

**INCOME TAX (AUTOMATIC EXCHANGE OF INFORMATION)
REGULATIONS, 2015**

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Income Tax Act

CAP. 73

**INCOME TAX (AUTOMATIC EXCHANGE OF INFORMATION)
REGULATIONS, 2015**

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

PART I

PRELIMINARY

Citation

1. These Regulations may be cited as the *Income Tax (Automatic Exchange of Information) Regulations, 2015*.

Definitions

2.(1) In these Regulations,

“Annex” means the annexes of the Treaty;

“Barbados Competent Authority” means the Minister responsible for Finance;

“Barbados Revenue Authority Appeals Tribunal” means the Tribunal established by section 9 of the *Barbados Revenue Authority Act* (Act 2014-1);

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

“dormant account” means a U.S. reportable account on which there has been no financial activity other than the posting of interest or the deduction of bank

fees which are not related to the usage of the account for minimum period of 6 months;

“FATCA” means the Foreign Account Tax Compliance Act which was enacted by the U.S. Congress on the 18th March, 2010;

“Global Intermediary Identification Number” means a number assigned to a Reporting Barbados Financial Institution by the United States Inland Revenue Service for the purposes of identifying and distinguishing it from another Reporting Barbados Financial Institution;

“person in charge” means a natural person or an individual who is

- (a) a specified U.S. person;
- (b) a controlling person in a Non-U.S. Entity;

“Reporting Barbados Financial Institution” means a financial institution which operates or carries on its business in such a manner, or functions in such a way which would result in that financial institution being classified for the purposes of the Treaty as

- (a) a custodial institution;
- (b) a depository institution;
- (c) an investment entity; or
- (d) a specified insurance company;

“Treaty” means the Agreement between the Government of the United States of America and the Government of Barbados to improve international tax compliance and to implement the Foreign Account Tax Compliance Act (FATCA).

(2) The following terms have the definitions assigned to them pursuant to the Treaty:

“account holder”, “cash value insurance contract”, “custodial account”, “depository account”, “IRS”, “Non-U.S. Entity”, “specified U.S. person”, “U.S. Competent Authority”, “U.S. TIN”, “U.S. reportable account”.

PART II

REPORTING REQUIREMENTS FOR U.S. REPORTABLE ACCOUNTS

Application

3. These Regulations shall have effect for and in connection with the Treaty and in particular in connection with Annex I and Annex II of the Treaty or any other annexes of the Treaty.

Information on Reporting Barbados Financial Institutions

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

- (a) the name of the Reporting Barbados Financial Institution;
- (b) certified copies of the incorporation documents and bank registration documents for the Reporting Barbados Financial Institution;
- (c) copies of any registration documents issued to the Reporting Barbados Financial Institution by the IRS;
- (d) the categorization of the Reporting Barbados Financial Institution as determined in accordance with the Treaty;
- (e) the Global Intermediary Identification Number assigned to the Reporting Barbados Financial Institution by the IRS; and
- (f) the full name, address, designation and contact details of the natural person or individual identified and authorised by the Reporting Barbados Financial Institution to be the principal point of contact for

the Reporting Barbados Financial Institution for all purposes of compliance with these Regulations.

- (2) A Reporting Barbados Financial Institution shall
- (a) provide the notification and the information specified in paragraph (1) to the Barbados Competent Authority, in writing, whether electronically or otherwise, no later than 31st day of July of the calendar year for which that financial institution becomes a Reporting Barbados Financial Institution; and
 - (b) notify the Barbados Competent Authority of any changes to the information provided under paragraph (1) within 30 days of that change.
- (3) Where a Reporting Barbados Financial Institution ceases to be registered with the IRS for whatever reason, it shall notify the Barbados Competent Authority of that fact within 30 days of the Reporting Barbados Financial Institution ceasing to be registered.

