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## **PROPOSAL**

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	12 February 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 49 final
Subject:	ANNEXES to the Proposal for a COUNCIL DIRECTIVE on administrative cooperation in the field of taxation (codification)

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Delegations will find attached document COM(2020) 49 final - Annexes 1 to 6.

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Encl.: COM(2020) 49 final - Annexes 1 to 6



Brussels, 12.2.2020  
COM(2020) 49 final

ANNEXES 1 to 6

**ANNEXES**

**to the**

**Proposal for a**

**COUNCIL DIRECTIVE**

**on administrative cooperation in the field of taxation (codification)**

**ANNEX I**  
**REPORTING AND DUE DILIGENCE RULES FOR FINANCIAL ACCOUNT  
INFORMATION**

This Annex lays down the reporting and due diligence rules that have to be applied by Reporting Financial Institutions in order to enable the Member States to communicate, by automatic exchange, the information referred to in Article 8(4) of this Directive. This Annex also describes the rules and administrative procedures that Member States shall have in place to ensure effective implementation of, and compliance with, the reporting and due diligence procedures set out below.

**SECTION I**

**GENERAL REPORTING REQUIREMENTS**

- A. Subject to points C, D and E, each Reporting Financial Institution must report to the competent authority of its Member State the following information with respect to each Reportable Account of such Reporting Financial Institution:
1. the name, address, Member State(s) of residence, 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 the due diligence procedures consistent with Sections V, VI and VII, is identified as having one or more Controlling Persons that  are  Reportable  Persons , the name, address, Member State(s) and (if any) other jurisdiction(s) of residence and TIN(s) of the Entity and the name, address, Member State(s) of residence, TIN(s) and date and place of birth of each Reportable Person;
  2. the account number (or functional equivalent in the absence of an account number);
  3. the name and identifying number (if any) of the Reporting Financial Institution;
  4. 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;
  5. in the case of any Custodial Account:
    - (a) 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
    - (b) 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;

6. 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
  7. in the case of any account not described in point A(5) or (6), 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.
- B. The information reported must identify the currency in which each amount is denominated.
- C. Notwithstanding point A(1), with respect to each Reportable Account that is a Pre-existing Account, the TIN(s) or date of birth is not required to be reported if such TIN(s) or date of birth is not in the records of the Reporting Financial Institution and is not otherwise required to be collected by such Reporting Financial Institution under domestic law or any Union legal instrument. However, a Reporting Financial Institution is required to use reasonable efforts to obtain the TIN(s) and date of birth with respect to Pre-existing Accounts by the end of the second calendar year following the year in which Pre-existing Accounts were identified as Reportable Accounts.
- D. Notwithstanding point A(1), the TIN is not required to be reported if a TIN is not issued by the relevant Member State or other jurisdiction of residence.
- E. Notwithstanding point A(1), the place of birth is not required to be reported unless:
- (1) the Reporting Financial Institution is otherwise required to obtain and report it under domestic law or the Reporting Financial Institution is or has been otherwise required to obtain and report it under any Union legal instrument that was in effect on 5 January 2015; and
  - (2) it is available in the electronically searchable data maintained by the Reporting Financial Institution.

## **SECTION II**

### **GENERAL DUE DILIGENCE REQUIREMENTS**

- A. An account is treated as a Reportable Account beginning as of the date it is identified as such pursuant to the due diligence procedures in Sections II through VII and, unless otherwise provided, information with respect to a Reportable Account must be reported annually in the calendar year following the year to which the information relates.
- B. The balance or value of an account is determined as of the last day of the calendar year or other appropriate reporting period.

- C. Where a balance or value threshold is to be determined as of the last day of a calendar year, the relevant balance or value must be determined as of the last day of the reporting period that ends with or within that calendar year.
- D. Each Member State may allow Reporting Financial Institutions to use service providers to fulfil the reporting and due diligence obligations imposed on such Reporting Financial Institutions, as contemplated in domestic law, but these obligations shall remain the responsibility of the Reporting Financial Institutions.
- E. Each Member State may allow Reporting Financial Institutions to apply the due diligence procedures for New Accounts to Pre-existing Accounts, and the due diligence procedures for High Value Accounts to Lower Value Accounts. Where a Member State allows New Account due diligence procedures to be used for Pre-existing Accounts, the rules otherwise applicable to Pre-existing Accounts continue to apply.

### **SECTION III**

#### **DUE DILIGENCE FOR PRE-EXISTING INDIVIDUAL ACCOUNTS**

- A. Introduction. The following procedures apply for purposes of identifying Reportable Accounts among Pre-existing Individual Accounts.
- B. Lower Value Accounts. The following procedures apply with respect to Lower Value Accounts:
  - 1. Residence Address. If the Reporting Financial Institution has in its records a current residence address for the individual Account Holder based on Documentary Evidence, the Reporting Financial Institution may treat the individual Account Holder as being a resident for tax purposes of the Member State or other jurisdiction in which the address is located for purposes of determining whether such individual Account Holder is a Reportable Person.
  - 2. Electronic Record Search. If the Reporting Financial Institution does not rely on a current residence address for the individual Account Holder based on Documentary Evidence as set forth in point B(1), the Reporting Financial Institution must review electronically searchable data maintained by the Reporting Financial Institution for any of the following indicia and apply points B(3) to (6):
    - (a) identification of the Account Holder as a resident of a Member State;
    - (b) current mailing or residence address (including a post office box) in a Member State;
    - (c) one or more telephone numbers in a Member State and no telephone number in the Member State of the Reporting Financial Institution;
    - (d) standing instructions (other than with respect to a Depository Account) to transfer funds to an account maintained in a Member State;
    - (e) currently effective power of attorney or signatory authority granted to a person with an address in a Member State; or

