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FEDERAL INLAND REVENUE SERVICE (ESTABLISHMENT)
ACT, 2007

INCOME TAX (COMMON REPORTING STANDARD)
REGULATIONS, 2019



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**FEDERAL INLAND REVENUE SERVICE (ESTABLISHMENT)
ACT, 2007**

**INCOME TAX (COMMON REPORTING STANDARD)
REGULATIONS, 2019**

[1st Day of July, 2019]

Commence-
ment.

In exercise of the powers conferred by Section 61 of the Federal Inland Revenue Service (Establishment) Act, No. 13 of 2007 ("the Act") and all other powers enabling it in that behalf, the Federal Inland Revenue Service Board established under Section 3(1) of the Act ("the Board") with the approval of the Minister, makes the following Regulations—

PART I—PRELIMINARY

1. These Regulations give effect to the provisions of—

Purpose.

(a) Multilateral Convention on Mutual Administrative Assistance in Tax Matters ("MAC") and the Multilateral Competent Authority Agreement ("MCAA") on Automatic Exchange of Financial Account Information, signed by Federal Republic of Nigeria ("Nigeria") on 17th August 2017;

(b) the Common Reporting Standard ("CRS") and its Commentaries ("CRS Commentaries") contained in Parts II.B and III.B of the Standard for Automatic Exchange of Financial Account Information in Tax Matters approved by the Council of the Organisation for Economic Cooperation and Development (OECD) on 15th July 2014, as set out in Parts II and III respectively, of the AEOI Implementation and Compliance Guidelines ("the Guidelines");

(c) Sections 8(1)(i), 8(1)(r), 8(2), 27(1) and 29 of the Act; and

(d) Sections 58 and 60 of the Companies Income Tax Act, CAP C21, Laws of the Federation of Nigeria, 2004.

2. These Regulations specify matters including, but not limited to—

Scope.

(a) matters that the Standard foresees to be specified by Nigeria with respect to Financial Institutions' implementation and compliance with "the Guidelines";

(b) requirements regarding the due diligence procedures with respect to financial accounts and the reporting of financial account information to the Federal Inland Revenue Service ("the Service") that Financial Institutions shall comply with when implementing and applying the Guidelines; and

(c) requirements with respect to the effective implementation of the CRS and the CRS Commentaries in Nigeria.

PART II—REQUIREMENTS OF THE COMMON REPORTING STANDARD

Status of the
Guidelines.

3. The CRS and the CRS Commentaries as contained in the Guideline as well as the Guidelines issued by the Service pursuant to regulations 7 of these Regulations shall be binding and Reporting Financial Institutions shall apply the CRS in accordance with the Commentaries, as may from time to time be issued by the Service.

Due
Diligence
Requirements.

4.—(1) Reporting Financial Institution shall establish, maintain and document the procedures required to be applied by this regulation that are designed to identify Reportable Accounts maintained by the institution.

(2) Reporting Financial Institution shall identify Reportable Accounts maintained by the institution by applying the due diligence procedures described in Sections II to VII of the CRS, and the due diligence procedures shall be applied consistently with the CRS Commentaries contained in part III of the Guidelines.

(3) An account shall be treated as a Reportable Account beginning from the date it is identified as such, pursuant to the due diligence procedures in Sections II to VII of the CRS and, unless otherwise provided, information with respect to a Reportable Account shall be reported annually in the calendar year following the year to which the information relates.

(4) For the purposes of these Regulations, an account with a balance or value that is negative is deemed to have a balance or value equal to nil.

(5) In determining the balance or value of an account denominated in a currency, other than United State Dollars (“USD”) for the purposes of the CRS and these Regulations, a Reporting Financial Institution shall translate the relevant USD threshold amount described in the CRS into the other currency by reference to the foreign exchange spot rate on the date for which the institution is determining the threshold amount.

(6) With respect to New Entity Accounts, for the purposes of determining whether a Controlling Person of a Passive Non-Financial Entity (“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.

(7) Reporting Financial Institution may use service provider to fulfil the reporting and due diligence obligations, but these obligations shall remain the responsibility of the Reporting Financial Institution.