Duties of Reporting Financial Institutions

- 5.(1) The duties of a Reporting Barbados Financial Institution shall include:
- (a) identifying a U.S. reportable account;
 - (b) identifying a specified U.S. person;
 - (c) identifying a person in charge;
 - (d) identifying a Non - U.S. Entity;
 - (e) reporting annually to the Barbados Competent Authority, in accordance with regulation 8, the information set out in regulation 9;
 - (f) complying with the applicable registration and reporting requirements, in respect of FATCA or the Treaty, which are set and published by the IRS or the US Competent Authority, as the case may be; or

(g) any other requirement as may be prescribed by the Treaty from time to time.

(2) A Reporting Barbados Financial Institution shall establish and maintain arrangements and procedures which are designed to identify and store the information required by sub-paragraphs (a), (b), (c), (d) and (e) of paragraph (1) and the arrangements and procedures shall

- (a) identify the territory in which an account holder or a person in control, as the case may be, is resident for the purposes of income tax or corporation tax or any tax of a similar character imposed by the law of that territory;
- (b) meet the due diligence procedures set out in these Regulations and the Treaty;
- (c) ensure that the due diligence procedures set out in Annex I of the Treaty are applied as required, and that the dates required by the Treaty are complied with.

Obligation to obtain and exchange information on a Non-U.S. Entity

6. A Reporting Barbados Financial Institution shall in respect of a Non-U.S. Entity, report in the form required by the IRS or the U.S. Competent Authority, as the case may be, the following information:

- (a) the name of the Non-U.S. Entity;
- (b) the address of the Non-US Entity; and
- (c) the U.S. TIN, if any.

Reporting threshold for certain U.S. reportable accounts

7.(1) A Reporting Barbados Financial Institution shall, in respect of a pre-existing Custodial Account or Depository Account where the balance or value of the Custodial Account or Depository Account is more than \$50 000 on the

30th day of June, 2014 report the information required by regulation 9 together with any information required by an annex of the Treaty.

(2) A Reporting Barbados Financial Institution shall, in respect of a pre-existing Cash Value Insurance Contract or an Annuity Contract where the balance or value of the Cash Value Insurance Contract or Annuity Contract is more than \$250 000 on the 30th day of June, 2014 report the information required by regulation 9 together with any information required by an annex of the Treaty.

(3) A Reporting Barbados Financial Institution shall, in respect of a new Custodial Account or Depository Account where the balance or value of the Custodial Account or Depository Account is more than \$50 000 on or after the 1st day of July, 2014 report the information required by regulation 9 together with any information required by an annex of the Treaty.

(4) A Reporting Barbados Financial Institution shall, in respect of a new Cash Value Insurance Contract or an Annuity Contract where the balance or value of the Cash Value Insurance Contract or Annuity Contract is more than \$250 000 on or after the 1st day of July, 2014 report the information required by regulation 9 together with any information required by an annex of the Treaty.

Effective date

8.(1) A Reporting Barbados Financial Institution shall for the purposes of the automatic exchange of information ensure that the information specified in regulation 9 is sent to the Barbados Competent Authority by the 31st day of July after the calendar year for which the information is required.

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

- (a) after the 31st day of December of the calendar year for which the information is required, in the form required by the IRS or the U.S. Competent Authority, as the case may be; or

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- (b) after the appropriate reporting period, where another reporting period is specified, in the form required by the IRS or the U.S. Competent Authority, as the case may be.
- (3) Where a Reporting Barbados Financial Institution fails to comply with paragraph (1) the Commissioner may by a notice in writing:
- (a) require the Reporting Barbados Financial Institution to submit the required information within 14 days; and
 - (b) inform the Reporting Barbados Financial Institution that a failure to comply with paragraph (1) amounts to a breach of these Regulations, and that such a breach may incur a pecuniary penalty.
- (4) Where the Commissioner seeks to impose a pecuniary penalty he shall impose that pecuniary penalty by a notice in writing and that notice in writing shall:
- (a) set out the facts and circumstances which render the Reporting Barbados Financial Institution liable to a pecuniary penalty;
 - (b) state the amount of the pecuniary penalty to be paid;
 - (c) state the date and time by which the determined pecuniary penalty should be paid; and
 - (d) inform the Reporting Barbados Financial Institution
 - (i) that they may request a review of the imposition by the Barbados Competent Authority; and
 - (ii) of the right to appeal to the Barbados Revenue Authority Appeals Tribunal.
- (5) Where a Reporting Barbados Financial Institution does not deliver the required information by the time specified in paragraphs (1) and (3), the Commissioner may by a notice in writing impose a pecuniary penalty of \$10,000 on that Reporting Barbados Financial Institution.