- (f) a 'hold mail' instruction or 'in-care-of' address in a Member State if the Reporting Financial Institution does not have any other address on file for the Account Holder.
3. If none of the indicia listed in point B(2) are discovered in the electronic search, then no further action is required until there is a change in circumstances that results in one or more indicia being associated with the account, or the account becomes a High Value Account.
  4. If any of the indicia listed in point B(2)(a) through (e) are discovered in the electronic search, or if there is a change in circumstances that results in one or more indicia being associated with the account, then the Reporting Financial Institution must treat the Account Holder as a resident for tax purposes of each Member State for which an indicium is identified, unless it elects to apply point B(6) and one of the exceptions in that point applies with respect to that account.
  5. If a 'hold mail' instruction or 'in-care-of' address is discovered in the electronic search and no other address and none of the other indicia listed in point B(2)(a) through (e) are identified for the Account Holder, the Reporting Financial Institution must, in the order most appropriate to the circumstances, apply the paper record search described in point C(2), or seek to obtain from the Account Holder a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of such Account Holder. If the paper search fails to establish an indicium and the attempt to obtain the self-certification or Documentary Evidence is not successful, the Reporting Financial Institution must report the account to the competent authority of its Member State as an undocumented account.
  6. Notwithstanding a finding of indicia under point B(2), a Reporting Financial Institution is not required to treat an Account Holder as a resident of a Member State if:
    - (a) the Account Holder information contains a current mailing or residence address in that Member State, one or more telephone numbers in that Member State (and no telephone number in the Member State of the Reporting Financial Institution) or standing instructions (with respect to Financial Accounts other than Depository Accounts) to transfer funds to an account maintained in a Member State, and the Reporting Financial Institution obtains, or has previously reviewed and maintains, a record of:
      - (i) a self-certification from the Account Holder of the Member State(s) or other jurisdiction(s) of residence of such Account Holder that does not include that Member State; and
      - (ii) Documentary Evidence establishing the Account Holder's non-reportable status;
    - (b) the Account Holder information contains a currently effective power of attorney or signatory authority granted to a person with an address in that Member State, and the Reporting Financial Institution obtains, or has previously reviewed and maintains, a record of:
      - (i) a self-certification from the Account Holder of the Member State(s) or other jurisdiction(s) of residence of such Account Holder that does not include that Member State; or

- (ii) Documentary Evidence establishing the Account Holder's non-reportable status.

C. Enhanced Review Procedures for High Value Accounts. The following enhanced review procedures apply with respect to High Value Accounts.

1. Electronic Record search. With respect to High Value Accounts, the Reporting Financial Institution must review electronically searchable data maintained by the Reporting Financial Institution for any of the indicia described in point B(2).
2. Paper Record Search. If the Reporting Financial Institution's electronically searchable databases include fields for, and capture all of the information described in, point C(3), then a further paper record search is not required. If the electronic databases do not capture all of this information, then with respect to a High Value Account the Reporting Financial Institution must also review the current customer master file and, to the extent not contained in the current customer master file, the following documents associated with the account and obtained by the Reporting Financial Institution within the last five years for any of the indicia described in point B(2):
  - (a) the most recent Documentary Evidence collected with respect to the account;
  - (b) the most recent account opening contract or documentation;
  - (c) the most recent documentation obtained by the Reporting Financial Institution pursuant to AML/KYC Procedures or for other regulatory purposes;
  - (d) any power of attorney or signature authority forms currently in effect; and
  - (e) any standing instructions (other than with respect to a Depository Account) to transfer funds currently in effect.
3. Exception To The Extent Databases Contain Sufficient Information. A Reporting Financial Institution is not required to perform the paper record search described in point C(2) to the extent the Reporting Financial Institution's electronically searchable information includes the following:
  - (a) the Account Holder's residence status;
  - (b) the Account Holder's residence address and mailing address currently on file with the Reporting Financial Institution;
  - (c) the Account Holder's telephone number(s) currently on file, if any, with the Reporting Financial Institution;
  - (d) in the case of Financial Accounts other than Depository Accounts, whether there are standing instructions to transfer funds in the account to another account (including an account at another branch of the Reporting Financial Institution or another Financial Institution);
  - (e) whether there is a current 'in-care-of' address or 'hold mail' instruction for the Account Holder; and
  - (f) whether there is any power of attorney or signatory authority for the account.

4. Relationship Manager Inquiry for Actual Knowledge. In addition to the electronic and paper record searches described in points C(1) and (2), the Reporting Financial Institution must treat as a Reportable Account any High Value Account assigned to a relationship manager (including any Financial Accounts aggregated with that High Value Account) if the relationship manager has actual knowledge that the Account Holder is a Reportable Person.
5. Effect of Finding Indicia.
  - (a) If none of the indicia listed in point B(2) are discovered in the enhanced review of High Value Accounts described in point C, and the account is not identified as held by a Reportable Person in point C(4), then further action is not required until there is a change in circumstances that results in one or more indicia being associated with the account.
  - (b) If any of the indicia listed in point B(2)(a) through (e) are discovered in the enhanced review of High Value Accounts described in point C, or if there is a subsequent change in circumstances that results in one or more indicia being associated with the account, then the Reporting Financial Institution must treat the account as a Reportable Account with respect to each Member State for which an indicium is identified unless it elects to apply point B(6) and one of the exceptions in that point applies with respect to that account.
  - (c) If a 'hold mail' instruction or 'in-care-of' address is discovered in the enhanced review of High Value Accounts described in point C, and no other address and none of the other indicia listed in points B(2)(a) through (e) are identified for the Account Holder, the Reporting Financial Institution must obtain from such Account Holder a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of the Account Holder. If the Reporting Financial Institution cannot obtain such self-certification or Documentary Evidence, it must report the account to the competent authority of its Member State as an undocumented account.
6. If a Pre-existing Individual Account  was  not a High Value Account as of 31 December 2015, but becomes a High Value Account as of the last day of a subsequent calendar year, the Reporting Financial Institution must complete the enhanced review procedures described in point C with respect to such account within the calendar year following the year in which the account becomes a High Value Account. If based on this review such account is identified as a Reportable Account, the Reporting Financial Institution must report the required information about such account with respect to the year in which it is identified as a Reportable Account and subsequent years on an annual basis, unless the Account Holder ceases to be a Reportable Person.
7. Once a Reporting Financial Institution applies the enhanced review procedures described in point C to a High Value Account, the Reporting Financial Institution is not required to reapply such procedures, other than the relationship manager inquiry described in point C(4), to the same High Value Account in any subsequent year unless the account is undocumented where the Reporting Financial Institution should reapply them annually until such account ceases to be undocumented.



