

Statutory Document No. 2019/0454



Income Tax Act 1970

INCOME TAX (MANDATORY DISCLOSURE RULES) REGULATIONS 2019

Approved by Tynwald: 10th December 2019
Coming into Operation:

The Treasury makes the following Regulations under section 104D of the Income Tax Act 1970.

1 Title

These Regulations are the Income Tax (Mandatory Disclosure Rules) Regulations 2019.

2 Commencement

If approved by Tynwald¹, these Regulations come into operation on a date to be appointed.

3 Interpretation

(1) In these Regulations —

“a **CRS avoidance arrangement**” means any arrangement for which it is reasonable to conclude that it is designed to circumvent or is marketed as, or has the effect of, circumventing CRS Legislation or exploiting an absence thereof, including through—

- (a) the use of an account, product or investment that is not, or purports not to be, a financial account, but has features that are substantially similar to those of a financial account;
- (b) the transfer of a financial account, or the monies or financial assets held in a financial account—
 - (i) to a financial institution that is not a reporting financial institution; or
 - (ii) to a jurisdiction that does not exchange CRS information with all jurisdictions of tax residence of a reportable taxpayer;
- (c) the conversion or transfer of a financial account, or the monies or financial assets (or both such monies and assets) held in a financial account, to a financial account that is not a reportable account;
- (d) the conversion of a financial institution into —

¹ Tynwald approval is required by section 104D(5) of the Income Tax Act 1970

- (i) a financial institution that is not a reporting financial institution; or
- (ii) a financial institution that is resident in a jurisdiction that does not exchange CRS information with all jurisdictions of tax residence of a Reportable Taxpayer;
- (e) undermining or exploiting weaknesses in the due diligence procedures used by financial institutions correctly to identify—
 - (i) an account holder, a controlling person; or both;
 - (ii) all the jurisdictions of tax residence of an account holder and or controlling person;
- (f) allowing, or purporting to allow—
 - (i) an entity to qualify as an Active NFE;
 - (ii) an investment to be made through an entity without triggering a reporting obligation under the CRS legislation; or
 - (iii) a person to avoid being treated as a controlling person; or
- (g) classifying a payment made for the benefit of an account holder or controlling person as a payment that is not reportable under CRS legislation;

where it is reasonable to conclude that such arrangement is designed to circumvent or is marketed as, or has the effect of, circumventing CRS legislation or exploiting an absence thereof.

- (2) For the purposes of this regulation, an arrangement is not considered to have the effect of circumventing CRS legislation solely because it results in non-reporting under the relevant CRS legislation, provided that it is reasonable to conclude that such non-reporting does not undermine the policy intent of such CRS legislation.
- (3) Types of structures are —
 - (a) **“an opaque offshore structure”** means a passive offshore vehicle that is held through an opaque structure;
 - (b) **“a passive offshore vehicle”** means, subject to paragraph (4), a legal person or legal arrangement that does not carry on a substantive economic activity supported by adequate staff, equipment, assets and premises in the jurisdiction where it is established or is tax resident.
- (4) A **“passive offshore vehicle”** does not include any legal person or legal arrangement that is—
 - (a) an institutional investor; or
 - (b) wholly-owned by one or more institutional investors or; where all beneficial owners of that legal person or legal arrangement are only resident for tax purposes in the jurisdiction of incorporation, residence, management, control and establishment (as applicable) of the legal person or legal arrangement.
- (5) **“An opaque structure”** means a structure for which it is reasonable to conclude that it is designed to have, marketed as having, or has the effect of allowing, a natural person to be a beneficial owner of a passive offshore vehicle while not allowing the

accurate determination of such person's beneficial ownership or creating the appearance that such person is not a beneficial owner, including through the use of—

- (a) nominee shareholders with undisclosed nominators;
- (b) means of indirect control beyond formal ownership;
- (c) arrangements that provide a reportable taxpayer with access to assets held by, or income derived from, the structure without being identified as a beneficial owner of such structure;
- (d) legal persons in a jurisdiction where there is—
 - (i) no requirement to keep, or mechanism to obtain, basic information and beneficial owner information, as defined in the latest Financial Action Task Force Recommendations, on such legal persons that is accurate and up to date;
 - (ii) no obligation on shareholders or members to disclose the names of persons on whose behalf shares are held; or
 - (iii) no obligation on, or mechanism for, shareholders or members of such legal persons to notify the legal person of any changes in ownership or control;
- (e) the use of legal arrangements organised under the laws of a jurisdiction that do not require the trustees (or in case of a legal arrangement other than a trust, the persons in equivalent or similar positions as the trustee of a trust) to hold, or be able to obtain, adequate, accurate and current beneficial ownership information regarding the legal arrangement;

where it is reasonable to conclude that the structure is designed to have, marketed as having, or has the effect of allowing a natural person to be a beneficial owner of a passive offshore vehicle while not allowing the accurate determination of such person's beneficial ownership or creating the appearance that such person is not a beneficial owner.

