

2017-05-08

**INCOME TAX (AUTOMATIC EXCHANGE OF INFORMATION)  
REGULATIONS, 2017**

*Arrangement of Regulations*

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S.I. 2017 No.

Income Tax Act

CAP. 73

**INCOME TAX (AUTOMATIC EXCHANGE OF INFORMATION)  
REGULATIONS, 2017**

The Minister, in exercise of the powers conferred on him by section 83(2) of the *Income Tax Act*, makes the following Regulations:

PART I

PRELIMINARY

**Citation**

1. These Regulations may be cited as the *Income Tax (Automatic Exchange of Information) Regulations, 2017*.

**Definitions**

2. In these Regulations,

“Barbados Competent Authority” means the Minister responsible for Finance or his authorised representative;

“Barbados Revenue Appeals Tribunal” means the Tribunal established by section 24 of the *Barbados Revenue Authority Act, 2014* (Act 2014-1);

“calendar year” means a period of 12 months commencing on the 1<sup>st</sup> day of January and ending on the 31<sup>st</sup> day of December;

“Common Reporting Standard” means the standard for the automatic exchange of financial account information developed by the Organisation for Economic Co-operation and Development and approved by the

Organisation for Economic Co-operation and Development Council on 15<sup>th</sup> July, 2014 and includes the Commentaries on the Common Reporting Standard published by the Organisation for Economic Co-operation and Development for the purpose of assisting with the interpretation of the standard;

“Convention” means the Convention on Mutual Administrative Assistance in Tax Matters as amended by the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters signed by Barbados on the 28<sup>th</sup> day of October, 2015;

“FATCA” means the Foreign Account Tax Compliance Act enacted by the United States Congress on the 18<sup>th</sup> day of March, 2010;

“global intermediary identification number” means a number assigned to a Reporting Barbados Financial Institution by the United States Inland Revenue Service for the purposes of identifying the institution and distinguishing it from another Reporting Barbados Financial Institution;

“identifying number” means a number assigned to a Reporting Barbados Financial Institution for the purposes of its obligations under the Common Reporting Standard;

“Multilateral Competent Authority Agreement” means the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information signed by Barbados on the 29<sup>th</sup> day of October, 2015;

“Reporting Barbados Financial Institution” means in relation to

(a) Part II, a Reporting Barbados Financial Institution as defined in the Treaty;

(b) Part III, a Barbados Financial Institution that is not a Non-Reporting Financial Institution and, for the purpose

(i) “Barbados Financial Institution” means

(A) a financial institution that is resident in Barbados, but excludes a branch of the financial institution that is located outside of Barbados; and

(B) a branch of a financial institution that is not resident in Barbados, where the branch is located in Barbados; and

(ii) “Non-Reporting Financial Institution” has the meaning assigned to it in the Common Reporting Standard and includes an entity listed in the *First Schedule*;

(c) Part IV, an entity described in paragraph (a) or (b), as the case may be;

“TIN” means Taxpayer Identification Number or its functional equivalent;

“Treaty” means the Agreement between the Government of the United States of America and the Government of Barbados to Improve International Tax Compliance and to Implement FATCA signed on the 17th day of November, 2014;

“USD” means United States Dollar, the official currency of the United States of America.

## PART II

### REPORTING REQUIREMENTS FOR U.S. REPORTABLE ACCOUNTS

#### **Application and Interpretation of Part II**

3.(1) This Part and, where applicable, Parts I and IV, have effect for and in connection with the implementation of the Treaty.

- (2) In this Part,
- (a) “dormant account” means a U.S. reportable account on which, for at least 6 months, there has been no financial activity other than the posting of interest or the deduction of bank fees which are not related to the usage of the account; and
  - (b) the following terms have the definitions assigned to them in the Treaty:
    - (i) account holder;
    - (ii) annuity contract;
    - (iii) cash value insurance contract;
    - (iv) controlling person;
    - (v) custodial account;
    - (vi) depository account;
    - (vii) IRS;
    - (viii) Non-U.S. Entity;
    - (ix) specified U.S. person;
    - (x) U.S. Competent Authority;
    - (xi) U.S. TIN;
    - (xii) U.S. reportable account.

**General duties of Reporting Barbados Financial Institutions for the purposes of the Treaty**

4. A Reporting Barbados Financial Institution shall
- (a) identify U.S. reportable accounts;
  - (b) identify specified U.S. persons, including specified U.S. persons who are controlling persons of Non-U.S. Entities;



- (c) identify Non-U.S. Entities for which specified U.S. persons are controlling persons;
- (d) identify the territories in which U.S. specified persons who are account holders or are controlling persons of Non-U.S. Entities that are account holders, as the case may be, are resident for the purposes of income tax, corporation tax or any tax of a similar character imposed by the laws of those territories;
- (e) ensure that the due diligence procedures set out in this Part and in the Treaty and, in particular, in Annex I of the Treaty are applied as required and that there is compliance with the dates provided for in the Treaty;
- (f) report annually to the Barbados Competent Authority, in accordance with regulation 6, the information set out in regulation 7; and
- (g) comply with the applicable registration and reporting requirements, in respect of FATCA or the Treaty, which are set and published by the IRS or the U.S. Competent Authority, as the case may be.

