

MONTSERRAT
STATUTORY RULES AND ORDERS
S.R.O. 22 OF 2019

TAX INFORMATION EXCHANGE (FATCA AGREEMENT)
(UK IGA) (CRS) (MONTSERRAT) (IMPLEMENTATION)
(AMENDMENT) REGULATIONS 2019

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**TAX INFORMATION EXCHANGE (FATCA AGREEMENT) (UK IGA)
(CRS) (MONTSERRAT) (IMPLEMENTATION) (AMENDMENT)
REGULATIONS 2019**

**THE TAX INFORMATION EXCHANGE (FATCA AGREEMENT) (UK IGA)
(CRS) (MONTSERRAT) (IMPLEMENTATION) (AMENDMENT)
REGULATIONS 2019 MADE BY THE GOVERNOR ACTING ON THE
ADVICE OF THE CABINET UNDER SECTION 5 OF THE TAX
INFORMATION EXCHANGE ACT (CAP. 17.24).**

1. Citation

These Regulations may be cited as the Tax Information Exchange (FATCA Agreement) (UK IGA) (CRS) (Montserrat) (Implementation) (Amendment) Regulations, 2019.

2. Interpretation

In these Regulations “**principal Regulations**” means the Tax Information Exchange (FATCA Agreement) (UK IGA) (CRS) (Montserrat) (Implementation) Regulations, 2016 (S.R.O. 45 of 2016).

3. Regulation 2 amended

Regulation 2 of the principal Regulations is amended by inserting, after subregulation (6), the following—

“(7) For the purposes of the CRS, 1 January 2016 is the date by which a financial institution must implement policies and

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procedures either to prevent a customer from making an overpayment in excess of USD 50 000, or to ensure that any customer overpayment in excess of USD 50 000 is refunded to the customer within 60 days as referred to under—

- (a) section VIII, B.8(b) of the CRS; and
- (b) section VIII, C.17(f)(ii) of the CRS.”

4. Regulation 7 amended

Regulation 7 of the principal Regulations is amended by—

- (a) deleting subregulation (1) and substituting the following—
 - “(1) In this regulation, “**reportable account**” means—
 - (a) an account which is a reportable account under the CRS; and
 - (b) subject to subregulations (3), (4) and (5), an account that is a pre-existing entity account with an account balance or value that does not exceed US\$250,000 as of 31 December, 2015.”;
- (b) deleting subregulation (2);
- (c) deleting subregulation (3) and substituting the following—
 - “(3) An account under subregulation (1)(b) is not a reportable account for a particular reporting year if the reporting financial institution elects to treat all such accounts, or a clearly identified subset of such accounts, as accounts that are not reportable accounts for that reporting year.”; and
- (d) inserting, after subregulation (5), the following—
 - “(6) For the purposes of the CRS –
 - (a) any reference to a pre-existing individual account or pre-existing entity account refers to a financial account maintained on 31 December 2015; and
 - (b) any reference to a new individual account or a new entity account refers to a financial account opened on or after 1 January 2016.”.

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5. Regulation 9 amended

Regulation 9(1) of the principal Regulations is amended by deleting the words “or 7(2)” and substituting the words “or 7(1)(b)”.

6. Regulation 12 amended

Regulation 12 of the principal Regulations is amended—

- (a) in subregulation (1)(c), by deleting all the words occurring after subparagraph (ii) and substituting the following—

“in relation to a financial account, is kept for a period of not less than 5 years after the end of the period within which the reporting financial institution must report the information required to be reported.”;

- (b) in subregulation (2) by deleting the words “and 7(2)” and substituting words “and 7(1)(b)”;

- (c) by inserting, after subregulation (2), the following—

“(3) For the purposes of the CRS, in applying the due diligence procedures for pre-existing individual and pre-existing entity accounts within subregulation (1)(b)—

