



Income Tax (Automatic Exchange of Information) Regulations 2017

No: 2017/02

Contents

1	Title	2
2	Commencement	2
3	Interpretation	2
Part 1		
Due diligence		
4	Due diligence requirements	4
5	Modifications to due diligence procedures	5
Part 2		
Reporting and record keeping		
6	Reporting obligation	6
7	Electronic return system	6
8	Notification to individual reportable persons	7
9	Non-resident reporting financial institution's Niue representative	7
<i>Records</i>		
10	Records	7
11	Inspection of books, etc and provision of information and assistance	8
<i>General</i>		
12	Confidentiality	8
13	Use of service providers	9
Part 3		
Penalties for breach of obligations		
<i>Penalties for breach of obligations</i>		
14	Penalties for failure to comply with Regulations	9
15	Default daily penalty	9
16	Penalties for false, inaccurate, or misleading information	9
17	Matters to be disregarded in relation to liability to penalties	9
18	Assessment of penalties	10
19	Right to appeal against penalty	10
20	Procedure on appeal against penalty	10
21	Increased daily default penalty	10
22	Enforcement of penalties	11
23	Regulations have effect despite arrangement	11

Schedule 1
Excluded accounts
Schedule 2
Participating jurisdictions
Schedule 3
Alternative reading of section VIIB of CRS

Pursuant to section 152(d) of the Income Tax Act 1961, Cabinet makes the following regulations –

1 Title

These regulations are the Income Tax (Automatic Exchange of Information) Regulations 2017.

2 Commencement

- (1) These regulations come into force on the day after the date on which they are made in accordance with Article 13 of the Constitution.

3 Interpretation

- (1) In these regulations, unless the context otherwise requires, –

Act means the Income Tax Act 1961

Court means the High Court of Niue

CRS means the common reporting standard, approved by the Council of the Organisation for Economic Co-operation and Development on 15 July 2014, that contains reporting and due diligence procedures for the exchange of information on an automatic basis; and includes –

- (a) the commentaries on the common reporting standard; and
- (b) amendments to the CRS and its commentaries made from time to time

Department means the Department of Tax

designated officer means an officer of the Department designated to exercise the powers conferred in these regulations

excluded account means –

- (a) an account as defined in Section VIIC17(a) to (f) of the CRS; or
- (b) an account listed as an excluded account in Schedule 1

Niue representative means a person who resides in Niue and who represents a financial institution that is not resident in Niue for corporate tax or income tax purposes

reporting financial institution means any Niue financial institution that is not a non-reporting financial institution. The term “Niue financial institution” means: (i) any financial institution that is resident in Niue, but excludes any branch of that financial institution that is located outside of Niue; and (ii) any branch of a financial institution that is not resident in Niue, if that branch is located in Niue

participating jurisdiction means a jurisdiction listed in Schedule 2

standardised industry coding system means a coding system used to classify establishments by business type for purposes other than tax purposes

US\$ means United States dollars, the official currency of the United States of America.

