



MONTSERRAT

## CHAPTER 17.24

# TAX INFORMATION EXCHANGE ACT and Subsidiary Legislation

### Revised Edition

showing the law as at 1 January 2019

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

	Page
<b>TAX INFORMATION EXCHANGE ACT</b>	3
Act 21 of 2010 .. in force 1 January 2011	
Amended by Acts 9 of 2011 .. in force 27 September 2011 (S.R.O. 40/2011)	
11 of 2015 .. in force 19 August 2015	
<b>TAX INFORMATION EXCHANGE RULES – Section 29</b>	25
S.R.O. 49/2011 .. in force 28 October 2011	
Amended by Act 9 of 2011 .. in force 27 September 2011 (S.R.O. 40/2011)	
<b>TAX INFORMATION EXCHANGE (CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS) (IMPLEMENTATION) (MONTSERRAT) REGULATIONS – Section 5(1)(b)</b>	31
S.R.O. 18/2016 .. in force 1 October 2013	
<b>TAX INFORMATION EXCHANGE (FATCA AGREEMENT) (UK IGA) (CRS) (MONTSERRAT) (IMPLEMENTATION) REGULATIONS – Section 5</b>	51
S.R.O. 45/2016 .. in force 5 October 2016	





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11 of 2015 .. in force 19 August 2015	
<b>TAX INFORMATION EXCHANGE RULES – Section 29</b>	27
S.R.O. 49/2011 .. in force 28 October 2011	
Amended by Act 9 of 2011 .. in force 27 September 2011 (S.R.O. 40/2011)	
<b>TAX INFORMATION EXCHANGE (CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS) (IMPLEMENTATION) (MONTSERRAT) REGULATIONS – Section 5(1)(b)</b>	31
S.R.O. 18/2016 .. in force 1 October 2013	
<b>TAX INFORMATION EXCHANGE (FATCA AGREEMENT) (UK IGA) (CRS) (MONTSERRAT) (IMPLEMENTATION) REGULATIONS – Section 5</b>	51
S.R.O. 45/2016 .. in force 5 October 2016	



**CHAPTER 17.24**

**TAX INFORMATION EXCHANGE ACT**

**ARRANGEMENT OF SECTIONS**

**PART 1**

**PRELIMINARY**

**SECTION**

1. Short title
2. Interpretation
3. Purpose
4. Application

**PART 2**

**MECHANISMS FOR THE EXCHANGE OF INFORMATION**

5. Implementation of tax information exchange agreement
6. Scheduled Agreements
7. Scheduling countries

**PART 3**

**THE TAX INFORMATION AUTHORITY**

8. Tax Information Authority
9. Functions and powers of the Authority

**PART 4**

**EXECUTION OF REQUESTS**

10. Notification of Attorney General required
11. Powers of Attorney General
12. Procedures for the execution of a request
13. Receiving testimony
14. Production of evidence other than for proceeding or related investigation
15. Production of evidence for proceeding and related investigation
16. Form of production of electronic information
17. Right to legal representative
18. Warrant to enter, search and seize

19. Interviews and examinations with consent
20. Notification
21. Authentication of official documents
22. Service of notices and documents

## PART 5

### CONFIDENTIALITY

23. Protection of persons disclosing confidential information
24. Restriction on application of Confidential Information Act
25. Confidentiality with regard to the provision of information
26. Restriction on use of information

## PART 6

### ENFORCEMENT

27. Offences
28. Immunity

## PART 7

### MISCELLANEOUS

29. Rules
  30. Regulations
  31. Act binds the Crown
- SCHEDULE: Scheduled Agreements and Scheduled Countries

## CHAPTER 17.24

### TAX INFORMATION EXCHANGE ACT

*(Acts 21 of 2010, 9 of 2011 and 11 of 2015)*

#### Commencement

*[6 January 2011]*

AN ACT TO PROVIDE FOR THE MUTUAL EXCHANGE OF INFORMATION ON TAXATION MATTERS BETWEEN MONTSERRAT AND OTHER COUNTRIES; AND FOR RELATED MATTERS.

#### PART 1

##### PRELIMINARY

#### Short title

1. This Act may be cited as the Tax Information Exchange Act.

#### Interpretation

2. In this Act—

“**Authority**” means the Tax Information Authority designated under section 8;

“**automatic exchange of information**” means the systematic and periodic exchange of information for tax purposes between parties in the manner agreed between the parties or their competent authorities;  
*(Inserted by Act 11 of 2015)*

“**Confidential Information Act**” means the Confidential Information Act (Cap. 11.25); *(Inserted by Act 11 of 2015)*

“**designated competent authority**” means—

- (a) the competent authority specified in a scheduled agreement or the competent authority designated by a scheduled country and;
- (b) in respect of Montserrat, the Authority;

**“effective date”** means—

- (a) in relation to a scheduled agreement, the date the scheduled agreement enters into force; and (*Substituted by Act 11 of 2015*)
- (b) in relation to a scheduled country, the date the order made under section 7 in respect of the country comes into force;

**“electronic”** has the same meaning as in the Electronic Transactions Act;

**“information on taxation matters”** means any fact, statement, document or record in whatever form respecting a taxation matter, and includes—

- (a) any fact, statement, document or record held by any bank, other financial institution, or any person, including any nominee and trustee, acting in an agency or fiduciary capacity;
- (b) any fact, statement, document or record regarding the beneficial ownership of any company, partnership and any other person, including—
  - (i) in the case of a collective investment fund, information on any shares, units and other interests; and
  - (ii) in the case of a trust, information on any settlors, trustees and beneficiaries; and
- (c) articles of evidence relating to a taxation matter;

**“items subject to legal privilege”** means items subject to client legal privilege under the laws of Montserrat;

**“judge”** means a judge of the Eastern Caribbean Supreme Court and includes a Commissioner of the High Court appointed under section 27 of the Supreme Court Act;

**“legal representative”** means a person who is authorised to practise law in Montserrat;

**“Minister”** means the Minister responsible for finance;

**“party”** means a party to a scheduled agreement;

**“proceeding”** has the same meaning as in section 2 of the Supreme Court Act;

**“request”** means—

- (a) a request made by a designated competent authority to another in accordance with a scheduled agreement or in accordance with the scheduled country requirements; or
- (b) a request made by Montserrat to a designated competent authority of a scheduled country;



“**requesting designated competent authority**” means a designated competent authority who makes a request for information on taxation matters under this Act;

“**Rules**” means the Rules for the Exchange of Information on Taxation Matters made under section 29;

“**scheduled agreement**” means a tax information exchange agreement which is given legal effect in Montserrat by an order of the Governor acting on the advice of Cabinet made under section 5; (*Substituted by Act 11 of 2015*)

“**scheduled country**” means a country listed in Part B of the Schedule by an order of the Governor made on the advice of Cabinet made under section 7; (*Amended by Act 9 of 2011*)

“**scheduled country requirements**” means the Rules and any other conditions imposed on a scheduled country under section 7; and

“**taxation matter**” includes a matter related to—

- (a) the automatic exchange of information; or
- (b) the collection, calculation or assessment of a tax covered by a scheduled agreement or by the scheduled country requirements; (*Substituted by Act 11 of 2015*)

“**tax information exchange agreement**” means an agreement for the provision of information on tax matters, including an agreement for the automatic exchange of information, to which Montserrat is a party. (*Inserted by Act 11 of 2015*)

## Purpose

3. The purpose of this Act is to—

- (a) provide for the implementation of tax information exchange agreements; and (*Substituted by Act 11 of 2015*)
- (b) enable information on taxation matters to be provided to a scheduled countries on request under the scheduled country requirements.

## Application

4. (1) This Act does not permit a request to be made or executed prior to the later of the following—

- (a) the effective date; and
- (b) the date of commencement of this Act.

(2) This Act permits the provision of information on taxation matters prior to the date of commencement of this Act.

(3) Subject to subsections (1) and (2), a scheduled agreement has legal effect in Montserrat for the period specified in the Agreement.

(4) This Act, a scheduled agreement and the scheduled country requirements are to be construed as requiring the provision solely of information on taxation matters in the country of a designated competent authority respecting—

- (a) a person who is subject to or potentially subject to a tax covered by, or a reporting requirement under, the scheduled agreement or the scheduled country requirements; and
- (b) property relevant to a taxation matter.  
*(Amended by Act 11 of 2015)*

## PART 2

### MECHANISMS FOR THE EXCHANGE OF INFORMATION

*(Amended by Act 11 of 2015)*

#### **Implementation of tax information exchange agreement**

5. (1) The Governor acting on the advice of Cabinet may—

- (a) by order, make a declaration as to the effective date of a tax information exchange agreement; and
- (b) make regulations to implement obligations arising under a tax information exchange agreement.

(2) Regulations made under this section may provide for offences and the imposition of penalties including administrative monetary penalties for the contravention of the regulations.

(3) Orders and regulations made under this section are subject to negative resolution. *(Substituted by Act 11 of 2015)*

#### **Scheduled agreements**

<sup>1</sup>6. (1) The Governor acting on the advice of Cabinet shall, by order, set out in Part A of the Schedule the following particulars in relation to each scheduled agreement—

- (a) the citation of the implementing enactment;
- (b) the parties;
- (c) the effective date; and
- (d) the designated competent authority.

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<sup>1</sup>Section 5A of Act 11 of 2015 inserted in the Act and renumbered as section 6 and sections 6 – 30 renumbered as section 7 – 31 accordingly

(2) The Governor acting on the advice of Cabinet may, by order, amend Part A of the Schedule.

*(Inserted by Act 11 of 2015)*

### Scheduling Countries

7. (1) In this section—

“eligible country” means a country in respect of which there is—

- (a) a bilateral agreement or arrangement between Montserrat or the United Kingdom and the country that facilitates trade and investment in Montserrat or the United Kingdom by nationals or residents of that country; or
- (b) a Double Taxation Agreement between Montserrat or the United Kingdom and the country, if that Agreement does not cover exchange of information on taxation matters to the Organization for Economic Cooperation and Development (OECD) standard.

(2) The Governor acting on the advice of Cabinet may, by order, bind Montserrat to execute requests from an eligible country and the order shall set out in Part B of the Schedule the following particulars in relation to that country—

- (a) the name of the country;
- (b) the date that the country was notified of the intention to schedule it;
- (c) the effective date; and
- (d) the designated competent authority for the country.

*(Amended by Act 9 of 2011)*

(3) An order made under this section shall also set out the scope of assistance to be offered to the country and any other conditions subject to which requests are to be executed.

(4) An order made under this section is subject to negative resolution.

(5) The Governor acting on the advice of Cabinet may, by order, amend Part B of the Schedule. *(Amended by Act 9 of 2011)*

(6) The Governor acting on the advice of Cabinet shall notify a scheduled country of any change to Part B of the Schedule in respect of the scheduled country and the grounds for it.

## PART 3

## THE TAX INFORMATION AUTHORITY

**Tax Information Authority**

**8. (1)** The Comptroller of Inland Revenue is hereby designated the Tax Information Authority.

**(2)** The Authority shall exercise his or her functions acting alone, or through a person designated by the Authority to act on his or her behalf, and is considered to act in an administrative capacity.

**Functions and powers of the Authority**

**9. (1)** The functions of the Authority include—

- (a)* subject to this Act, the Rules and any regulations made under the Act, executing requests, including providing assistance in relation to—
  - (i)* serving documents;
  - (ii)* taking the testimony or statement of any person; and
  - (iii)* executing searches and seizures;
- (b)* ensuring compliance with a scheduled agreement and with the scheduled country requirements;
- (c)* advising the Minister on matters respecting a proposal or agreement for the provision of information on taxation matters, and any other related matter requested by the Minister;
- (d)* making determinations under the terms of a scheduled agreement or the scheduled country requirements as to any costs and the apportionment of these costs;
- (e)* entering into agreements with, or giving directions to, scheduled competent authorities, respecting the operation of and procedures for the exchange of information on taxation matters; and
- (f)* performing any other functions prescribed under this Act.

**(2)** The Authority has the power to do all things necessary or convenient for the exchange of information on taxation matters under this Act, the relevant scheduled agreement or the relevant scheduled country requirements.

## PART 4

### EXECUTION OF REQUESTS

#### **Notification of Attorney General required**

**10.** The Authority shall notify the Attorney General of any request received by the Authority, including particulars of the request.

#### **Powers of Attorney General**

**11. (1)** The Attorney General is entitled, in a manner analogous to an *amicus curiae*, to take part in any proceedings, whether judicial or administrative, arising directly or indirectly from a request received by the Authority.

