

Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation

Article 1

Directive 2011/16/EU is amended as follows:

- (1) In Article 3, point 9 is replaced by the following:
9. “automatic exchange” means the systematic communication of predefined information on residents in other Member States to the relevant Member State of residence, without prior request, at pre-established regular intervals. In the context of Article 8, available information refers to information in the tax files of the Member State communicating the information, which is retrievable in accordance with the procedures for gathering and processing information in that Member State. In the context of Article 8(3a), Article 8(7a), Article 21(2) and Article 25(2) and (3) any capitalised term shall have the meaning that it has under the corresponding definitions set out in Annex I..
- (2) Article 8 is amended as follows:
- (a) Paragraph 3 is replaced by the following:
3. The competent authority of a Member State may indicate to the competent authority of any other Member State that it does not wish to receive information on one or several of the categories of income and capital referred to in paragraph 1. It shall also inform the Commission thereof.
- A Member State may be considered as not wishing to receive information in accordance with paragraph 1, if it does not inform the Commission of any single category in respect of which it has information available.;
- (b) the following paragraph is inserted:
- 3a. Each Member State shall take the necessary measures to require its Reporting Financial Institutions to perform the reporting and due diligence rules included in Annexes I and II and to ensure effective implementation of, and compliance with, such rules in accordance with Section IX of Annex I.
- Pursuant to the applicable reporting and due diligence rules contained in Annexes I and II, the competent authority of each Member State shall, by automatic exchange, communicate within the deadline laid down in point (b) of paragraph 6 to the competent authority of any other Member State, the following information regarding taxable periods as from 1 January 2016 concerning a Reportable Account:
- a the name, address, TIN(s) and date and place of birth (in the case of an individual) of each Reportable Person that is an Account Holder of the account and, in the case of any Entity that is an Account Holder and that, after application of due diligence rules consistent with the Annexes, is identified as having one or more Controlling Persons that is a Reportable Person, the name, address, and TIN(s) of the Entity and the name, address, TIN(s) and date and place of birth of each Reportable Person;

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- b the account number (or functional equivalent in the absence of an account number);
- c the name and identifying number (if any) of the Reporting Financial Institution;
- d the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account;
- e in the case of any Custodial Account:
 - (i) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and
 - (ii) the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;
- f in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and
- g in the case of any account not described in point (e) or point (f), the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

For the purposes of the exchange of information under this paragraph, unless otherwise foreseen in this paragraph or in the Annexes, the amount and characterisation of payments made with respect to a Reportable Account shall be determined in accordance with national legislation of the Member State which communicates the information.

The first and second subparagraphs of this paragraph shall prevail over point (c) of paragraph 1 or any other Union legal instrument, including Council Directive 2003/48/EC⁽¹⁾, to the extent that the exchange of information at issue would fall within the scope of point (c) of paragraph 1 or of any other Union legal instrument, including Directive 2003/48/EC.;

- (c) paragraph 5 is replaced by the following:

5. Before 1 July 2017, the Commission shall submit a report that provides an overview and an assessment of the statistics and information received, on issues such as the administrative and other relevant costs and benefits of the automatic exchange of information, as well as practical aspects linked thereto. If appropriate, the Commission shall present a

proposal to the Council regarding the categories and the conditions laid down in paragraph 1, including the condition that information concerning residents in other Member States has to be available, or the items referred to in paragraph 3a, or both.