(6) A pecuniary penalty imposed under paragraph (5) is due and payable from the date on which its payment is required in the written notice and where the Reporting Barbados Financial Institution continues to fail to submit the required information to the Barbados Competent Authority it shall be liable to a further pecuniary penalty of \$ 5 000 for each day for which the failure to submit the required information continues.

(7) The Barbados Competent Authority shall where the Reporting Barbados Financial Institution fails to pay the pecuniary penalty send such further notices in writing as the Barbados Competent Authority considers necessary in the circumstances and in the interest of fairness and justice.

Obligation to obtain and exchange information on U.S. reportable accounts

9.(1) A Reporting Barbados Financial Institution shall for a specified U.S. person and a person in charge obtain and report the required information on the following U.S. reportable accounts:

- (a) depository accounts;
- (b) custodial accounts;
- (c) cash value insurance contracts;
- (d) annuity contracts; and
- (e) U.S. reportable accounts other than custodial or depository accounts, or cash value insurance contracts or annuity contract.

(2) A Reporting Barbados Financial Institution shall, where applicable, in respect of a depository account obtain and report, in the form required by the IRS or the U.S. Competent Authority, as the case may be, the following information:

- (a) the full name of the account holder;
- (b) the place of birth of the account holder, where the place of birth is a place in the United States of America;

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- (c) the mailing address and residential address of the account holder in the United States of America;
 - (d) the mailing address and residential address of account holder in Barbados;
 - (e) the U.S. TIN of the specified U.S. person;
 - (f) the account number of the account or the financial equivalent;
 - (g) the denomination of the currency in which the depository account is held or will be paid;
 - (h) the Global Intermediary Identification Number and the name of the Reporting Barbados Financial Institution;
 - (i) the account balance or value on the 31st day of December of the calendar year for which the report is to be made;
 - (j) the existence of any power of attorney or any other form of signatory authority granted to a person with an address in the United States of America;
 - (k) any standing instructions to transfer funds to an account maintained in the United States of America; and
 - (l) the total gross amount paid or credited to the account.
- (3) A Reporting Barbados Financial Institution shall, where applicable, in respect of a custodial account obtain and report, in the form required by the IRS or the U.S. Competent Authority, as the case may be, the following information:
- (a) the full name of the account holder;
 - (b) the place of birth of the account holder, where the place of birth is a place in the United States of America;
 - (c) the mailing address and residential address of the account holder in the United States of America;

- (d) the mailing address and residential address of account holder in Barbados;
- (e) the U.S. TIN of the specified U.S. person;
- (f) the account number of the account or the financial equivalent;
- (g) the denomination of the currency in which the custodial account is held;
- (h) the Global Intermediary Identification Number and the name of the Reporting Barbados Financial Institution;
- (i) the account balance or value on the 31st day of December of the calendar year for which the report is to be made;
- (j) the total gross amount of interest paid or credited to the account;
- (k) the total gross amount of dividends paid or credited to the account;
- (l) the total gross amount of other income paid or credited to the account;
- (m) the total gross proceeds from the sale or redemption of property paid or credited to the account;
- (n) any standing instructions to transfer funds to an account maintained in the United States of America; and
- (o) the existence of any power of attorney or any other form of signatory authority granted to a person with an address in the United States of America.

