**EXPLANATORY MEMORANDUM TO**

# THE INTERNATIONAL TAX COMPLIANCE (CLIENT NOTIFICATION) REGULATIONS 2016

**2016 No. 899**

## 1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.

## 2. Purpose of the instrument

2.1 This instrument creates an obligation on certain businesses to notify certain of their clients about information that Her Majesty's Revenue and Customs are due to receive annually from 2017 under international agreements to improve tax compliance, to remind their clients of their tax obligations in respect of overseas income, and to warn them of the consequences of non-compliance.

## 3. Matters of special interest to Parliament

***Matters of special interest to the Select Committee on Statutory Instruments***

3.1 None.

***Other matters of interest to the House of Commons***

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

## 4. Legislative Context

4.1 This instrument is made under the powers in section 222 of the Finance Act 2013, as amended by section 50 of the Finance (No.2) Act 2015. This is the first use of the power that relies on amendment by that section.

4.2 The International Tax Compliance Regulations 2015 (S.I. 2015/878), which this instrument amends, requires that UK financial institutions identify certain details about people and entities holding financial accounts with them and, where those accounts are held by tax residents of listed jurisdictions outside of the UK, requires them to report those details to Her Majesty's Revenue and Customs. Her Majesty's Revenue and Customs will then send that data to the tax authorities of other jurisdictions, in exchange for which Her Majesty's Revenue and Customs will receive data on UK tax residents' accounts overseas.

4.3 This instrument relies on many of the definitions in S.I. 2015/878 and the underlying international agreements.

## 5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is the United Kingdom.

## 6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## 7. Policy background

***What is being done and why***

7.1 This instrument is being made to raise awareness amongst certain United Kingdom tax residents who are likely to be affected by the reporting to Her Majesty's Revenue and Customs, under international tax compliance agreements, of information which relates to them. It will also ensure that they are informed about the opportunities to voluntarily disclose information to Her Majesty's Revenue and Customs and the sanctions for non-compliance with their obligations.

7.2 At the present time, businesses who provide financial or legal advice or services know more about certain of their clients' liabilities to tax on overseas assets and income than Her Majesty's Revenue and Customs. The legislation targets those businesses and those clients so that they can use the information in their hands to make their clients aware of the need to ensure their tax affairs are up to date as early as possible.

7.3 The instrument targets two groups of businesses: financial institutions, as defined in international agreements and the existing Regulations, and specified relevant persons, which is broadly those who provide professional advice or services in respect of taxation or finance involving overseas income or assets.

7.4 The notification is to be sent to individuals, inasmuch as the account is held for an individual or the financial or tax advice was given in respect of the individual's own affairs. A notification does not have to be sent to an individual who is simply representing a legal person or arrangement.

7.5 Financial institutions must notify those customers whom they know or reasonably believe to be UK tax resident and to have financial accounts outside of the United Kingdom in jurisdictions that have entered into international tax compliance agreements; or to notify those whom they know or reasonably believe to be UK tax resident with over US$1 million in financial accounts maintained by the financial institution. These groups of customers are judged by Her Majesty's Revenue and Customs to be more likely to hold assets overseas.

7.6 Specified relevant persons must notify those who they have provided with advice or services about income or assets outside of the United Kingdom; or to notify those to whom they have provided advice or services with respect to personal taxation. In either case, the specified relevant person is not required to notify those for whom they have completed and submitted a personal tax return, as Her Majesty's Revenue and Customs will have the same information regarding these people. With respect to the first group, the personal tax return must reflect the advice or services on overseas matters.

7.7 The instrument offers a choice of approaches to both types of business because Her Majesty's Revenue and Customs understands that different approaches will suit different sizes and models of business; this balances the burdens on business with the need to ensure that relevant taxpayers receive a notification.

7.8 The notification is included in the instrument to ensure that a consistent message is provided to people, which provides the information they need to make a decision on how they should proceed.

