



Electronic Money Association

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HM Revenue & Customs

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10 January 2025

Dear Sir, Madam

Re: EMA response to the consultation on the proposed amendments to the International Tax Compliance Regulations 2015 ("ITCR 2015")

The EMA is the EU trade body representing electronic money issuers and alternative payment service providers. Our members include leading payments and e-commerce businesses worldwide, providing online payments, card-based products, electronic vouchers, and mobile payment instruments. Most members operate across the EU, most frequently on a cross-border basis. A list of current EMA members is provided at the end of this document.

I would be grateful for your consideration of our comments and proposals.

Yours sincerely,

A handwritten signature in black ink that reads 'Thaer Sabri'. The signature is written in a cursive style with a long horizontal stroke extending to the right.

Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

EMA responses

Regulation 7A: Reporting of gross proceeds: CRS

The regulation introduces a provision allowing a reporting financial institution (“RFI”) to elect to report the gross proceeds from the sale or redemption of financial assets under the OECD CARF and the CRS, which provides the required flexibility, increases transparency, and promotes full reporting.

EMA Comment: *It is important to establish clear guidelines and procedures for reporting requirements, timelines, and documentation standards to maintain consistency and accuracy in reporting.*

Additionally, it will be beneficial to clarify the earliest point at which the election can be made and whether it applies retroactively to transactions within the reporting year; conditions for withdrawal as well as practical directions to help RFIs to decide whether to make the election based on their operations.

Regulation 10A: Registration with HMRC

The regulation introduces a mandatory requirement for financial institution and a non-reporting financial institution to register with HMRC if they fall within the definitions set out in international reporting standards, such as the CRS and the FATCA agreement (i.e. trusts, reporting financial institutions, non-reporting financial institutions). The registration deadline is set as either 31 December 2025 or six months from the date the institution meets the criteria for registration.

EMA Comment: *The government’s feedback¹ indicates that the registration requirement for non-reporting financial institutions and relevant trusts is intended to be a one-off obligation, with no requirement for annual renewals or nil reporting. However, this clarification is not explicitly reflected in the Draft Regulations.*

To avoid ambiguity and ensure consistent understanding among stakeholders, the regulation should explicitly state that registration is a one-time requirement unless circumstances change, such as an institution ceasing to meet the criteria for registration and no nil reporting is required. This clarification would align the regulations with the government’s stated intention and provide certainty to reporting entities, reducing potential compliance burdens.

¹ Government response to Question 13, Outcome of the consultation on the CARF, CRS amendments, and seeking views on extension to domestic reporting <https://www.gov.uk/government/consultations/cryptoasset-reporting-framework-and-common-reporting-standard/outcome/cryptoasset-reporting-framework-common-reporting-standard-amendments-and-seeking-views-on-extension-to-domestic-reporting-summary-of-responses>

Regulation 12GA: Provision of a valid self-certification

This regulation introduces requirements for the provision of valid self-certifications by account holders and controlling persons under the CRS and FATCA frameworks. It mandates that self-certifications adhere to the respective provisions in the CRS (Sections III to VI and commentary) and the FATCA agreement (Annex I). The provisions aim to ensure consistent and accurate collection of information for due diligence and reporting purposes.

EMA Comment: *Future guidance should offer comprehensive support for RFIs on self-certification requirements, including training programs to clarify obligations under CRS and the importance of compliance. Additionally, targeted campaigns should educate account holders on providing accurate self-certifications and the consequences of false information.*

Regulation 22A: Penalties for failure to apply due diligence procedures

The regulation introduces penalties for RFIs or UK representatives that fail to comply with the due diligence requirements specified under Regulation 3 of the ITCR 2015, including obtaining valid self-certifications as required by the CRS or FATCA agreements. Penalties are calculated per account holder or controlling person for whom the due diligence procedures were not correctly applied. The maximum penalty amount has not been specified in the regulation.

EMA Comment: *The proposed per-account penalty approach could lead to disproportionately large penalties, particularly for financial institutions managing large volumes of accounts. A per-account penalty may escalate quickly for minor procedural lapses, such as administrative delays, which are often outside the institution's control.*

A more proportional penalty system would consider the severity of the failure, allowing RFIs to demonstrate the nature of the issue. Additionally, smaller institutions, with fewer resources, may face undue financial burdens from penalties, while larger institutions may be better equipped to absorb them. A more flexible penalty regime, with scaling and opportunities for mitigation, would help balance enforcement with fairness, fostering a more equitable regulatory environment.

Furthermore, providing a "grace period" or a warning system for first-time or minor breaches could help firms adjust to the new regulations without facing harsh penalties immediately.

Regulation 22B: Penalties for failure to comply with record-keeping requirements

No further comment other than to note that the maximum penalty amount has not been specified in the regulation.

Regulation 22C: Penalties for late returns

No further comment other than to note that the maximum penalty amount has not been specified in the regulation.

Regulation 22D: Penalties for inaccurate or incomplete reports

No further comment other than to note that the maximum penalty amount has not been specified in the regulation.