8. If there is a change of circumstances with respect to a High Value Account that results in one or more indicia described in point B(2) being associated with the account, then the Reporting Financial Institution must treat the account as a Reportable Account with respect to each Member State for which an indicium is identified unless it elects to apply point B(6) and one of the exceptions in that point applies with respect to that account.
  9. A Reporting Financial Institution must implement procedures to ensure that a relationship manager identifies any change in circumstances of an account. For example, if a relationship manager is notified that the Account Holder has a new mailing address in a Member State, the Reporting Financial Institution is required to treat the new address as a change in circumstances and, if it elects to apply point B(6), is required to obtain the appropriate documentation from the Account Holder.
- D. Any Pre-existing Individual Account that has been identified as a Reportable Account under this Section must be treated as a Reportable Account in all subsequent years, unless the Account Holder ceases to be a Reportable Person.

## **SECTION IV**

### **DUE DILIGENCE FOR NEW INDIVIDUAL ACCOUNTS**

The following procedures apply for purposes of identifying Reportable Accounts among New Individual Accounts.

- A. With respect to New Individual Accounts, upon account opening, the Reporting Financial Institution must obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Financial Institution to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures.
- B. If the self-certification establishes that the Account Holder is resident for tax purposes in a Member State, the Reporting Financial Institution must treat the account as a Reportable Account and the self-certification must also include the Account Holder's TIN with respect to such Member State (subject to point D of Section I) and date of birth.
- C. If there is a change of circumstances with respect to a New Individual Account that causes the Reporting Financial Institution to know, or have reason to know, that the original self-certification is incorrect or unreliable, the Reporting Financial Institution cannot rely on the original self-certification and must obtain a valid self-certification that establishes the residence(s) for tax purposes of the Account Holder.

## SECTION V

### DUE DILIGENCE FOR PRE-EXISTING ENTITY ACCOUNTS

The following procedures apply for purposes of identifying Reportable Accounts among Pre-existing Entity Accounts.

- A. Entity Accounts Not Required to Be Reviewed, Identified or Reported. Unless the Reporting Financial Institution elects otherwise, either with respect to all Pre-existing Entity Accounts or, separately, with respect to any clearly identified group of such accounts, a Pre-existing Entity Account with an aggregate account balance or value that  did  not exceed, as of 31 December 2015, an amount denominated in the domestic currency of each Member State that corresponds to USD 250 000 is not required to be reviewed, identified, or reported as a Reportable Account until the aggregate account balance or value exceeds that amount as of the last day of any subsequent calendar year.
- B. Entity Accounts Subject to Review. A Pre-existing Entity Account that has an aggregate account balance or value that  exceeded , as of 31 December 2015, an amount denominated in the domestic currency of each Member State that corresponds to USD 250 000 and a Pre-existing Entity Account that  did  not exceed, as of 31 December 2015, that amount but the aggregate account balance or value of which exceeds such amount as of the last day of any subsequent calendar year must be reviewed in accordance with the procedures set forth in point D.
- C. Entity Accounts With Respect to Which Reporting Is Required. With respect to Pre-existing Entity Accounts described in point B, only accounts that are held by one or more Entities that are Reportable Persons, or by Passive NFEs with one or more Controlling Persons who are Reportable Persons, shall be treated as Reportable Accounts.
- D. Review Procedures for Identifying Entity Accounts With Respect to Which Reporting Is Required. For Pre-existing Entity Accounts described in point B, a Reporting Financial Institution must apply the following review procedures to determine whether the account is held by one or more Reportable Persons, or by Passive NFEs with one or more Controlling Persons who are Reportable Persons:
  1. Determine Whether the Entity Is a Reportable Person.
    - (a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures) to determine whether the information indicates that the Account Holder is resident in a Member State. For this purpose, information indicating that the Account Holder is resident in a Member State includes a place of incorporation or organisation, or an address in a Member State.
    - (b) If the information indicates that the Account Holder is resident in a Member State, the Reporting Financial Institution must treat the account as a Reportable Account unless it obtains a self-certification from the Account Holder, or reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person.

2. Determine Whether the Entity is a Passive NFE with One or More Controlling Persons who are Reportable Persons. With respect to an Account Holder of a Pre-existing Entity Account (including an Entity that is a Reportable Person), the Reporting Financial Institution must determine whether the Account Holder is a Passive NFE with one or more Controlling Persons who are Reportable Persons. If any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account. In making these determinations the Reporting Financial Institution must follow the guidance in points (a), (b) and (c) in the order most appropriate under the circumstances.
  - (a) Determining whether the Account Holder is a Passive NFE. For purposes of determining whether the Account Holder is a Passive NFE, the Reporting Financial Institution must obtain a self-certification from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution other than an Investment Entity described in point A(6)(b) of Section VIII that is not a Participating Jurisdiction Financial Institution.
  - (b) Determining the Controlling Persons of an Account Holder. For the purposes of determining the Controlling Persons of an Account Holder, a Reporting Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures.
  - (c) Determining whether a Controlling Person of a Passive NFE is a Reportable Person. For the purposes of determining whether a Controlling Person of a Passive NFE is a Reportable Person, a Reporting Financial Institution may rely on:
    - (i) information collected and maintained pursuant to AML/KYC Procedures in the case of a Pre-existing Entity Account held by one or more NFEs with an aggregate account balance or value that does not exceed an amount denominated in the domestic currency of each Member State that corresponds to USD 1 000 000; or
    - (ii) a self-certification from the Account Holder or such Controlling Person of the Member State(s) or other jurisdiction(s) in which the controlling person is resident for tax purposes.