7.9 The instrument creates a penalty of £3,000 for not complying with either or both of the customer identification or notification requirements. This is a flat-rate penalty, and not linked to the number of customers who did not receive a notification –this is because the Regulations will either be complied with or not, and are a one-off obligation. The general nature of some of the approaches also makes a per-client approach disproportionate.

7.10 As the instrument looks for overseas accounts provided UK taxpayers, the instrument requires that any UK bodies corporate falling within the rules should use reasonable steps to ensure that their controlled bodies corporate outside the UK should also make a notification where that overseas person would be a Financial Institutions or Specified Relevant Persons were they conducting business in the UK. Such a notification would be sent to any of the overseas person's UK-resident customers to whom they have provided an account or offshore advice or services.

***Consolidation***

7.11 HM Revenue and Customs will review consolidation of the International Tax Compliance Regulations 2015 following planned changes in the near future to add new participating jurisdictions to the list for reporting.

## 8. Consultation outcome

8.1 Consultation was undertaken over the course of three months in 2015 prior to and following an early draft of the instrument, and again for a short period in 2016 with a further draft. The consultation group was made up of representative bodies and a range of businesses within the affected sectors (circa. 80 separate bodies).

8.2 The initial consultation demonstrated that in many cases it would be extremely onerous for businesses to identify specific clients who had received advice or services with respect to their overseas income or assets. Businesses requested that a general approach be made available so that those who could not identify specific clients could send out a general notification to raise awareness with all clients.

8.3 Through consultation and discussion, this was refined to allow a general approach for reporting financial institutions to notify their clients who have accounts with value over US$1 million, and specified relevant persons who had received advice about tax but the adviser had not submitted a tax return on their behalf. In further consultation, the latter exemption from the general approach for clients whose tax returns had been submitted was made optional to allow for cases where the agents could not easily distinguish such advisory clients.

8.4 Following representations from representative bodies for smaller agents, the definition of specified relevant person was refined to exempt smaller advisory businesses whose involvement with overseas income and assets stretches to little more than entering figures in personal tax returns.

8.5 Some charities fall within the definition of financial institution, and for them an 'account holder' is the beneficiary of a charitable grant. In separate consultation with the charity sector it was soon apparent that they were not appropriate for inclusion. UK charities do not provide grants from overseas, so would not have provided an

overseas account, and are highly unlikely to refer their beneficiaries for a financial account overseas.

8.6 An early draft used the £300 penalty for failure to comply in the existing Regulations, but strong feedback from the consultation group was that for many the cost of the penalty would then be less than the cost of complying. Hence the level of penalty was increased to £3,000.

## 9. Guidance

9.1 Guidance will be published in the HMRC International Exchange of Information Manual, which is available at https://www.gov.uk/hmrc-internal-manuals/international-exchange-of-information.

9.2 Her Majesty's Revenue and Customs will also notify the consultation group when this instrument is laid, and send them a copy of the guidance and other relevant paperwork.

## 10. Impact

10.1 The impact on business, charities or voluntary bodies is that businesses will incur costs complying with the regulations, estimated to be around £1.9 million, and minor and short-term costs in dealing with possible follow-up contact from their customers, estimated to be around £200,000. There is no impact on charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 A Tax Information and Impact Note covering this instrument was published on 8 July 2015 a week prior to legislation in the Summer Finance Bill 2015 and is available on the website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins. It remains an accurate summary of the impacts that apply to this instrument.

## 11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is as noted in the consultation section. The Regulations provide for wholesale exclusion from the rules for those just preparing tax returns, and options for approaches to ensure the least burden in identifying clients.

## 12. Monitoring & review

12.1 The Regulations will be monitored alongside other related measures linked to international agreements on tax compliance, based on taxpayers' use of the disclosure facility.

## 13. Contact

13.1 James Konya at Her Majesty's Revenue and Customs, Telephone: 03000 544 525 or email: james.konya@hmrc.gsi.gov.uk, can answer any queries regarding the instrument.