4 Interpretation of other terms

- (1) This regulation defines other expressions.
- (2) In these Regulations—

“arrangement” includes an agreement, scheme, plan or understanding, whether or not legally enforceable, and includes all the steps and transactions that bring it into effect;

“basic information” on a legal person includes, at a minimum, information about the legal ownership and control structure of the legal person, including information about the status and powers of the legal person, its shareholders or members and its directors;

“beneficial ownership” and **“beneficial owner”** shall be interpreted in a manner consistent with the latest Financial Action Task Force Recommendations and the latter term shall include any natural person who exercises control over a legal person or legal

arrangement, and, in the case of a trust, means any settlor, trustee, protector (if any), beneficiary 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;

“client”, in respect of an intermediary, means any person who—

- (a) requests the intermediary to, or
- (b) on whose behalf, or for whose benefit, the intermediary, makes a CRS avoidance arrangement or opaque offshore structure available for implementation, or provides relevant services in respect of a CRS avoidance arrangement or opaque offshore structure.

“CRS legislation” means the standard for automatic exchange of financial account information in tax matters as implemented in the domestic laws of the Isle of Man and includes the Income Tax (Common Reporting Standard) Regulations 2015 and any subsequent amendments, together with international arrangements under section 104B of the Income Tax Act 1970 which provide for the exchange of information collected under the Common Reporting Standard;

“institutional investor” means a legal person or legal arrangement—

- (a) that is regulated as a bank (including a depository or custodial institution), insurance company, collective investment vehicle or pension fund, the shares or interests of which are regularly traded on an established securities market;
- (b) that is a government entity, central bank, international or supranational organisation; or
- (c) a legal person or legal arrangement wholly-owned by one or more of the foregoing;

“intermediary” means—

- (a) any person responsible for the design or marketing of a CRS avoidance arrangement or opaque offshore structure (“promoter”); and
- (b) any person that provides relevant services in respect of a CRS avoidance arrangement or opaque offshore structure in circumstances where the person providing such services could reasonably be expected to know that the arrangement or structure is a CRS avoidance arrangement or an opaque offshore structure (“service provider”). The standard of “reasonably be expected to know” must be determined by reference to the service provider’s actual knowledge based on readily available information and the degree of expertise and understanding required to provide the relevant services.

“legal arrangement” means an express trust or other similar legal arrangement, such as fiducie, Treuhand and fideicomiso;

“legal person” means any entity and can include a company, body corporate, foundation, Anstalt, partnership, association and other relevantly similar entity, but does not include a natural person.

“partner jurisdiction” means a jurisdiction that—

- (a) has introduced rules that are substantially similar to those set out in this legislation; and
- (b) with respect to the particular CRS avoidance arrangement or opaque offshore structure, has international exchange of information instruments in effect with all jurisdictions of residence of the Reportable Taxpayer;

“relevant services” in respect of a CRS avoidance arrangement or opaque offshore structure, means providing assistance or advice with respect to the design, marketing, implementation or organisation of that arrangement or structure;

“reportable taxpayer” means, in respect of a CRS avoidance arrangement, any actual or potential user of that arrangement and, in respect of an opaque offshore structure, a natural person whose identity as a beneficial owner cannot be accurately determined due to the opaque offshore structure.

“structure” means an arrangement concerning the direct or indirect ownership or control of a person or asset.

- (3) Expressions used in these Regulations which are also used in the CRS legislation have the same meaning here as they have there.

5 **Obligation on intermediary to disclose**

Any person that is an intermediary with respect to a CRS avoidance arrangement or opaque offshore structure must disclose that arrangement or structure to the Assessor of Income Tax if that person—

- (a) makes that CRS avoidance arrangement or opaque offshore structure available for implementation, or provides relevant services in respect of that CRS avoidance arrangement or opaque offshore structure through a branch located in the Isle of Man;
- (b) is resident or has its place of management in the Isle of Man; or
- (c) is incorporated in, or established under the laws of, the Isle of Man.

6 **When information is required to be disclosed**

The disclosure required under regulation 5 shall be made thirty days after the intermediary:

- (a) makes the CRS avoidance arrangement or opaque offshore structure available for implementation; or
- (b) supplies relevant services in respect of the CRS avoidance arrangement or opaque offshore structure.