**(2)** If the Attorney General considers that the execution of a request is contrary to public policy, he or she may issue a certificate to that effect and the Authority shall deny the request.

#### **Procedures for the execution of a request**

**12. (1)** Upon receipt of a request, and subject to sections 11(2) and 15(1), the Authority shall determine whether the request is in compliance with the relevant scheduled agreement or the scheduled country requirements as the case may be and, if it determines that there is compliance, it shall execute the request in accordance with this Act and the relevant scheduled agreement or the scheduled country requirements as the case may be.

**(2)** The Authority may request any additional information from the requesting designated competent authority that may be necessary to assist the Authority in executing the request.

#### **Receiving testimony**

**13. (1)** If, pursuant to a request, a person is required to testify, the Authority shall apply to a judge for the judge to receive the testimony that appears to the judge to be appropriate for the purpose of giving effect to the request, and the Authority shall provide the testimony to the requesting designated competent authority.

**(2)** The judge may issue a subpoena, take evidence under oath and exercise any other power that the High Court may exercise for the purpose of compelling testimony.

**(3)** A person is not compelled in proceedings under this section to give evidence that he or she cannot be compelled to give in proceedings before a court in Montserrat.

### **Production of evidence other than for proceedings or related investigations**

**14. (1)** If, pursuant to a request, the Authority considers it necessary to obtain information on a taxation matter from a person for a purpose other than proceedings in the country of the requesting designated competent authority or investigations related to those proceedings, the Authority shall issue a notice in writing requiring the production of the information specified in the notice.

- (2)** The notice may require the information to be —
- (a)* provided within a specified time;
  - (b)* provided in the form as the Authority may require; and
  - (c)* verified or authenticated in the manner that the Authority may require.
- (3)** If information is produced under this section—
- (a)* the Authority may take copies or extracts of it; and
  - (b)* where a person claims a lien on a document, the production is without prejudice to the lien.
- (4)** A notice under this section—
- (a)* does not confer a right to production of, or access to, items subject to legal privilege; and
  - (b)* has effect despite any obligation as to confidentiality or other restriction upon the disclosure of information whether imposed by the Confidential Information Act, any other law or the common law.

### **Production of evidence for proceedings and related investigations**

**15. (1)** If, pursuant to a request, the Authority considers it necessary to obtain information on a taxation matter from a person for proceedings in the country of the requesting designated competent authority or for related investigations, the Authority shall apply to a judge for an order to produce the information.

**(2)** If, on the application, the judge is satisfied that the conditions in subsection (4) are fulfilled, the judge may make an order that the person who appears to the judge to be in control of the information, within the period specified in the order—

- (a)* produce it to the Authority to take away; or
- (b)* give the Authority access to it.

**(3)** The period to be specified in the order is fourteen days, unless it appears to the judge that a longer or shorter period would be appropriate in the particular circumstances of the application.

(4) The conditions referred to in subsection (2) are that the judge is satisfied that—

- (a) the Authority has certified the request in accordance with the relevant scheduled agreement or the scheduled country requirements as the case may be, and this Act;
- (b) the information is under the control of a person in Montserrat;
- (c) the information does not include items subject to legal privilege or items subject to protection as secret, under the scheduled agreement or the scheduled country requirements as the case may be;
- (d) section 20(1) has been complied with; and
- (e) under the relevant scheduled agreement or the scheduled country requirements as the case may be, there are no reasonable grounds for not granting the request.

(5) If a judge makes an order under subsection (2)(b) in relation to information held on any premises, the judge may, on the application of the Authority, issue a warrant for the Authority, accompanied by a police officer, to enter the premises to gain access to and seize information on taxation matters. (*Substituted by Act 11 of 2015*)

(6) The Rules of Court made under section 84 of the Supreme Court Act and section 17 of the Supreme Court Order 1967 of the United Kingdom may include Rules in relation to—

- (a) applications for the discharge and variation of orders under subsection (2); and
- (b) proceedings relating to such orders.

(7) Information obtained under an order under subsection (2) shall be brought immediately to the Authority to be dealt with according to this Act.

(8) An order under this section—

- (a) does not confer a right to production of, or access to, items subject to legal privilege; and
- (b) has effect despite any obligation as to confidentiality or other restriction upon the disclosure of information whether imposed by the Confidential Information Act, any other law or the common law.

### **Form of production of electronic information**

16. If the information to be produced under section 13, 14 or 15 exists electronically it is to be produced in a form in which it is visible and legible

and, if it is to be taken away, then it should also be in a form appropriate for that purpose. (*Amended by Act 11 of 2015*)

### Right to legal representative

17. A person required to testify or to produce information under section 13, 14 or 15 has the right to a legal representative.

### Warrant to enter, search and seize

18. (1) If the Authority is satisfied that there are reasonable grounds to believe that information on taxation matters is being held on any premises, the Authority may apply to a judge for a warrant for the Authority, accompanied by a police officer, to—

- (a) enter and search the premises; and
  - (b) seize information on taxation matters.
- (Substituted by Act 11 of 2015)

(2) The judge may issue a warrant authorising the entry, search and seizure if the judge is satisfied that—

- (a) a notice issued under section 14(1) or an order made under section 15(2) in relation to information on the premises has not been complied with and the request for the purposes of which the application is made might be seriously prejudiced unless the Authority could secure immediate access to the information; or
- (b) the conditions in section 15(4) are fulfilled and he or she considers that it would not be appropriate to make an order under section 15(2) in relation to the material because—
  - (i) it is not practicable to communicate with a person entitled to produce the information;
  - (ii) it is not practicable to communicate with a person entitled to grant access to the information or entitled to grant entry to the premises on which the information is situated; or
  - (iii) the request for the purposes of which the application is made might be seriously prejudiced unless a police officer could secure immediate access to the information.

(3) Any information seized under a warrant issued under subsection (2) shall be brought immediately to the Authority to be dealt with according to law.



## Interviews and examinations with consent

### 19. (1) If—

- (a) under a relevant scheduled agreement or the scheduled country requirements as the case may be, the designated competent authority asks permission for its representative to interview a specified person or examine their records in Montserrat, or both; and
- (b) the specified person notifies the Authority in writing that he or she consents,

the representative, accompanied by the Authority, may conduct the interview or examination or both, at a time and place agreed in writing by the Authority and the specified person.

### (2) The representative may—

- (a) take statements from the specified person; and
- (b) with the consent of the specified person, make copies of, or take extracts from, any record.

### (3) A representative does not have the power to—

- (a) compel the specified person to answer a question;
- (b) compel the specified person to remain in a place for the purpose of the interview;
- (c) compel the specified person to produce any information;
- (d) enter or search premises without the consent of the owner or occupier of the premises; or
- (e) do anything without the consent of the specified person.

(4) A person who consents to an interview or examination or both has the right to be advised by his or her legal representative during the interview or examination.

(5) In this section, “**specified person**” means a person who is subject to a tax that—

- (a) is covered in the relevant scheduled agreement; or
- (b) is specified in the scheduled country requirements.

## Notification

20. (1) Subject to the provisions of this section, if the Authority knows the whereabouts or address of a person who is the subject of a request which is solely in relation to a matter that is not a criminal matter or an alleged criminal matter, the Authority shall serve the person with a notice of the request. (*Substituted by Act 11 of 2015*)

(2) A notice under subsection (1) shall set out the following particulars—

- (a) that a request identifying that person as the subject of the request has been made;
- (b) the name of the country making the request; and
- (c) the nature of the information being requested.

*(Substituted by Act 11 of 2015)*

(3) The Authority is not required to serve a notice under subsection (1) if the requesting country certifies that—

- (a) the request is urgent; or
- (b) serving the notice is likely to prejudice an investigation undertaken in the requesting country.

*(Substituted by Act 11 of 2015)*

(4) A person notified may, within fifteen days from the date of receipt of the notice, make a written submission to the Authority specifying any grounds which he or she wishes the Authority to consider in making its determination as to whether or not the request is in compliance with the scheduled agreement or the scheduled country requirements as the case may be, including any assertions that the information requested is subject to legal privilege.

(5) The Authority shall consider any written submission made in compliance with subsection (4), but is not obliged to permit or consider any oral submission by or on behalf of a person who is the subject of a request for information.

(6) Save as expressly provided in this Act, the Authority shall hold all information received as confidential, and the proceedings of the Authority shall accordingly be closed to all persons not specifically authorised by the Authority or by this Act to be present at the proceedings.

(7) This Act does not require the Authority to search for or conduct enquiries into the address of a person who is the subject of a request in order to serve a notice to that person under subsection (1).

(8) For the purposes of subsection (1), the date of receipt of notice from the Authority is deemed to be fifteen days from the date of issuance indicated on the notice.

### **Authentication of official documents**

**21.** For the purpose of this Act, the Authority may authenticate official documents or records of Montserrat containing information relating to taxation matters.

### **Service of notices and documents**

**22. (1)** For the purposes of this Act, the service of a document is sufficient if delivered by hand or posted by registered post to the registered or other office of the addressee or to his or her last known address.

**(2)** Affidavit testimony of delivery of the notice or document by hand or supporting the registration certificate is sufficient proof of service.

## **PART 5**

### **CONFIDENTIALITY**

#### **Protection of persons disclosing confidential information**

**23. (1)** A person does not commit an offence under the Confidential Information Act or any other law of Montserrat if the person—

- (a)* discloses confidential information or testifies in compliance with an order or notice issued under Part 4; or
- (b)* provides information to the Authority to facilitate the automatic exchange of information or for other tax purposes.

**(2)** A person who discloses confidential information, testifies or provides information to the Authority under subsection (1), does not breach a confidential relationship between that person and another person and no civil claim or action shall lie against that person or the principal or employer of that person by reason only of the disclosure or provision of information.

*(Substituted by Act 11 of 2015)*

#### **Restriction on application of Confidential Information Act**

**24.** Section 4 of the Confidential Information Act does not apply to information given—

- (a)* by a person in conformity with an order or notice issued on a request under Part 4; or
- (b)* to the Authority by a person to facilitate the automatic exchange of information or for other tax purposes.

*(Substituted by Act 11 of 2015)*

#### **Confidentiality with regard to the provision of information**

**25. (1)** Subject to this Act, a person shall treat as confidential the particulars of and matters related to a request, the automatic exchange of information and the provision of information for other tax purposes.

**(2)** A person (the “first person”), who is notified of a request or is required to take action, produce a document or supply information

respecting a request, the automatic exchange of information or the provision of information for other tax purposes, shall not disclose the fact of the receipt of the request, the particulars required, the documents produced or the information supplied to any other person, except—

- (a) the legal representative of the first person; or
- (b) any other person that the Authority may authorise,

for the period that the first person may be notified by the Authority.

(3) This section is binding on the legal representative or other person referred to in subsections (2)(a) and (b) respectively as if they were the first person referred to in subsection (3).

(4) Subject to this Act, the Authority shall hold information received as confidential and the proceedings of the Authority shall accordingly be closed to a person who is not authorised by the Authority or by this Act to be present at the proceedings.

*(Substituted by Act 11 of 2015)*

### Restriction on use of information

26. The Authority shall not consent to the use or transmission by the requesting designated competent authority of information or evidence provided under this Act for purposes, investigations or proceedings other than those stated in the request unless the transmission or use is authorised by a court.

## PART 6

### ENFORCEMENT

#### Offences

27. (1) A person who is required under this Act to produce information on taxation matters that is under his or her control and who—

- (a) without lawful excuse fails to do so, within the time specified by a judge by order, or by the Authority by notice; or
- (b) alters, destroys, mutilates, defaces, hides or removes the information,

commits an offence and is liable on summary conviction to a fine of \$10,000 or to a term of imprisonment of two years or to both.

(2) A person who divulges information contrary to section 25 commits an offence and is liable on summary conviction to a fine of \$2,000 or to imprisonment for a term of six months or to both.

(3) If, pursuant to a request concerning criminal proceedings or investigations—

(a) an order under section 15(2) is made or is applied for, and is refused;

(b) or a warrant under section 18(1) is issued,

a person who, knowing or suspecting that a request is made, or that an investigation into any matter to which a request relates is taking place, makes a disclosure which is likely to prejudice the proceedings or the investigation to which the request relates, commits an offence and is liable on summary conviction to a fine of \$20,000 or to imprisonment for a term of five years or to both.

(4) In proceedings against a person for an offence under subsection (3), it is a defence to prove that the person—

- (a) reasonably believed that the disclosure was not likely to prejudice the request or investigation; or
- (b) had lawful authority or reasonable excuse for making the disclosure.