- (2) Any term defined in the Act and used, but not defined, in these regulations has the same meaning as in the Act.
- (3) Subject to in subsection (4), any term defined in the CRS but not in the Act or these regulations has the same meaning as in the CRS.
- (4) For the purpose of applying the definitions in the CRS to these regulations –
 - (a) the definition of **reportable jurisdiction** in section VIID4 of the CRS must be read as “The term “**Reportable Jurisdiction**” means any jurisdiction other than Niue”; and
 - (b) the dates for the purpose of the following definitions in section VIII of the CRS are:
 - (i) paragraph (b) of the definition of **qualified credit card issuer**: 1 July 2017
 - (ii) the definition of **lower value account**: 30 June 2017
 - (iii) the definition of **new account**: 1 July 2017
 - (iv) the definition of **pre-existing account**: 30 June 2017
 - (v) paragraph (f)(ii) of the definition of **excluded account**: 1 July 2017
- (5) For the purposes of these regulations, the definition of **high value account** in section VIII of the CRS must be read as if it read as follows: “The term “**High Value Account**” means a Preexisting Individual Account with an aggregate balance or value that exceeds USD 1 000 000 as of 30 June 2017, 31 December 2017, or 31 December of any subsequent year”.
- (6) In applying the account balance aggregation and currency rules for the purpose of the CRS and these regulations, an account balance that has a negative value is treated as having a balance or value of nil.
- (7) In determining the balance of value of an account denominated in a currency other than US\$ for the purpose of the CRS and these regulations, an institution must translate the relevant US\$ threshold amount described in the CRS or these regulations into the other currency by reference to the spot rate of exchange on the date for which the institution is determining the threshold amounts.
- (8) For the purposes of the CRS and these regulations, a financial account held by an individual as a partner of a partnership is treated as an entity account and not as an individual account.

Part 1
Due diligence

4 Due diligence requirements

- (1) Every reporting financial institution must establish, maintain, and document procedures that are designed to identify reportable accounts.
- (2) When identifying reportable accounts maintained by the institution a reporting financial institution must apply the due diligence procedures described in sections II to VII of the CRS.
- (3) The due diligence procedures must be applied as if the date specified in—
 - (a) section III D of the CRS were 31 December 31 December 2017 in respect of high value accounts and 31 December 2018 in respect of lower value accounts; and
 - (b) section V E(1) of the CRS were 30 June 2017 in the first instance and 31 December 2018 in the second instance.
- (4) For the purposes of these regulations, section III C(6) of the CRS must be read as if it read as follows: “If a Preexisting Individual Account is not a High Value Account as of 30 June 2017, but becomes a High Value Account as of 31 December 2017 or the last day of a subsequent calendar year, the Reporting Financial Institution must complete the enhanced review procedures described in paragraph C with respect to such account within the calendar year following the year in which the account becomes a High Value Account. If based on this review such account is identified as a Reportable Account, the Reporting Financial Institution must report the required information about such account with respect to the year in which it is identified as a Reportable Account and subsequent years on an annual basis, unless the Account Holder ceases to be a Reportable Person”.
- (5) For the purposes of these regulations, section V A of the CRS must be read as if it read as follows: “Entity Accounts Not Required to Be Reviewed, Identified or Reported. Unless the Reporting Financial Institution elects otherwise, either with respect to all Preexisting Entity Accounts or, separately, with respect to any clearly identified group of such accounts, a Preexisting Entity Account with an aggregate account balance or value that does not exceed USD 250 000 as of 30 June 2017, is not required to be reviewed, identified, or reported as a Reportable Account until the aggregate account balance or value exceeds USD 250 000 as of 31 December 2017 or the last day of any subsequent calendar year”.
- (6) For the purposes of these regulations, section V B of the CRS must be read as if it read as follows: “Entity Accounts Subject to Review. A Preexisting Entity Account that has an aggregate account balance or value that exceeds USD 250 000 as of 30 June 2017, and a Preexisting Entity Account that does not exceed USD 250 000 as of 30 June 2017 but

the aggregate account balance or value of which exceeds USD 250 000 as of 31 December 2017 or the last day of any subsequent calendar year, must be reviewed in accordance with the procedures set forth in paragraph D”.

- (7) For the purposes of these regulations, section V E(2) of the CRS must be read as if it read as follows: “Review of Preexisting Entity Accounts with an aggregate account balance or value that does not exceed USD 250 000 as of 30 June 2017, but exceeds USD 250 000 as of 31 December 2017 or 31 December of a subsequent year, must be completed within the calendar year following the year in which the aggregate account balance or value exceeds USD 250 000”.
- (8) An account is treated as a reportable account beginning on the date it is identified as such under the due diligence procedures described in sections II to VII of the CRS and, unless otherwise provided, information with respect to a reportable account must be reported annually in the calendar year following the year to which the information relates.
- (9) Section VII B of the CRS must be read as if it read as set out in Schedule 3.