E. Timing of Review and Additional Procedures Applicable to Pre-existing Entity Accounts

1. Review of Pre-existing Entity Accounts with an aggregate account balance or value that  did  not exceed, as of 31 December 2015, an amount denominated in the domestic currency of each Member State that corresponds to USD 250 000 but exceeds that amount as of 31 December of a subsequent year must be completed within the calendar year following the year in which the aggregate account balance or value exceeds such amount.
2. If there is a change of circumstances with respect to a Pre-existing Entity Account that causes the Reporting Financial Institution to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the Reporting Financial Institution must re-

determine the status of the account in accordance with the procedures set forth in point D.

## **SECTION VI**

### **DUE DILIGENCE FOR NEW ENTITY ACCOUNTS**

The following procedures apply for purposes of identifying Reportable Accounts among New Entity Accounts.

Review Procedures for Identifying Entity Accounts With Respect to Which Reporting Is Required. For New Entity Accounts, a Reporting Financial Institution must apply the following review procedures to determine whether the account is held by one or more Reportable Persons, or by Passive NFEs with one or more Controlling Persons who are Reportable Persons:

1. Determine Whether the Entity Is a Reportable Person.
  - (a) Obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Financial Institution to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures. If the Entity certifies that it has no residence for tax purposes, the Reporting Financial Institution may rely on the address of the principal office of the Entity to determine the residence of the Account Holder.
  - (b) If the self-certification indicates that the Account Holder is resident in a Member State, the Reporting Financial Institution must treat the account as a Reportable Account, unless it reasonably determines based on information in its possession or that is publicly available that the Account Holder is not a Reportable Person with respect to such Member State.
2. Determine Whether the Entity is a Passive NFE with One or More Controlling Persons Who Are Reportable Persons. With respect to an Account Holder of a New Entity Account (including an Entity that is a Reportable Person), the Reporting Financial Institution must determine whether the Account Holder is a Passive NFE with one or more Controlling Persons who are Reportable Persons. If any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account. In making these determinations the Reporting Financial Institution must follow the guidance in points (a), (b) and (c) in the order most appropriate under the circumstances.
  - (a) Determining whether the Account Holder is a Passive NFE. For purposes of determining whether the Account Holder is a Passive NFE, the Reporting Financial Institution must rely on a self-certification from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution other than an Investment Entity described in point A(6)(b) of Section VIII that is not a Participating Jurisdiction Financial Institution.

- (b) Determining the Controlling Persons of an Account Holder. For purposes of determining the Controlling Persons of an Account Holder, a Reporting Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures.
- (c) Determining whether a Controlling Person of a Passive NFE is a Reportable Person. For purposes of determining whether a controlling person of a Passive NFE is a Reportable Person, a Reporting Financial Institution may rely on a self-certification from the Account Holder or such Controlling Person.

## **SECTION VII**

### **SPECIAL DUE DILIGENCE RULES**

The following additional rules apply in implementing the due diligence procedures described above:

- A. **Reliance on Self-Certifications and Documentary Evidence.** A Reporting Financial Institution may not rely on a self-certification or Documentary Evidence if the Reporting Financial Institution knows or has reason to know that the self-certification or Documentary Evidence is incorrect or unreliable.
- B. **Alternative Procedures for Financial Accounts held by Individual Beneficiaries of a Cash Value Insurance Contract or an Annuity Contract and for a Group Cash Value Insurance Contract or Group Annuity Contract.** A Reporting Financial Institution may presume that an individual beneficiary (other than the owner) of a Cash Value Insurance Contract or an Annuity Contract receiving a death benefit is not a Reportable Person and may treat such Financial Account as other than a Reportable Account unless the Reporting Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Reportable Person. A Reporting Financial Institution has reason to know that a beneficiary of a Cash Value Insurance Contract or an Annuity Contract is a Reportable Person if the information collected by the Reporting Financial Institution and associated with the beneficiary contains indicia as described in point B of Section III. If a Reporting Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Reportable Person, the Reporting Financial Institution must follow the procedures in point B of Section III.

A Reporting Financial Institution may treat a Financial Account that is a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract as a Financial Account that is not a Reportable Account until the date on which an amount is payable to the employee/certificate holder or beneficiary, if the Financial Account that is a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract meets the following requirements:

- (i) the Group Cash Value Insurance Contract or Group Annuity Contract is issued to an employer and covers 25 or more employees/certificate holders;
- (ii) the employee/certificate holders are entitled to receive any contract value related to their interests and to name beneficiaries for the benefit payable upon the employee's death; and
- (iii) the aggregate amount payable to any employee/certificate holder or beneficiary does not exceed an amount denominated in the domestic currency of each Member State that corresponds to USD 1 000 000.

The term ‘Group Cash Value Insurance Contract’ means a Cash Value Insurance Contract that (i) provides coverage on individuals who are affiliated through an employer, trade association, labour union, or other association or group; and (ii) charges a premium for each member of the group (or member of a class within the group) that is determined without regard to the individual health characteristics other than age, gender, and smoking habits of the member (or class of members) of the group.

The term ‘Group Annuity Contract’ means an Annuity Contract under which the obligees are individuals who are affiliated through an employer, trade association, labour union, or other association or group.

C. Account Balance Aggregation and Currency Rules

1. Aggregation of Individual Accounts. For purposes of determining the aggregate balance or value of Financial Accounts held by an individual, a Reporting Financial Institution is required to aggregate all Financial Accounts maintained by the Reporting Financial Institution, or by a Related Entity, but only to the extent that the Reporting Financial Institution's computerised systems link the Financial Accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described in this point.
2. Aggregation of Entity Accounts. For purposes of determining the aggregate balance or value of Financial Accounts held by an Entity, a Reporting Financial Institution is required to take into account all Financial Accounts that are maintained by the Reporting Financial Institution, or by a Related Entity, but only to the extent that the Reporting Financial Institution's computerised systems link the Financial Accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described in this point.
3. Special Aggregation Rule Applicable to Relationship Managers. For purposes of determining the aggregate balance or value of Financial Accounts held by a person to determine whether a financial account is a High Value Account, a Reporting Financial Institution is also required, in the case of any Financial Accounts that a relationship manager knows, or has reason to know, are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person, to aggregate all such accounts.
4. Amounts Read to Include Equivalent in Other Currencies. All amounts denominated in the domestic currency of each Member State shall be read to include equivalent amounts in other currencies, as determined by domestic law.