(8) Reporting Financial Institution may apply the due diligence procedures for New Accounts, as described in Section IV or VI of the CRS, to Pre-existing Accounts, and the due diligence procedures for High Value Accounts, as described in paragraph C of Section III of the CRS, to Lower Value Accounts.

(9) Reporting Financial Institution may apply the residence address procedures as described in sub-paragraph B (1) of Section III of the CRS to a Lower Value Account.

(10) Reporting Financial Institutions may apply paragraphs A to C of Section V 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.

5.—(1) A Reporting Financial Institution shall, in respect of the calendar year 2019 and every following calendar year, file with the Service an Information Return setting out the information required to be reported as described in paragraphs A and B of Section I of the Guidelines, subject to paragraphs C to E of the same Section, in relation to every Financial Account identified as a Reportable Account that is maintained by the institution at any time during a calendar year.

Reporting
Requirements.

(2) Where a Reporting Financial Institution applies the due diligence, procedures described in regulation 4 of these Regulations for a calendar year and no account is identified as a Reportable Account, the institution shall file with the Service an Information Return which provides that the institution maintains no such Reportable Accounts in respect of that year.

(3) An Information Return, required to be filed by this regulation, shall be filed electronically using such technology as may be approved or provided by the Service, and in such form as the Service may require.

(4) An Information Return, required to be filed by these Regulations, shall be submitted on or before 31st May of the year following the calendar year to which the return relates.

6.—(1) Reporting Financial Institution shall keep records of the steps undertaken and any evidence relied upon or any record that the institution obtains or creates for the purpose of complying with these Regulations, including self-certifications and records of Documentary Evidence.

Record-
Keeping
Requirements.

(2) Reporting Financial Institution required by these Regulations to keep records that does so electronically shall retain them in an electronically readable format for the retention period referred to in sub-regulation (4) of this regulation.

(3) Reporting Financial Institution that obtains or creates records, as required under these Regulations, in a language other than English shall provide an English translation to the Service.

(4) Reporting Financial Institution that is required to keep, obtain or create records under these Regulations shall retain those records for a period of at least six years following the end of the last calendar year in respect of which the record is relevant.

PART III—ADMINISTRATION

Functions
and Powers
of the
Service.

7. The Service shall administer and enforce compliance with these Regulations and issue Guidelines for such purposes. Accordingly, the Service may exercise all powers vested in it under the Act and other relevant laws to realise that purpose.

Access and
Inspection
of Books.
etc. and
Provision of
Information
and
Assistance.

8.—(1) The Service may, by notice in writing, at all reasonable times, enter any premises or place of business of a Financial Institution, or require a Financial Institution to give it within such time, not less than 14 days, as may be provided by the notice, with such information as the Service may reasonably require for any purpose relating to the administration or enforcement of these Regulations, including—

(a) determining whether information included in an Information Return is correct and complete ;

(b) determining whether information not included in an Information Return was rightfully excluded ; and

(c) examining the procedures put in place by the institution for the purposes of ensuring compliance with that institution's obligations under these Regulations.

(2) The Service may require a Financial Institution to produce books, records or other documentation; to provide information, explanations and particulars; and to give all assistance which the Service may reasonably require relating to the administration or enforcement of these Regulations.

(3) The Service may make extracts from or copies of all or any part of the books, records or other documents or other materials made available to the Service or require that copies of books, records or other documents be made available to the Service for any purpose relating to the administration or enforcement of these Regulations.

(4) The Service may seek the cooperation of any person or Agency of Government for the purposes of administration and enforcement of these Regulations.

Confidentiality
of the CRS
Information
Return.

9. The Service shall preserve the confidentiality of an Information Return at least to the same extent that would apply if such information were provided to it under the provisions of the domestic laws, the MAC or the MCAA.

PART IV—NON-COMPLIANCE AND PENALTIES

Non-
Compliance
and
Administrative
Penalties.

10.—(1) Where a person fails to comply with a duty or obligation imposed by these Regulations, the Service shall impose an administrative penalty of ₦10,000,000.00 for each of such failure, and ₦1,000,000.00 for every month in which the failure continues.

(2) Where a Reporting Financial Institution fails to file an Information Return as and when required under regulation 5 of these Regulations, the Service shall impose an administrative penalty of ₦10,000,000.00 in the first month in which the failure occurs and ₦1,000,000.00 for each subsequent month the failure continues.