(5) A person who, when required to do so in accordance with the instructions given by a judge under section 13, or any subpoena served upon him, refuses to attend as required or to provide testimony in response to a request, commits an offence and is liable on summary conviction to a fine of \$5,000 or to imprisonment for a term of one year or to both.

## Immunity

28. Neither the Authority nor any person designated under section 8 to act on his or her behalf is liable in damages for anything done or omitted in the discharge of their functions under this Act unless it is shown that the act or omission was in bad faith.

## PART 7

### MISCELLANEOUS

## Rules

29. The Governor acting on the advice of Cabinet may make Rules for the Exchange of Information on Taxation Matters to govern the exchange of information on taxation matters with scheduled countries.

*(Amended by Act 9 of 2011)*

**Regulations**

**30.** The Governor acting on the advice of Cabinet may make regulations generally for carrying out the purposes of this Act including prescribing the forms to be used for the purposes of this Act.

*(Amended by Act 9 of 2011)*

**Act binds the Crown**

**31.** This Act binds the Crown.

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**SCHEDULE**

(Sections 5, 6 and 7)

SCHEDULED AGREEMENTS AND SCHEDULED COUNTRIES

**Part A**

<b>Scheduled Agreements</b>				
<b>Item No.</b>	<b>Citation of implementing enactment</b>	<b>Parties: Montserrat and</b>	<b>Effective date</b>	<b>Designated Competent Authority</b>
1.	Tax Information Exchange Agreement (Australia) Order 2011 (S.R.O.17/2011)	Australia	23 November 2010	Commissioner of Taxation
2.	Tax Information Exchange Agreement (Kingdom of Belgium) Order 2011 (S.R.O.18/2011)	Kingdom of Belgium	16 February 2010	Minister of Finance
3.	Tax Information Exchange Agreement (Denmark) Order 2011 (S.R.O.19/2011)	Denmark	22 November 2010	Minister for Taxation
4.	Tax Information Exchange Agreement (Faroese) Order 2011 (S.R.O.20/2011)	Faroese	22 November 2010	Minister of Finance
5.	Tax Information Exchange Agreement (Finland) Order 2011 (S.R.O.21/2011)	Finland	22 November 2010	Minister of Finance
6.	Tax Information Exchange Agreement (Greenland) Order 2011 (S.R.O.22/2011)	Greenland	22 November 2010	Minister of Finance
7.	Tax Information Exchange Agreement (Iceland) Order 2011 (S.R.O.23/2011)	Iceland	22 November 2010	Minister of Finance

<b>Scheduled Agreements</b>				
<b>Item No.</b>	<b>Citation of implementing enactment</b>	<b>Parties: Montserrat and</b>	<b>Effective date</b>	<b>Designated Competent Authority</b>
8.	Tax Information Exchange Agreement (Kingdom of the Netherlands) Order 2011 <i>(S.R.O.24/2011)</i>	Kingdom of the Netherlands	10 December 2009	Minister of Finance
9.	Tax Information Exchange Agreement (Kingdom of Norway) Order 2011 <i>(S.R.O.25/2011)</i>	Kingdom of Norway	22 November 2010	Minister of Finance
10.	Tax Information Exchange Agreement (Sweden) Order 2011 <i>(S.R.O.26/2011)</i>	Sweden	22 November 2010	Minister of Finance
11.	Tax Information Exchange Agreement (Federal Republic of Germany) Order 2012 <i>(S.R.O.79/2012)</i>	Germany	28 November 2011	Minister of Finance
12.	Tax Information Exchange (Guernsey) Order, 2016 <i>(S.R.O. 7/2016)</i>	Guernsey	19 May 2014	Director of Income Tax
13.	Tax Information Exchange Agreement (Ireland) Order, 2016 <i>(S.R.O. 61/2015)</i>	Ireland	15 Dec 2012	Minister of Finance

*(Amended by Act 11 of 2015)*



**Part B**

<i>Scheduled Countries</i>					
<i>Item No.</i>	<i>Order No.</i>	<i>Country</i>	<i>Notifi- cation Date</i>	<i>Effective Date</i>	<i>Designated Competent Authority</i>



## **TAX INFORMATION EXCHANGE RULES**

### **ARRANGEMENT OF RULES**

#### **RULES**

1. Short title
2. Definitions
3. Scope of assistance
4. Request
5. Provision of information
6. Grounds for declining a request
7. Confidentiality
8. Costs
9. Language
10. Other international agreements or arrangements
11. Mutual agreement procedure
12. De-scheduling

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### **TAX INFORMATION EXCHANGE RULES –SECTION 29**

*(S.R.O. 49/2011)*

#### **Commencement**

*[28 October 2011]*

#### **Short title**

1. These Rules may be cited as the Tax Information Exchange Rules.

#### **Definitions**

2. (1) For the purposes of these Rules—  
“**collective investment fund or scheme**” means any pooled investment vehicle, irrespective of legal form;  
“**criminal laws**” means all criminal laws under the domestic law of Montserrat or a scheduled country, irrespective of whether contained in the tax laws, the Penal Code or other statutes;  
“**information**” means any fact, statement or record in any form;  
“**information gathering measures**” means laws and administrative or judicial procedures that enable Montserrat to obtain and provide the requested information;  
“**information on taxation matters**” has the same meaning as in the Act;  
“**principal class of shares**” means the class or classes of shares representing a majority of the voting power and value of a company;

“**public collective investment fund or scheme**” means a collective investment fund or scheme in which the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “**by the public**” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;

“**publicly traded company**” means a company whose principal class of shares is listed on a recognised stock exchange in which its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “**by the public**” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;

“**recognised stock exchange**” means a stock exchange agreed upon by the competent authorities of Montserrat and a scheduled country;

“**request**” means request for information on taxation matters;

“**tax**” means a tax in respect of which information may be provided under Rule 3.

### Scope of assistance

**3. (1)** Subject to section 15(8) of the Act, the Tax Information Authority must, in accordance with these Rules, provide information on taxation matters that is foreseeably relevant to the administration and enforcement of a scheduled country’s domestic laws concerning the taxes stipulated under subrule (2)(a).

**(2)** Unless otherwise provided under section 7(3) of the Act in an order scheduling the country, the Tax Information Authority—

- (a)* may provide information on a taxation matter respecting taxes of every kind and description imposed by the scheduled country;
- (b)* must provide information on a taxation matter without regard to whether the conduct being investigated would constitute a crime under the laws of Montserrat if such conduct occurred in Montserrat, or whether the information would be needed for tax purposes under the laws of Montserrat;
- (c)* is not obligated to provide information that is neither held by authorities in Montserrat nor in the possession or control of persons who are within the territorial jurisdiction of Montserrat;
- (d)* is not obligated to obtain or provide ownership information respecting a publicly traded company or a public collective investment fund or scheme unless the information can be obtained without giving rise to disproportionate difficulties.

**(3)** The rights and safeguards secured to a person by law or administrative practice of Montserrat remain applicable to the extent that they do not unduly prevent or delay effective provision of information.

## Request

4. Subject to section 11(2) of the Act, if the competent authority of the scheduled country makes a request, the Tax Information Authority must ensure that the competent authority provides the following information—

- (a) the identity of the person under examination or investigation;
- (b) a statement of the information sought including its nature and the form in which the scheduled country wishes to receive the information;
- (c) the tax purpose for which the information is sought;
- (d) grounds for believing that the information requested is foreseeably relevant to the administration and enforcement of the tax law of the scheduled country;
- (e) grounds for believing that the information requested is held in Montserrat or is in the control of a person within the jurisdiction of Montserrat;
- (f) to the extent known, the name and address of a person believed to be in control of the requested information;
- (g) a statement that the request conforms to the law and administrative practices of the scheduled country, and that if the information requested was within the jurisdiction of the scheduled country, the competent authority of the scheduled country would be able to obtain the information under its laws in the normal course of administrative practice; and
- (h) a statement that the scheduled country has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

## Provision of information

5. (1) Upon receipt of a request from a scheduled country, the Tax Information Authority must use its best endeavours to comply with the request with the least reasonable delay to the extent that it is able and willing, and must—

- (a) within sixty days of receipt of the request, confirm receipt in writing to the competent authority of the scheduled country and notify it of deficiencies in the request having regard to Rule 4;
- (b) after ninety days from the receipt of the request, immediately inform the scheduled country if it is unable to obtain and provide the information, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

(2) If the information in the control of the Tax Information Authority is not sufficient to enable it to comply with the request, the Authority must use all relevant information gathering measures to enable it to do so.

(3) If specifically requested by the competent authority of the scheduled country, the Tax Information Authority must provide the information, in accordance with the Act or any other law, in the form of depositions of witnesses and authenticated copies of original records.

### Grounds for declining a request

6. (1) The Tax Information Authority may decline a request—

- (a) that falls outside the scope of assistance in Rule 3 or it does not contain the information in Rule 4;
- (b) to obtain or provide information that a scheduled country would not be able to obtain under its own laws for the purpose of the administration or enforcement of its own tax laws;
- (c) if the scheduled country has not pursued all means available in its jurisdiction to obtain the information, except where recourse to such means would give rise to disproportionate difficulty;
- (d) for information to administer or enforce a provision of the tax law of the scheduled country, or any connected requirement, which discriminates against a national of Montserrat as compared with a national of the scheduled country in the same circumstances; and
- (e) to supply items that is subject to legal privilege under the laws of Montserrat or which would disclose a trade, business, industrial, commercial or professional secret or trade process, subject to subrule (2);
- (f) where the disclosure of the information requested would be contrary to the public policy of Montserrat.

(2) For the purpose of these Rules, information within paragraphs (a) to (c) of the definition of “**information on taxation matters**” in the Act is not by reason of that fact alone to be treated as a secret or trade process.

(3) The Tax Information Authority must not refuse a request on the ground that the tax claim giving rise to it is disputed.

### Confidentiality

7. Information is forwarded to a scheduled country under these Rules on the condition that the information—

- (a) be treated as confidential and be used only for the purposes specified in rule 3;
- (b) be disclosed only to a person or authority (including a court and an administrative body) concerned with the purposes in Rule 3 and used by these persons or authorities only for such purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial decisions; and

- (c) not be disclosed to another person or entity or authority or any other jurisdiction without the express written consent of the Tax Information Authority.

### **Costs**

8. Costs incurred in providing assistance are to be agreed by Montserrat and the scheduled country concerned with the request.

### **Language**

9. A request and answers must be provided in English or any other language agreed between Montserrat and the scheduled country.

### **Other international agreements or arrangements**

10. The possibility of assistance provided by these Rules does not limit, nor is it limited by, those contained in existing international agreements or other arrangements between Montserrat and a scheduled country that relate to co-operation in taxation matters.

### **Mutual agreement procedure**

11. (1) The competent authorities of Montserrat and a scheduled country may mutually agree—

- (a) on the procedure to be used under Rules 4 and 5;  
(b) on the language to be used in making and responding to requests in accordance with Rule 9.

(2) Montserrat and a scheduled country may also agree on forms of dispute resolution.

### **De-scheduling**

12. (1) Montserrat may terminate a mutual cooperation under these Rules by serving a notice of termination either to the authority of the scheduled country responsible for external affairs or by letter to the competent authority of the scheduled country.

(2) The Tax Information Authority must notify a scheduled country that it is no longer a scheduled country if—

- (a) the Governor acting on the advice of Cabinet makes an order to remove a country from the schedule to the Act; or  
(b) the scheduled country breaches Rule 7 or any other condition subject to which information on taxation matters was forwarded under these Rules.

*(Amended by Act 9 of 2011)*

(3) A scheduled country is de-scheduled on the date indicated in the notice, or, if no date is indicated, thirty days after the notice is sent.

(4) If a scheduled country is de-scheduled, the country must continue to treat information forwarded to it under these Rules as confidential.

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**TAX INFORMATION EXCHANGE (CONVENTION ON MUTUAL  
ADMINISTRATIVE ASSISTANCE IN TAX MATTERS)  
(IMPLEMENTATION) (MONTSERAT) REGULATIONS**

**ARRANGEMENT OF REGULATIONS**

1. Short title
2. Interpretation
3. Convention to have the force of law
4. Parties to the Convention

SCHEDULE 1: Convention on Mutual Administrative Assistance in Tax Matters

SCHEDULE 2: List of parties to the Convention

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**TAX INFORMATION EXCHANGE (CONVENTION ON MUTUAL  
ADMINISTRATIVE ASSISTANCE IN TAX MATTERS) (IMPLEMENTATION)  
(MONTSERAT) REGULATIONS—SECTION 5(1)(B)**

*(S.R.O. 18/2016)*

**Commencement**

*[1 October 2013]*

**Short title**

1. These Regulations may be cited as the Tax Information Exchange (Convention on Mutual Administrative Assistance in Tax Matters) (Implementation) (Montserrat) Regulations.