#### **Reporting thresholds for certain U.S. reportable accounts**

5. A Reporting Barbados Financial Institution shall, in respect of
- (a) a pre-existing custodial account or depository account where the balance or value of the custodial account or depository account is more than USD\$50 000 on the 30<sup>th</sup> day of June, 2014, report the information specified in regulation 7 together with any other information required by an annex of the Treaty;
  - (b) a pre-existing cash value insurance contract or an annuity contract where the balance or value of the cash value insurance contract or annuity contract is more than USD\$250 000 on the 30<sup>th</sup> day of June, 2014, report the information specified in regulation 7 together with any other information required by an annex of the Treaty;

- (c) a new custodial account or depository account where the balance or value of the custodial account or depository account is more than USD \$50 000 on or after the 1<sup>st</sup> day of July, 2014, report the information specified in regulation 7 together with any other information required by an annex of the Treaty; and
- (d) a new cash value insurance contract or an annuity contract where the balance or value of the cash value insurance contract or annuity contract is more than USD\$250 000 on or after the 1<sup>st</sup> day of July, 2014, report the information specified in regulation 7 together with any other information required by an annex of the Treaty.

**Effective date**

6.(1) A Reporting Barbados Financial Institution shall, for the purposes of the automatic exchange of information with the IRS or the U.S. Competent Authority, as the case may be, ensure that the information specified in regulation 7 is sent to the Barbados Competent Authority by the 31<sup>st</sup> day of July after the calendar year for which the information is required.

(2) Where the Barbados Competent Authority receives the information specified in paragraph (1), it shall forward the information to the U.S. Competent Authority within 9 months after

- (a) the 31<sup>st</sup> day of December of the calendar year for which the information is required, in the form required by the IRS or the U.S. Competent Authority, as the case may be; or
- (b) the appropriate reporting period, where another reporting period is specified, in the form required by the IRS or the U.S. Competent Authority, as the case may be.

- (3) Where a Reporting Barbados Financial Institution fails to comply with paragraph (1), the Barbados Competent Authority shall by notice in writing
- (a) require the Reporting Barbados Financial Institution to submit the required information within 14 days after the date of service of the notice; and
  - (b) inform the Reporting Barbados Financial Institution that a failure to comply with paragraph (1) amounts to a breach of these Regulations, and that such a breach may render the institution liable to a pecuniary penalty.

**Obligation to obtain and exchange information with respect to U.S. reportable accounts**

7.(1) A Reporting Barbados Financial Institution shall, in respect of each specified U.S. person who is an account holder or is a controlling person of a Non-U.S. Entity that is an account holder, obtain and report, in the form required by the IRS or the U.S. Competent Authority, as the case may be, the information set out in paragraph (2) on the following U.S. reportable accounts:

- (a) depository accounts;
  - (b) custodial accounts;
  - (c) cash value insurance contracts;
  - (d) annuity contracts; and
  - (e) U.S. reportable accounts other than custodial accounts, depository accounts, cash value insurance contracts and annuity contracts.
- (2) The information referred to in paragraph (1) is as follows:
- (a) the full name of the account holder;
  - (b) the place of birth of the account holder, where the place of birth is a place in the United States of America;

- (c) the mailing address and residential address of the account holder in the United States of America;
- (d) the mailing address and residential address of the account holder in Barbados;
- (e) the U.S. TIN of the specified U.S. person;
- (f) where the U.S. specified person is a controlling person of a Non-U.S. Entity, the name, address and U.S. TIN, if any, of the Non-U.S. Entity;
- (g) the account number of the account or the functional equivalent;
- (h) the name of the Reporting Barbados Financial Institution and its global intermediary identification number;
- (i) the existence of any power of attorney or any other form of signatory authority granted to a person with an address in the United States of America;
- (j) any standing instructions to transfer funds to an account maintained in the United States of America; and
- (k) in the case of
  - (i) a depository account
    - (A) the denomination of the currency in which the depository account is held or will be paid;
    - (B) the account balance or value on the 31<sup>st</sup> day of December of the calendar year for which the report is to be made; and
    - (C) the total gross amount of interest paid or credited to the account;
  - (ii) a custodial account
    - (A) the denomination of the currency in which the custodial account is held;