## SECTION VIII

### DEFINED TERMS

The following terms have the meanings set forth below:

#### A. Reporting Financial Institution

1. The term 'Reporting Financial Institution' means any Member State Financial Institution that is not a Non-Reporting Financial Institution. The term 'Member State Financial Institution' means: (i) any Financial Institution that is resident in a Member State, but excludes any branch of that Financial Institution that is located outside that Member State; and (ii) any branch of a Financial Institution that is not resident in a Member State, if that branch is located in that Member State.
2. The term 'Participating Jurisdiction Financial Institution' means (i) any Financial Institution that is resident in a Participating Jurisdiction, but excludes any branch of that Financial Institution that is located outside such Participating Jurisdiction; and (ii) any branch of a Financial Institution that is not resident in a Participating Jurisdiction, if that branch is located in such Participating Jurisdiction.
3. The term 'Financial Institution' means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.
4. The term 'Custodial Institution' means any Entity that holds, as a substantial portion of its business, Financial Assets for the account of others. An Entity holds Financial Assets for the account of others as a substantial portion of its business if the Entity's gross income attributable to the holding of Financial Assets and related financial services equals or exceeds 20 % of the Entity's gross income during the shorter of: (i) the three-year period that ends on 31 December (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the Entity has been in existence.
5. The term 'Depository Institution' means any Entity that accepts deposits in the ordinary course of a banking or similar business.
6. The term 'Investment Entity' means any Entity:
  - (a) which primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:
    - (i) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;
    - (ii) individual and collective portfolio management; or
    - (iii) otherwise investing, administering, or managing Financial Assets or money on behalf of other persons;

or

- (b) the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in point A(6)(a).

An Entity is treated as primarily conducting as a business one or more of the activities described in point A(6)(a), or an Entity's gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets for the purposes of point A(6)(b), if the Entity's gross income attributable to the relevant activities equals or exceeds 50 % of the Entity's gross income during the shorter of: (i) the three-year period ending on 31 December of the year preceding the year in which the determination is made; or (ii) the period during which the Entity has been in existence. The term 'Investment Entity' does not include an Entity that is an Active NFE because that Entity meets any of the criteria in points D(8)(d) through (g).

This point shall be interpreted in a manner consistent with similar language set forth in the definition of 'financial institution' in the Financial Action Task Force Recommendations.

- 7. The term 'Financial Asset' includes a security (for example, a share of stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness), partnership interest, commodity, swap (for example, interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements), Insurance Contract or Annuity Contract, or any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, swap, Insurance Contract, or Annuity Contract. The term 'Financial Asset' does not include a non-debt, direct interest in real property.
- 8. The term 'Specified Insurance Company' means any Entity that is an insurance company (or the holding company of an insurance company) which issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.

## **B. Non-Reporting Financial Institution**

- 1. The term 'Non-Reporting Financial Institution' means any Financial Institution which is:
  - (a) a Governmental Entity, International Organisation or Central Bank, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution;
  - (b) a Broad Participation Retirement Fund; a Narrow Participation Retirement Fund; a Pension Fund of a Governmental Entity, International Organisation or Central Bank; or a Qualified Credit Card Issuer;
  - (c) any other Entity that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the Entities described in points B(1)(a) and (b), and is included in the list of Non-Reporting Financial Institutions referred to in Article 8(7) of this Directive,



provided that the status of such Entity as a Non-Reporting Financial Institution does not frustrate the purposes of this Directive;

- (d) an Exempt Collective Investment Vehicle; or
  - (e) a trust to the extent that the trustee of the trust is a Reporting Financial Institution and reports all information required to be reported pursuant to Section I with respect to all Reportable Accounts of the trust.
2. The term ‘Governmental Entity’ means the government of a Member State or other jurisdiction, any political subdivision of a Member State or other jurisdiction (which, for the avoidance of doubt, includes a state, province, county, or municipality), or any wholly owned agency or instrumentality of a Member State or other jurisdiction or of any one or more of the foregoing (each, a ‘Governmental Entity’). This category is comprised of the integral parts, controlled entities, and political subdivisions of a Member State or other jurisdiction.
- (a) An ‘integral part’ of a Member State or other jurisdiction means any person, organisation, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of a Member State or other jurisdiction. The net earnings of the governing authority must be credited to its own account or to other accounts of the Member State or other jurisdiction, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity.
  - (b) A ‘controlled entity’ means an Entity which is separate in form from the Member State or other jurisdiction or which otherwise constitutes a separate juridical entity, provided that:
    - (i) the Entity is wholly owned and controlled by one or more Governmental Entities directly or through one or more controlled entities;
    - (ii) the Entity's net earnings are credited to its own account or to the accounts of one or more Governmental Entities, with no portion of its income inuring to the benefit of any private person; and
    - (iii) the Entity's assets vest in one or more Governmental Entities upon dissolution.
  - (c) Income does not inure to the benefit of private persons if such persons are the intended beneficiaries of a governmental programme, and the programme activities are performed for the general public with respect to the common welfare or relate to the administration of some phase of government. Notwithstanding the foregoing, however, income is considered to inure to the benefit of private persons if the income is derived from the use of a Governmental Entity to conduct a commercial business, such as a commercial banking business, that provides financial services to private persons.
3. The term ‘International Organisation’ means any international organisation or wholly owned agency or instrumentality thereof. This category includes any intergovernmental organisation (including a supranational organisation) (i) that

is comprised primarily of governments; (ii) that has in effect a headquarters or substantially similar agreement with the Member State; and (iii) the income of which does not inure to the benefit of private persons.

