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Financial Accounts Reporting Regulations 2013 (S. I. No. X of 2013)

The Revenue Commissioners, in exercise of the powers conferred on them by section 891E of the Taxes Consolidation Act 1997 (No. 39 of 1997), with the consent of the Minister for Finance hereby make the following regulations with respect to which, pursuant to section 891E of that Act, a draft has been laid before each House of the Oireachtas and a resolution approving of the draft has been passed by each such House:

DRAFT

Citation and commencement.

1. (1) These Regulations may be cited as the Financial Accounts Reporting Regulations 2013.

(2) These Regulations come into operation on x/x/ 2013.

Interpretation.

2. (1) In these Regulations, except where the context otherwise requires—

“Act” means the Taxes Consolidation Act 1997 (No. 39 of 1997);

“Account balance or value” includes—

(i) a nil or negative balance or value, and

(ii) in the case of a cash value insurance contract or an annuity contract, the cash value or surrender value of that contract;

“account number” includes, in addition to the account number, any code or codes used generally in the financial services industry to identify a reporting financial institution or a branch of a reporting financial institution, and “bank code”, “branch code”, “sorting code” and any other similar terms used to identify a reporting financial institution or a branch of a reporting financial institution shall be construed accordingly;

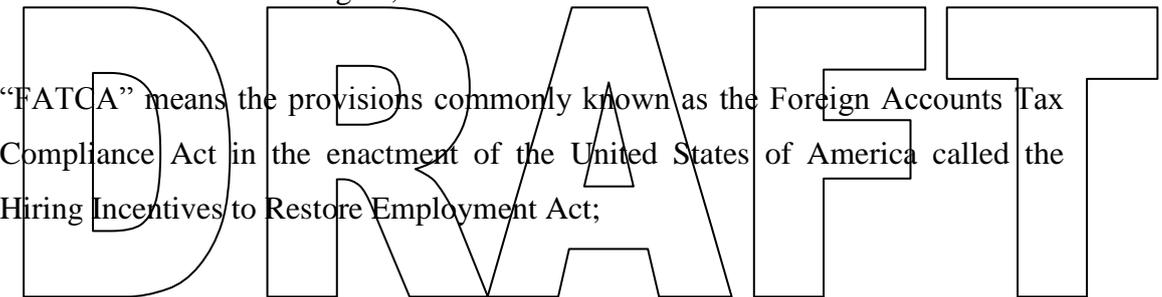
‘Agreement’ means the Agreement Between the Government of Ireland and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA done at Dublin on 21 December 2012;

‘authorised officer’ means an officer of the Revenue Commissioners authorised by them in writing to exercise the powers conferred by these Regulations;

‘competent authority’ means the Secretary of the Treasury of the United States of America or his or her delegate;

“FATCA” means the provisions commonly known as the Foreign Accounts Tax Compliance Act in the enactment of the United States of America called the Hiring Incentives to Restore Employment Act;

“investment undertaking” has the same meaning as in section 739B;



‘tax reference number’ means a U.S. TIN;

“tax year” means a year of assessment or other appropriate reporting period of 12 months;

“U.S. Regulations” means the relevant U.S. Treasury Regulations referred to in Article 1.q) of the Agreement.

(2) Subject to paragraph (1), and unless the context otherwise requires, a word or expression used in these Regulations that is also used in the Agreement shall have the same meaning as it has in the Agreement.

(3) Where a person is required under these regulations to—

(a) deliver a return, or

(b) make a declaration or election,

the return, declaration, or election is to be made, given or furnished in such form as the Revenue Commissioners may require.

Reporting Financial Institutions

3. (1) Subject to paragraphs (2), any person that carries on business in the State as—

- (a) a custodial institution,
- (b) a depository institution,
- (c) an investment entity or
- (d) a specified insurance company,

shall be a reporting financial institution.

(2) Subject to Regulations (4) and (5), paragraph (1) shall not apply to a deemed compliant financial institution.

Deemed Compliant Financial Institutions

4.(1) This regulation applies to a non-reporting Irish financial institution within the meaning of Article 1(q) of the Agreement.