- (B) the account balance or value on the 31<sup>st</sup> day of December of the calendar year for which the report is to be made;
  - (C) the total gross amount of interest paid or credited to the account;
  - (D) the total gross amount of dividends paid or credited to the account;
  - (E) the total gross amount of other income paid or credited to the account; and
  - (F) the total gross proceeds from the sale or redemption of property paid or credited to the account;
- (iii) a cash value insurance contract or an annuity contract,
- (A) the denomination of the currency in which the cash value insurance contract or annuity contract is held or will be paid;
  - (B) the annual amount reported to the policy holder as the surrender value of the account;
  - (C) the redemption value of the account as calculated by the financial institution on the 31<sup>st</sup> day of December of the calendar year for which the report is to be made;
  - (D) any partial surrenders made in respect of the cash value insurance contract or the annuity contract during the calendar year; and
  - (E) the total gross amount paid or credited to the account holder with respect to the account including the total aggregate of the amount of any redemption payments made to the account holder; and

- (iv) U.S. reportable accounts other than custodial accounts, depository accounts, cash value insurance contracts and annuity contracts
  - (A) the denomination of the currency in which the account is held or will be paid;
  - (B) the annual amount reported to the policy holder as the redemption value of the account;
  - (C) the redemption value of the account as calculated by the financial institution on the 31<sup>st</sup> day of December of the calendar year for which the report is to be made;
  - (D) any partial redemption made in respect of the account during the calendar year; and
  - (E) the total gross amount paid or credited to the account holder with respect to the account including the total aggregate of the amount of any redemption payments made to the account holder.

(3) Where at the 31<sup>st</sup> day of December for any calendar year a Reporting Barbados Financial Institution maintains no U.S. reportable accounts, the Reporting Barbados Financial Institution shall submit a report to the Barbados Competent Authority which states that fact.

**Closed or dormant U.S. reportable accounts**

8.(1) A Reporting Barbados Financial Institution shall, where a U.S. reportable account has been closed or surrendered in the calendar year of the report, report the information specified in regulation 7, in the form required by the IRS or the U.S. Competent Authority, as the case may be, and that report shall state the balance on the day before the closure or surrender of the U.S. reportable account.

(2) A Reporting Barbados Financial Institution shall, in respect of a U.S. reportable account which is dormant or has been classified as a dormant account,

report the information specified in regulation 7, in the form required by the IRS or the U.S. Competent Authority, as the case may be.

**Transitional provisions for FATCA**

9. Notwithstanding regulations 6 and 7, in respect of a specified U.S. person, including a specified U.S. person who is a controlling person of a Non-U.S. Entity

- (a) for the calendar year 2014, a Reporting Barbados Financial Institution shall only report the following:
  - (i) the full name of the account holder;
  - (ii) the mailing address and residential address of the account holder in the United States of America;
  - (iii) the mailing address and residential address of the account holder in Barbados;
  - (iv) the U.S. TIN for each specified U.S. person;
  - (v) the account number of the account or the functional equivalent; and
  - (vi) the account balance or value on the 31<sup>st</sup> day of December, 2013 and, where the account has been closed, the balance or value of the account on the day before the date of closure;
- (b) for the calendar year 2015, a Reporting Barbados Financial Institution shall only report the following:
  - (i) the full name of the account holder;
  - (ii) the mailing address and residential address of the account holder in the United States of America;
  - (iii) the mailing address and residential address of the account holder in Barbados;
  - (iv) the U.S. TIN for each specified U.S. person;

- (v) the account number of the account or the functional equivalent;
- (vi) the account balance or value on the 31<sup>st</sup> day of December, 2014 and, where the account has been closed, the balance or value of the account on the day before the date of closure; and
- (vii) the total gross amount paid or credited to the account including any interest and dividends and the aggregate amount of any redemption payments made to the account.

### PART III

#### REPORTING REQUIREMENTS PURSUANT TO THE COMMON REPORTING STANDARD

##### **Application and interpretation of Part III**

10.(1) This Part and, where applicable, Parts I and IV, have effect for and in connection with the implementation of the Multilateral Competent Authority Agreement and the Convention.

(2) For the purposes of automatic exchange of financial account information under the Multilateral Competent Authority Agreement and the Convention, the Common Reporting Standard comes into force for Barbados on the 1<sup>st</sup> day of January, 2017.

(3) In this Part,

“high value account” means a pre-existing individual account with an aggregate balance or value that exceeds USD\$1 000 000 as of the 30<sup>th</sup> day of June, 2017 or the 31<sup>st</sup> day of December of 2017 or of any subsequent calendar year;

“lower value account” means a pre-existing individual account with an aggregate balance or value that does not exceed USD\$1 000 000 as of the 30<sup>th</sup> day of June, 2017;



“new account” means a financial account opened on or after the 1<sup>st</sup> day of July, 2017 and maintained by a Reporting Barbados Financial Institution;

“pre-existing account” means a financial account maintained by a Reporting Barbados Financial Institution as of the 30<sup>th</sup> day of June, 2017;

“pre-existing entity account” means a pre-existing account held by one or more entities;

“pre-existing individual account” means a pre-existing account held by one or more individuals;

“reportable account” means an account held by a reportable person or by a passive NFE with a controlling person who is a reportable person, provided that it has been identified as such pursuant to the due diligence procedures set out in Sections II to VII of the Common Reporting Standard.