5 Modifications to due diligence procedures

- (1) A reporting financial institution may apply, for a calendar year, the residence address procedure, as described in section IIIB(1) of the CRS, to a lower value account.
- (2) A reporting financial institution may apply, for a calendar year, section VA to C of the CRS to determine whether a pre-existing entity account is subject to the due diligence procedures described in section V of the CRS.
- (3) A reporting financial institution may apply, for a calendar year, the due diligence procedures for new accounts (as described in section IV A or VI A of the CRS) to pre-existing accounts and, if it does, the procedures described in the following provisions of the CRS apply to the new account:
 - (a) section III B(1):
 - (b) section 1 C:
 - (c) section III A:
 - (d) section V A.
- (4) However, a reporting financial institution must not apply the due diligence procedures for new accounts to a pre-existing account unless the institution applies the procedures to all pre-existing account it maintains, or to a clearly identifiable group of pre-existing accounts.
- (5) A reporting financial institution may apply, for a calendar year, the due diligence procedures for high value accounts (as described in section III C of the CRS) to low value accounts.

- (6) For a pre-existing entity account, a reporting financial institution may use as documentary evidence any classification in the institution's records with respect to the account holder if –
- (a) the classification was –
 - (i) determined based on a standardised industry coding system; and
 - (ii) recorded by the institution consistent with its normal business practices for purposes of AML/KYC procedures or another regulatory purpose (other than for tax purposes); and
 - (iii) implemented by the institution before the date used to classify the financial account as a pre-existing account; and
 - (b) the institution does not know or have reason to know that such a classification is incorrect or unreliable.
- (7) With respect to new entity accounts, for the purposes of determining whether a controlling person of a passive NFE is a reportable person, a reporting financial institution may only rely on a self-certification from either the account holder or the controlling person.

Part 2 Reporting and record keeping

Reporting obligations

6 Reporting obligation

- (1) For every reportable account maintained by reporting financial institution, the institution must, for the first reporting year and every following calendar year, make a return setting out the information required to be reported under section I A and B of the CRS, but subject to section 1 C to E of the CRS.
- (2) The first calendar year for an account identified as a reportable account for the purposes of the CRS is 2016.
- (3) The return must be submitted electronically in accordance with regulation 7 on or before 31 May of the year following the calendar year to which the return relates.
- (4) For the purposes of the information required to be reported under the CRS, –
- (a) references to the balance or value of an account include a nil balance or value; and
 - (b) references to paying an amount include crediting an amount.

7 Electronic return system

An information return, as required to be filed by regulation 6, must be filed electronically using whatever technology is approved or provided by the Department, in whatever form the Department requires.

8 Notification to individual reportable persons

- (1) A reporting financial institution must notify each individual reportable person that information relating to that person that is required to be reported under regulation 6 will be reported to the Customs and Revenue Department and may be transferred to the government of another territory in accordance with the relevant agreement.
- (2) The notification must be made by 31 January in the calendar year following the first year in which the account held by the individual is a reportable account maintained by the reporting financial institution.

9 Non-resident reporting financial institution's Niue representative

- (1) If a reporting financial institution is not resident in Niue, the obligations of the institution under these regulations are to be treated as if they were also the obligations of any Niue representative of the institution.
- (2) For the purposes of this regulation, —
 - (a) a reporting financial institution that is a partnership is resident in Niue if the control and management of the business of the partnership as a reporting financial institution takes place there or it is subject to financial supervision there; and
 - (b) a reporting financial institution that is not a partnership is resident in Niue if it is resident in Niue for corporation tax or income tax purposes and, in the case of a trust, if one or more of the trustees is resident in Niue.