7 **Information required to be disclosed**

The information that an intermediary is required to disclose under regulation 5 in respect of a CRS avoidance arrangement or opaque offshore structure shall include—

- (a) the name, address, jurisdiction and tax identification number of tax residence of the following persons—

- (i) the person making the disclosure;
 - (ii) any Client of that person in respect of that arrangement or structure (separately identifying any client that is a reportable taxpayer, including the date of birth of such persons);
 - (iii) any actual user of a CRS avoidance arrangement or beneficial owner of an opaque offshore structure;
 - (iv) any person that is an intermediary with respect to that arrangement or structure (other than the person making the disclosure).
- (b) the details of that CRS avoidance arrangement or opaque offshore structure including—
- (i) in respect of a CRS avoidance arrangement, a factual description of those features of the arrangement that are designed to have, marketed as having, or have the effect of, circumventing the CRS legislation; and
 - (ii) in respect of an opaque offshore structure, a factual description of those features that have the effect of not allowing the accurate determination of the reportable taxpayer's beneficial ownership or creating the appearance that the reportable taxpayer is not a beneficial owner of the passive offshore vehicle; and
- (c) the jurisdiction or jurisdictions where the CRS avoidance arrangement or opaque offshore structure has been made available for implementation;

to the extent such information is within the knowledge, possession or control of the person providing the disclosure.

8 No obligation for the intermediary to disclose

- (1) An intermediary shall not be required to disclose any information set out under regulation 7 where that information is protected from disclosure under professional secrecy rules stipulated in domestic law, but only to the extent the disclosure would reveal confidential information held by an attorney, solicitor or other admitted legal representative with respect to a client, as defined in the Commentary to Article 26 of the OECD Model Tax Convention.
- (2) An intermediary that is not required to disclose information under this regulation shall provide written notice to the client of the client's disclosure obligations under these rules by the time specified in regulation 6.

9 No obligation on intermediary to the extent information has already been disclosed

An intermediary is not required to disclose any information set out in regulation 7, to the extent that the intermediary holds documentation demonstrating that—

- (a) such information was previously disclosed to the Assessor of Income Tax;
- (b) the information relates to relevant services supplied, or a CRS avoidance arrangement or opaque offshore structure made available for implementation, through a branch maintained by that intermediary in a

partner jurisdiction and such information has been disclosed to the tax authority of that partner jurisdiction; or

- (c) the intermediary is required to disclose such information under regulation 5 and such information has been disclosed to the tax authority of a partner jurisdiction where that intermediary is resident or has its place of management.

10 Reportable taxpayer required to disclose in certain circumstances

- (1) Any reportable taxpayer that is resident in the Isle of Man and that is—

- (a) a user of a CRS avoidance arrangement, or
- (b) a beneficial owner under an opaque offshore structure,

must disclose to the Assessor any information on the arrangement or structure that is not disclosed by an intermediary because the intermediary is not subject to any disclosure requirements under regulation 5 or is not required to disclose the information pursuant to regulation 9.

- (2) The reportable taxpayer is not required to disclose any information under this regulation to the extent that the reportable taxpayer has received documentation from the intermediary demonstrating that the information has been disclosed by that intermediary to the tax authority of a partner jurisdiction under mandatory disclosure rules that are substantially similar to those set out in these Regulations .
- (3) The disclosure under this regulation shall include all the information required to be disclosed under regulation 5 and be made within thirty days following that on which the first step of the CRS avoidance arrangement or opaque offshore structure has been implemented.

11 Disclosure of Arrangements entered into after 29 October 2014 and before the commencement of these regulations

- (1) A promoter shall disclose a CRS avoidance arrangement within 180 days of the commencement of these Regulations if—
 - (a) that arrangement was implemented on or after 29 October 2014 but before the date on which these Regulations come into operation; and
 - (b) that person was a promoter in respect of that arrangement; irrespective of whether that person provides relevant services in respect of that arrangement after the date on which these Regulations come into operation.
- (2) No disclosure shall be required under this regulation where the promoter has documentation to demonstrate that the aggregate balance or value of the financial account subject to the CRS avoidance arrangement immediately prior to its implementation was less than \$(US)1,000,000.
- (3) For the purposes of this regulation, terms defined in the Standard for Automatic Exchange of Financial Account Information in Tax Matters as published by the OECD on 15 July 2014 have the same meaning here.

12 Format of Disclosure

- (1) The disclosure must be made electronically using the Online Information Providers Service, that is to say the Information Providers Service which is accessible through the Income Tax Services page² of the Isle of Man Government website (www.gov.im).
- (2) The disclosure must be made in the format prescribed by the Assessor and published from time to time.
- (3) A disclosure which is made otherwise than in accordance with paragraphs (1) and (2) is treated as not having been made.
- (4) A disclosure made on behalf of a person is taken to have been made by that person, unless the person proves that the disclosure was made without their authority.