(4) For the purposes of this Part, the following terms have the definitions assigned to them in the Common Reporting Standard:

- (a) account holder;
- (b) annuity contract;
- (c) cash value;
- (d) cash value insurance contract;
- (e) controlling person;
- (f) custodial account;
- (g) depository account;
- (h) entity;
- (i) financial account;
- (j) NFE;
- (k) Passive NFE;
- (l) reportable person.

(5) For the purposes of this Part, any expression defined in the Common Reporting Standard or the Multilateral Competent Authority Agreement but not in these Regulations shall have, in these Regulations, the same meaning as in the Common Reporting Standard or the Multilateral Competent Authority Agreement, as the case may be.

(6) For the purposes of complying with the Common Reporting Standard

(a) “participating jurisdiction” means a jurisdiction listed in the *Second Schedule*; and

(b) “reportable jurisdiction” means a jurisdiction listed in the *Third Schedule*.

(7) For the purposes of complying with the Common Reporting Standard, the date referred to in sub-paragraphs B(8)(b) and C(17)(f)(ii) of Section VIII of the Common Reporting Standard is the 1<sup>st</sup> day of July, 2017.

**Due diligence obligations in relation to reportable accounts**

11.(1) A Reporting Barbados Financial Institution shall

(a) identify reportable accounts from among pre-existing accounts and new accounts maintained by the financial institution by applying the due diligence procedures set out in Sections II to VII of the Common Reporting Standard; and

(b) identify each jurisdiction in which an account holder or a controlling person is resident for the purpose of income tax, corporation tax or any other tax imposed by the law of the jurisdiction that is similar in nature to either of those taxes.

(2) In furtherance of paragraph (1)(a), a Reporting Barbados Financial Institution

(a) shall, where a pre-existing individual account is not a high value account as of the 30<sup>th</sup> day of June, 2017 but becomes a high value account as of the 31<sup>st</sup> day of December of 2017 or of any subsequent

calendar year, complete the enhanced review procedures described in Section III, paragraph C of the Common Reporting Standard, with respect to such account within the calendar year following the year in which the account becomes a high value account;

- (b) shall, where based on the enhanced review procedures referred to in sub-paragraph (a), it identifies an account as a reportable account, report, in relation to the account, the information set out in regulation 12(4) with respect to the year in which the account is identified as a reportable account and subsequent years, on an annual basis, unless the account holder ceases to be a reportable person;
- (c) shall complete the review of

  - (i) pre-existing high value individual accounts by the 31<sup>st</sup> day of December, 2017; and
  - (ii) pre-existing lower value individual accounts by the 31<sup>st</sup> day of December, 2018;
- (d) is not required to review, identify or report on a pre-existing entity account with an aggregate account balance or value that does not exceed USD\$250 000 as of the 30<sup>th</sup> day of June, 2017 until the aggregate account balance or value exceeds USD\$250 000 as of the 31<sup>st</sup> day of December of 2017 or of any subsequent calendar year;
- (e) shall review, in accordance with the procedures set out in Section V, paragraph D of the Common Reporting Standard, any pre-existing entity account with an aggregate account balance or value that exceeds USD\$250 000 as of the 30<sup>th</sup> day of June, 2017 and any pre-existing entity account with an aggregate account balance or value that does not exceed USD\$250 000 as of the 30<sup>th</sup> day of June, 2017 but exceeds USD \$250 000 as of the 31<sup>st</sup> day of December of 2017 or of any subsequent calendar year; and

- (f) shall complete the review of
- (i) pre-existing entity accounts with an aggregate account balance or value that exceeds USD\$250 000 as of the 30<sup>th</sup> day of June, 2017, by the 31<sup>st</sup> day of December, 2018; and
  - (ii) pre-existing entity accounts with an aggregate account balance or value that does not exceed USD\$250 000 as of the 30<sup>th</sup> day of June, 2017 but exceeds USD\$250 000 as of the 31<sup>st</sup> day of December of 2017 or of any subsequent calendar year, within the calendar year following the year in which the aggregate account balance or value exceeds USD\$250 000.

### **Reporting obligations**

**12.(1)** A Reporting Barbados Financial Institution shall, in respect of the first reporting year and each subsequent calendar year, submit a report with the Barbados Competent Authority setting out the information specified in paragraph (4) in respect of each reportable account that is maintained by the Reporting Barbados Financial Institution during that calendar year.

