

MANDATORY AUTOMATIC EXCHANGE OF FINANCIAL INFORMATION IN THE FIELD OF TAXATION



TAX

It was published today in the Official Gazette the bill that introduces the mandatory automatic exchange of financial information between tax administrations, defining the set of elements financial institutions must report to the Portuguese Tax Authority (Autoridade Tributária Aduaneira or AT) in order to be transmitted to the remaining tax administrations.

We will briefly present the information that shall be exchanged with the tax administrations of other Member States of the European Union and the remaining Signatory States of the Common Reporting Standard (CRS).

Financial institutions based in Portugal (including branches of foreign banks located in Portugal) are required to convey to the Portuguese Tax Authority financial information regarding a set of accounts the former maintain, in so far as these are held by reportable persons or entities controlled by them.

I. Which financial accounts are subject to reporting?

The characterisation of the following as reportable financial accounts is purely illustrative and relies on the fulfillment of certain conditions foreseen in the law:

- i. Depository accounts**, which include, among others, the amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon;
- ii. Custodial accounts;**
- iii. Equity interest or debt interest in the financial institution maintained by an investment entity, including an array of different securities;**
- iv. Cash value insurance contracts and annuity contracts** issued or maintained by a financial institution other than a non-investment-linked, non-transferable immediate life annuity that is issued to an individual

and monetises a pension or disability benefit provided under an excluded account.

II. Which financial accounts are excluded from reporting?

Accounts which present a low risk of being used to evade tax, to be defined by Order of the Finance Minister, are excluded from reporting, as well as:

- i. A retirement or pension account whose contributions are limited to 50.000 USD or less or there is a maximum lifetime contribution limit which corresponds to 1.000.000 USD or less, provided certain legal requirements are met;
- ii. An account subject to regulation as an investment vehicle for purposes other than for retirement and is regularly traded in the securities market, or the account is subject to regulation as a savings vehicle for purposes other than for retirement; the account is tax-favoured; withdrawals are conditioned on meeting certain criteria related to the purpose of the investment or savings account, and penalties apply to withdrawals made before such criteria are met; and annual contributions are limited to 50.000 USD or less, provided certain legal requirements are met;
- iii. A life insurance contract whose coverage period will end before the insured individual is 90 years old, so long as the periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured is 90 years old, whichever is shorter; the contract has no contract value that any person can access, whether by withdrawal, loan or any given way without terminating the contract, provided certain legal requirements are met;
- iv. An account that is held solely by an estate if the documentation for such account contains a copy of the will or death certificate of the deceased;
- v. An account established in connection with (i) a court order or judgment, (ii) a sale, exchange or lease of real or personal property, (iii) an obligation of a financial institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time, (iv) an obligation of a financial institution solely to facilitate the payment of taxes at a later time;
- vi. A depository account which exists solely because a customer makes a payment in excess of a balance due with respect to a credit card or other revolving credit facility and the overpayment is not immediately returned to the customer as long as, beginning on or before 1 January 2016, the financial institution implements policies and procedures to prevent a customer from making an overpayment in excess of 50.000 USD, provided certain legal requirements are met;
- vii. **Pre-existing entity accounts with an aggregate balance or value which does not exceed 250.000 USD as of 31 December 2015 are not required**

to be reviewed, identified or reported as reportable accounts, as a general rule. These accounts will only be reviewed, identified or reported as reportable accounts when their aggregate balance or value exceeds such amount as of the last day of any subsequent calendar year.

III. Which information is reported?

In broad terms, financial institutions must report to the AT *(i)* the name, address, State of residence, tax identification number and date and place of birth, in the case of an individual, and, in the case of an entity which is an account holder controlled by a reportable person, the name, address, State of residence, tax identification number and date and place of birth of said person, *(ii)* the account number or functional equivalent in the absence of an account number, *(iii)* the name and identifying number (if any) of the financial institution, *(iv)* the account balance or value as of 31 December, and *(v)* the currency in which each amount is denominated, regarding each reported account.

If the account is jointly held by two or more persons, each holder shall be attributed the entire balance or value of the financial account.

In the case of depository accounts the total gross amount of interest paid or credited to the account is also reported, while in the case of custodial account the total gross amount of interest, dividends and other income generated with respect to the assets held in the account are also reported.

IV. Which entities are presumably excluded from reporting obligations?

(i) Corporations whose stock is regularly traded in securities markets and related entities, *(ii)* public entities, *(iii)* international organizations, *(iv)* central banks, and *(v)* financial institutions.

V. Whose persons are in principal subject to reporting obligations?

The persons resident in other states covered by this regime and that have reporting accounts in financial institutes located in Portugal.

VI. From which moment onwards is the mandatory automatic exchange of financial information regime applicable?

The financial information to be reported includes the entire taxation period beginning on 1 January 2016 in relation to residents in other EU member states

and to residents in other states that have adopted the CRS with effect as of the referred date.

As such, the information concerning 2016 should to be reported by the financial institutions to the Portuguese Tax Authority until 31 July 2017 which, in turn, shall exchange information with the Tax Authorities of the remaining States until 30 September 2017.

The mandatory automatic exchange of information shall proceed in the same terms and deadlines in the following years.

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