(3) Where a person makes a false statement, false report or false declaration or gives any false information or omission in respect of any information required to be included on an Information Return under regulation 5 of these Regulations, the Service shall impose an administrative penalty of ₦5,000,000.00 and such person may also be liable to penalties as prescribed in the Act.

(4) Where a Financial Institution or a person fails to comply with the requirement of the Service in the exercise or performance of its powers or duties under these Regulations, the Service shall impose an administrative penalty of ₦1,000,000.00 in the first instance and ₦100,000.00 for each subsequent day the failure continues.

(5) Where a Reporting Financial Institution fails to keep records in accordance with regulation 6 of these Regulations, the Service shall impose an administrative penalty of ₦10,000,000.00 in the first month in which the failure occurs and ₦1,000,000.00 for each subsequent month the failure continues.

11.—(1) Penalties shall not be imposed under regulation 10 of these Regulations where the Service is satisfied that there is a reasonable excuse for such omission or failure.

Exemption
from
Administrative
Penalties.

(2) For the purposes of sub-regulation (1) of this regulation, neither of the following is a reasonable excuse—

- (a) that there is an insufficiency of funds to do something ; or
- (b) that a person relies upon another person to do something.

(3) Where a person had a reasonable excuse for a failure but the excuse has ceased, the person shall be treated as having continued to have the excuse, provided the failure is remedied within a reasonable time after the excuse ceased.

PART V—SUPPLEMENTARY AND GENERAL PROVISIONS

12. Where a Financial Institution or any person enters into any arrangement or engages in a practice, and it can reasonably be inferred that the main purpose or one of the main purposes of such arrangement, is to avoid an obligation imposed under these Regulations, such Financial Institution or person shall be subject to the obligation imposed under these Regulations, as where the person had not entered into the arrangement or engaged in the practice.

Anti-
Avoidance.

13.—(1) In these Regulations and for the purposes of applying the Guidelines, unless the context otherwise requires—

“*AML*” means Anti-Money Laundering ;

“*CRS*” means the Common Reporting Standard contained in Part II.B of the Standard for Automatic Exchange of Financial Account Information in Tax Matters approved by the Council of the OECD on 15th July 2014, as set out in part II of the Guidelines, as may, from time to time, be issued by the Service ;

“*CRS Commentaries*” means the Commentaries on the CRS contained in Part III.B of the Standard for Automatic Exchange of Financial Account Information in Tax Matters approved by the Council of the OECD on 15th July 2014, as set out in the part III of the Guidelines, as may, from time to time, be issued by the Service ;

“*Excluded Account*” means an account as defined in sub-paragraphs C(17)(a) to (f) of Section VIII of the Guidelines ;

“*The Guidelines*” means the detailed plans of implementation and compliance contained in and known as “Income Tax (Common Reporting Standard) Implementation and Compliance Guidelines” comprising the CRS and the CRS Commentaries or as may from time to time be issued by the Service ;

“*Information Return*” means a report, setting out certain information as specified by these Regulations, which a Reporting Financial Institution is required to file with the Service ;

“*KYC*” means Know Your Customer ;

“*Minister*” means the Minister charged with the responsibility for Finance ;

“*Nigeria Financial Institution*” means—

(a) any Financial Institution that is resident in Nigeria, but excludes any branch of that Financial Institution that is located outside of Nigeria ; and

(b) any branch of a Financial Institution that is not resident in Nigeria, where that branch is located in Nigeria ;

“*NFE*” means Non-Financial Entity or any entity that is not a Financial Institution ;

“*Non-Reporting Financial Institution*” means a Financial Institution as defined in sub-paragraphs B(1)(a), (b), (d) and (e) of Section VIII of the CRS as contained in Part II of the Guidelines ;

“*Participating Jurisdiction*” means a jurisdiction as defined in Section VIII(A)(2) of the CRS as set out in Part II to the Guidelines ;

“Pre-existing Account” means—

(a) a Financial Account maintained by a Reporting Financial Institution as of 30th June 2019 ; or

(b) any Financial Account of an Account Holder, regardless of the date such Financial Account was opened where :