**Interpretation**

2. In these Regulations—

“**Convention**” means the Convention on Mutual Administrative Assistance in Tax Matters done in Strasbourg on 25 January 1988 as amended by the Protocol done in Paris on 27 May, 2010, signed on behalf of the United Kingdom and extended to Montserrat; and

“**party**” means a party to the Convention.

**Convention to have the force of law**

3. (1) Subject to subparagraphs (2) and (3), the Convention set out in Schedule 1 has the force of law in Montserrat.

(2) Article 2.1.b.i, ii and iv of the Convention shall not have the force of law in Montserrat.

(3) Montserrat shall not provide assistance in the recovery of a tax claim or administrative fine for any tax.

### Parties to the Convention

4. (1) Schedule 2 sets out—

- (a) the parties in respect of which the Convention is in force; and
- (b) the date the Convention comes into force with respect to each party.

(2) The Governor acting on the advice of Cabinet may, by Order, amend Schedule 2.

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## SCHEDULE 1

(Paragraph 3)

### CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS

#### PREAMBLE

The member states of the Council of Europe and the Member countries of the Organisation for Economic Co-operation and Development (OECD), signatories of this Convention,

Considering that the development of international movement of persons, capital, goods and services - although highly beneficial in itself - has increased the possibilities of tax avoidance and evasion and therefore requires increasing cooperation among tax authorities;

Welcoming the various efforts made in recent years to combat tax avoidance and tax evasion on an international level, whether bilaterally or multilaterally;

Considering that a co-ordinated effort between States is necessary in order to foster all forms of administrative assistance in matters concerning taxes of any kind whilst at the same time ensuring adequate protection of the rights of taxpayers;

Recognising that international co-operation can play an important part in facilitating the proper determination of tax liabilities and in helping the taxpayer to secure his rights;

Considering that fundamental principles entitling every person to have his rights and obligations determined in accordance with a proper legal procedure should be recognised as applying to tax matters in all states and that states should endeavour to protect the legitimate interests of taxpayers, including appropriate protection against discrimination and double taxation;

Convinced therefore that States should carry out measures or supply information, having regard to the necessity of protecting the confidentiality of information, and taking account of international instruments for the protection of privacy and flows of personal data;

Considering that a new co-operative environment has emerged and that it is desirable that a multilateral instrument is made available to allow the widest number of States to obtain the benefits of the new co-operative environment and at the same time implement the highest international standards of co-operation in the tax field;

Desiring to conclude a convention on mutual administrative assistance in tax matters,  
Have agreed as follows:

## CHAPTER I SCOPE OF THE CONVENTION

### ARTICLE 1

#### *Object of the Convention and persons covered*

1. The Parties shall, subject to the provisions of Chapter IV, provide administrative assistance to each other in tax matters. Such assistance may involve, where appropriate, measures taken by judicial bodies.
2. Such administrative assistance shall comprise:
  - a. exchange of information, including simultaneous tax examinations and participation in tax examinations abroad;
  - b. assistance in recovery, including measures of conservancy; and
  - c. service of documents.
3. A Party shall provide administrative assistance whether the person affected is a resident or national of a Party or of any other State.

### ARTICLE 2

#### *Taxes covered*

1. This Convention shall apply:
  - a. to the following taxes:
    - i. taxes on income or profits,
    - ii. taxes on capital gains which are imposed separately from the tax on income or profits,
    - iii. taxes on net wealth,  
imposed on behalf of a Party; and
  - b. to the following taxes:
    - i. taxes on income, profits, capital gains or net wealth which are imposed on behalf of political subdivisions or local authorities of a Party;

- ii. compulsory social security contributions payable to general government or to social security institutions established under public law;
    - iii. taxes in other categories, except customs duties, imposed on behalf of a Party, namely:
      - A. estate, inheritance or gift taxes;
      - B. taxes on immovable property;
      - C. general consumption taxes, such as value-added or sales taxes;
      - D. specific taxes on goods and services such as excise taxes;
      - E. taxes on the use or ownership of motor vehicles;
      - F. taxes on the use or ownership of movable property other than motor vehicles;
      - G. any other taxes;
    - iv. taxes in categories referred to in sub-paragraph iii above which are imposed on behalf of political subdivisions or local authorities of a Party.
2. The existing taxes to which the Convention shall apply are listed in Annex A in the categories referred to in paragraph 1.
3. The Parties shall notify the Secretary General of the Council of Europe or the Secretary General of OECD (hereinafter, referred to as the ‘Depositaries’) of any change to be made to Annex A as a result of a modification of the list mentioned in paragraph 2. Such change shall take effect on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Depositary.
4. The Convention shall also apply, as from their adoption, to any identical or substantially similar taxes which are imposed in a Contracting State after the entry into force of the Convention in respect of that Party in addition to or in place of the existing taxes listed in Annex A and, in that event, the Party concerned shall notify one of the depositaries of the adoption of the tax in question.

## CHAPTER II

### GENERAL DEFINITIONS

#### ARTICLE 3

##### *Definitions*

1. For the purposes of this Convention, unless the context otherwise requires:
  - a. the terms “**applicant State**” and “**requested State**” mean respectively any Party applying for administrative assistance in tax matters and any Party requested to provide such assistance;

- b. the term “**tax**” means any tax or social security contribution to which the Convention applies pursuant to Article 2;
- c. the term “**tax claim**” means any amount of tax, as well as interest thereon, related administrative fines and costs incidental to recovery, which are owed and not yet paid;
- d. the term “**competent authority**” means the persons and authorities listed in Annex B;
- e. the term “**nationals**” in relation to a Party means:
  - i. all individuals possessing the nationality of that Party, and
  - ii. all legal persons, partnerships, associations and other entities deriving their status as such from the laws in force in that Party.

For each Party that has made a declaration for that purpose, the terms used above will be understood as defined in Annex C.

2. As regards the application of the Convention by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that Party concerning the taxes covered by the Convention.

3. The Parties shall notify one of the depositaries of any change to be made to Annexes B and C. Such change shall take effect on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the depositary in question.

## CHAPTER III FORMS OF ASSISTANCE

### Section I Exchange of information

#### ARTICLE 4

##### *General provision*

1. The Parties shall exchange any information, in particular as provided in this section that is foreseeably relevant to.

- a. the assessment and collection of tax, and the recovery and enforcement of tax claims, and
- b. the prosecution before an administrative authority or the initiation of prosecution before a judicial body.

Information which is unlikely to be relevant to these purposes shall not be exchanged under this Convention.

2. Deleted.

3. Any Party may, by a declaration addressed to one of the Depositaries, indicate that, according to its internal legislation, its authorities may inform its resident or national before transmitting information concerning him, in conformity with Articles 5 and 7.

#### ARTICLE 5

##### *Exchange of information on request*

1. At the request of the applicant State, the requested State shall provide the applicant state with any information referred to in Article 4 which concerns particular persons or transactions.

2. If the information available in the tax files of the requested State is not sufficient to enable it to comply with the request for information, that State shall take all relevant measures to provide the applicant State with the information requested.

#### ARTICLE 6

##### *Automatic exchanged of information*

With respect to categories of cases and in accordance with procedures which they shall determine by mutual agreement, two or more Parties shall automatically exchange the information referred to in Article 4.

#### ARTICLE 7

##### *Spontaneous exchange of information*

1. A Party shall, without prior request, forward to another Party information of which it has knowledge in the following circumstances:

- a. the first mentioned Party has grounds for supposing that there may be a loss of tax in the other Party;
- b. a person liable to tax obtains a reduction in or an exemption from tax in the first-mentioned Party which would give rise to an increase in tax or to liability to tax in the other Party;
- c. business dealings between a person liable to tax in a Party and a person liable to tax in another Party are conducted through one or more countries in such a way that a saving in tax may result in one or the other Party or in both;
- d. a Party has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises;
- e. information forwarded to the first-mentioned Party by the other Party has enabled information to be obtained which may be relevant in assessing liability to tax in the latter Party.

2. Each Party shall take such measures and implement such procedures as are necessary to ensure that information described in paragraph 1 will be made available for transmission to another Party.

ARTICLE 8

*Simultaneous tax examinations*

1. At the request of one of them, two or more Parties shall consult together for the purposes of determining cases and procedures for simultaneous tax examinations. Each Party involved shall decide whether or not it wishes to participate in a particular simultaneous tax examination.
2. For the purposes of this Convention, a simultaneous tax examination means an arrangement between two or more Parties to examine simultaneously, each in its own territory, the tax affairs of a person or persons in which they have a common or related interest, with a view to exchanging any relevant information which they so obtain.

ARTICLE 9

*Tax examinations abroad*

1. At the request of the competent authority of the applicant State, the competent authority of the requested State may allow representatives of the competent authority of the applicant State to be present at the appropriate part of a tax examination in the requested State.
2. If the request is acceded to, the competent authority of the requested State shall, as soon as possible, notify the competent authority of the applicant State about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the requested State for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the requested state.
3. A Party may inform one of the Depositories of its intention not to accept, as a general rule, such requests as are referred to in paragraph 1. Such a declaration maybe made or withdrawn at any time.

ARTICLE 10

*Conflicting information*

If a Party receives from another Party information about a person's tax affairs which appears to it to conflict with information in its possession, it shall so advise the Party which has provided the information.

Section II

**Assistance in recovery**

ARTICLE 11

*Recovery of tax claims*

1. At the request of the applicant state the requested state shall, subject to the provisions of Articles 14 and 15, take the necessary steps to recover tax claims of the first-mentioned state as if they were its own tax claims.

2. The provision of paragraph 1 shall apply only to tax claims which form the subject of an instrument permitting their enforcement in the applicant state and, unless otherwise agreed between the Parties concerned, which are not contested.

However, where the claim is against a person who is not a resident of the applicant state, paragraph 1 shall only apply, unless otherwise agreed between the Parties concerned, where the claim may no longer be contested.

3. The obligation to provide assistance in the recovery of tax claims concerning a deceased person or his estate is limited to the value of the estate or of the property acquired by each beneficiary of the estate, according to whether the claim is to be recovered from the estate or from the beneficiaries thereof.

## ARTICLE 12

### *Measures of conservancy*

At the request of the applicant State, the requested State shall, with a view to the recovery of an amount of tax, take measures of conservancy even if the claim is contested or is not yet the subject of an instrument permitting enforcement.

## ARTICLE 13

### *Documents accompanying the request*

1. The request for administrative assistance under this section shall be accompanied by:

- a. a declaration that the tax claim concerns a tax covered by the Convention and, in the case of recovery, that, subject to paragraph 2 of Article 11, the tax claim is not or may not be contested;
- b. an official copy of the instrument permitting enforcement in the applicant state; and
- c. any other document required for recovery or measures of conservancy.

2. The instrument permitting enforcement in the applicant State shall, where appropriate and in accordance with the provisions in force in the requested state, be accepted, recognised, supplemented or replaced as soon as possible after the date of the receipt of the request for assistance, by an instrument permitting enforcement in the latter state.

## ARTICLE 14

### *Time-limits*

1. Questions concerning any period beyond which a tax claim cannot be forced shall be governed by the law of the applicant state. The request for assistance shall give particulars concerning that period.



2. Acts of recovery carried out by the requested state in pursuance of a request for assistance, which, according to the laws of that state, would have the effect of suspending or interrupting the period mentioned in paragraph 1, shall also have this effect under the laws of the applicant state. The requested state shall inform the applicant state about such acts.

3. In any case, the requested state is not obliged to comply with a request for assistance which is submitted after a period of fifteen years from the date of the original instrument permitting enforcement.

## ARTICLE 15

### *Priority*

The tax claim in the recovery of which assistance is provided shall not have in the requested state any priority specially accorded to the tax claims of that state even if the recovery procedure used is the one applicable to its own tax claims.

## ARTICLE 16

### *Deferral of payment*

The requested state may allow deferral of payment or payment by instalments if its laws or administrative practice permit it to do so in similar circumstances, but shall first inform the applicant state.

## Section III

### **Service of documents**

## ARTICLE 17

### *Service of documents*

1. At the request of the applicant state, the requested state shall serve upon the addressee documents, including those relating to judicial decisions, which emanate from the applicant state and which relate to a tax covered by this Convention.

2. The requested state shall effect service of documents:

- a. by a method prescribed by its domestic laws for the service of documents of a substantially similar nature;
- b. to the extent possible, by a particular method requested by the applicant state or the closest to such method available under its own laws.

