EXPLANATORY MEMORANDUM TO

THE INTERNATIONAL TAX COMPLIANCE (CROWN DEPENDENCIES AND GIBRALTAR) (AMENDMENT) REGULATIONS 2015

2015 No. 873

1. This explanatory memorandum has been prepared by HM Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations amend the International Tax Compliance (Crown Dependencies and Gibraltar) Regulations 2014 (S.I. 2104/520) ('the 2014 Regulations') which give effect to four agreements to improve international tax compliance. The agreements ("the CDOT agreements") are those made between the Government of the United Kingdom of Great Britain and Northern Ireland, and each of the Government of the Isle of Man (signed on 10 October 2013), the States of Guernsey (signed on 22 October 2013), the Government of Jersey (signed on 22 October 2013) and the Government of Gibraltar (signed on 21 November 2013).

2.2 The instrument makes a number of amendments to better reflect the CDOT agreements, including a requirement for electronic reporting of information to HMRC by reporting financial institutions, removing the need for financial institutions to make nil returns where there are no identified reportable accounts, and inserting penalty provisions for non-compliance. The amendments bring the 2014 Regulations into line with the International Tax Compliance Regulations 2015 which are being laid alongside these Regulations.

3. Matters of special interest to the Select Committee on Statutory Instruments

None.

4. Legislative Context

4.1 The 2014 Regulations impose obligations on UK financial institutions to identify, maintain records of and report to HMRC financial accounts where the account holder is identified as a resident of Gibraltar, Guernsey, the Isle of Man or Jersey. HMRC will exchange this information automatically under the exchange of information Articles in the UK's agreements (Double Taxation Conventions or Tax Information Exchange Agreements) with each of these territories.

4.2 The 2014 Regulations determine the due diligence procedures that UK financial institutions must follow to identify reportable accounts and define the information that must be reported to HMRC once such reportable accounts have been identified.

4.3 This instrument clarifies what income is to be taken into account when determining whether or not an entity is an investment entity, and therefore a reporting financial institution under the 2014 Regulations. It also clarifies which assets should be taken into account when determining whether or not a financial institution is a custodial institution. Those assets are financial assets held as a nominee for another person.

4.4 This instrument introduces provisions to require financial institutions to report information to HMRC electronically. The form and manner of the report will be specified in specific or general directions given by the Commissioners for Her Majesty's Revenue and Customs.

4.5 This instrument inserts a provision to allow HMRC to impose continuing daily penalties on financial institutions that fail to comply with their obligations after an initial penalty has been determined. This aligns the 2014 Regulations both with the International Tax Compliance Regulations and HMRC's wider penalty regime.

4.6 This instrument removes the requirement for financial institutions to make nil returns to HMRC where they have no reportable accounts for the purpose of the CDOT agreements. This aligns the 2014 Regulations with the International Tax Compliance Regulations.

5. Territorial Extent and Application

5.1 This instrument applies to all of 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 The CDOT agreements increase cooperation between tax administrations in the fight against tax fraud and evasion.

7.2 Increased globalisation has made it easier for taxpayers to make, hold and manage investments through financial institutions outside their country of residence. Significant amounts of money are held offshore and go untaxed to the extent that taxpayers fail to comply with their obligations to declare income and gains in the jurisdiction where they reside.

7.3 The 2014 Regulations enable the UK to fulfil its obligations to report information automatically on accounts held in the UK by persons resident in Gibraltar, Guernsey, the Isle of Man and Jersey in accordance with the CDOT agreements. In return the UK will

automatically receive information from these territories in respect of offshore accounts held by UK residents. First exchanges of information will occur in 2016.

8. Consultation outcome

8.1 These Regulations have not been subject to consultation. There was full consultation on the 2014 Regulations, and these amendments make minor and administrative changes.

9. Guidance

9.1 Working with business and advisers HMRC has produced guidance in relation to the 2014 Regulations which is accessible at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/358562/guidance-uk-cd-ot.pdf. HMRC will amend the relevant guidance to reflect changes made by these Regulations at the next update.

10. Impact

10.1 The impact on business, charities or voluntary bodies of these changes is negligible.

10.2 The impact on the public sector is negligible.

10.3 A Tax Information and Impact Assessment covering the 2014 Regulations was published on 12 December 2013 alongside a draft of the 2014 Regulations and is available on the HMRC 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 small business.

11.2 The amendments made by these Regulations have no additional effects on small business over and above those identified in the Explanatory Memorandum to the 2014 Regulations which can be found at http://www.legislation.gov.uk/uksi/2014/520/pdfs/uksiem_20140520_en.pdf .

12. Monitoring & review

12.1 HMRC and HM Treasury will continue to liaise with stakeholders from time to time to discuss the implementation of the Regulations as part of continuing engagement with industry.

13. Contact

Chris Orchard or Wayne Strangwood at HM Revenue and Customs can answer any queries regarding the instrument. Contact details are as follows:

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