(2) The first reporting year, for the purposes of the Common Reporting Standard, is the calendar year 2017.

(3) A Reporting Barbados Financial Institution shall, for the purpose of the automatic exchange of financial account information with a reportable jurisdiction, ensure that the report referred to in paragraph (1) is sent to the Barbados Competent Authority on or before the 31<sup>st</sup> day of July following the calendar year to which the information relates.

(4) A Reporting Barbados Financial Institution shall, in respect of each reportable person who is an account holder or is a controlling person of a Passive NFE that is an account holder, report the following information:

- (a) the full name, address, jurisdictions of residence, TIN, and where the reportable person is an individual, date and place of birth of, the reportable person;

- (b) where the reportable person is a controlling person of a Passive NFE that is an account holder, the full name, address, jurisdictions of residence and TIN of the entity;
- (c) the account number of the account or the functional equivalent;
- (d) the name of the Reporting Barbados Financial Institution and its identifying number;
- (e) the account balance or value (including, in the case of a cash value insurance contract or annuity contract, the cash value or surrender value) as of the end of the relevant calendar year or, where the account was closed during such year, the closure of the account;
- (f) in the case of
  - (i) a custodial account
    - (A) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year; and
    - (B) the total gross proceeds from the sale or redemption of financial assets paid or credited to the account during the calendar year with respect to which the Reporting Barbados Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the account holder;
  - (ii) a depository account, the total gross amount of interest paid or credited to the account during the calendar year; and
  - (iii) reportable accounts other than custodial accounts and depository accounts, the total gross amount paid or credited to the account holder with respect to the account during the calendar year with respect to which the Reporting Barbados Financial Institution is the obligor or debtor, including the aggregate amount of any

redemption payments made to the account holder during the calendar year; and

- (g) the currency in which each amount is denominated.
- (5) Notwithstanding paragraph (4),

  - (a) with respect to each reportable account that is a pre-existing account, the TIN or date of birth is not required to be reported where such TIN or date of birth is not in the records of the Reporting Barbados Financial Institution and is not otherwise required to be collected by the institution under any other enactment, but a Reporting Barbados Financial Institution shall use reasonable efforts to obtain the TIN and date of birth with respect to pre-existing accounts by the end of the second calendar year following the year in which such accounts were identified as reportable accounts; and
  - (b) the place of birth is not required to be reported unless the Reporting Barbados Financial Institution is otherwise required to obtain and report it under any other enactment and it is available in the electronically searchable data maintained by the Reporting Barbados Financial Institution.
- (6) Where at the 31<sup>st</sup> day of December for any calendar year a Reporting Barbados Financial Institution maintains no reportable accounts, the Reporting Barbados Financial Institution shall submit a report to the Barbados Competent Authority which states that fact.
- (7) Where a Reporting Barbados Financial Institution fails to comply with paragraphs (1) and (3), the Barbados Competent Authority shall by notice in writing

  - (a) require the Reporting Barbados Financial Institution to submit the required information within 14 days after the date of service of the notice; and
  - (b) inform the Reporting Barbados Financial Institution that a failure to comply with paragraphs (1) and (3) amounts to a breach of these

Regulations, and that such a breach may render the institution liable to a pecuniary penalty.

#### **General rules for accounts**

13.(1) For the purposes of this Part

- (a) a Reporting Barbados Financial Institution shall treat an account balance with a negative value as having a nil value; and
- (b) a reference to paying an amount includes crediting an amount.

(2) Where a Reporting Barbados Financial Institution applies the Common Reporting Standard and the balance or value of an account is denominated in a currency other than United States Dollars, the Reporting Barbados Financial Institution shall translate the currency into the United States Dollar threshold amount by reference to the spot rate of exchange on the date for which the Reporting Barbados Financial Institution is determining the threshold amount.

### PART IV

#### GENERAL PROVISIONS

##### **Information on Reporting Barbados Financial Institutions**

14.(1) A Reporting Barbados Financial Institution which has reporting obligations under these Regulations shall notify the Barbados Competent Authority of that fact and shall provide the Barbados Competent Authority with the following information:

- (a) the name of the Reporting Barbados Financial Institution;
- (b) certified copies of the incorporation documents and bank registration documents of the Reporting Barbados Financial Institution;
- (c) copies of any registration documents issued to the Reporting Barbados Financial Institution by the IRS in accordance with the Treaty;