(2) Where a deemed compliant financial institution is required by—

- (a) Annex II of the Agreement, or
- (b) Regulation 1.1471.5(f)(1) of the U.S. Regulations,

to submit a return of information in relation to an account maintained by it, it shall be a reporting financial institution for the purpose of returning information on that account.

Obligation of a Reporting Financial Institution to register

5. (1) Every reporting financial institution, and every registered deemed compliant financial institution within the meaning of Schedule 1 to these Regulations shall register with the Internal Revenue Service of the United States of America for the

purposes of FATCA in such manner, including by electronic means as the Internal Revenue Service may require.

(2) An application for registration shall be made by the reporting financial institution or deemed compliant financial institution, as the case may be, by [25 October 2013], or if the institution has not commenced to carry on a business on that date, not later than 30 days following the commencement of that business.

Reportable Accounts

6. (1) Subject to paragraph (2), a reportable account, in relation to a reporting financial institution, means a U.S. reportable account that is maintained by that institution in the State for the purposes of its business as a custodial institution, a depository institution, an investment entity or a specified insurance company and that is not an excluded account to which paragraph (3) applies.

(2) (a) Where a reporting financial institution so elects, an account that satisfies the conditions set out in paragraphs (b) or (c) shall not be a reportable account.

(b) An account satisfies the conditions in this paragraph if it is an account that is beneficially owned by an individual, and is a preexisting account within the meaning of paragraph A of section II of Annex I of the Agreement,

(c) An account satisfies the conditions in this paragraph if it is an account that—

(i) is beneficially owned by an individual, and is a new individual account within the meaning of paragraph A of section III of Annex I of the Agreement, or

(ii) is beneficially owned by an entity and is a preexisting entity account within the meaning of paragraph A of section IV of Annex I of the Agreement.

(d) An election under this paragraph shall be made on or before the return date for the tax year in respect of which the return is required to be made and must be in such form as the Revenue Commissioners may require.

(3) This paragraph applies to exempt products within the meaning of section III of Annex II of the Agreement.

Identification of reportable accounts

7. (1) Subject to paragraph (2), a reporting financial institution shall apply the due diligence rules and procedures specified in Annex I of the Agreement in order to identify the account holder of the reportable accounts maintained by the institution.

(2) Notwithstanding paragraph (1), a reporting financial institution may treat a new account opened by an individual as a preexisting account where—

(a) on the account opening date, the institution maintains a preexisting account for that individual, and

(b) the institution returns the aggregate account balance or value of both accounts.

(3) (a) Subject to subparagraph (b), where the due diligence procedures required by paragraph (1), require a person to submit evidence of their identity or residence, such evidence shall be in such form as the institution considers reasonable.

(b) Notwithstanding subparagraph (a) and where requested to do so by an authorised officer, the reporting institution shall obtain such other evidence of the identity or residence of the account holder as may be required by that officer.

Obligation to submit returns of reportable accounts

8. (1) For the purpose of these Regulations “return date” in relation to a tax year means a date that is not later than [30 June] of the tax year following the tax year for which a return is required under this Regulation.

(2) Notwithstanding paragraph 1 the return date for the tax year 2013 shall be a date not later than [30 June] 2015.

(3) (1) A reporting financial institution shall—

(a) as respects the tax year 2013 and each subsequent tax year, make and deliver to the appropriate Revenue officer, on or before the return date, a return in respect of all reportable accounts maintained by the institution in that year, and

(b) as respects the tax years 2015 and 2016, make and deliver to the appropriate Revenue officer, on or before the return date, a return of payments made to non-participating financial institutions in those years.

(4) The return referred to in paragraph (3)(1)(a) shall include, as respects—

(a) the financial institution, the details set out in paragraph (5), and

(b) each reportable account, the details set out in paragraph (6).

(5) The details relating to the financial institution are—

(a) the name of the institution,

(b) the address of the registered office of the institution, and

(c) the Global Identification Intermediary Number allocated to the institution by the Internal Revenue Service in the United States of

America for the purpose of identifying the institution as one whose FATCA obligations are modified by reason of the Agreement.