13 Penalties for failure to comply with Regulations

- (1) An intermediary who fails to comply with any of the provisions of these regulations is liable—
 - (a) to a penalty not exceeding—
 - (i) in the case of a provision mentioned in regulations 5, £600 for each day during the initial period, and
 - (ii) in any other case £5,000, and
 - (b) if the failure continues after a penalty is imposed under sub-paragraph (a), to a further penalty or penalties not exceeding £600 for each day on which the failure continues after the day on which the penalty under sub-paragraph (a) was imposed (but excluding any day for which a penalty under this regulation has already been imposed).
- (2) A reportable taxpayer who fails to comply with regulation 10, is liable to a penalty not exceeding—
 - (a) £5,000 in respect of each reportable arrangement to which the failure relates (but subject to sub-paragraphs (b) and (c),
 - (b) where there has been previous failure to comply with regulation 10 on one occasion, £7,500 in respect of each reportable arrangement to which the current failure relates, or
 - (c) where there has been a failure to comply with regulation 10 on more than one occasion, £10,000 in respect of each reportable arrangement to which the current failure relates.
- (3) In this regulation, “the initial period” means the period—
 - (a) beginning with the relevant day, and
 - (b) ending on the earlier of—

² www.gov.im/treasury/incometax/services

- (i) the day on which the penalty under paragraph (1)(a)(i) is determined, and
 - (ii) the last day before the failure ceases.
- (4) For the purpose of paragraph (3) the “relevant day” is the day after the date which the information must be disclosed under regulation 5.

14 Imposition of penalties

- (1) If a person becomes liable to a penalty under regulation 13 the Assessor may impose the penalty at any time.
- (2) If the Assessor does so, he or she must notify the person.

15 Right of appeal against penalty

- (1) A person upon whom a penalty is imposed may appeal against it on the grounds that liability to a penalty under regulation 13 did not arise.
- (2) A person upon whom a penalty is imposed may appeal against its amount.

16 Procedure on appeal against penalty

- (1) Notice of an appeal under regulation 15 must be given to the Assessor —
 - (a) in writing; and
 - (b) before the end of the period of 30 days beginning with the date on which notification under regulation 14 was given.
- (2) It must state the grounds of appeal.
- (3) On an appeal under regulation 15(1) that is notified to the Income Tax Commissioners, the Commissioners may confirm or cancel the penalty.
- (4) On an appeal under regulation 15(2) that is notified to the Income Tax Commissioners, the Commissioners may —
 - (a) confirm the penalty; or
 - (b) substitute another penalty that the Assessor has power to impose.
- (5) Subject to this regulation, the provisions of section 87 of the *Income Tax Act 1970* relating to appeals have effect in relation to appeals under regulation 15 and 16 as they have effect in relation to an appeal against an assessment to income tax.

17 Enforcement of Penalties

- (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) That date is —
 - (a) the date on which the penalty is imposed under regulation 13 or notification under regulation 14 is given in respect of the penalty; or

- (b) if a notice of appeal under regulation 16 is given, the date on which the appeal is finally determined or withdrawn.
- (3) A penalty under these regulations may be enforced as if it were income tax charged in an assessment and due and payable.

MADE 13 NOVEMBER 2019

A L CANNAN
Minister for the Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations introduce the Mandatory Disclosure Rules to improve international tax compliance.

The Regulations place an obligation on a taxpayer or intermediary to disclose certain information in respect of CRS avoidance arrangements and opaque structures to the Assessor of Income Tax.

Regulation 3 and 4 provides for the interpretation of certain terms within the regulations.

Regulation 5 provides the obligation to disclose CRS arrangement or opaque offshore structure..

Regulation 6 provides the time limits for disclosure.

Regulations 7, 8 and 9 provide for the information that is required to be disclosed including for example the name, address, jurisdiction and tax identification number of the person making the disclosure. It also provides for the details of the CRS avoidance arrangement that is required to be disclosed. Within Regulation 8 there is also a protection for certain confidential information. Regulation 9 ensures that information need not be disclosed by an intermediary if they can demonstrate that it has already been disclosed to the Assessor of Income Tax or it was already provided in a partner jurisdiction.

Regulation 10 provides for an obligation on a reportable taxpayer that is resident in the Isle of Man and a user of a CRS avoidance arrangement or the beneficial owner under an opaque offshore structure.

Regulation 11 provides that arrangements entered into after 29 October 2014 but before the commencement of these regulations should be disclosed within 180 days of the commencement of these regulations. No disclose is required if the promoter has documentation to demonstrate that the value of the financial account subject to the CRS avoidance was less than \$(US)1,000,000.

Regulation 12 makes provision as to the form and manner of the disclosure and requires that the disclosure must be made electronically using the Online Information Providers Service.

Regulations 13 and 14 and make provision for penalties for failure to comply with the regulations.

Regulations 15 and 16 make provision for an appeal to the Income Tax Commissioners in respect of a penalty.

Regulation 17 provides for the payment and enforcement of penalties.