



Income Tax (Automatic Exchange of Financial Account Information) Regulations 2016

His Excellency Tom Marsters

Queen's
Representative

Order in Executive Council

At Avarua, Rarotonga this 29th day of November 2016

Present:

His Excellency the Queen's Representative in Executive Council

Pursuant to section 96B of the Income Tax Act 1997, His Excellency the Queen's Representative, acting on the advice and with the consent of the Executive Council, makes the following regulations—

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Regulations

- 1 **Title**
These regulations are the Income Tax (Automatic Exchange of Information) Regulations 2016.
- 2 **Commencement**
These regulations come into force on the day after the date on which these regulations are made.

Part 1 Preliminary provisions

- 3 **Interpretation**
 - (1) In these regulations, unless the context otherwise requires,—
Act means the Income Tax Act 1997
Cook Islands Financial Institution—
 - (a) means any financial institution that is resident in the Cook Islands, but does not include any branch of that institution that is located outside the Cook Islands; and
 - (b) includes any branch of a financial institution that is not resident in the Cook Islands if that branch is located in the Cook Islands**dormant account** means an account where—
 - (c) the account holder has not initiated a transaction with regard to the account or any other account held by the account holder with the reporting financial institution in the previous 3 years;
 - (d) the account holder has not communicated with the reporting financial institution regarding the account or any other account held by the account holder with the reporting financial institution in the previous 6 years;
 - (e) the account is treated as a dormant account under the reporting financial institution's normal operating procedures;
 - (f) in the case of a cash value insurance contract, the reporting financial institution has not communicated with the account holder regarding the account or any other account held by the account holder with the reporting financial institution in the previous 6 years**non-reporting financial institution** means any financial institution that is—
 - (a) a Governmental entity, international organisation or central bank, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a specified insurance company, custodial institution, or depository institution; or
 - (b) a broad participation retirement fund, a narrow participation retirement fund, a pension fund of a Governmental entity, international organisation or central bank, or a qualified credit card issuer; or
 - (c) any other entity that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the entities described in paragraphs (a) and (b), and is treated in law as a non-reporting financial

institution, provided that the status of the entity as a non-reporting financial institution does not frustrate the purposes of the CRS; or

- (d) an exempt collective investment vehicle; or
- (e) a trust to the extent that the trustee of the trust is a reporting financial institution and reports all information required to be reported under Section I of the CRS with respect to all reportable accounts of the trust

person includes any institution or entity

reportable account has the meaning given to it by regulation 4

reporting financial institution means any Cook Islands Financial Institution that is not a non-reporting financial institution.

- (2) Subject to sub clause (4), any term or expression that is defined in the CRS and used, but not defined, in these regulations has the same meaning as in the CRS.
- (3) A reference in these regulations to the CRS, or a provision of it, is to be construed as a reference to the CRS or provision as amended from time to time.
- (4) Any term or expression that is defined in the Act and used, but not defined, in these regulations has the same meaning as in the Act.

4 Meaning of reportable account

- (1) In these regulations, a **reportable account** means—
 - (a) an account that is a reportable account within the meaning of the CRS:
 - (b) an account that is a pre-existing entity account with an account balance or value that does not exceed US\$250,000 as at the commencement date of these regulations.
- (2) However,—
 - (a) the following excluded accounts are not reportable accounts—
 - (i) any account of any non-reporting financial institution:
 - (ii) any dormant account (other than an annuity contract) with a balance that does not exceed US\$1,000 are not reportable accounts:
 - (b) an account within sub clause (1)(b) is not a reportable account in relation to a reporting financial institution for a calendar year if there is an election by the institution which has effect for that year to treat all such accounts, or a clearly identified group of such accounts, as not being reportable accounts.
- (3) An election under sub clause (2) (b) must be made for each calendar year for which the election is to have effect in the return required by regulation 7 for that year.
- (4) The reporting financial institution must apply the account balance aggregation and currency rules in the CRS for the purposes of determining whether an account maintained by the institution is within sub clause (1) (b).
- (5) The account balance aggregation and currency rules are in Section VII.C of the CRS.
- (6) In applying the account balance aggregation and currency rules for the purposes of these regulations, an account balance that has a negative value is treated as having a nil value.
- (7) In determining the balance or value of an account denominated in a currency other than US dollars for the purposes of sub clause (1) (b), the institution must

translate the relevant dollar threshold amount into the other currency by reference to the spot rate of exchange on the date for which the institution is determining the threshold amounts.

- (8) For the purposes of these regulations, an account held by an individual as a partner of a partnership is treated as an entity account and is not treated as an individual account.

Part 2

Obligations in relation to financial accounts

5 Due diligence requirements

- (1) A reporting financial institution must establish and maintain arrangements that are designed to identify reportable accounts.
- (2) The arrangements must—
- (a) identify the jurisdiction in which an account holder or a controlling person is resident for income tax or corporation tax purposes; and
 - (b) apply the due diligence procedures set out in the CRS; and
 - (c) secure that the information obtained in accordance with this regulation, or a record of the steps taken to comply with this regulation, in relation to any financial account is kept for a period of 6 years beginning with the end of the year in which the arrangements applied to the financial accounts.
- (3) The due diligence procedures in relation to a reporting financial institution under the CRS are set out in Sections 2 to 7 of the CRS.
- (4) In applying the due diligence procedures, accounts within regulation 4(1) (b) in respect of which no election under regulation 4(2) (b) has been made are treated as new accounts or pre-existing accounts, as the case may be.