- (a) the review of “high value accounts”, per Section III, D of the CRS must be completed by 31 December 2016;
- (b) the term “high value account” means a pre-existing individual account with an aggregate balance or value that exceeds US\$1,000,000 as of 31 December 2015 or 31 December of any subsequent year;
- (c) the review of “lower value accounts”, per Section III, D of the CRS must be completed by 31 December 2017;
- (d) the term “lower value account” means a pre-existing individual account with an aggregate balance or value as of 31 December 2015 that does not exceed US\$1,000,000;
- (e) the review of “pre-existing entity accounts”, per Section V, E of the CRS must be completed by 31 December 2017;

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- (f) if an election has been made under regulation 7(3), pre-existing entity accounts are not required to be reviewed until the aggregate account balance or value exceeds US\$250,000 on the last day of the calendar year; and
- (g) if the aggregate account balance or value exceeds US\$250,000 on the last day of the calendar year the due diligence procedures must be completed within the calendar year that follows.

7. Regulation 13 amended

Regulation 13(4) of the principal Regulations is amended by inserting, after the words “A reporting financial institution”, the words “under the UK IGA”.

8. Part 3A inserted

These principal Regulations are amended by inserting, after regulation 22, the following—

**“PART 3A—REQUIREMENTS RELATING TO
SELF-CERTIFICATION**

22A. Reporting financial institution obtaining self-certification

- (1) A reporting financial institution shall maintain account opening processes for the collection and validation of a self-certification upon account opening, as a requirement of the opening of an account, whether done face-to-face, online or by telephone.
- (2) If validation of a self-certification collected cannot be completed upon account opening due to the use of a back-office function by the reporting financial institution for this purpose, the reporting financial institution must complete the validation process no later than 90 days after the account opening.
- (3) In limited instances if, due to the specificities of a business sector, it is not possible to collect a self-certification on the first day of the account opening process, a reporting financial institution should both collect and validate the self-

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certification as quickly as feasible, and in any case within a period of 90 days.

- (4) If, in the instances referred to in subregulations (2) and (3), an account holder fails to provide a valid self-certification within 90 days after account opening, the reporting financial institution shall freeze or cancel the account of the account holder.”.

9. Regulation 24A inserted

The principal Regulations are amended by inserting, after regulation 24, the following—

“24A. Failure to comply with self-certification

- (1) A person commits an offence if the person —
- (a) makes a self-certification that is false in a material particular for the CRS; and
 - (b) gives a financial institution the false self-certification or the false self-certification is given to a financial institution for any purpose for which the self-certification was made or purports to have been made.
- (2) For the purpose of subregulation (1), it is irrelevant that—
- (a) the self-certification was made outside Montserrat;
 - (b) the person did not know, or had reason to know, that the self-certification was false; or
 - (c) the self-certification was given to the financial institution by another person.
- (3) In this regulation—
- “makes”** means to sign or otherwise positively affirm; and
- “self-certification”** means information, whatever called, that performs or purports to perform a purpose of a self-certification under the CRS.

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24B. Failure to obtain a self-certification

A reporting financial institution that does not collect and validate a self-certification in accordance with regulation 22A(1), (2) and (3) and fails to act in accordance with regulation 22A(4), commits an offence.

24C. Penalty for self-certification offences

A reporting financial institution or other person who commits an offence under this Part is liable to a penalty of \$10,000.”.

10. Regulation 29 amended

Regulations 29(4) is amended by inserting, after the words “under regulation”, the words “24A, 24B,”.

11. Schedule 1 deleted

The principal Regulations are amended by deleting Schedule 1.

12. Schedule 3 deleted

The principal Regulations are amended by deleting Schedule 3.

13. Negative resolution

These regulations are subject to negative resolution.

Made by the Governor acting on the advice of the Cabinet this 20th day of June ,
2019.


CLERK OF CABINET

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Published by exhibition by the Clerk of Cabinet at the Office of the Legislature, Farara Plaza, Brades, MSR1110, this *5th* day of *July*, 2019.


CLERK OF CABINET

Laid in the Legislative Assembly this *29th* day of *July*, 2019

for 
CLERK OF THE LEGISLATIVE ASSEMBLY