Regulation 22E: Penalties for failure to provide notification to individual reportable persons

No further comment other than to note that the maximum penalty amount has not been specified in the regulation.

Regulation 22F: Penalties for failure to register with HMRC

The regulation introduces penalties for failing to register with HMRC as required under regulation 10A. It applies to reporting financial institutions, non-reporting financial institutions, and UK representatives. Penalties include an initial fine (not exceeding a specified amount) and daily fines for continued non-compliance after the issuance of a penalty notice. The maximum penalty amounts have not been specified in the regulation.

EMA Comment: *Comprehensive and timely guidance on the registration requirements under regulation 10A is essential to mitigate non-compliance. Such guidance should clearly outline the obligations, timelines, and procedural steps to ensure that institutions fully understand their responsibilities. Additionally, ongoing communication and education efforts will be crucial to help institutions understand the new requirements and the importance of compliance.*

Regulation 22G: Penalties for failure to provide information

No further comment other than to note that the maximum penalty amount has not been specified in the regulation.

Regulation 22H: Penalties for failure to provide a valid self-certification

No further comment other than to note that the maximum penalty amount has not been specified in the regulation.

Regulation 22I: Reasonable excuse

This regulation establishes a "reasonable excuse" provision, which allows institutions or individuals to avoid penalties under specified regulations if they can demonstrate a valid reason for non-compliance to HMRC or a tribunal. It also defines circumstances that do not qualify as reasonable excuses, such as insufficiency of funds or reliance on another party. Additionally, it provides a continuation clause, allowing the reasonable excuse to be considered valid if the failure is promptly remedied after the excuse ceases.

EMA Comment: *While reliance on another party is excluded as a reasonable excuse, the guidance could clarify whether this applies strictly to operational delegation (e.g., relying on third-party service providers) or could extend to cases where incorrect information was provided by external parties (e.g. account holders, controlling persons).*

Regulation 22J: Duplication of liability to penalties

This regulation addresses the potential for duplication of penalties under multiple regulations for the same act or omission by a reporting financial institution or UK representative. It stipulates that penalties cannot be imposed under more than one of the specified regulations (i.e. Regulations 22A, 22B, and 22D) for the same failure. Instead, HMRC officers will determine the most appropriate penalty based on the circumstances.

EMA comment: *The regulation allows HMRC officers to choose the "correct or appropriate" penalty, but it does not specify the criteria for this determination. Guidance could clarify factors considered, such as the severity, intent, or impact of the non-compliance. The process by which HMRC officers determine the appropriate penalty should be transparent, with institutions informed of the reasons for the decision.*

Regulation 22K: Assessment of penalties by HMRC

This regulation outlines the authority of HMRC officers to assess penalties under regulations 22A to 22H, including setting the penalty amount as they deem "correct or appropriate." It specifies requirements for notifying the individual or entity subject to the penalty and details the conditions under which assessments can be adjusted. Additionally, it allows for further assessments if an earlier penalty amount is deemed insufficient.

EMA comment: *The regulation leaves significant discretion to HMRC officers in determining the penalty amount. Providing clear criteria or factors that must be considered (e.g., the nature of the non-compliance, intent, financial impact) would improve transparency and consistency. With respect to further assessments on failure that has already been penalised,*

there should be clear criteria or factors that would trigger, and, furthermore, there should be a limit on the time on which a further assessment be made (e.g. six months after the imposition of the initial penalty) and a cap on the amount by which the penalty is increased (e.g. no more than 100% of the initial penalty).

The regulation could differentiate between procedural errors (e.g., late filings) and substantive non-compliance (e.g., deliberate inaccuracies) in setting penalty amounts to ensure proportionality.

Regulation 22L: Time limits and treatment of penalties

No further comment.

Regulation 22M: Right to appeal against penalty assessments by HMRC

No further comment.

Regulation 22N: Procedure on appeal

No further comment.

Members of the EMA, as of January 2024

AAVE LIMITED
Airbnb Inc
Airwallex (UK) Limited
Allegro Group
Amazon
American Express
ArcaPay UAB
Banked
Bitstamp
BlaBla Connect UK Ltd
Blackhawk Network EMEA Limited
Boku Inc
Booking Holdings Financial Services International Limited
BVNK
CashFlows
Circle
Citadel Commerce UK Ltd
Contis
Corner Banca SA
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ECOMMPAY Limited
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eToro Money
Etsy Ireland UC
Euronet Worldwide Inc
Facebook Payments International Ltd
Financial House Limited
First Rate Exchange Services
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IDT Financial Services Limited
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One Money Mail Ltd
OpenPayd
Own.Solutions
Park Card Services Limited
Paymentsense Limited
Paynt
Payoneer Europe Limited
PayPal Europe Ltd
Paysafe Group
Paysend EU DAC
Plaid
PPRO Financial Ltd
PPS
Ramp Swaps Ltd
Remitly
Revolut
Ripple
Securiclick Limited
Segpay
Skrill Limited
Soldo Financial Services Ireland DAC
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