3. A Party may effect service of documents directly through the post on a person within the territory of another Party.

4. Nothing in the Convention shall be construed as invalidating any service of documents by a Party in accordance with its laws.

5. When a document is served in accordance with this article, it need not be accompanied by a translation. However, where it is satisfied that the addressee cannot understand the language of the document, the requested state shall arrange to have it translated into or a summary drafted in its or one of its official languages.

Alternatively, it may ask the applicant state to have the document either translated into or accompanied by a summary in one of the official languages of the requested state, the Council of Europe or OECD.

#### CHAPTER IV

#### PROVISIONS RELATING TO ALL FORMS OF ASSISTANCE

#### ARTICLE 18

##### *Information to be provided by the applicant State*

1. A request for assistance shall indicate where appropriate:
  - a. the authority or agency which initiated the request made by the competent authority;
  - b. the name, address or any other particulars assisting in the identification of the person in respect of whom the request is made;
  - c. in the case of a request for information, the form in which the applicant state wishes the information to be supplied in order to meet its needs;
  - d. in the case of a request for assistance in recovery or measures of conservancy, the nature of the tax claim, the components of the tax claim and the assets from which the tax claim may be recovered;
  - e. in the case of a request for service of documents, the nature and the subject of the document to be served;
  - f. whether it is in conformity with the law and administrative practice of the applicant State and whether it is justified in the light of the requirements of Article 21.2.g.
2. As soon as any other information relevant to the request for assistance comes to its knowledge, the applicant state shall forward it to the requested state.

#### ARTICLE 19

##### *Possibility of declining a request*

[Deleted.]

ARTICLE 20

*Response to the request for assistance*

1. If the request for assistance is complied with, the requested state shall inform the applicant state of the action taken and of the result of the assistance as soon as possible.
2. If the request is declined, the requested state shall inform the applicant state of that decision and the reason for it as soon as possible.
3. If, with respect to a request for information, the applicant state has specified the form in which it wishes the information to be supplied and the requested state is in a position to do so, the requested state shall supply it in the form requested.

ARTICLE 21

*Protection of persons and limits to the obligation to provide assistance*

1. Nothing in this Convention shall affect the rights and safeguards secured to persons by the laws or administrative practice of the requested State.
2. Except in the case of Article 14, the provisions of this Convention shall not be construed so as to impose on the requested state the obligation:
  - a. to carry out measures at variance with its own laws or administrative practice or the laws or administrative practice of the applicant State;
  - b. to carry out measures which would be contrary to public policy (*ordre public*);
  - c. to supply information which is not obtainable under its own laws or its administrative practice or under the laws of the applicant State or its administrative practice;
  - d. to supply information which would disclose any trade, business, industrial, commercial or professional secret, or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*);
  - e. to provide administrative assistance if and insofar as it considers the taxation in the applicant State to be contrary to generally accepted taxation principles or to the provisions of a convention for the avoidance of double taxation, or of any other convention which the requested State has concluded with the applicant State;
  - f. to provide administrative assistance for the purpose of administering or enforcing a provision of the tax law of the applicant State, or any requirement connected therewith, which discriminates against a national of the requested State as compared with a national of the applicant State in the same circumstances.
3. If information is requested by the applicant State in accordance with this Convention, the requested State shall use its information gathering measures to obtain

the requested information, even though the requested State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations contained in this Convention, but in no case shall such limitations, including in particular those of paragraphs 1 and 2, be construed to permit a requested State to decline to supply information solely because it has no domestic interest in such information.

4. In no case shall the provisions of this Convention, including in particular those of paragraphs 1 and 2, be construed to permit a requested State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

## ARTICLE 22

### *Secrecy*

1. Any information obtained by a Party under this Convention shall be treated as secret and protected in the same manner as information obtained under the domestic law of that Party and, to the extent needed to ensure the necessary level of protection of personal data, in accordance with the safeguards which may be specified by the supplying party as required under its domestic law.

2. Such information shall in any case be disclosed only to persons or authorities (including courts and administrative or supervisory bodies) concerned with the assessment, collection or recovery of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, taxes of that Party or the oversight of the above. Only the persons or authorities mentioned above may use the information and then only for such purposes. They may, notwithstanding the provisions of paragraph 1, disclose it in public court proceedings or in judicial decisions relating to such taxes.

3. for the purpose of a tax in a category subject to the reservation.

4. Notwithstanding the provisions of paragraphs 1, 2 and 3, information received by a Party may be used for other purposes when such information may be used for such other purposes under the laws of the supplying Party and the competent authority of that Party authorises such use. Information provided by a Party to another Party may be transmitted by the latter to a third Party, subject to prior authorisation by the competent authority of the first-mentioned Party.

## ARTICLE 23

### *Proceedings*

1. Proceedings relating to measures taken under this Convention by the requested state shall be brought only before the appropriate body of that state.

2. Proceedings relating to measures taken under this Convention by the applicant state, in particular those which, in the field of recovery, concern the existence or the amount of the tax claim or the instrument permitting its enforcement,

shall be brought only before the appropriate body of that state. If such proceedings are brought, the applicant state shall inform the requested state which shall suspend the procedure pending the decision of the body in question. However, the requested state shall, if asked by the applicant state, take measures of conservancy to safeguard recovery. The requested state can also be informed of such proceedings by any interested person. Upon receipt of such information, the requested state shall consult on the matter, if necessary, with the applicant state.

3. As soon as a final decision in the proceedings has been given, the requested state or the applicant state, as the case may be, shall notify the other state of the decision and the implications which it has for the request for assistance.

## CHAPTER V SPECIAL PROVISIONS

### ARTICLE 24

#### *Implementation of the Convention*

1. The Parties shall communicate with each other for the implementation of this Convention through their respective competent authorities. The competent authorities may communicate directly for this purpose and may authorise subordinate authorities to act on their behalf. The competent authorities of two or more Parties may mutually agree on the mode of application of the Convention among themselves.

2. Where the requested State considers that the application of this Convention in a particular case would have serious and undesirable consequences, the competent authorities of the requested and of the applicant state shall consult each other and endeavour to resolve the situation by mutual agreement.

3. A co-ordinating body composed of representatives of the competent authorities of the Parties shall monitor the implementation and development of this Convention, under the aegis of OECD. To that end, the co-ordinating body shall recommend any action likely to further the general aims of the Convention. In particular it shall act as a forum for the study of new methods and procedures to increase international co-operation in tax matters and, where appropriate, it may recommend revisions or amendments to the Convention. States which have signed but not yet ratified, accepted or approved the Convention are entitled to be represented at the meetings of the co-ordinating body as observers.

4. A Party may ask the co-ordinating body to furnish opinions on the interpretation of the provisions of the Convention.

5. Where difficulties or doubts arise between two or more Parties regarding the implementation or interpretation of the Convention, the competent authorities of those Parties shall endeavour to resolve the matter by mutual agreement. The agreement shall be communicated to the co-ordinating body.

6. The Secretary General of OECD shall inform the Parties, and the signatory states which have not yet ratified, accepted or approved the Convention, of opinions

furnished by the co-ordinating body according to the provisions of paragraph 4 above and of mutual agreements reached under paragraph 5 above.

#### ARTICLE 25

##### *Language*

Requests for assistance and answers thereto shall be drawn up in one of the official languages of OECD and of the Council of Europe or in any other language agreed bilaterally between the Contracting States concerned.

#### ARTICLE 26

##### *Costs*

Unless otherwise agreed bilaterally by the Parties concerned:

- a. ordinary costs incurred in providing assistance shall be borne by the requested State;
- b. extraordinary costs incurred in providing assistance shall be borne by the applicant State.

#### CHAPTER VI

#### FINAL PROVISIONS

#### ARTICLE 27

##### *Other International Agreement or Arrangements*

1. The possibilities of assistance provided by this Convention do not limit, nor are they limited by, those contained in existing or future international agreements or other arrangements between the Parties concerned or other instruments which relate to co-operation in tax matters.
2. Notwithstanding paragraph 1, those Parties which are member States of the European Union can apply, in their mutual relations, the possibilities of assistance provided for by the Convention in so far as they allow a wider co-operation than the possibilities offered by the applicable European Union rules.

#### ARTICLE 28

##### *Signature and entry into force of the Convention*

1. This Convention shall be open for signature by the member States of the Council of Europe and the member countries of OECD. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with one of the Depositaries.

2. This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five States have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 1.
3. In respect of any member State of the Council of Europe or any member country of OECD which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.
4. Any member State of the Council of Europe or any member country of OECD which becomes a Party to the Convention after the entry into force of the Protocol amending this Convention, opened for signature on 27<sup>th</sup> May 2010 (the “**2010 Protocol**”), shall be a Party to the Convention as amended by that Protocol, unless they express a different intention in a written communication to one of the Depositories.
5. After the entry into force of the 2010 Protocol, any State which is not a member of the Council of Europe or of the OECD may request to be invited to sign and ratify this Convention as amended by the 2010 Protocol. Any request to this effect shall be addressed to one of the Depositories, who shall transmit it to the Parties. The Depository shall also inform the Committee of Ministers of the Council of Europe and the OECD Council. The decision to invite States which so request to become Party to this Convention shall be taken by consensus by the Parties to the Convention through the co-ordinating body. In respect of any State ratifying the Convention as amended by the 2010 Protocol in accordance with this paragraph, this Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of ratification with one of the Depositories.
6. The provisions of this Convention, as amended by the 2010 Protocol, shall have effect for administrative assistance related to taxable periods beginning on or after 1 January of the year following the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party, or where there is no taxable period, for administrative assistance related to charges to tax arising on or after 1 January of the year following the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party. Any two or more Parties may mutually agree that the Convention, as amended by the 2010 Protocol, shall have effect for administrative assistance related to earlier taxable periods or charges to tax.
7. Notwithstanding paragraph 6, for tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party, the provisions of this Convention, as amended by the 2010 Protocol, shall have effect from the date of entry into force in respect of a Party in relation to earlier taxable periods or charges to tax.

## ARTICLE 29

*Territorial application of the Convention*

1. Each state may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Convention shall apply.
2. Any state may, at any later date, by a declaration addressed to one of the depositaries, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the depositary.
3. Any declaration made under either of the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to one of the depositaries. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the depositary.

## ARTICLE 30

*Reservations*

1. Any state may, at the time of signature or when depositing its instrument of ratification, acceptance or approval or at any, later date, declare that it reserves the right:
  - a. not to provide any form of assistance in relation to the taxes of other Parties in any of the categories listed in sub-paragraph b of paragraph 1 of Article 2, provided that it has not included any domestic tax in that category under Annex A of the Convention;
  - b. not to provide assistance in the recovery of any tax claim, or in the recovery of an administrative fine, for all taxes or only for taxes in one or more of the categories listed in paragraph 1 of Article 2;
  - c. not to provide assistance in respect of any tax claim, which is inexistence at the date of entry into force of the Convention in respect of that state or, where a reservation has previously been made under subparagraph a or b above, at the date of withdrawal of such a reservation in relation to taxes in the category in question;
  - d. not to provide assistance in the service of documents for all taxes or only for taxes in one or more of the categories listed in paragraph 1 of Article 2;
  - e. not to permit the service of documents through the post as provided for in paragraph 3 of Article 17.
  - f. to apply paragraph 7 of Article 28 exclusively for administrative assistance related to taxable periods beginning on or after 1 January of the third year preceding the one in which the Convention, as amended by



the 2010 Protocol, entered into force in respect of a Party, or where there is no taxable period, for administrative assistance related to charges to tax arising on or after 1 January of the third year preceding the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party.

2. No other reservation may be made.

3. After the entry into force of the Convention in respect of a Party, that Party may make one or more of the reservations listed in paragraph 1 which it did not make at the time of ratification, acceptance or approval. Such reservations shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of the reservation by one of the Depositaries.

4. Any Party, which has made a reservation under paragraphs 1 and 3, may wholly or partly withdraw it by means of a notification addressed to one of the Depositaries. The withdrawal shall take effect on the date of receipt of such notification by the Depositary in question.

5. A Party which has made a reservation in respect of a provision of this Convention may not require the application of that provision by any other Party; it may, however, if its reservation is partial, require the application of that provision in so far as it has itself accepted it.

## ARTICLE 31

### *Denunciation*

1. Any Party may, at any time, denounce this convention by means of a notification addressed to one of the Depositaries.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Depositary.

3. Any Party, which denounces the Convention, shall remain bound by the provisions of Article 22 for as long as it retains in its possession any documents or information obtained under the Convention.

