

Statutory Document No. 2021/0143



Income Tax Act 1970

THE INTERNATIONAL TAX COMPLIANCE (UNITED STATES OF AMERICA) (AMENDMENT) REGULATIONS 2021

Approved by Tynwald: 16 June 2021

Coming into Operation in accordance with article 2

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

1 Title

This Order is The International Tax Compliance (United States of America) (Amendment) Regulations 2021.

2 Commencement and effect

If approved by Tynwald¹, these Regulations come into operation on the day after they are approved.

3 Amendment of The International Tax Compliance (United States of America) Regulations 2014

(1) The International Tax Compliance (United States of America) Regulations 2014² are amended as follows.

(2) For regulation 13, substitute —

13 Fines for Failure to Comply with Regulations

(1) If a person fails to comply with any obligation under these Regulations, the Assessor shall impose a fine of up to £300 per reportable account.

(2) If the failure to comply relates to the submission of a return under regulation 9(2), the person will be subject to a fine of £300 only. For the purpose of Regulation 13A(2) the date

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

² SD 2014/0187.

the fine was imposed will be deemed to be the day after the return should have been submitted.

13A Daily Default Fine

- (1) If —
 - (a) a fine under regulation 13(1) is imposed; and
 - (b) the failure in question continues after the person has been notified of the fine;

the person may be liable to a further fine, for each subsequent day on which the failure continues, of an amount not exceeding £60 for each such day.

- (2) If a fine under regulation 13(2) is imposed the person may be liable to a further fine, from the date the fine was issued under regulation 13(2) and for each subsequent day on which a return is not submitted, of an amount not exceeding £60 for each such day.

13B Significant Non-Compliance

- (1) The Assessor shall impose the higher of either —
 - (a) a fine of up to £10,000; or
 - (b) a fine of up to double the amount of the fine charged under regulation 13,

if the Assessor determines a person to be significantly non-compliant.

- (2) The fine under this regulation is additional to any fine under regulations 13 and 13A.
- (3) For the purposes of this regulation significantly non-compliant includes—
 - (a) intentionally failing to comply with any requirement of these Regulations;
 - (b) providing information or producing any document which is false or misleading in a material particular; or
 - (c) discovering an inaccuracy and failing to take reasonable steps to inform the Assessor.

13C Fines – supplementary

- (1) Liability to a fine under regulation 13 or 13A does not arise if the person satisfies the Assessor or (on an appeal notified to the Income Tax Commissioners) the Income Tax Commissioners that there is a reasonable excuse for the failure.
- (2) For the purposes of this regulation neither of the following is a reasonable excuse —

- (a) that there is an insufficiency of funds to do something;
- (b) that a person relies upon another person to do something.

- (3) If a person had a reasonable excuse for a failure but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

13D Imposition of Fines

- (1) If a person becomes liable to a fine under regulations 13 to 13B the Assessor may impose the fine at any time.
- (2) If the Assessor does so, he or she must notify the person.
- (3) The Assessor may adjust any fine imposed down, without the necessity of an appeal.

13E Right to Appeal against a Fine

- (1) A person upon whom a fine is imposed under regulations 13 to 13B may appeal against it.
- (2) A person upon whom a fine is imposed may appeal against its amount.

13F Procedure on Appeal against a Fine

- (1) Notice of an appeal under regulation 13E 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 13D was given.
- (2) It must state the grounds of appeal.
- (3) On an appeal under regulation 13E(1) that is notified to the Income Tax Commissioners, the Commissioners may confirm or cancel the penalty.
- (4) On an appeal under regulation 13E(2) that is notified to the Income Tax Commissioners, the Commissioners may —
 - (a) confirm the fine; or
 - (b) substitute another fine that the Assessor has power to impose.
- (5) Subject to this regulation and regulation 13G, the provisions of section 87 of the *Income Tax Act 1970* relating to appeals have effect in relation to appeals under regulation 13E and 13F as they have effect in relation to an appeal against an assessment to income tax.


13G Increased Daily Default Penalty

- (1) This paragraph applies if –
 - (a) a fine arising under regulation 13A has been imposed under regulation 13D;
 - (b) the failure in respect of which that fine was imposed continues for more than 30 days beginning with the date on which notification of that fine is given; and
 - (c) the person has been told that an application may be made under this paragraph for an increased daily fine to be imposed.
- (2) If this regulation applies, the Assessor may make an application to the Income Tax Commissioners for an increased daily fine to be imposed on the person.
- (3) If the Commissioners decide that an increased daily fine should be imposed then for each applicable day on which the failure continues –
 - (a) the person is not liable to a fine under regulation 13A in respect of the failure; and
 - (b) the person is liable instead to a fine under this regulation of an amount determined by the Commissioners.
- (4) The Commissioners may determine an amount not exceeding £1,000 for each applicable day.
- (5) If a person becomes liable to a fine under this regulation, the Assessor must notify the person.
- (6) The notification must specify the day from which the increased fine is to apply.
- (7) That day and any subsequent day is an “applicable day” for the purposes of this regulation.

13H Enforcement of Fines

- (1) A fine 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 fine is imposed under regulation 13D or notification under regulation 13G(5) is given in respect of the fine; or
 - (b) if a notice of appeal under regulation 13F is given, the date on which the appeal is finally determined or withdrawn.
- (3) A fine under these Regulations may be enforced as if it were income tax charged in an assessment and due and payable.

13I Offences and general provisions relating to compliance

- (1) A person who intentionally fails to comply with any requirement of these Regulations is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.
- (2) A person who, when required by or for the purposes of these Regulations provides information or produces any document which is false or misleading in a material particular, is guilty of an offence and liable to imprisonment of a term of two years and to a fine not exceeding level 3 on the standard scale.
- (3) In determining whether a person has complied with any requirement of these Regulations, a court must have regard to any guidance issued or approved by the Assessor.
- (4) A Reporting Manx Financial Institution may use a third party for the purpose of complying with these Regulations but compliance with such requirements remains the responsibility of the Reporting Manx Financial Institution. .

MADE 21ST APRIL 2021

A L CANNAN
Minister for the Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 104D of the Income Tax Act 1970. They amend The International Tax Compliance (United States of America) Regulations 2014 [SD 2014/0187] which give effect to the arrangement reached between the Government of the United States of America and the Government of the Isle of Man to Improve International Tax Compliance and to Implement FATCA (the provisions commonly known as the Foreign Account Tax Compliance Act in the enactment of the United States of America called the Hiring Incentives to Restore Employment Act), signed on 13 December 2013.

The amendments relate to the provision of penalties, enforcement and appeal rights in relation to the breach of obligations under The International Tax Compliance (United States of America) Regulations 2014.