(4) A Reporting Barbados Financial Institution shall, where applicable, in respect of a Cash Value Insurance Contract or an Annuity Contract obtain and report, in the form required by the IRS or the U.S. Competent Authority, as the case may be, the following information:

- (a) the full name of the account holder;
- (b) the place of birth of the account holder, where the place of birth is a place in the United States of America;

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- (c) the mailing address and residential address of the account holder in the United States of America;
 - (d) the mailing address and residential address of the account holder in Barbados;
 - (e) the U.S. TIN of the specified U.S. person;
 - (f) the account number of the account or the financial equivalent;
 - (g) the denomination of the currency in which the Cash Value Insurance Contract is held or will be paid;
 - (h) the Global Intermediary Identification Number and the name of the Reporting Financial Institution;
 - (i) the annual amount reported to the policy holder as the surrender value of the account;
 - (j) the redemption value of the account as calculated by the financial institution on 31st day of December of the calendar for which the report is to be made;
 - (k) any partial surrenders made in respect of the Cash Value Insurance Contract or an Annuity Contract during the calendar year;
 - (l) any standing instructions to transfer funds to an account maintained in the United States of America; and
 - (m) the existence of any power of attorney or any other form of signatory authority granted to a person with an address in the United States of America.
- (5) A Reporting Barbados Financial Institution shall, where applicable, in respect of U.S. reportable accounts other than custodial or depository accounts, or cash value insurance contracts or annuity contracts, obtain and report, in the form required by the IRS or the U.S. Competent Authority, as the case may be, the following information:
- (a) the full name of the account holder;

- (b) the place of birth of the account holder, where the place of birth is a place in the United States of America;
 - (c) the mailing address and residential address of the account holder in the United States of America;
 - (d) the mailing address and residential address of the account holder in Barbados;
 - (e) the U.S. TIN of the specified U.S. person;
 - (f) the account number of the account or the financial equivalent;
 - (g) the Global Intermediary Identification Number and the name of the Reporting Financial Institution;
 - (h) the annual amount reported to the policy holder as the redemption value of the account;
 - (i) the redemption value of the account as calculated by the financial institution on the 31st day of December of the calendar year for which the report is to be made;
 - (j) any partial redemption made in respect of the account during the calendar year;
 - (k) the total gross amount paid or credited to the account including the total aggregate of the amount of any redemption made to the account;
 - (l) any standing instructions to transfer funds to an account maintained in the United States of America; and
 - (m) the existence of any power of attorney or any other form of signatory authority granted to a person with an address in the United States of America.
- (6) Where at the 31st day of December for any calendar year a Reporting Barbados Financial Institution maintains no U.S. reportable accounts, that Reporting Barbados Financial Institution shall forward a report to the Barbados Competent Authority which states that fact.

Closed or dormant U.S. reportable accounts

10.(1) A Reporting Barbados Financial Institution shall where a U.S. reportable account has been closed or surrendered in the calender year of the report, report the information required by regulation 9, in the form required by the IRS or the U.S. Competent Authority, as the case may be, and that report shall state the balance on the day before the closure or surrender of the U.S. reportable account.

(2) A Reporting Barbados Financial Institution shall in respect of a U.S. reportable account which is dormant or has been classified as a dormant account report the information specified in regulation 9, in the form required by the IRS or the U.S. Competent Authority, as the case may be.

Duty to maintain records of relevant information

11.(1) A Reporting Barbados Financial Institution shall establish and keep records of all information collected for U.S. reportable accounts.

(2) The records referred to in paragraph (1) shall

- (a) record the information collected for the purposes of regulation 5;
- (b) record the information collected for the purposes of regulation 6;
- (c) record the information submitted for the purposes of regulation 9; and
- (d) ensure that a record is made of the evidence obtained to support information collected under these Regulations.

(3) The Reporting Barbados Financial Institution shall ensure that the records made for the purposes of this regulation are kept for a minimum period of 5 years after the end of the calender year for which the record was made.

Appointment of Agents or Third Parties

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

(2) Where a person is appointed under paragraph (1), the Reporting Barbados Financial Institution

(a) shall at all times, have access to and be able to produce, where so requested by the Barbados Competent Authority, the records and documentary evidence used to identify and report on U.S. reportable accounts; and

(b) is responsible for any failure of that person to carry out his obligations notwithstanding that the actions were the actions of that person or that the failure to act was the failure by that person to act.

