

Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC

CHAPTER II

**EXCHANGE OF INFORMATION**

*SECTION II*

***Mandatory automatic exchange of information***

*Article 8*

**Scope and conditions of mandatory automatic exchange of information**

1 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 2014 that is available concerning residents in that other Member State, on the following specific categories of income and capital as they are to be understood under the national legislation of the Member State which communicates the information:

- a income from employment;
- b director's fees;
- c life insurance products not covered by other Union legal instruments on exchange of information and other similar measures;
- d pensions;
- e ownership of and income from immovable property.

2 Before 1 January 2014, Member States shall inform the Commission of the categories listed in paragraph 1 in respect of which they have information available. They shall inform the Commission of any subsequent changes thereto.

[<sup>F13</sup> 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.]

[<sup>F23a</sup> 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

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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;
- 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<sup>(1)</sup>, 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.]

<sup>F34</sup> .....

<sup>F35</sup> .....

[<sup>F16</sup> 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;

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- 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.]

7 The Commission shall adopt the practical arrangements for the automatic exchange of information, in accordance with the procedure referred to in Article 26(2), before the dates referred to in Article 29(1).

[<sup>F2</sup>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.]

8 Where Member States agree on the automatic exchange of information for additional categories of income and capital in bilateral or multilateral agreements which they conclude with other Member States, they shall communicate those agreements to the Commission which shall make those agreements available to all the other Member States

#### Textual Amendments

- F1** Substituted by [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.](#)
- F2** Inserted by [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.](#)
- F3** Deleted by [Council Directive \(EU\) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.](#)

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- (1) [<sup>F2</sup>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).]

**Textual Amendments**

- F2** Inserted by 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.