(i) the Account Holder also holds with the Reporting Financial Institution (or with a Related Entity within the same jurisdiction as the Reporting Financial Institution) a Financial Account that is a Pre-existing Account under sub-paragraph (a) above ;

(ii) the Reporting Financial Institution (and, as applicable, the Related Entity within the same jurisdiction as the Reporting Financial Institution) treats both of the aforementioned Financial Accounts, and any other Financial Accounts of the Account Holder that are treated as Pre-existing Accounts under sub-paragraph (b) as a single Financial Account for purposes of satisfying the standards of knowledge requirements set forth in paragraph A of Section VII of the CRS, and for purposes of determining the balance or value of any of the Financial Accounts when applying any of the account thresholds ;

(iii) with respect to a Financial Account that is subject to AML/KYC procedures, the Reporting Financial Institution is permitted to satisfy such AML/KYC procedures for the Financial Account by relying upon the AML/KYC procedures performed for the Pre-existing Account described in sub-paragraph (a) above ; 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 purposes of the CRS ;

“Reportable Jurisdiction” means—

(a) any jurisdiction other than Nigeria or the United States of America ;

(b) a jurisdiction with which an international agreement providing for the automatic exchange of information for tax purposes is in effect between Nigeria and that other jurisdiction, as may be contained in a list published by the Service, from time to time ; or

(c) a jurisdiction as defined in Section VIII(D)(4) of the Guidelines ; and

“Reporting Financial Institution” means any Nigeria Financial Institution that is not a Non-Reporting Financial Institution.

(2) Subject to sub-regulations (1) and (3) of this regulation and for the purposes of applying the CRS and the CRS Commentaries, any term which is defined in the CRS or in the CRS Commentaries but not in these Regulations has the same meaning in these Regulations as in the CRS or in the CRS Commentaries as set out in the Guidelines.

(3) For the purposes of applying these Regulations and the Guidelines—

(a) all monetary expression in USD shall be read to include its equivalent in Naira ;

(b) “Entity” means a legal person or a legal arrangement, such as corporation, partnership, trust or foundation ;

(c) an Entity is a “Related Entity” of another Entity where—

(i) either Entity controls the other Entity ;

(ii) the two Entities are under common control ; or

(iii) the two Entities are - Investment Entities as described in sub-paragraph A(6)(b) of Section VIII of the CRS ; under common management ; and such management fulfils the due diligence obligations of such Investment Entities.

For this purpose, control includes direct or indirect ownership of more than 50% of the vote and value in an Entity ;

(d) the dates specified in the CRS in Part II of the Guidelines shall be read as :

(i) in sub-paragraph C (6) of Section III, 31st December 2019 ;

(ii) in paragraph D of Section III, 31st December 2019 in respect of a High Value Account and 31st December 2020 in respect of a Lower Value Account ;

(iii) in paragraph A of Section V, 31st December 2019 ;

(iv) in paragraph B of Section V, 31st December 2019 in both the first and second instances ;

(v) in sub-paragraph E (1) of Section V, 31st December 2019 in the first instance and 31st December 2020 in the second instance ;

(vi) in sub-paragraph E (2) of Section V, 30th June 2019 ;

(vii) in sub-paragraph B(8)(b) of Section VIII, 1st July 2019 ;

(viii) in sub-paragraph B(9)(a) of Section VIII, 1st July 2019 and in sub-paragraph B(9)(d) of Section VIII, 31st December 2019 ;

(ix) in sub-paragraph C (9) of Section VIII, 30th June 2019 ;

(x) in sub-paragraph C (10) of Section VIII, 1st July 2019 ;

(xi) in sub-paragraph C (14) of Section VIII, 30th June 2019 ;

(xii) in sub-paragraph C (15) of Section VIII, 30th June 2019 ; and

(xiii) in sub-paragraph C (17) (f)(ii) of Section VIII, 1st July 2019.

The above specified dates may be subject to such modifications by the Service as it may deem appropriate.

Commence-
ment.

14. These Regulations shall come into force on 1st July, 2019.

15. These Regulations may be cited as the Income Tax (Common Reporting Standard) Regulations, 2019. Short Title.

MADE at Abuja this 1st day of July, 2019.

TUNDE FOWLER
Executive Chairman
Federal Inland Revenue Service