Issuance of Guidelines

13.(1) The Barbados Competent Authority may issue guidelines in such form as it considers appropriate for the purpose of aiding compliance with these Regulations.

(2) The guidelines and any amendment to the guidelines shall be published in the *Official Gazette*.

PART III
GENERAL PROVISIONS

Confidentiality and Safeguards

14.(1) The Barbados Competent Authority and a Reporting Barbados Financial Institution shall in respect of any information received pursuant to the Treaty ensure that

- (a) the information is treated as confidential ; and
- (b) the information is only disclosed to an authority that is legally entitled to the information, including
 - (i) the courts and the prosecution; or
 - (ii) administrative bodies or any other body which is involved in the collection, assessment, administration of, enforcement or the determination of appeals in relation to the taxes covered by the Treaty.

(2) Subject to paragraph (1), any person, including the courts and administrative bodies and any other body that is legally entitled to the information, shall use the information for taxation purposes only.

(3) The Barbados Competent Authority and a Reporting Barbados Financial Institution shall ensure that the information exchanged, for the purposes of these Regulations is subject to,

- (a) the confidentiality requirements and any other safeguards provided in the Treaty;
- (b) any limitation to the access and use of the information exchanged and, to the extent needed to ensure the necessary level of protection of personal data, in accordance with the safeguards, which may be specified by the Treaty.

Inspection and Compliance

15.(1) The Barbados Competent Authority may require a Reporting Barbados Financial Institution to

- (a) provide the Barbados Competent Authority, with information, including copies of any relevant books, documents or other records, or any electronically stored information, that the Barbados Competent Authority may reasonably require within the time specified by the Barbados Competent Authority; or
- (b) make available to the Barbados Competent Authority, all copies of books, documents or other records, or any electronically stored information, in the possession or control of the Reporting Barbados Financial Institution.

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

Power to require correction

16.(1) The Barbados Competent Authority may, where a Reporting Barbados Financial Institution fails to submit a return or submits a return that contains administrative or other minor errors, the Barbados Competent Authority shall inform the Reporting Barbados Financial Institution of the omission or administrative or other minor error, and request that the return or any new or corrected information be submitted to the Barbados Competent Authority within 14 days.

(2) The Barbados Competent Authority may impose a penalty where a Reporting Barbados Financial Institution fails to comply with a request made in accordance with the paragraph (1).

Offences

- 17.** A Reporting Barbados Financial Institution which
- (a) knowingly fails to make a report as required under regulations 5(1), 6, 9 or 10;
 - (b) knowingly fails to establish and maintain the arrangements and procedures required by regulation 5(2);
 - (c) fails to comply with a requirement of the Barbados Competent Authority under regulation 15;
 - (d) fraudulently or negligently makes a false report, whether in its entirety or in any particular part or with regard to any stated fact;
 - (e) with intent to avoid the provisions of these Regulations, alters, destroys, mutilates, defaces, hides or removes any document or information, including documents or information electronically held; or
 - (f) wilfully obstructs the Barbados Competent Authority under regulation 15;

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

Pecuniary Penalties

- 18.(1)** Notwithstanding regulation 17, the Commissioner may impose a pecuniary penalty of \$10,000 if the Reporting Barbados Financial Institution:
- (a) fails to notify the Barbados Competent Authority of any of the matters specified in regulations 5(1), 6, 9, 10, and 15;
 - (b) fails to implement arrangement or procedures specified in regulation 5(2);

- (c) without reasonable cause fails to submit any new or corrected information within the prescribed time period after having been given notice that the return contains an administrative or other minor error and that the new or corrected information is required.
- (2) Before imposing a penalty on a Reporting Barbados Financial Institution the Commissioner or an authorised officer of the Barbados Revenue Authority shall provide the Reporting Barbados Financial Institution with a notice in writing, and that notice in writing shall:
- (a) set out the facts and circumstances that, renders the Reporting Barbados Financial Institution liable to a penalty;
 - (b) state the amount of the penalty to be paid;
 - (c) state the time by which the determined penalty should be paid; and
 - (d) inform the Reporting Barbados Financial Institution
 - (i) that they may request a review of the imposition of the penalty by the Barbados Competent Authority; and
 - (ii) of the right to appeal to the Barbados Revenue Authority Appeals Tribunal.
- (3) Where the Reporting Barbados Financial Institution is given a penalty under paragraph (1) and fails to comply or pay the penalty, that Reporting Barbados Financial Institution is liable to a further penalty of \$5 000 for each day for which the failure to comply or to pay the penalty continues.
- (4) The Barbados Competent Authority shall, where the Reporting Barbados Financial Institution fails to pay the penalty, send such further notices in writing, in accordance with paragraph (2) as the Barbados Competent Authority considers necessary in the circumstances and in the interest of fairness and justice.