- (d)* the global intermediary identification number or identifying number of the Reporting Barbados Financial Institution, as the case may be;
  - (e)* the categorization of the Reporting Barbados Financial Institution as determined in accordance with the Treaty or the Common Reporting Standard; and
  - (f)* the full name, address, designation and contact details of the individual identified and authorised by the Reporting Barbados Financial Institution to be the principal point of contact for the Reporting Barbados Financial Institution for all purposes of compliance with these Regulations.
- (2) A Reporting Barbados Financial Institution shall
  - (a)* provide the notification and the information specified in paragraph (1) to the Barbados Competent Authority, in writing, whether electronically or otherwise, no later than the 31<sup>st</sup> day of July of the calendar year for which the institution becomes a Reporting Barbados Financial Institution; and
  - (b)* notify the Barbados Competent Authority of any change to the information provided under paragraph (1) within 30 days of the change.
- (3) Where a Reporting Barbados Financial Institution ceases to be registered with the IRS, the institution shall notify the Barbados Competent Authority of that fact within 30 days of the Reporting Barbados Financial Institution ceasing to be so registered.

**Duty to maintain records of relevant information**

- 15.(1) A Reporting Barbados Financial Institution shall establish and keep records of
- (a)* the steps undertaken for the performance of its obligations under regulations 11 and 12;



- (b) any evidence relied upon, for the performance of its obligations under regulations 4, 5, 7, 8, 9, 11 and 12 and, in particular, of all information collected for U.S. reportable accounts under Part II and reportable accounts under Part III; and
  - (c) the information submitted to the Barbados Competent Authority for the purposes of regulations 7 and 12.
- (2) The Reporting Barbados Financial Institution shall ensure that the records made for the purposes of this regulation are kept for a minimum period of 5 years after the end of the calendar year for which the record was made.

#### **Appointment of agents**

16.(1) A Reporting Barbados Financial Institution may appoint and use a person as its agent to carry out the obligations imposed on a Reporting Barbados Financial Institution by these Regulations.

(2) Notwithstanding paragraph (1), where a person is appointed under paragraph (1), the Reporting Barbados Financial Institution shall remain responsible for the obligations referred to in paragraph (1) and, in particular

- (a) shall at all times, have access to and be able to produce, where so requested by the Barbados Competent Authority, the records described in regulation 15(1); and
- (b) is responsible for any failure of that person to carry out his obligations notwithstanding that the actions were the actions of that person or that the failure to act was the failure by that person to act.

#### **Confidentiality, safeguards and limitations on use of information**

17.(1) The Barbados Competent Authority and Reporting Barbados Financial Institutions shall in respect of any information received pursuant to the Treaty or the Convention ensure that the information is treated as confidential

and the information is only disclosed to an authority that is legally entitled to the information, including

- (a) the courts and the prosecution; or
  - (b) administrative bodies or any other body which is involved in the collection, assessment, administration of, enforcement or the determination of appeals in relation to, the taxes covered by the Treaty or the Convention, as the case may be.
- (2) Subject to paragraph (1), any person, including the courts and administrative bodies and any other body that is legally entitled to the information, shall use the information for taxation purposes only.
- (3) The Barbados Competent Authority and Reporting Barbados Financial Institutions shall ensure that the information exchanged for the purposes of these Regulations is subject to
- (a) the confidentiality requirements and any other safeguards provided in the Treaty or the Convention, as the case may be;
  - (b) any limitation on the access and use of the information exchanged and, to the extent needed to ensure the necessary level of protection of personal data, in accordance with any safeguards, specified by the Treaty or the Convention, as the case may be.

### **Inspection and compliance**

**18.(1)** The Barbados Competent Authority may, in writing require a Reporting Barbados Financial Institution, within such time as the Barbados Competent Authority may specify, to provide or make available to the Barbados Competent Authority, such information including copies of any relevant books, documents or other records, whether electronically stored or otherwise, in the possession or control of the institution, as the Barbados Competent Authority may reasonably require for the purpose of determining whether the institution complies with these Regulations.

(2) Where any information which is required to be provided to, or inspected by, the Barbados Competent Authority is located outside of Barbados, the Reporting Barbados Financial Institution shall take all necessary steps to bring the information to Barbados within the time specified in writing by the Barbados Competent Authority.

#### **Power to require correction**

19. Where a Reporting Barbados Financial Institution fails to submit a report or submits a report that contains administrative or other minor errors, the Barbados Competent Authority shall by notice in writing

- (a) inform the Reporting Barbados Financial Institution of the failure or administrative or other minor error;
- (b) require the institution to submit the report or any new or corrected information within 14 days after the date of service of the notice; and
- (c) inform the institution that a failure to comply with sub-paragraph (b) amounts to a breach of these Regulations, and that such a breach may render the institution liable to a pecuniary penalty.

#### **Offences**

20.(1) A Reporting Barbados Financial Institution that

- (a) knowingly fails to submit a report as required by these Regulations;
- (b) fails to comply with a requirement of, or obligation imposed by, the Barbados Competent Authority under regulation 18; or
- (c) fraudulently or negligently makes a false report, whether in its entirety or in any particular part or with regard to any stated fact,

is guilty of an offence and is liable on indictment to a fine of \$50 000 or to imprisonment for a term of 10 years or to both such fine and imprisonment.