Records

10 Records

- (1) Every reporting financial institution must keep all records that the institution obtains or creates for the purposes of complying with these regulations, including self-certifications and records of documentary evidence.
- (2) If a reporting financial institution that is required by these regulations to keep records does so electronically, the institution must retain them in an electronically readable format for the retention periods specified in subclause (4).
- (3) If a reporting financial institution obtains or creates records, as required by these regulations, in a language other than English, the institution must, upon request, provide an English translation to the Comptroller of Customs.
- (4) Records that are required by these regulations to be kept, obtained, or created by a reporting financial institution must be retained by the institution for at least 7 years following —
 - (a) in the case of self-certification, the last day on which a related financial account is open; and

- (b) in any other case, the end of the last calendar year in respect of which the record is relevant.

11 Inspection of books, etc and provision of information and assistance

- (1) A designated officer may, by notice in writing, require a financial institution to give the officer, within a period specified in the notice of not less than 14 days, any information (including copies of any books, records, or other documents) that the officer reasonably requires for any purpose relating to the administration or enforcement of these regulations.
- (2) A designated officer may require a financial institution, for the purpose of the administration or enforcement of these regulations, to do all or any of the following:
 - (a) to produce books, records, or other documentation:
 - (b) to provide information, explanations, and particulars:
 - (c) to give all assistance that the officer may reasonably require.
- (3) A designated officer may, for the purpose of the administration or enforcement of these regulations, do either or both of the following:
 - (a) make extracts from, or copies of, all or any part of the books, records, or other documents or other material made available to the officer:
 - (b) require that copies of books, records, or other documents be made available to the officer.

General

12 Confidentiality

- (1) Every official must treat information received from a reporting financial institution under these regulations as confidential, and may only disclose as much information as is necessary for the purpose of the administration or enforcement of the Act, these regulations, or any agreement or arrangement entered into by Cabinet for and on behalf of the Government of Niue for the exchange of information that relates to tax (including the automatic exchange of that information) in relation to Niue and any other country or territory.
- (2) In subclause (1), **official** means any person who –
 - (a) performs or performed, a duty in the course of administering or enforcing these regulations; or
 - (b) is or was employed in the administration or enforcement of these regulations.
- (3) A person commits an offence and is liable on summary conviction to a fine not exceeding 6 penalty units or imprisonment for not more than 6 months who breaches subsection (1) by disclosing or divulging any information, or producing any document, relating to the information received from a reporting financial institution under these regulations.

13 Use of service providers

A reporting financial institution may use a service provider to undertake the due diligence requirements under regulations 4 and 5 and the reporting obligations under regulations 6 to 8, but in such cases those obligations continue to be the obligations of the institution.

Part 3

Penalties for breach of obligations

Penalties for breach of obligations

14 Penalties for failure to comply with Regulations

- (1) A person who fails to comply with any obligation under these Regulations is liable on summary conviction to a fine not exceeding 5 penalty units or imprisonment for not more than 12 months.

15 Default daily penalty

- (1) A person is liable to a further penalty not exceeding 6 penalty units per day for each subsequent day on which a failure continues if –
- (a) a penalty under regulation 14 has been assessed; and
 - (b) the failure in question continues after the person has been notified of the assessment.

16 Penalties for false, inaccurate, or misleading information

- (1) A person is liable to a penalty not exceeding 5 penalty units if the person provides inaccurate information, in complying with an obligation under regulation 6 or in connection with such an obligation, and one of the following applies:
- (a) the inaccuracy is either deliberate or is due to a failure to comply with the due diligence requirements in regulations 4 or 5;
 - (b) the person knows of the inaccuracy at the time the information is provided but does not inform the Comptroller of Customs at that time;
 - (c) the person discovers the inaccuracy some time later and fails to take reasonable steps to inform the Comptroller of Customs.
- (2) In this section **inaccurate** information includes information that is false or misleading.