Power to not enforce a pecuniary penalty

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

8 or 18, by an instrument in writing state in detail the reason for its failure to comply with a requirement under regulation 15 or the circumstances which lead to its failure to comply, and request a cancellation of the imposed penalty.

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

- (a) that it does not have sufficient funds; or
- (b) that a person referred to in regulation 12 has failed to carry out the duties and obligations imposed by the Treaty and these Regulations

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

(3) The Barbados Competent Authority may, where it is satisfied that there is a reasonable excuse for the failure to comply resulting in the imposition of a penalty, waive the penalty by a notice in writing.

Right to appeal against a pecuniary penalty

20. A Reporting Barbados Financial Institution may, within 14 days after the date of a notice in writing appeal to the Barbados Revenue Authority Appeals Tribunal against

- (a) the penalty on the grounds that liability to a penalty under these Regulations did not arise; or
- (b) as to the amount of the penalty imposed.

Procedure on appeal against penalty

21.(1) Notice of an appeal must be given in writing

- (a) to the Barbados Revenue Authority Appeals Tribunal in accordance with the procedures of that Tribunal;
- (b) to the Barbados Competent Authority; and
- (c) must state the grounds of appeal.

(2) On hearing the appeal, the Barbados Revenue Authority Appeals Tribunal may:

- (a) confirm the penalty; or
- (b) cancel the penalty.

Appeals to the High Court

22.(1) A Reporting Financial Institution that is aggrieved by a decision of the Commissioner or Barbados Revenue Authority Appeals Tribunal, may appeal to a Judge in Chambers against the decision within 30 days after the notice is served on it, or the assessment or re-assessment of the penalty is confirmed by the Commissioner or Barbados Revenue Authority Appeals Tribunal.

(2) At the conclusion of the proceedings held in accordance with paragraph (1), the Judge of the High Court may by order

- (a) confirm the assessment or re-assessment of the penalty; or
- (b) refer the assessment or re-assessment back to the Commissioner with directions for making a final assessment of the penalty.

Transitional Provisions

23. Notwithstanding regulations 8 and 9, in respect of a specified U.S. person and a person in charge

- (a) for the calendar year 2014, a Reporting Barbados Financial Institution shall only report the following:
 - (i) the full name of the account holder;
 - (ii) the mailing address and residential address which the account holder has in the United States of America;
 - (iii) the mailing address and residential address of the account holder in Barbados;
 - (iv) U.S. TIN for each specified U.S. person ;

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- (v) account number or other financial equivalent; and
 - (vi) the account balance or value on the 31st day of December, 2013 and where the account has been closed the balance or value of the account on the day before the date of closure;
- (b) for the calendar year 2015, a Reporting Barbados Financial Institution shall only report the following:
- (i) the full name of the account holder;
 - (ii) the mailing address and residential address which the account holder has in the United States of America;
 - (iii) the mailing address and residential address of the account holder in Barbados;
 - (iv) U.S. TIN for each U.S. specified person ;
 - (v) account number or other financial equivalent;
 - (vi) the account balance or value on the 31st day of December, 2014 and where the account has been closed the balance or value of the account on the day before the date of closure; and
 - (vii) the total gross amount paid or credited to the account including any interest, dividends, the aggregate amount of any redemption payments made to the account.

Made by the Minister this 3rd day of September, 2015.

CHRISTOPHER SINCKLER
Minister Responsible for Finance