## ARTICLE 32

### *Depositaries and their functions*

1. The Depositary with whom an act, notification or communication has been accomplished, shall notify the member States of the Council of Europe and the member countries of OECD and any Party to this Convention of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance or approval;
- c. any date of entry into force of this Convention in accordance with the provisions of Articles 28 and 29;

- d. any declaration made in pursuance of the provisions of paragraph 3 of Article 4 or paragraph 3 of Article 9 and the withdrawal of any such declaration;
- e. any reservation made in pursuance of the provisions of Article 30 and the withdrawal of any reservation effected in pursuance of the provisions of paragraph 4 of Article 30;
- f. any notification received in pursuance of the provisions of paragraph 3 or 4 of Article 2, paragraph 3 of Article 3, Article 29 or paragraph 1 of Article 31;
- g. any other act, notification or communication relating to this Convention.

2. The Depository receiving a communication or making a notification in pursuance of the provisions of paragraph 1 shall immediately inform the other depository thereof.

In witness whereof the undersigned, being duly authorised thereto, have signed the Convention.

Established by the Depositories the 1<sup>st</sup> day of June 2011 pursuant to Article X. 4 of the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters, in English and French, both texts being equally authentic, in two copies of which one shall be deposited in the archives of each Depository. The Depositories shall transmit a certified copy to each Party to the Convention as amended by the Protocol and to each State entitled to become a party.

## SCHEDULE 2

*(Paragraph 4(1))*

### LIST OF PARTIES TO THE CONVENTION

PARTY TO THE CONVENTION	DATE OF ENTRY INTO FORCE WITH RESPECT TO PARTY
Albania	1 December, 2013
Anguilla	1 March, 2014
Argentina	1 January, 2013
Aruba	1 September, 2013
Australia	1 December, 2012
Austria	1 December, 2014
Belgium	1 April, 2015
Belize	1 September, 2013
Bermuda	1 March, 2014
British Virgin Islands	1 March, 2014
Canada	1 March, 2014
Cayman Islands	1 January, 2014
Colombia	1 July, 2014
Costa Rica	1 August, 2013
Croatia	1 June, 2014
Curacao	1 September, 2013

Cyprus	1 April, 2015
Czech Republic	1 February, 2014
Denmark	1 June, 2011
Estonia	1 November, 2014
Faroe Islands	1 June, 2011
Finland	1 June, 2011
France	1 April, 2012
Georgia	1 June, 2011
Ghana	1 September, 2013
Gibraltar	1 March, 2014
Greece	1 September, 2013
Greenland	1 June, 2011
Guernsey	1 August, 2014
Hungary	1 March, 2015
Iceland	1 February, 2012
India	1 June, 2012
Indonesia	1 May, 2015
Ireland	1 September, 2013
Isle of Man	1 March, 2014
Italy	1 May, 2012
Japan	1 October, 2013
Jersey	1 June, 2014
Korea	1 July, 2012
Latvia	1 November, 2014
Lithuania	1 June, 2014
Luxembourg	1 November, 2014
Malta	1 September, 2013
Mexico	1 September, 2012
Moldova	1 March, 2012
Montserrat	1 October, 2013
Netherlands	1 September, 2013
New Zealand	1 March, 2014
Norway	1 June, 2011
Poland	1 October, 2011
Portugal	1 March, 2015
Romania	1 November, 2014
Russia	1 July, 2015
Sint Maarten	1 September, 2013
Slovak Republic	1 March, 2014
Slovenia	1 June, 2011
Spain	1 January, 2013
Sweden	1 September, 2011
Tunisia	1 February, 2014
Turks & Caicos Islands	1 December, 2013
Ukraine	1 September, 2013
United Kingdom	1 October, 2011



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

ARRANGEMENT OF REGULATIONS

PART 1

PRELIMINARY

REGULATION

1. Short title
2. Interpretation.
3. Effect and application

PART 2

REPORTABLE ACCOUNTS

*Division 1*

***FATCA Agreement***

4. Reportable account FATCA Agreement

*Division 2*

***UK IGA***

5. Reportable account UK IGA

*Division 3*

***CRS***

6. Reportable account CRS

*Division 4*

***General***

7. Election not to treat account as a reportable account
8. Application of account balance aggregation and currency rules
9. Determination of balance or value of account denominated in currency other than US dollars
10. Account held by individual as partner of a partnership

## PART 3

## OBLIGATIONS IN RELATION TO FINANCIAL ACCOUNTS

*Division 1****Due diligence***

11. Due diligence requirements
12. Modification of due diligence requirements: UK IGA and CRS
13. Modification of due diligence requirements: FATCA Agreement

*Division 2****Reporting***

14. Reporting obligations
15. Electronic return system
16. Modifications of reporting requirements: FATCA Agreement
17. Modification of reporting requirements: UK IGA

*Division 3****General***

18. Additional due diligence and reporting obligations in relation to payments to a non-participating financial institution: FATCA
19. Notification to individual reportable persons
20. Non-resident reporting financial institution's Montserrat representative
21. Use of service providers

## PART 4

## COMPLIANCE AND ENFORCEMENT

22. Anti-Avoidance
23. Penalty for failure to comply with Regulations
24. Daily default penalty
25. Submission of inaccurate information
26. FATCA Agreement penalty: non-participating financial institutions
27. Matters to be disregarded in relation to liability to penalties
28. Imposition of penalties
29. Right to appeal against penalty
30. Procedure on appeal against a penalty
31. Increased daily default penalty
32. Enforcement of penalties

SCHEDULE 1

SCHEDULE 2

SCHEDULE 3

SCHEDULE 4

SCHEDULE 5

**TAX INFORMATION EXCHANGE (FATCA AGREEMENT)  
(UK IGA) (CRS) (MONTSERRAT) (IMPLEMENTATION) REGULATIONS – SECTION 5**  
*(S.R.O. 45/2016)*

**Commencement**

*[5 October 2016]*

PART 1

PRELIMINARY

**Short title**

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

**Interpretation**

2. (1) In these Regulations—

“**Act**” means Tax Information Exchange Act;

“**Commissioners**” means the Commissioners of Income and Corporation Tax appointed under section 41 of the Income and Corporation Tax Act;

“**Comptroller**” has the same meaning assigned to it under section 2 of the Income and Corporation Tax Act;

“**Convention**” means the Convention on Mutual Administrative Assistance in Tax Matters done in Strasbourg on 25 January, 1988 as amended by the Protocol done in Paris on 27 May, 2010, signed on behalf of the United Kingdom and extended to Montserrat with effect in respect of Montserrat from 1 October, 2013;

“**CRS**” means the Common Reporting Standard for the automatic exchange of financial account information in tax matters, approved by the Council of the OECD on 15 July, 2014;

“**CRS Commentary**” means explanatory material made and published by the OECD to assist with the interpretation of the CRS;

“**FATCA Agreement**” means the agreement between the Government of Montserrat and the Government of the United States of America to improve international tax compliance and to implement the U.S. Treasury Regulations, signed on 8 September, 2015;

“**Multilateral Competent Authority Agreement**” means the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information signed by the Government of Montserrat on 29 October, 2014, in relation to agreements with participating jurisdictions listed under Schedule 5, to improve international tax compliance based on the CRS;

“**OECD**” means the Organisation of Economic Co-operation and Development;

“**relevant agreement**” means the UK IGA, the FATCA Agreement or the Multilateral Competent Authority Agreement, as the case may be;

“**reporting year**” means the period of twelve months commencing on 1 January in each calendar year; and

“**UK IGA**” means the agreement between the Government of Montserrat and the United Kingdom of Great Britain and Northern Ireland to improve international tax compliance, signed on 25 November, 2013.

(2) For the purposes of these Regulations, in relation to the CRS,

“**pre-existing account**” means a financial account—

(a) maintained by a reporting financial institution as of 31 December, 2015; or

(b) of an account holder, opened on any date if—

(i) the account holder also holds with the reporting financial institution or a related entity within the same jurisdiction as the reporting financial institution, a pre-existing financial account under paragraph (a);

(ii) the reporting financial institution (and if applicable, the related entity within the same jurisdiction as the reporting financial institution), regard a financial account under paragraphs (a), (b)(i), and any other financial account of the account holder that is regarded as a pre-existing account under this subparagraph, as a single financial account in order to—

(A) meet the requirements under section VII(A) of the CRS; and

(B) determine the balance or value of a financial account by applying an account threshold;

(iii) with respect to a financial account that is subject to AML/KYC procedures, the reporting financial institution is permitted to satisfy the AML/KYC procedures for the financial account by relying on the AML/KYC procedures performed for the pre-existing account under paragraph (a); and

(iv) the opening of the financial account does not require the provision of new, additional or amended customer information by the account holder other than for the purposes of the CRS.

(3) Schedule 4 sets out the section or article of a relevant agreement or arrangement under which the meaning of an expression that is not defined in the Act or these Regulations is provided for.

(4) An expression that is defined in a relevant agreement or arrangement but not under the Act or these Regulations has the same meaning for the purposes of these Regulations as in the relevant agreement or arrangement.



- (5) For the purposes of these Regulations—
- (a) the CRS Commentary is part of the CRS and applies for the purpose of the automatic exchange of financial account information under a relevant agreement; and
  - (b) **“reportable jurisdiction”** means a jurisdiction other than the United States of America and Montserrat.
- (6) For the purposes of the CRS a non-reporting financial institution is—
- (a) a financial institution as defined under section VIII, B(1)(a), (b), (d) and (e) of the CRS; and
  - (b) an entity listed under Schedule 3.

### **Effect and application**

3. (1) These Regulations have effect for and in connection with the implementation of Montserrat’s obligations under a relevant agreement.

(2) Unless the context otherwise requires, these Regulations apply separately in relation to each relevant agreement.

## PART 2

### REPORTABLE ACCOUNTS

#### *Division 1*

#### ***FATCA Agreement***

### **Reportable account FATCA Agreement**

4. (1) In this regulation, **“reportable account”** means an account which is a reportable account under the FATCA Agreement.

(2) Subject to subregulation (3), in relation to a reporting financial institution under the FATCA Agreement, an account is a reportable account if it meets the description under Annex I, paragraphs II.A, III.A or IV.A of the FATCA Agreement.

(3) An account is not a reportable account under subregulation (2) if—

- (a) the account holder is deceased or is a personal representative of the estate of a deceased individual;
- (b) the account holder is holding the account in compliance with a an order of a court; or
- (c) the funds held in the account are only being held as security for the performance of a party’s obligation under a contract for the disposal of an estate or interest in property.

(4) Accounts under subregulation (2) are not reportable accounts for a particular reporting year if the reporting financial institution elects to treat each of the accounts or a clearly identified subset of the accounts as accounts that are not reportable accounts for that reporting year.

*Division 2***UK IGA****Reportable account UK IGA**

5. (1) In this regulation, “**reportable account**” means an account which is a reportable account under the UK IGA.

(2) Subject to subregulation (3), in relation to a reporting financial institution under the UK IGA, an account is a reportable account if it is—

- (a) a pre-existing individual account that meets the description under Annex I, paragraph II.A of the UK IGA;
- (b) a pre-existing entity account that meets the description under Annex I, paragraph II.A of the UK IGA;
- (c) a new individual account that meets the description under Annex I, paragraph III.A of the UK IGA; or
- (d) a new entity account that meets the description under Annex I, paragraph V.A of the UK IGA.

(3) Accounts under subregulation (2) are not reportable accounts for a particular reporting year if the reporting financial institution elects to treat each of the accounts or a clearly identified subset of the accounts as accounts that are not reportable accounts for that reporting year.

*Division 3***CRS****Reportable account CRS**

6. (1) In this regulation, “**reportable account**” means an account which is a reportable account under the CRS.

(2) Subject to subregulations (3), (4) and (5), in relation to a reporting financial institution under the CRS, an account is a reportable account if it is a pre-existing entity account with an account balance or value that does not exceed US\$250,000 as of 31 December, 2015.

(3) Accounts under subregulation (2) are not reportable accounts for a particular reporting year if the reporting financial institution elects to treat each of the accounts or a clearly identified subset of the accounts as accounts that are not reportable accounts for that reporting year.

(4) An account under the CRS is not a reportable account if it is listed as an excluded account under Schedule 1.

(5) For the purposes of the CRS, dormant accounts (other than an annuity contract) with a balance not exceeding US\$1,000 are not reportable accounts for a particular reporting year if the reporting financial institution elects to treat each

dormant account or a clearly identified subset of dormant accounts as accounts that are not reportable accounts for that reporting year.

*Division 4*

**General**

**Election not to treat account as a reportable account**

7. (1) A reporting financial institution shall make an election under this Part as part of an annual return submitted to the Comptroller under regulation 14.