4. The term ‘Central Bank’ means an institution that is by law or government sanction the principal authority, other than the government of the Member State itself, issuing instruments intended to circulate as currency. Such an institution may include an instrumentality that is separate from the government of the Member State, whether or not owned in whole or in part by the Member State.
5. The term ‘Broad Participation Retirement Fund’ means a fund established to provide retirement, disability, or death benefits, or any combination thereof, to beneficiaries who are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that the fund:
  - (a) does not have a single beneficiary with a right to more than 5 % of the fund's assets;
  - (b) is subject to government regulation and provides information reporting to the tax authorities; and
  - (c) satisfies at least one of the following requirements:
    - (i) the fund is generally exempt from tax on investment income, or taxation of such income is deferred or taxed at a reduced rate, due to its status as a retirement or pension plan;
    - (ii) the fund receives at least 50 % of its total contributions (other than transfers of assets from other plans described in points B(5), (6) and (7) or from retirement and pension accounts described in point C(17)(a)) from the sponsoring employers;
    - (iii) distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability, or death (except rollover distributions to other retirement funds described in points B(5), (6) and (7) or retirement and pension accounts described in point C(17)(a)), or penalties apply to distributions or withdrawals made before such specified events; or
    - (iv) contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed, annually, an amount denominated in the domestic currency of each Member State that corresponds to USD 50 000, applying the rules set forth in point C of Section VII for account aggregation and currency translation.
6. The term ‘Narrow Participation Retirement Fund’ means a fund established to provide retirement, disability, or death benefits to beneficiaries who are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that:
  - (a) the fund has fewer than 50 participants;
  - (b) the fund is sponsored by one or more employers that are not Investment Entities or Passive NFEs;

- (c) the employee and employer contributions to the fund (other than transfers of assets from retirement and pension accounts described in point C(17)(a)) are limited by reference to earned income and compensation of the employee, respectively;
  - (d) participants that are not residents of the Member State in which the fund is established are not entitled to more than 20 % of the fund's assets; and
  - (e) the fund is subject to government regulation and provides information reporting to the tax authorities.
7. The term 'Pension Fund of a Governmental Entity, International Organisation or Central Bank' means a fund established by a Governmental Entity, International Organisation or Central Bank to provide retirement, disability, or death benefits to beneficiaries or participants who are current or former employees (or persons designated by such employees), or who are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the Governmental Entity, International Organisation or Central Bank.
  8. The term 'Qualified Credit Card Issuer' means a Financial Institution satisfying the following requirements:
    - (a) the Financial Institution is a Financial Institution solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the card and the overpayment is not immediately returned to the customer; and
    - (b) beginning on or before 1 January 2016, the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of an amount denominated in the domestic currency of each Member State that corresponds to USD 50 000, or to ensure that any customer overpayment in excess of that amount is refunded to the customer within 60 days, in each case applying the rules set forth in point C of Section VII for account aggregation and currency translation. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.
  9. The term 'Exempt Collective Investment Vehicle' means an Investment Entity that is regulated as a collective investment vehicle, provided that all of the interests in the collective investment vehicle are held by or through individuals or Entities that are not Reportable Persons, except a Passive NFE with Controlling Persons who are Reportable Persons.

### **C. Financial Account**

1. The term 'Financial Account' means an account maintained by a Financial Institution, and includes a Depository Account, a Custodial Account and:
  - (a) in the case of an Investment Entity, any equity or debt interest in the Financial Institution. Notwithstanding the foregoing, the term 'Financial Account' does not include any equity or debt interest in an Entity that is an Investment Entity solely because it (i) renders investment advice to, and acts on behalf of; or (ii) manages portfolios for, and acts on behalf

of, a customer for the purpose of investing, managing, or administering Financial Assets deposited in the name of the customer with a Financial Institution other than such Entity;

- (b) in the case of a Financial Institution not described in point C(1)(a), any equity or debt interest in the Financial Institution, if the class of interests was established with the purpose of avoiding reporting in accordance with Section I; and
- (c) any Cash Value Insurance Contract and any Annuity Contract 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 account that is an Excluded Account.

The term 'Financial Account' does not include any account that is an Excluded Account.

2. The term 'Depository Account' includes any commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a Financial Institution in the ordinary course of a banking or similar business. A Depository Account also includes an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon.
3. The term 'Custodial Account' means an account (other than an Insurance Contract or Annuity Contract) which holds one or more Financial Assets for the benefit of another person.
4. The term 'Equity Interest' means, in the case of a partnership that is a Financial Institution, either a capital or profits interest in the partnership. In the case of a trust that is a Financial Institution, an Equity Interest is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust. A Reportable Person will be treated as being a beneficiary of a trust if such Reportable Person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust.
5. The term 'Insurance Contract' means a contract (other than an Annuity Contract) under which the issuer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk.
6. The term 'Annuity Contract' means a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals. The term also includes a contract that is considered to be an Annuity Contract in accordance with the law, regulation, or practice of the Member State or other jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years.
7. The term 'Cash Value Insurance Contract' means an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies) that has a Cash Value.