- (2) A person who
- (a) with intent to avoid the provisions of these Regulations, alters, destroys, mutilates, defaces, hides or removes any document or information, including documents or information electronically held; or
  - (b) wilfully obstructs the Barbados Competent Authority in the exercise of its functions under regulation 18,

is guilty of an offence and is liable on indictment to a fine of \$50 000 or to imprisonment for a term of 10 years or to both such fine and imprisonment.

**Pecuniary penalties**

21.(1) Notwithstanding regulation 20, the Commissioner may impose on a Reporting Barbados Financial Institution, a pecuniary penalty of \$10 000 where the institution

- (a) fails to deliver the information specified in regulation 7 or to submit a report containing the information to be reported under regulation 12 to the Barbados Competent Authority within the time prescribed by regulations 6 and 12, respectively;
- (b) fails to notify the Barbados Competent Authority of any of the matters specified in regulations 4, 7, 8, 11, 12 and 14;
- (c) fails to comply with a requirement of, or obligation imposed by, the Barbados Competent Authority under regulation 18; or
- (d) without reasonable cause, fails to submit any new or corrected information within the required period after having been given notice that a report contains an administrative or other minor error and that the new or corrected information is required in accordance with regulation 19.

(2) The Commissioner shall, before imposing a pecuniary penalty on a Reporting Barbados Financial Institution, by notice in writing

- (a) inform the institution of the facts and circumstances that render it liable to the penalty;
- (b) state the amount of the penalty to be paid;
- (c) state the date by which the penalty must be paid; and
- (d) inform the institution
  - (i) that it may request a review, by the Commissioner, of the imposition or amount of the penalty; and
  - (ii) of the right to appeal to the Barbados Revenue Appeals Tribunal against the decision of the Commissioner.

(3) Without prejudice to regulation 22, the Commissioner may, upon a request by a Reporting Barbados Financial Institution for a review pursuant to paragraph (2)(d)(i), confirm, vary or cancel a penalty as it considers appropriate.

(4) A pecuniary penalty imposed under paragraph (1) is due and payable by the date specified in the notice referred to in paragraph (2), and where a Reporting Barbados Financial Institution does not remedy a failure referred to in paragraph (1), the institution is liable to a further penalty of \$5 000 for each day or part thereof for which the failure continues after the date on which the original penalty became due and payable.

(5) The Commissioner shall, where a Reporting Barbados Financial Institution fails to pay a penalty, send such further notices in writing, in accordance with paragraph (2), as the Commissioner considers necessary in the circumstances and in the interest of fairness and justice.

**Waiver of pecuniary penalty**

**22.(1)** A Reporting Barbados Financial Institution may, within 14 days after the date of service of a notice of the imposition of a penalty under regulation 21

- (a)* inform the Commissioner in writing and in detail, of the reason for, or the circumstances which led to, its failure to comply with the requirement in respect of which the penalty was imposed; and
- (b)* request a waiver of the penalty.

**(2)** For the purposes of paragraph (1), a Reporting Barbados Financial Institution cannot rely on the fact that

- (a)* it did not have sufficient funds; or
- (b)* a person referred to in regulation 16 failed to carry out the duties and obligations imposed these Regulations,

as a reasonable excuse for non-compliance with these Regulations.

**(3)** The Commissioner may, where satisfied that a Reporting Barbados Financial Institution had a reasonable excuse for the failure which resulted in the imposition of a penalty, waive the penalty by notice in writing.

**Appeal to Barbados Revenue Appeals Tribunal against pecuniary penalty**

**23.** A Reporting Barbados Financial Institution may, within 14 days after the date of service of a notice of the imposition of a pecuniary penalty under regulation 21, appeal to the Barbados Revenue Appeals Tribunal against

- (a)* the penalty on the ground that liability to a penalty under these Regulations does not arise; or
- (b)* the amount of the penalty imposed.

**Procedure on appeal against pecuniary penalty**

- 24.(1) Notice of an appeal shall be given in writing to
- (a) the Barbados Revenue Appeals Tribunal in accordance with the procedures of the tribunal; and
  - (b) the Commissioner,

and shall state the grounds of appeal.

- (2) On hearing the appeal, the Barbados Revenue Appeals Tribunal may confirm, vary or cancel the penalty.

**Appeals to the High Court**

25. A Reporting Barbados Financial Institution that is aggrieved by a decision of the Barbados Revenue Appeals Tribunal in respect of a pecuniary penalty may appeal to a Judge in Chambers against the decision within 30 days after the notice of the decision is served on it.