(2) An election under subregulation (1) shall—

- (a) be made for each reporting year for which the election is to take effect; and
- (b) specify the type of account in relation to which it is to take effect.

**Application of account balance aggregation and currency rules**

8. (1) In order to determine whether an account maintained by a reporting financial institution is a reportable account under regulations 4(2), 5(2) or 6(2), the reporting financial institution shall apply the following account balance aggregation and currency rules with respect to each relevant agreement or arrangement:

- (a) Annex I, section VI.C of the FATCA Agreement;
- (b) Annex I, section VI.C of the UK IGA; and
- (c) section VII.C of the CRS.

(2) In applying the rules under subregulation (1), an account balance that has a negative value is treated as having a nil value.

**Determination of balance or value of account denominated in currency other than US dollars**

9. In order to determine the balance or value of an account denominated in currency other than US dollars a reporting financial institution shall translate the relevant dollar threshold amounts into the other currency by reference to the spot rate of exchange on the date for which the institution is determining the threshold amounts.

**Account held by individual as partner of a partnership**

10. For the purposes of these Regulations, an account held by an individual as a partner of a partnership is to be treated as an entity account.

## PART 3

## OBLIGATIONS IN RELATION TO FINANCIAL ACCOUNTS

*Division 1****Due diligence*****Due diligence requirements**

**11. (1)** Subject to subsection (2), in order to identify a reportable account, a reporting financial institution shall establish and maintain arrangements that—

- (a) identify the jurisdiction in which an account holder or controlling person resides for the purposes of—
  - (i) income tax; or
  - (ii) a tax imposed under the law of that jurisdiction that is similar to income tax;
- (b) apply the due diligence procedures under a relevant agreement or arrangement, as set out under Schedule 2; and
- (c) ensure that—
  - (i) the information obtained in accordance with this regulation; or
  - (ii) a record of the steps taken to comply with this regulation,

in relation to a financial account, is kept for a period of at least six years commencing on the end of the year in which the arrangement applied to the financial account.

**(2)** In applying the due diligence procedures, a reporting financial institution shall treat an account under regulations 4(2), 5(2) and 6(2) in respect of which an election under regulations 4(3), 5(3) and 6(3) respectively is not made, as a new account or a pre-existing account, as the case may be.

**Modification of due diligence requirements: UK IGA and CRS**

**12. (1)** Subject to subregulation (2), a reporting financial institution under the UK IGA or the CRS may—

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

**(2)** A reporting financial institution under the UK IGA that elects to modify due diligence requirements may modify the due diligence requirements under Annex I to the UK IGA as follows:

- (a) if the reporting financial institution obtains or is in the process of obtaining evidence of a person's United Kingdom tax status in relation to a pre-existing account, the reporting financial institution may rely on the evidence in relation to a new account unless it has

reasonable cause to believe that the person's United Kingdom tax status has changed;

- (b) if the reporting financial institution or a related entity obtains or is in the process of obtaining evidence of a person's United Kingdom tax status in relation to a financial account, the reporting financial institution may rely on the evidence in relation to the financial accounts maintained by the institution for the account holder, unless it has reasonable cause to believe that the person's United Kingdom tax status has subsequently changed.

(3) Subregulation (2)(a) applies in the case of a pre-existing individual account maintained by a reporting financial institution for an account holder only if, in order to establish which procedures under Annex I, paragraph II.B and II.C or paragraph II.D and II.E of the UK IGA apply to the pre-existing individual accounts, the reporting financial institution treats each account as a single pre-existing individual account.

(4) A reporting financial institution need not meet the due diligence requirements under regulation 12 in relation to a financial account if—

- (a) the reporting financial institution maintains the financial account, as a result of a merger with or acquisition of a qualifying financial institution that established the United Kingdom status of the account holder and a controlling person; and
- (b) the reporting financial institution has no reasonable cause to believe that the United Kingdom tax status of the account holder or a controlling person has changed.

(5) For the purposes of subregulation (4)(a), “**qualifying financial institution**”, in relation to a financial institution, means another financial institution which—

- (a) has not previously been a related entity of the financial institution; and
- (b) immediately before the merger or acquisition was a financial institution or a reporting financial institution.

(6) A reporting financial institution shall make an election under this regulation by submitting the election to the Comptroller in the form the Comptroller determines.

(7) An election under this regulation takes effect from the day it is made and remains in effect until the reporting financial institution withdraws it.

(8) A reporting financial institution under the UK IGA may—

- (a) in the case of a lower value pre-existing individual account, if it has documentary evidence of the individual account holder's current residential address, treat the individual account holder as a resident for tax purposes of the jurisdiction in which the address is to be found, in order to determine whether the individual account holder is a reportable person; and

- (b) in the case of a pre-existing entity account, use as documentary evidence a classification in its records with respect to the account holder that was—
- (i) determined based on a coding system used to classify establishments by business type for purposes, other than for tax purposes;
  - (ii) recorded by the reporting financial institution in accordance with its normal business practices for the purpose of AML/KYC Procedures or another regulatory purpose (other than for tax purposes); and
  - (iii) implemented by the reporting financial institution before the date used to classify the financial account as a pre-existing account,
- if it does not know or does not have reason to suspect that the classification is incorrect.

### **Modification of due diligence requirements: FATCA Agreement**

**13. (1)** A reporting financial institution under the FATCA Agreement may modify the due diligence requirements as follows:

- (a) in the case of an account under Annex I, paragraph II.B or C of the FATCA Agreement, the due diligence requirements exclude the requirement to carry out the electronic search under Annex I, paragraph II.B (1) if the reporting financial institution—
- (i) establishes that the account holder is a specified U.S. person from documentary evidence under Annex I, paragraph VI.D of the FATCA Agreement; and
  - (ii) establishes the status of the account holder in accordance with subparagraph (i) in order to meet its obligations under a Qualifying Intermediary Agreement provided for under Annex I, paragraph VI.D of the FATCA Agreement.
- (b) in the case of an account under Annex I, paragraph II.D or E of the FATCA Agreement, the due diligence requirements exclude the requirement to carry out the electronic searches provided for under Annex I, paragraph II.B (1) or II.D (1) or the requirement to carry out the paper record search under Annex I, paragraph II.D (2) if the reporting financial institution—
- (i) establishes that the account holder is a specified U.S. person from documentary evidence under Annex I, paragraph VI.D of the FATCA Agreement; and
  - (ii) establishes the status of the account holder in accordance with subparagraph (i) in order to meet its obligations under a Qualifying Intermediary Agreement provided for under Annex I, paragraph VI.D of the FATCA Agreement.

(2) A reporting financial institution may rely on evidence that a person is a specified U.S. person obtained in relation to another financial account if the due diligence procedures in the relevant U.S. Treasury Regulations so allow.

(3) For the purposes of this regulation, a reference to the documentary evidence set out under Annex I, paragraph VI.D of the FATCA Agreement is to be construed as if the words “**other than a Form W-8 or W-9**” are omitted.

## *Division 2*

### ***Reporting***

#### **Reporting obligations**

14. (1) A reporting financial institution shall, for the first reporting year and each following reporting year, submit to the Comptroller, a return setting out the information required to be reported under subregulation (2) in relation to a reportable account maintained by the reporting financial institution during that reporting year.

(2) For the purposes subregulation (1)—

(a) in the case of a reportable account for the purposes of the CRS—

(i) the first reporting year is 2016; and

(ii) a reporting financial institution shall report on the information set out under Schedule 1 of the CRS;

(b) in the case of a reportable account for the purposes of the FATCA Agreement—

(i) the first reporting year is 2014; and

(ii) a reporting financial institution shall report on the information set out under Article 2(2) of the FATCA Agreement; and

(c) in the case of an reportable account for the purposes of the UK IGA—

(i) the first reporting year is 2014; and

(ii) a reporting financial institution shall report on the information set out under Article 2(2) of the UK IGA.

(3) In relation to the information to be reported under a relevant agreement—

(a) a reference to the balance or value of an account includes a nil balance or value; and

(b) a reference to paying an amount includes crediting an amount.

(4) A reporting financial institution shall, on or before 30 June of the year following the reporting year to which a return relates, submit the return to the Comptroller electronically using an electronic return system.

(5) If a reporting financial institution applies the due diligence procedures under Division 1 for a reporting year and the reporting financial institution does not identify an account as a reportable account, the reporting financial institution shall

submit to the Comptroller, a return indicating that it did not maintain a reportable account for that reporting year.

### Electronic return system

- 15. (1)** The electronic return system under regulation 14(4) shall—
- (a) be in the form and operate in the manner the Comptroller directs; and
  - (b) incorporate an electronic validation process.
- (2)** Unless the contrary is proven, the Comptroller shall presume that—
- (a) the use of the electronic return system resulted in a return having been made if the return was recorded by the electronic validation process;
  - (b) a return was made at the time recorded by the electronic validation process; and
  - (c) the person who made the return is the person identified as making the return by the electronic validation process.

### Modifications of reporting requirements: FATCA Agreement

**16.** For the purposes of the FATCA Agreement, the information to be reported by a financial institution on a reportable account is modified as follows:

- (a) in the case of a reportable account for the reporting year 2014, a financial institution shall report on the information under Article 3(3)(a)(1) of the FATCA Agreement;
- (b) in the case of a custodial account for the reporting year 2015, a financial institution shall report on the information under Article 3(3)(a)(2) of the FATCA Agreement;
- (c) in the case of a pre-existing account—
  - (i) for a reporting year before 2017—
    - (A) a financial institution is not required to include a U.S Federal taxpayer identification number if the financial institution does not hold the taxpayer identification number; and
    - (B) if an account holder is an individual and a financial institution holds the individual's date of birth, the financial institution shall include the account holder's date of birth; and
  - (ii) for the reporting year 2017 and a subsequent reporting year, if a financial institution that does not hold a U.S. Federal taxpayer identifying number that it is required to report, the financial institution shall obtain that U.S Federal taxpayer identifying number from the account holder; and



- (d) despite regulation 14(4), in the case of the reporting years 2014 and 2015, a financial institution shall submit the return under regulation 14(4) before 15 November, 2016 in the form the Comptroller determines.

### **Modification of reporting requirements: UK IGA**

**17. (1)** In relation to a reportable account, a financial institution is not required to include in the return—

- (a) for the reporting year 2014, information on relevant total gross credits; and
- (b) for the reporting year 2015, information under Article 2.2(e)(2) of the UKIGA.

**(2)** Subject to subregulation (3), in the case of a pre-existing account, a financial institution is not required to include in a return for a reporting year before 2017, information on the account holder's—

- (a) national insurance number;
- (b) date of birth; or
- (c) in the case of an account holder who is a passive NFFE that has a controlling person who is a specified U.K person—
- (i) the name and address of that specified U.K person; and
- (ii) if the specified U.K person is an individual, the individual's national insurance number or date of birth.

**(3)** Despite regulation 14(4), in the case of the reporting year 2014 and 2015, a financial institution shall submit the return under regulation 14(4) before 15 November, 2016 in the form the Comptroller determines.

### *Division 3*

#### **General**

### **Additional due diligence and reporting obligations in relation to payments to a non-participating financial institution: FATCA**

**18. (1)** The due diligence requirements and the information to be reported by a financial institution under the FATCA Agreement in relation to payments to a non-participating financial institution are modified as follows:

- (a) a reporting financial institution shall establish and maintain arrangements designed to identify a payment that the reporting financial institution made to a non-participating financial institution in the reporting year 2015 or 2016; and
- (b) a reporting financial institution shall apply the due diligence procedures under Annex I, paragraph IV.D(3) of the FATCA

Agreement, in order to determine whether a financial institution is a non-participating financial institution.

(2) If a reporting financial institution falls within the terms of Article 4(1)(e) of the FATCA Agreement in the reporting years 2015 and 2016, the reporting financial institution shall disclose information in accordance with Article 4(1)(e) of the FATCA Agreement.

(3) A reporting financial institution shall, in respect of the reporting years 2015 and 2016—

- (a) prepare a return that sets out the information required under Article 4(1)(b) of the FATCA Agreement; and
- (b) submit the return under paragraph (a) to the Comptroller electronically, in accordance with regulation 14(4).

(4) For the purposes of this regulation—

- (a) **“payment”** does not include consideration a reporting financial institution gives for the provision of goods and services to that reporting financial institution; and
- (b) **“non-participating financial institution”** includes a person treated as a non-participating financial institution under Article 4(5)(a) of the FATCA Agreement.