17 Matters to be disregarded in relation to liability to penalties

- (1) Liability to a penalty under regulations 14 to 16 does not arise if the person satisfies the Comptroller of Customs or (on an appeal notified to the High Court of Niue) that there is a reasonable excuse for the failure.
- (2) For the purposes of this regulation, neither of the following is a reasonable excuse:

- (a) that there is an insufficiency of funds to do something;
 - (b) that a person relies upon another person to do something.
- (3) If a person had a reasonable excuse for a failure but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

18 Assessment of penalties

- (1) If a person becomes liable to a penalty under any of regulations 14 to 16, the Comptroller of Customs may assess the penalty and, if he or she does so, must notify the person.
- (2) An assessment of a penalty under regulation 14 to 16 must be made within the period of 12 months beginning with the date on which the person became liable to the penalty.
- (3) As assessment of a penalty under regulation 16 must be made –
- (a) within 12 months after the date on which the inaccuracy first came to the attention of the Comptroller of Customs; and
 - (b) within 6 years after the date on which the person became liable to the penalty.

19 Right to appeal against penalty

A person may appeal against a penalty assessment –

- (a) on the grounds that liability to a penalty under any of regulations 14 to 16 does not arise; or
- (b) as to the amount of such a penalty.

20 Procedure on appeal against penalty

- (1) Notice of an appeal under regulation 19 must be given –
- (a) in writing; and
 - (b) before the end of the period of 30 days beginning with the date on which notification under regulation 18(1) was given; and
 - (c) to the Comptroller of Customs.
- (2) The notice must state the grounds of appeal.
- (3) On an appeal that is notified to the Comptroller of Customs, the Court may –
- (a) If the appeal is under regulation 19(a), confirm or cancel the assessment; and
 - (b) If the appeal is under regulation 19(b), either confirm the assessment or substitute another assessment that the Comptroller of Customs had the power to make.

21 Increased daily default penalty

- (1) This clause applies if –

- (a) a penalty under regulation 15 is assessed under regulation 18; and
 - (b) the failure in respect of which that assessment is made continues for more than 30 days beginning with the date on which notification of that assessment is given; and
 - (c) the person has been told that an application may be made under this clause for an increased daily penalty to be imposed.
- (2) If this clause applies, the Comptroller of Customs may apply to the Court for an increased daily penalty to be imposed on the person.
 - (3) If the Court decides that an increased daily penalty should be imposed, then for each applicable day on which the failure continues –
 - (a) the person is not liable to a penalty under regulation 15 in respect of the failure; and
 - (b) the person is liable instead to a penalty under this clause of an amount determined by the Court.
 - (4) The Court may not determine an amount exceeding \$1, 000 for each applicable day.
 - (5) If a person becomes liable to a penalty under this clause, the Comptroller of Customs must notify the person.
 - (6) The notification must specify the day from which the increased penalty is to apply.
 - (7) That day and any subsequent day is an “applicable day” for the purposes of this clause.

22 Enforcement of penalties

- (1) A penalty under these regulations must be paid before the end of the period of 30 days beginning with –
 - (a) the date on which the assessment under regulation 18 or notification under regulation 18(5) is given in respect of the penalty; or
 - (b) if a notice of appeal under regulation 20 is given, the date on which the appeal is finally determined or withdrawn.
- (2) A penalty under these regulations may be enforced as if it were income tax charged in an assessment and due and payable.

Anti-avoidance

23 Regulations have effect despite arrangement

If a person enters into any arrangement that has a main purpose of avoiding any obligation under or in connection with the application of these regulations, the regulations have effect as if the arrangements had not been entered into.

Reg 3(1)

Schedule 1
Excluded accounts

For the purposes of the Standard the following are excluded accounts.