8. The term 'Cash Value' means the greater of (i) the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan); and (ii) the amount the policyholder can borrow under or with regard to the contract. Notwithstanding the foregoing, the term 'Cash Value' does not include an amount payable under an Insurance Contract:
- (a) solely by reason of the death of an individual insured under a life insurance contract;
  - (b) as a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;
  - (c) as a refund of a previously paid premium (less cost of insurance charges whether or not actually imposed) under an Insurance Contract (other than an investment-linked life insurance or annuity contract) due to cancellation or termination of the contract, decrease in risk exposure during the effective period of the contract, or arising from the correction of a posting or similar error with regard to the premium for the contract;
  - (d) as a policyholder dividend (other than a termination dividend) provided that the dividend relates to an Insurance Contract under which the only benefits payable are described in point C(8)(b); or
  - (e) as a return of an advance premium or premium deposit for an Insurance Contract for which the premium is payable at least annually if the amount of the advance premium or premium deposit does not exceed the next annual premium that will be payable under the contract.
9. The term 'Pre-existing Account' means:
- (a) a Financial Account maintained by a Reporting Financial Institution as of 31 December 2015;
  - (b) any Financial Account of an Account Holder, regardless of the date such Financial Account was opened, if:
    - (i) the Account Holder also holds with the Reporting Financial Institution (or with a Related Entity within the same Member State as the Reporting Financial Institution) a Financial Account that is a Pre-existing Account under point C(9)(a);
    - (ii) the Reporting Financial Institution (and, as applicable, the Related Entity within the same Member State 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 point (b), as a single Financial Account for purposes of satisfying the standards of knowledge requirements set forth in point A of Section VII, 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 point C(9)(a); 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 the purposes of this Directive.
10. The term 'New Account' means a Financial Account maintained by a Reporting Financial Institution opened on or after 1 January 2016 unless it is treated as a Pre-existing Account under point C(9)(b).
  11. The term 'Pre-existing Individual Account' means a Pre-existing Account held by one or more individuals.
  12. The term 'New Individual Account' means a New Account held by one or more individuals.
  13. The term 'Pre-existing Entity Account' means a Pre-existing Account held by one or more Entities.
  14. The term 'Lower Value Account' means a Pre-existing Individual Account with an aggregate balance or value as of 31 December 2015 that  did  not exceed an amount denominated in the domestic currency of each Member State that corresponds to USD 1 000 000.
  15. The term 'High Value Account' means a Pre-existing Individual Account with an aggregate balance or value that exceeds, as of 31 December 2015, or 31 December of any subsequent year, an amount denominated in the domestic currency of each Member State that corresponds to USD 1 000 000.
  16. The term 'New Entity Account' means a New Account held by one or more Entities.
  17. The term 'Excluded Account' means any of the following accounts:
    - (a) a retirement or pension account that satisfies the following requirements:
      - (i) the account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits);
      - (ii) the account is tax-favoured (i.e., contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the Account Holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);
      - (iii) information reporting is required to the tax authorities with respect to the account;
      - (iv) withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and
      - (v) either (i) annual contributions are limited to an amount denominated in the domestic currency of each Member State that corresponds to USD 50 000 or less; or (ii) there is a maximum lifetime contribution limit to the account of an amount

denominated in the domestic currency of each Member State that corresponds to USD 1 000 000 or less, in each case applying the rules set forth in point C of Section VII for account aggregation and currency translation.

A Financial Account that otherwise satisfies the requirement of point C(17)(a)(v) will not fail to satisfy such requirement solely because such Financial Account may receive assets or funds transferred from one or more Financial Accounts that meet the requirements of point C(17)(a) or (b) or from one or more retirement or pension funds that meet the requirements of any of points B(5), (6) and (7);

- (b) an account that satisfies the following requirements:
  - (i) the account is subject to regulation as an investment vehicle for purposes other than for retirement and is regularly traded on an established securities market, or the account is subject to regulation as a savings vehicle for purposes other than for retirement;
  - (ii) the account is tax-favoured (i.e., contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the Account Holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);
  - (iii) withdrawals are conditioned on meeting specific criteria related to the purpose of the investment or savings account (for example, the provision of educational or medical benefits), or penalties apply to withdrawals made before such criteria are met; and
  - (iv) annual contributions are limited to an amount denominated in the domestic currency of each Member State that corresponds to USD 50 000 or less, applying the rules set forth in point C of Section VII for account aggregation and currency translation.

A Financial Account that otherwise satisfies the requirement of point C(17)(b)(iv) will not fail to satisfy such requirement solely because such Financial Account may receive assets or funds transferred from one or more Financial Accounts that meet the requirements of point C(17)(a) or (b) or from one or more retirement or pension funds that meet the requirements of any of points B(5), (6) and (7);

- (c) a life insurance contract with a coverage period that will end before the insured individual attains age 90, provided that the contract satisfies the following requirements:
  - (i) 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 attains age 90, whichever is shorter;
  - (ii) the contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;
  - (iii) the amount (other than a death benefit) payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges (whether or not actually imposed)

for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract; and

- (iv) the contract is not held by a transferee for value;
- (d) an account that is held solely by an estate if the documentation for such account includes a copy of the deceased's will or death certificate;
- (e) an account established in connection with any of the following:
  - (i) a court order or judgment.
  - (ii) a sale, exchange, or lease of real or personal property, provided that the account satisfies the following requirements:
    - the account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a Financial Asset that is deposited in the account in connection with the sale, exchange, or lease of the property,
    - the account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease,
    - the assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee (including to satisfy such person's obligation) when the property is sold, exchanged, or surrendered, or the lease terminates,
    - the account is not a margin or similar account established in connection with a sale or exchange of a Financial Asset, and
    - the account is not associated with an account described in point C(17)(f);
  - (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;
- (f) a Depository Account that satisfies the following requirements:
  - (i) the account 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; and
  - (ii) the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of an amount denominated in the domestic currency of each Member



State that corresponds to USD 50 000, or to ensure that any customer overpayment in excess of that amount is refunded to the customer within 60 days, in each case applying the rules set forth in point C of Section VII for currency translation. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns;

- (g) any other account that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the accounts described in points C(17)(a) through (f), and is included in the list of Excluded Accounts referred to in Article 8(7), provided that the status of such account as an Excluded Account does not frustrate the purposes of this Directive.