### Notification to individual reportable persons

19. (1) Subject to subregulation (2), a reporting financial institution shall notify each individual who is a—

- (a) reportable person;
- (b) specified U.K. person; and
- (c) specified U.S. person,

that information relating to that person which is to be reported under regulation 14—

- (i) is to be reported to the Comptroller; and
- (ii) may be transferred by the Comptroller to the government in accordance with a relevant agreement.

(2) A reporting financial institution shall submit the notification under subregulation (1) by 31 January in the reporting year following the first year in which the account held by the individual is a reportable account maintained by the reporting financial institution.

(3) For the purposes of this regulation—

- (a) in the case of a specified UK person under the UK IGA and a reportable person under the CRS, **“government”** means the government of the jurisdiction of which the reportable person is a tax resident;

- (b) in the case of a specified U.S person, “**government**” means the government of the United States of America.

### **Non-resident reporting financial institution’s Montserrat representative**

**20. (1)** The obligations of a reporting financial institution which is not resident in Montserrat shall also be the obligations of the reporting financial institution’s Montserrat representative.

**(2)** For the purposes of this regulation—

(a) a reporting financial institution which—

(i) is a partnership, is resident in Montserrat if the control and management of the business of the partnership as a reporting financial institution takes place in Montserrat;

(ii) is not a partnership, is resident in Montserrat if it is resident in Montserrat for income tax purposes; and

(b) “**Montserrat representative**”, includes a trustee, agent, curator, guardian, attorney, branch or manager.

### **Use of service providers**

**21. (1)** A reporting financial institution may use a service provider to undertake the due diligence requirements under Division 1 and the reporting obligations under Division 2.

**(2)** If a reporting financial institution uses a service provider in accordance with subregulation (1), the obligation to undertake the relevant due diligence requirements remains that of the reporting financial institution.

## **PART 4**

### **COMPLIANCE AND ENFORCEMENT**

#### **Anti-Avoidance**

**22.** If a person enters into an arrangement, the main purpose of which is to avoid an obligation under these Regulations—

(a) the person is deemed not to have entered into the arrangement; and

(b) these regulations have effect as if the arrangement had not been entered into.

#### **Penalty for failure to comply with Regulations**

**23.** Subject to regulation 24, a person who fails to comply with these regulations is liable to a penalty of \$1,000.

**Daily default penalty**

24. If—

- (a) the Comptroller imposes a penalty under regulation 23; and
- (b) the default continues after the person is notified of the penalty,

the person is liable to a further penalty for each subsequent day on which the default continues, of an amount of \$250 for each day.

**Submission of inaccurate information**

25. (1) A person is liable to a penalty of \$10,000 if—

- (a) with respect to the satisfaction of a reporting requirement under regulation 14, the person provides inaccurate information; and
- (b) condition A, B or C is met.

(2) Condition A is that the inaccuracy is—

- (a) due to a failure to comply with the due diligence requirements under Part 3, Division 1; or
- (b) deliberate on the part of the person.

(3) Condition B is that the person knows of the inaccuracy at the time the information is provided but does not inform the Comptroller at that time.

(4) Condition C is that the person—

- (a) discovers the inaccuracy on a date later than the date the information is provided; and
- (b) fails to take reasonable steps to inform the Comptroller.

**FATCA Agreement penalty: non-participating financial institutions**

26. (1) In relation to the payments identified under regulation 18(1)(a), a person is liable to a penalty of \$1,000 for each failure to—

- (a) report a payment; and
- (b) set out the payment accurately in a report made under regulation 18.

(2) A person's liability for penalties under this regulation is limited to \$10,000 in each reporting year.

**Matters to be disregarded in relation to liability to penalties**

27. (1) Liability to a penalty under regulation 23, 24 or 26 does not arise if a person satisfies the Comptroller or (on appeal to the Commissioners), the Commissioners, that there is a reasonable excuse for the failure.

(2) For the purposes of this regulation—

- (a) a deficiency of funds to do something; or
- (b) the fact that a person relies on another person to do something,

is not a reasonable excuse.

(3) If a person had a reasonable excuse for a failure but the excuse ceases, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceases.

### **Imposition of penalties**

28. (1) If a person becomes liable to a penalty under regulations 23 to 26, the Comptroller may impose the penalty.

(2) If the Comptroller imposes a penalty, the Comptroller shall submit to the person liable to the penalty, a notice that sets out—

- (a) the circumstances that render the person liable to the penalty;
- (b) the amount of the penalty imposed; and
- (c) the person's right to appeal to the Commissioners against the penalty.

(3) The Comptroller may only impose a penalty under regulation 23, 24 or 26(1)(a) within the period of twelve months from the date on which the person becomes liable to the penalty.

(4) The Comptroller may only impose a penalty under regulation 25 or 26(1)(b)—

- (a) within a period of twelve months from the date on which the inaccuracy first came to the attention of the Comptroller; and
- (b) within a period of six years from the date on which the person becomes liable to the penalty.

### **Right to appeal against penalty**

29. A person may appeal against a penalty—

- (a) on the ground that liability to the penalty does not arise; or
- (b) as to the amount of the penalty.

### **Procedure on appeal against a penalty**

30. (1) A person who wishes to appeal against a penalty shall, before the end of the period of thirty days from the date on which notification under regulation 28(2) was given to him, submit to the Commissioners a notice in writing setting out the grounds for the appeal.

(2) On an appeal under regulation 29(a) the Commissioners may confirm or cancel the penalty.

(3) On an appeal under regulation 29(b) the Commissioners may—

- (a) confirm the penalty; or
- (b) substitute another penalty that the Comptroller is empowered to impose.

(4) Subject to this regulation and regulation 32, Part 10 of the Income and Corporation Tax Act applies with the necessary modifications, to an appeal under these Regulations.

### Increased daily default penalty

31. (1) This regulation applies if—

- (a) a penalty under regulation 24 is imposed under regulation 28;
- (b) the failure in respect of which the penalty is imposed continues for more than thirty days from the date on which notification of the penalty is given to a person; and
- (c) the Comptroller informs the person that he may make an application under this paragraph for the imposition of an increased daily default penalty.

(2) If this regulation applies, the Comptroller may apply to the Commissioners for an increased daily default penalty to be imposed on the person notified under regulation 28(2).

(3) If the Commissioners decide that an increased daily default penalty be imposed on a person, for each applicable day on which the failure continues—

- (a) the person is not liable to a penalty under regulation 24 in respect of the failure; and
- (b) the person is liable to a penalty under this regulation of an amount determined by the Commissioners.

(4) The Commissioners shall not determine an amount exceeding \$2,000 for each applicable day.

(5) If a person is liable to a penalty under this regulation, the Comptroller shall—

- (a) notify the person; and
- (b) specify in the notice, the date from which the increased penalty applies.

(6) For the purposes of this regulation, “applicable day” means the date specified under subregulation (5)(b) and any subsequent day on which the increased penalty applies.

### Enforcement of penalties

32. (1) A penalty under these Regulations shall be paid before the end of the period of thirty days, beginning with the date under subregulation (2).

(2) The date referred to under subregulation (1) is—

- (a) the date on which the penalty is imposed under regulation 28 or notification under regulation 31(5) is given in respect of the penalty; or

- (b) if a notice of appeal under regulation 30 is given, the date on which the appeal is finally determined or withdrawn.
- (3) A penalty under these Regulations may be enforced as if it were income tax charged in an assessment and which is due and payable.

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### SCHEDULE 1

(Regulation 6(4))

#### EXCLUDED ACCOUNTS

For the purposes of the CRS, a pension arrangement for which—

- (a) the annual contributions do not exceed EC\$200,000; and
- (b) funds contributed cannot be accessed by a member of the arrangement before the age of 55 except in a case of serious ill health,
- is an excluded account.

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### SCHEDULE 2

(Regulation 11(1)(b))

Due Diligence procedures for reporting financial institutions	
Relevant agreement	Due diligence procedure
Reporting financial institution under the UK IGA	Annex I, UK IGA
Reporting financial institution under the FATCA Agreement	Annex I, FATCA Agreement
Reporting financial institution under the CRS	Sections II to VII, CRS

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### SCHEDULE 3

(Regulation 2(6)(b))

Non-reporting financial institutions  
 Montserrat Building Society Limited  
 St. Patrick's Co-operative Credit Union Ltd.

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**SCHEDULE 4***(Regulation 2(3))*

Expression	The UK IGA	The CRS	The FATCA Agreement
account holder	Article 1(1)(v)	Section VIII(E)(1)	Article 1(1)(ee)
AML/KYC Procedures	Annex I, VI. B	Section VIII (E)(2)	
annuity contract	Article 1(1)(q)	Section VIII(C)(6)	
CRS			
cash value insurance contract	Article 1(1)(r)	Section VIII(C)(7)	
controlling person	Article 1(1)(aa)	Section VIII(D)(6)	Article 1(1)(mm)
custodial account	Article 1(1)(q)	Section VIII(A)(3)	Article 1(1)(u)
entity	Article 1(1)(x)	Section VIII(E)(3)	Article 1(1)(hh)
excluded account		Section VIII(C)(17)	
the FATCA Agreement			
financial account	Article 1(1)(o)	Section VIII(C)	Article 1(1)(s)
financial institution	Article 1(1)(1)	Section VIII(A)(3)	Article 1(1)(g)
Investment Entity	Article 1(1)(j)	Section VIII(A)(6)	
new account		Section VIII(C)(10)	
non-participating financial institution			Article 1(1)(r)



Participating jurisdiction		Section VIII(D)(5)	
pre-existing account	Article 1(1)(t)		
pre-existing entity account	Section IV of Annex I	Section VIII(C)(13)	Section IV of Annex I
related entity	Article 1(1)(z)	Section VIII(E)(4)	
reportable account	Article 1(1)(u)	Section VIII(D)(1)	Article 1(1)(bb)
reporting financial institution	Article 1(1)(m)	Section VIII(A)(1)	Article 1(1)(n)
reportable person		Section VIII(D)(2)	
relevant agreement			
specified U.K person	Article 1(1)(w)		
specified U.S person			Article 1(1)(gg)
UK IGA			
U.S. reportable account			Article 1(1)(dd) and paragraph I.B of Annex I
US Treasury Regulations			

**SCHEDULE 5***(Regulation 2(1))***PARTICIPATING JURISDICTIONS**(FOR THE PURPOSES OF THE DEFINITION  
“MULTILATERAL COMPETENT AUTHORITY AGREEMENT”)

Participating jurisdiction	Intended first information exchange by:
Albania	September 2018
Andorra	September 2018
Anguilla	September 2017
Antigua and Barbuda	September 2018
Argentina	September 2017
Aruba	September 2018
Australia	September 2018
Austria	September 2018
Barbados	September 2017
Belgium	September 2017
Belize	September 2018
Bermuda	September 2017
British Virgin Islands	September 2017
Bulgaria	September 2017
Canada	September 2018
Cayman Islands	September 2017
Chile	September 2018
China (People's Republic of )	September 2018
Colombia	September 2017
Cook Islands	September 2018
Costa Rica	September 2018
Croatia	September 2017
Curacao	September 2017
Cyprus	September 2017
Czech Republic	September 2017
Denmark	September 2017
Estonia	September 2017
Faroe Islands	September 2017
Finland	September 2017
France	September 2017
Germany	September 2017
Ghana	September 2018
Gibraltar	September 2017
Greece	September 2017
Greenland	September 2017
Grenada	September 2018
Guernsey	September 2017
Hungary	September 2017

Iceland	September 2017
India	September 2017
Indonesia	September 2018
Ireland	September 2017
Israel	September 2018
Isle of Man	September 2017
Italy	September 2017
Japan	September 2018
Jersey	September 2017
Korea	September 2017
Kuwait	September 2018
Latvia	September 2017
Liechtenstein	September 2017
Lithuania	September 2017
Luxembourg	September 2017
Malaysia	September 2018
Malta	September 2017
Marshall Islands	September 2018
Mauritius	September 2018
Mexico	September 2017
Monaco	September 2018
Montserrat	September 2017
Nauru	September 2018
Netherlands	September 2017
New Zealand	September 2018
Niue	September 2017
Norway	September 2017
Poland	September 2017
Portugal	September 2017
Romania	September 2017
Russian Federation	September 2018
Saint Kitts and Nevis	September 2018
Saint Lucia	September 2018
Saint Vincent and the Grenadines	September 2018
Samoa	September 2018
San Marino	September 2017
Sint Maarten	September 2018
Slovak Republic	September 2017
Slovenia	September 2017
South Africa	September 2017
Spain	September 2017
Sweden	September 2017
Switzerland	September 2018
Turks & Caicos Islands	September 2017
United Kingdom	September 2017

