2)-
 - (A) for “must determine”, substitute “must identify”, and
 - (B) for “who are Reportable Persons”, substitute “and determine the residence of such Reportable Persons”; and
- (vi) in paragraph A(2)(c)-
 - (A) in the title, for “whether a Controlling Person of a Passive NFE is a Reportable Person”, substitute “the residence of a Controlling Persons of a Passive NFE”, and
 - (B) for “whether a Controlling Person of a Passive NFE is a Reportable Person” substitute “the residence of a Controlling Person”;
- (d) in paragraph B of Section VII, insert “of residence in a Foreign Jurisdiction” before “as described in paragraph B of Section III.”;
- (e) in Section VIII-
 - (i) in paragraph B(9), insert “, except a Passive NFE with Controlling Persons who are Reportable Persons” after “collective investment vehicle are held by or through one or more Entities described in subparagraph B(1), or individuals or Entities that are not Reportable Persons”;
 - (ii) in paragraph C(1)(a)-
 - (A) delete “other than an Investment Entity that is a Financial Institution solely because it manages an Investment Entity described in subparagraph A(6)(b)”, and

- (B) after “any equity or debt interest in the Financial Institution” insert “. Notwithstanding the foregoing, the term “Financial Account” does not include any equity or debt interest in an Entity that is an Investment Entity solely because it (i) renders investment advice to, and acts on behalf of, or (ii) manages portfolios for, and acts on behalf of, a customer for the purpose of investing, managing, or administering Financial Assets deposited in the name of the customer with a Financial Institution other than such Entity”;
- (i) in paragraph C(3)-
 - (A) delete “for the benefit of another person”, and
 - (B) after “one or more Financial Assets”, insert “for the benefit of another person”;
- (ii) in paragraph C(14), for “a balance or value”, substitute “an aggregate balance or value”;
- (iii) in paragraph C(15), for “a balance or value”, substitute “an aggregate balance or value”; and
- (iv) after paragraph E(6), insert-

“7. The term “**Foreign Jurisdiction**” means any jurisdiction other than the jurisdiction of the Reporting Financial Institution.”.

Dated 9th November, 2017.

G H LICUDI QC,
Minister with responsibility for the
co-ordination of International Exchange of Information,
For the Government.

EXPLANATORY MEMORANDUM

These Regulations further transpose into the law of Gibraltar, Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, and give further effect to the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information, signed by the Competent Authority of Gibraltar on 29 October 2014.