**Anti-avoidance**

26. Where a person enters into an arrangement or engages in a practice, the main purpose or one of the main purposes of which can reasonably be considered to be to avoid any obligation under these Regulations, the person is subject to the obligation as if the person had not entered into the arrangement or engaged in the practice.

**Issuance of guidelines**

- 27.(1) The Barbados Competent Authority may issue guidelines in such form as it considers appropriate for the purpose of aiding compliance with these Regulations.
- (2) The guidelines and any amendment to the guidelines shall be published in the *Official Gazette*.

**Revocation of S.I. 2015/69**

**28.** The *Income Tax (Automatic Exchange of Information) Regulations, 2015* (S.I. 2015 No. 69) are revoked.



**FIRST SCHEDULE**

*(Regulation 2)*

*NON-REPORTING FINANCIAL INSTITUTIONS*

For the purposes of the Common Reporting Standard, the following are Non-Reporting Financial Institutions:

Central Bank of Barbados

Caribbean Development Bank

National Insurance Fund

The Barbados Agency for Micro Enterprise Development Ltd. (FundAccess)

Enterprise Growth Fund Limited

Barbados Co-operative & Credit Union League Ltd.

**SECOND SCHEDULE**

*(Regulation 10(6)(a))*

*PARTICIPATING JURISDICTIONS*

For the purposes of the Common Reporting Standard, the following are participating jurisdictions:

Andorra  
Anguilla  
Antigua and Barbuda  
Argentina  
Aruba  
Australia  
Austria  
The Bahamas  
Bahrain  
Barbados  
Belgium  
Belize  
Bermuda  
Brazil  
British Virgin Islands  
Brunei Darussalam  
Bulgaria  
Canada  
Cayman Islands  
Chile  
China  
Colombia  
Cook Islands  
Costa Rica  
Croatia  
Curaçao  
Cyprus  
Czech Republic  
Denmark  
Dominica  
Estonia  
Faroe Islands

Finland  
France  
Germany  
Ghana  
Gibraltar  
Greece  
Greenland  
Grenada  
Guernsey  
Hong Kong (China)  
Hungary  
Iceland  
India  
Indonesia  
Ireland  
Isle of Man  
Israel  
Italy  
Japan  
Jersey  
Kuwait  
Latvia  
Lebanon  
Liechtenstein  
Lithuania  
Luxembourg  
Macao (China)  
Malaysia  
Malta  
Marshall Islands  
Mauritius  
Mexico  
Monaco  
Montserrat  
Nauru  
Netherlands  
New Zealand  
Niue  
Norway  
Panama

Poland  
Portugal  
Qatar  
Republic of Korea  
Romania  
Russia  
Saint Kitts and Nevis  
Saint Lucia  
Saint Vincent and the Grenadines  
Samoa  
San Marino  
Saudi Arabia  
Seychelles  
Singapore  
Sint Maarten  
Slovak Republic  
Slovenia  
South Africa  
Spain  
Sweden  
Switzerland  
Trinidad and Tobago  
Turkey  
Turks and Caicos Islands  
United Arab Emirates  
United Kingdom  
Uruguay  
Vanuatu

**THIRD SCHEDULE***(Regulation 10(6)(b))**REPORTABLE JURISDICTIONS*

For the purposes of the Common Reporting Standard, the following are reportable jurisdictions:

Antigua and Barbuda  
Argentina  
Aruba  
Austria  
Australia  
Bahrain  
Belgium  
Belize  
Bermuda  
Brazil  
British Virgin Islands  
Bulgaria  
Canada  
Cayman Islands  
Chile  
China  
Colombia  
Cook Islands  
Costa Rica  
Croatia  
Curaçao  
Cyprus  
Czech Republic  
Denmark  
Dominica  
Estonia  
Faroe Islands  
Finland  
France  
Germany  
Gibraltar  
Greece

Greenland  
Grenada  
Guernsey  
Hungary  
Iceland  
India  
Indonesia  
Ireland  
Isle of Man  
Israel  
Italy  
Japan  
Jersey  
Kuwait  
Latvia  
Lithuania  
Luxembourg  
Malaysia  
Malta  
Mauritius  
Mexico  
Monsterrat  
Netherlands  
New Zealand  
Norway  
Panama  
Poland  
Portugal  
Qatar  
Republic of Korea  
Romania  
Russia  
Saint Kitts and Nevis  
Saint Lucia  
Saint Vincent and the Grenadines  
San Marino  
Saudi Arabia  
Seychelles  
Singapore  
Sint Maarten

Slovak Republic  
Slovenia  
South Africa  
Spain  
Sweden  
Switzerland  
Trinidad and Tobago  
United Kingdom  
Uruguay  
Vanuatu

Made by the Minister this            day of            , 2017.

Minister responsible for Finance

