



## Bulletin 2021/5

### The Income Tax (Guernsey) (Amendment) Ordinance, 2021

This Bulletin is issued under the provisions of Regulation 10 of The Income Tax (Approved International Agreements) (Implementation) (United Kingdom and United States of America) Regulations, 2014 and the provisions of Regulation 12 of The Income Tax (Approved International Agreements) (Implementation) (Common Reporting Standard) Regulations, 2015.

#### Legislative & Regulatory Changes

At the States of Deliberation meeting on the 15 July 2021, the Income Tax (Guernsey) (Amendment) Ordinance, 2021, ("the Ordinance") was approved. In relation to CRS & FATCA, the Ordinance amends the Income Tax (Guernsey) Law, 1975 to:

- Provide the legal basis on which the Director of the Revenue Service is able to undertake onsite visits in respect of business premises, including for the purposes of reviewing compliance with any approved international agreement or international tax measure. Approval must be sought from the Bailiff prior to any such inspection unless consent or at least 7 day's written notice has been given.
  - The Revenue Service has been conducting CRS & FATCA compliance activities (including site visits) for almost a year. To date those site visits have been conducted with the consent of the relevant Reporting Financial Institutions. This provision merely formalises the Revenue Service's ability to carry out the site visits.
  - Whilst the provisions of the Ordinance require 7 days' written notice (unless approval has been granted by the Bailiff for a shorter period), in practice the Revenue Service will usually provide longer notice of the intended site visit. This is to allow time for the relevant Reporting Financial Institution to prepare and provide information and documents, including answering a questionnaire, ahead of the site visit.
- Require all financial institutions operating in Guernsey to register with the Revenue Service if they are a person or entity which is a financial institution within the meaning of the Income Tax (Approved International Agreements) (Implementation) (United Kingdom and United States of America) Regulations, 2014 ("FATCA") or the Income Tax (Approved International Agreements) (Implementation) (Common Reporting Standard) Regulations, 2015 ("CRS") ("a relevant institution") and to submit an annual validation.
  - To clarify, previously it has only been necessary to register on the Information Gateway Online Reporter (IGOR) system if you were a financial institution that had a CRS and/or FATCA reporting obligation. This new provision will require all financial institutions (as defined in the CRS or FATCA) to register with the Revenue Service

regardless of whether they have a reporting obligation (for example, non-reporting financial institutions).

- It is intended that this enhanced registration process will apply from 2022 (with the intention that the deadline for registration will be 28 February 2022) and the IGOR system is being developed further to enable this.
- Further information will be provided at the beginning of December 2021 as the registration process requires the Revenue Service to issue a notice setting out the registration requirements (including information and documentation to be provided, registration deadline, etc).
- Enable the Director of the Revenue Service to give directions to a relevant institution which are necessary or desirable for the purposes of securing compliance with the international tax provisions. The Director also has the power to appoint or require the relevant institution to appoint independent inspectors to investigate a relevant institution which is reasonably suspected of having contravened the international tax provisions.
  - As detailed in the Policy Letter ([Billet d'État XXIV, December 2019](#)), this provision has been introduced for what is anticipated to be limited circumstances where the Revenue Service has identified that a financial institution has potential significant failings in meeting its CRS and/or FATCA obligations.
  - In such cases the Revenue Service will have the ability to require the financial institution to appoint a suitably qualified independent person ("an Inspector") who will then oversee the remediation of the significant failings and be required to make a full disclosure to the Revenue Service detailing the full extent of the failings, the measures introduced to correct the failings and to give assurance that future reporting, based on the revised policies and procedures, will be accurate and complete.
- Require relevant institutions to notify the Director if they have been unable to obtain valid self-certification under the CRS and/or FATCA Regulations, or having obtained self-certification, have reasonable grounds to suspect that the self-certification is or has subsequently become incorrect or unreliable. Upon receipt of such a notification, the Director may require the relevant institution to provide any further information and may also make a freezing order restricting withdrawals from, or otherwise dealing with, the account in question.
  - **Freezing Order** - The ability of the Revenue Service to issue a financial institution with a freezing order in respect of financial accounts where the financial institution has been unable to obtain the required self-certification (or where self-certification has been received and there are reasonable grounds to suspect it is incorrect or unreliable) is intended to support the financial institution by providing it with the legislative obligation to stop any transactions on the account, pending receipt of a full and accurate self-certification.

- It is intended that the Revenue Service will enforce this notification obligation with effect from January 2022. Further information will be provided to financial institutions at the beginning of December 2021 with regard to the method to be used to notify the Revenue Service and the information that will be required to be reported under this provision.
- Provide a right of appeal against a decision of the Director to give a direction, appoint an inspector, impose a requirement to provide further information or documents, or make a freezing order.

Following the Resolutions of the States of Deliberation on 12 December 2019, which instructed the drafting of necessary legislation to enable the Revenue Service to apply enhanced sanctions for failure to comply with the CRS and FATCA obligations, the Policy & Resources Committee made:

[The Income Tax \(Approved International Agreements\) \(Implementation\) \(Common Reporting Standard\) \(Amendment\) Regulations, 2021](#); and

[The Income Tax \(Approved International Agreements\) \(Implementation\) \(United Kingdom and United States of America\) \(Amendment\) Regulations, 2021](#)

- These Regulations came into operation on 29 April 2021.
- The Regulations enable the Revenue Service to impose increased daily penalties (of up to £1,000 per day) where there has been 30 days of continual failure (following the imposition of the initial penalty of £300 and daily penalties of £50) to submit either CRS or FATCA reports by the reporting deadline (30 June).
- Changes the basis for applying penalties in respect of CRS or FATCA reports which have been submitted and are found to be incorrect or incomplete due to negligence or fraud, where the penalties that may be imposed will be based on a percentage of the value of the financial accounts that have not been reported or reported incorrectly.
  - In cases where the incorrect reports were submitted owing to negligence the penalty will be based on 0.5% of the balance or value of each affected financial account (and where no account balance or value is required to be reported a penalty of up to £1,000 per financial account); and
  - In cases of fraud, the penalty will be based on 1% of the balance or value of each affected financial account (and where no account balance or value is required to be reported a penalty of up to £5,000 per financial account).

## Information

Please note that the above is a precis of the approved changes. Financial institutions are encouraged to view the Policy Letter and updated Legislation published on the States of Guernsey and Revenue Service CRS & FATCA webpages, which can be found here:

[The Income Tax \(Guernsey\) \(Amendment\) Ordinance, 2021 - States of Guernsey \(gov.gg\)](https://www.gov.gg/legislation/the-income-tax-guernsey-amendment-ordinance-2021)

[www.gov.gg/crs](https://www.gov.gg/crs)

[www.gov.gg/fatca](https://www.gov.gg/fatca)

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14 September 2021