Reg 3(1)

Schedule 2
Participating jurisdictions

Committed Jurisdictions	
Andorra	Japan
Anguilla	Jersey
Antigua and Barbuda	Korea
Argentina	Kuwait
Aruba	Latvia
Australia	Lebanon
Austria	Liechtenstein
Bahamas	Lithuania
Bahrain	Luxembourg
Barbados	Macau (China)
Belgium	Malaysia
Belize	Malta
Bermuda	Marshall Islands
Brazil	Mauritius
British Virgin Islands	Mexico
Brunei Darussalam	Monaco
Bulgaria	Montserrat
Canada	Nauru
Cayman Islands	Netherlands
Chile	New Zealand
China	Niue
Colombia	Norway
Cook Islands	Panama
Costa Rica	Poland
Croatia	Portugal
Curaçao	Qatar
Cyprus	Romania
Czech Republic	Russia
Denmark	Saint Kitts and Nevis
Dominica	Saint Lucia
Estonia	Saint Vincent and the Grenadines
Faroe Islands	Samoa
Finland	San Marino
France	Saudi Arabia

Germany	Seychelles
Ghana	Singapore
Gibraltar	Saint Maarten
Greece	Slovak Republic
Greenland	Slovenia
Grenada	South Africa
Guernsey	Spain
Hong Kong (China)	Sweden
Hungary	Switzerland
Iceland	Trinidad and Tobago
India	Turkey
Indonesia	Turks and Caicos Islands
Ireland	United Arab Emirates
Isle of Man	United Kingdom
Israel	Uruguay
Italy	Vanuatu

Reg 3(7)

Schedule 3
Alternative reading of section VIIB of CRS

Alternative Procedures for Financial Accounts held by Individual Beneficiaries of a Cash Value Insurance Contract or an Annuity Contract and for a Group Cash Value Insurance Contract or Group Annuity Contract. A Reporting Financial Institution may presume that an individual beneficiary (other than the owner) of a Cash Value Insurance Contract or an Annuity Contract receiving a death benefit is not a Reportable person and may treat such Financial Account as other than a Reportable Account unless the Reporting Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Reportable Person. A Reporting Financial Institution has reason to know that a beneficiary of a Cash Value Insurance Contract or an Annuity Contract is Reportable Person if the information collected by the Reporting Financial Institution and associated with the beneficiary contains indicia as described in paragraph B of Section III. If a Reporting Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Reportable Person, the Reporting Financial Institution must follow the procedures in paragraph B of Section III.

A Reporting Financial Institution may treat a Financial Account that is a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract as a Financial Account that is not a Reportable Account until the date on which an amount is payable to the employee/certificate holder or beneficiary, if the Financial Account that is a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contracts meets the following requirements:

Income Tax (Automatic Exchange of Information) Regulations 2017

- (a) the Group Cash Value Insurance Contract or Group Annuity Contract is issued to an employer and covers 25 or more employees/certificate holders;
- (b) the employee/certificate holders are entitled to receive any contact value related to their interests and to name beneficiaries for the benefit payable upon the employee's death; and
- (c) the aggregate amount payable to any employee/certificate holder or beneficiary does not exceed an amount denominated in the domestic currency of each Member State that corresponds to USD 1 000 000.

The term "Group Cash Value Insurance Contract" means a Cash Value Insurance Contract that (a) provides coverage on individuals who are affiliated through an employer, trade association, labour union, or other association or group; and (b) charges a premium for each member of the group (or member of a class with the group) that is determined without regard to the individual health characteristics other than age, gender, and smoking habits of the member (or class of members) of the group.

The term "Group Annuity Contract" means an Annuity Contract under which the obligees are individuals who are affiliated through an employer, trade association, labour union, or other association or group.

Approved by the Cabinet of Ministers at the Cabinet Chambers, Fale Fono,
Alofi, this

28 day of March 2017.

Signed by Hon. Sir Toke Tufukia Talagi
Premier



Countersigned by Charlene Funaki
Clerk to Cabinet



These regulations are administered by the Niue Tax Office.

These regulations were made on the 28 day of March 2017.