When examining a proposal presented by the Commission, the Council shall assess further strengthening of the efficiency and functioning of the automatic exchange of information and raising the standard thereof, with the aim of providing that:

- a the competent authority of each Member State shall, by automatic exchange, communicate to the competent authority of any other Member State, information regarding taxable periods as from 1 January 2017 concerning residents in that other Member State, on all categories of income and capital listed in paragraph 1, as they are to be understood under the national legislation of the Member State communicating the information; and
- b the lists of categories and items laid down in paragraphs 1 and 3a be extended to include other categories and items, including royalties.;

(d) paragraph 6 is replaced by the following:

6. The communication of information shall take place as follows:
 - a for the categories laid down in paragraph 1: at least once a year, within six months following the end of the tax year of the Member State during which the information became available;
 - b for the information laid down in paragraph 3a: annually, within nine months following the end of the calendar year or other appropriate reporting period to which the information relates.;

(e) the following paragraph is inserted:

7a. For the purposes of subparagraphs B.1(c) and C.17(g) of Section VIII of Annex I, each Member State shall, by 31 July 2015, provide to the Commission the list of entities and accounts that are to be treated, respectively, as Non-Reporting Financial Institutions and Excluded Accounts. Each Member State shall also inform the Commission if any changes in this respect occur. The Commission shall publish in the *Official Journal of the European Union* a compiled list of the information received and shall update the list as necessary.

Member States shall ensure that those types of Non-Reporting Financial Institutions and Excluded Accounts satisfy all the requirements listed in subparagraphs B.1(c) and C.17(g) of Section VIII of Annex I, and in particular that the status of a Financial Institution as a Non-Reporting Financial Institution or the status of an account as an Excluded Account does not frustrate the purposes of this Directive..

(3) In Article 20, paragraph 4 is replaced by the following:

4. The automatic exchange of information pursuant to Article 8 shall be sent using a standard computerised format aimed at facilitating such automatic exchange and based on the existing computerised format pursuant to Article 9 of Directive 2003/48/EC, to be used for all types of automatic exchange of information, adopted by the Commission in accordance with the procedure referred to in Article 26(2)..

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- (4) In Article 21, paragraph 2 is replaced by the following:
2. The Commission shall be responsible for whatever development of the CCN network is necessary to permit the exchange of that information between Member States and for ensuring the security of the CCN network.
- Member States shall be responsible for whatever development of their systems is necessary to enable that information to be exchanged using the CCN network and for ensuring the security of their systems.
- Member States shall ensure that each individual Reportable Person is notified of a breach of security with regard to his data when that breach is likely to adversely affect the protection of his personal data or privacy.
- Member States shall waive all claims for the reimbursement of expenses incurred in applying this Directive except, where appropriate, in respect of fees paid to experts..
- (5) Article 25 is amended as follows:
- (a) the current text of Article 25 becomes paragraph 1;
- (b) the following paragraphs are inserted:
2. Reporting Financial Institutions and the competent authorities of each Member State shall be considered to be data controllers for the purposes of Directive 95/46/EC.
- 3 Notwithstanding paragraph 1, each Member State shall ensure that each Reporting Financial Institution under its jurisdiction informs each individual Reportable Person concerned that the information relating to him referred to in Article 8(3a) will be collected and transferred in accordance with this Directive and shall ensure that the Reporting Financial Institution provides to that individual all information that he is entitled to under its domestic legislation implementing Directive 95/46/EC in sufficient time for the individual to exercise his data protection rights and, in any case, before the Reporting Financial Institution concerned reports the information referred to in Article 8(3a) to the competent authority of its Member State of residence.
- 4 Information processed in accordance with this Directive shall be retained for no longer than necessary to achieve the purposes of this Directive, and in any case in accordance with each data controller's domestic rules on statute of limitations..
- (6) Annexes I and II, the texts of which are set out in the Annex to this Directive, are added.

Article 2

1 Member States shall adopt and publish, by 31 December 2015, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately communicate to the Commission the text of those measures.

They shall apply those measures from 1 January 2016.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2 Notwithstanding point (b) of point (2) of Article 1 and paragraph 1 of this Article, Austria shall apply the provisions of this Directive from 1 January 2017, with respect to taxable periods as from that date.

3 Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 9 December 2014.

For the Council

The President

P. C. PADOAN

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- (1) Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments ([OJ L 157, 26.6.2003, p. 38](#)).