6 Modification of due diligence requirements of CRS

A reporting financial institution under the CRS may—

- (a) apply the due diligence procedures for new accounts to pre-existing accounts; and
- (b) apply the due diligence procedures for high value accounts to low value accounts.

7 Reporting obligation

- (1) A reporting financial institution must, in respect of the first reporting year and every following calendar year, make a return setting out the information required to be reported under the CRS in relation to every reportable account that is maintained by the institution at any time during the calendar year in question.
- (2) The first reporting year for any reportable account is the calendar year 2017.
- (3) The information required to be reported in relation to a reportable account is set out in Section I of the CRS.
- (4) The return must be submitted electronically in accordance with regulation 8 on or before 31st May of the year following the calendar year to which the return relates.

- (5) For the purposes of the information required to be reported under the CRS,—
 - (a) references to the balance or value of an account include a nil balance or value;
 - (b) references to paying an amount include crediting an amount.
- (6) However, a reporting financial institution under the CRS that is a trust with discretionary beneficiaries need only report in respect of the discretionary beneficiaries in the years they receive a distribution, so long as the institution has in place appropriate procedures—
 - (a) to identify when a distribution is made to a discretionary beneficiary of the trust in a given year; and
 - (b) that enable the institution to report such a beneficiary as a controlling person.

8 Electronic return system

- (1) The return under regulation 7 must be made electronically using an electronic return system.
- (2) The form and manner of an electronic return system may be specified in specific or general directions given by the Collector.
- (3) A return that is not made in accordance with sub clauses (1) and (2) is treated as not having been made.
- (4) An electronic return system must incorporate an electronic validation process.
- (5) Unless the contrary is proved,—
 - (a) the use of an electronic return system is presumed to have resulted in the making of the return only if this has been successfully recorded as such by the relevant electronic validation process;
 - (b) the time of making the return is presumed to be the time recorded as such by the relevant electronic validation process;
 - (c) the person delivering the return is presumed to be the person identified as such by any relevant feature of the electronic return system.
- (6) A return made behalf of a reporting financial institution is taken to have been made by that institution, unless the institution proves that the return was made without the institution's authority.

9 Non-resident reporting financial institution's representative or agent

- (1) If a reporting financial institution is not resident in the Cook Islands, the obligations of the institution under these regulations are to be treated as if they were also the obligations of any Cook Islands representative or agent of the institution.
- (2) For the purposes of this regulation,—
 - (a) a reporting financial institution which is a partnership is resident in the Cook Islands if the control and management of the business of the partnership as a reporting financial institution takes place there;
 - (b) a reporting financial institution which is not a partnership is resident in the Cook Islands if it is resident in the Cook Islands for tax purposes.

10 Use of service providers

A reporting financial institution may use a service provider to undertake the due diligence requirements under regulations 5 and 6, and the reporting obligations under regulations 7 and 8, but in such cases those obligations continue to be the obligations of the institution.

11 Offences and penalties for breach of obligations

- (1) A financial institution commits an offence and is liable to a fine not exceeding \$10,000 if the institution fails to comply with any obligation under these regulations.
- (2) A financial institution that commits an offence against sub clause (1) is liable to a further fine not exceeding \$200 a day for each subsequent day on which the failure continues.
- (3) A financial institution commits an offence and is liable to a fine not exceeding \$20,000 if,—
 - (a) in complying with an obligation under regulation 7, the financial institution provides inaccurate information; and
 - (b) condition A, B or C is met.
- (4) Condition A is that the inaccuracy is—
 - (a) due to a failure to comply with the due diligence requirements in regulation 5 (as modified by regulation 6 where that regulation applies); or
 - (b) deliberate on the part of the financial institution.
- (5) Condition B is that the financial institution knows of the inaccuracy at the time the information is provided, but does not inform Collector at that time.
- (6) Condition C is that the financial institution —
 - (a) discovers the inaccuracy some time later; and
 - (b) fails to take reasonable steps to inform the Collector.

12 Defence of reasonable excuse

- (1) A financial institution does not commit an offence against these regulations if it satisfies the Court 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 financial institution relies upon another person to do something.
- (3) If a financial institution had a reasonable excuse for a failure but the excuse has ceased, the institution is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

13 Anti-avoidance

- (1) Sub clause (2) applies if—
 - (a) a person enters into an arrangement; and
 - (b) the main purpose, or 1 of the main purposes, of the person in entering into the arrangement is to avoid any obligation under these regulations.
- (2) When this sub clause applies, these regulations are to have effect as if the arrangement had not been entered into.

Aukino Tairea
Clerk of the Executive Council

These regulations are administered by the Revenue Management Division of the Ministry of
Finance and Economic Management.

These regulations were made on the _____ day of _____ 2016.