(6) subject to paragraph (7), the details relating to each reportable account are—

(a) the name, address, and tax reference number of —

(i) each specified U.S. person that is an account holder,

(ii) each passive entity that is an account holder and

(iii) each specified U.S. person that controls the passive entity referred to in subparagraph (ii),

(b) the account number, or where there is no account number, information capable of identifying the asset giving rise to the payment,

(c) the account balance or value as of the end of the tax year or, if the account was closed during such year, the highest balance or value of the account in that year ;

(d) in the case of any custodial account:

(i) the total gross amount of interest,

(ii) the total gross amount of dividends,

(iii) the total gross amount of other income arising from the assets held in the account, and

(iv) the total gross proceeds from the sale or redemption of any property where the financial institution acted as a custodian, broker, nominee, or otherwise as an agent for the account holder in relation to that sale or redemption,

which has been paid or credited in respect of such account during the tax year,

(e) in the case of any depository account, the total gross amount of interest paid or credited to the account during the tax year, and

(f) in the case of any account not described in subparagraphs (d) or (e) of this paragraph, the total gross amount paid or credited to the account holder with respect to the account during the tax year, where the financial institution is the obligor or debtor including the aggregate amount of any redemption payments made to the account holder during the tax year.

(7) The details to be included in a return—

(a) for the tax years 2013 and 2014, are the details set out in subparagraphs (a) to (c),

(b) for the tax years 2015 and 2016, are the details set out in subparagraphs (a) to (f) but not including the details set out in paragraph (d)(iv), and

(c) for the tax year 2017 and all subsequent tax year are the details set out in subparagraphs (a) to (f).

(8) In the case of a preexisting account of a specified U.S. person (hereafter referred to as the account holder), where the TIN of the account holder is not available from the records of the financial institution, the financial institution shall report the date of birth of the account holder where this information is available from the records of the financial institution.

(9) Where the account is a recalcitrant account, the financial institution should report so much of the information as is specified in paragraphs (5) and (6) as is available to the institution.

(10) The return referred to in paragraph (3)(b) shall include—

- (a) as regards the reporting financial institution, the details set out in paragraph (5),
- (b) the name and address of each non-participating financial institution, and
- (c) the aggregate amounts of payments made to the non-participating financial institution in the tax year.

Appointment of Third Parties

9. (1) A reporting financial institution may appoint another person as its agent to carry out the duties and obligations imposed on it by these Regulations or the Agreement.

- (2) Where another person is so appointed—
 - (a) the financial institution must, at all times, have access to and be able to produce, where so requested by an authorised officer, the records and documentary evidence used to identify and report on reportable accounts, and
 - (b) the financial institution is responsible for any failure of that other person to carry out its obligations and the provisions of subsections (7) and (8) of section 891E will apply to the institution notwithstanding that—
 - (i) the actions were the actions of that other person or
 - (ii) the failure to act was the failure by that other person to act.

Obligations of Reporting Financial Institutions to obtain TINs

10. (1) A reporting financial institution shall implement arrangements to obtain the TIN of every U.S. Specified Person who is the account holder of a reportable account.

(2) Paragraph (1) has effect—

(a) from 1 January 2017 in the case of preexisting accounts and

(b) from 1 January 2014 in the case of new accounts opened on or after that date.

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SCHEDULE 1

Registered Deemed Compliant Financial Institutions

1. Nonreporting members of participating FFI groups within the meaning of Regulation 1.1471-5(f)(i)(B) of the U.S. Regulations.
2. Restricted funds within the meaning of Regulation 1.1471-5(f)(i)(D) of the U.S. Regulations.
3. Qualified credit card issuers within the meaning of Regulation 1.1471-5(f)(i)(E) of the U.S. Regulations.
4. Sponsored Investment entities and controlled foreign corporations within the meaning of Regulation 1.1471-5(f)(i)(F) of the U.S. Regulations.

The Minister for Finance consents to the making of the foregoing Regulations.