#### **D. Reportable Account**

1. The term ‘Reportable Account’ means a Financial Account that is maintained by a Member State Reporting Financial Institution and is held by one or more Reportable Persons or by a Passive NFE with one or more Controlling Persons that is a Reportable Person, provided it has been identified as such pursuant to the due diligence procedures described in Sections II through VII.
2. The term ‘Reportable Person’ means a Member State Person other than: (i) a corporation the stock of which is regularly traded on one or more established securities markets; (ii) any corporation that is a Related Entity of a corporation described in point (i); (iii) a Governmental Entity; (iv) an International Organisation; (v) a Central Bank; or (vi) a Financial Institution.
3. The term ‘Member State Person’ with regard to each Member State means an individual or Entity that is resident in any other Member State under the tax laws of that other Member State, or an estate of a decedent that was a resident of any other Member State. For this purpose, an Entity such as a partnership, limited liability partnership or similar legal arrangement, which has no residence for tax purposes shall be treated as resident in the jurisdiction in which its place of effective management is situated.
4. The term ‘Participating Jurisdiction’ with regard to each Member State means:
  - (a) any other Member State;
  - (b) any other jurisdiction (i) with which the Member State concerned has an agreement in place pursuant to which that jurisdiction will provide the information specified in Section I; and (ii) which is identified in a list published by that Member State and notified to the European Commission;
  - (c) any other jurisdiction (i) with which the Union has an agreement in place pursuant to which that jurisdiction will provide the information specified in Section I; and (ii) which is identified in a list published by the European Commission.
5. The term ‘Controlling Persons’ means the natural persons who exercise control over an Entity. In the case of a trust, that term means the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective

control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term 'Controlling Persons' must be interpreted in a manner consistent with the Financial Action Task Force Recommendations.

6. The term 'NFE' means any Entity that is not a Financial Institution.
7. The term 'Passive NFE' means any: (i) NFE that is not an Active NFE; or (ii) an Investment Entity described in point A(6)(b) that is not a Participating Jurisdiction Financial Institution.
8. The term 'Active NFE' means any NFE that meets any of the following criteria:
  - (a) less than 50 % of the NFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50 % of the assets held by the NFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;
  - (b) the stock of the NFE is regularly traded on an established securities market or the NFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;
  - (c) the NFE is a Governmental Entity, an International Organisation, a Central Bank, or an Entity wholly owned by one or more of the foregoing;
  - (d) substantially all of the activities of the NFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an Entity does not qualify for this status if the Entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
  - (e) the NFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFE does not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFE;
  - (f) the NFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganising with the intent to continue or recommence operations in a business other than that of a Financial Institution;
  - (g) the NFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution; or

- (h) the NFE meets all of the following requirements:
  - (i) it is established and operated in its Member State or other jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its Member State or other jurisdiction of residence and it is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare;
  - (ii) it is exempt from income tax in its Member State or other jurisdiction of residence;
  - (iii) it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
  - (iv) the applicable laws of the NFE's Member State or other jurisdiction of residence or the NFE's formation documents do not permit any income or assets of the NFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE has purchased; and
  - (v) the applicable laws of the NFE's Member State or other jurisdiction of residence or the NFE's formation documents require that, upon the NFE's liquidation or dissolution, all of its assets be distributed to a Governmental Entity or other non-profit organisation, or escheat to the government of the NFE's Member State or other jurisdiction of residence or any political subdivision thereof.

## **E. Miscellaneous**

1. The term 'Account Holder' means the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account. A person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as holding the account for purposes of this Directive, and such other person is treated as holding the account. In the case of a Cash Value Insurance Contract or an Annuity Contract, the Account Holder is any person entitled to access the Cash Value or change the beneficiary of the contract. If no person can access the Cash Value or change the beneficiary, the Account Holder is any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract. Upon the maturity of a Cash Value Insurance Contract or an Annuity Contract, each person entitled to receive a payment under the contract is treated as an Account Holder.
2. The term 'AML/KYC Procedures' means the customer due diligence procedures of a Reporting Financial Institution pursuant to the anti-money laundering or similar requirements to which such Reporting Financial Institution is subject.

3. The term 'Entity' means a legal person or a legal arrangement, such as a corporation, partnership, trust, or foundation.
4. An Entity is a 'Related Entity' of another Entity if (i) either Entity controls the other Entity; (ii) the two Entities are under common control; or (iii) the two Entities are Investment Entities described in point A(6)(b), are 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.
5. The term 'TIN' means Taxpayer Identification Number (or functional equivalent in the absence of a Taxpayer Identification Number).
6. The term 'Documentary Evidence' includes any of the following:
  - (a) a certificate of residence issued by an authorised government body (for example, a government or agency thereof, or a municipality) of the Member State or other jurisdiction in which the payee claims to be a resident;
  - (b) with respect to an individual, any valid identification issued by an authorised government body (for example, a government or agency thereof, or a municipality), that includes the individual's name and is typically used for identification purposes;
  - (c) with respect to an Entity, any official documentation issued by an authorised government body (for example, a government or agency thereof, or a municipality) that includes the name of the Entity and either the address of its principal office in the Member State or other jurisdiction in which it claims to be a resident or the Member State or other jurisdiction in which the Entity was incorporated or organised;
  - (d) any audited financial statement, third-party credit report, bankruptcy filing, or securities regulator's report.

With respect to a Pre-existing Entity Account, Reporting Financial Institutions may use as Documentary Evidence any classification in the Reporting Financial Institution's records with respect to the Account Holder that was determined based on a standardised industry coding system, that was recorded by the Reporting Financial Institution consistent with its normal business practices for purposes of AML/KYC Procedures or another regulatory purposes (other than for tax purposes) and that was implemented by the Reporting Financial Institution prior to the date used to classify the Financial Account as a Pre-existing Account, provided that the Reporting Financial Institution does not know or does not have reason to know that such classification is incorrect or unreliable. The term 'standardised industry coding system' means a coding system used to classify establishments by business type for purposes other than tax purposes.

## SECTION IX

### EFFECTIVE IMPLEMENTATION

Pursuant to Article 8(4) of this Directive, Member States must have rules and administrative procedures in place to ensure effective implementation of, and compliance with, the reporting and due diligence procedures set out above including:

- (1) rules to prevent any Financial Institutions, persons or intermediaries from adopting practices intended to circumvent the reporting and due diligence procedures;
  - (2) rules requiring Reporting Financial Institutions to keep records of the steps undertaken and any evidence relied upon for the performance of the above procedures and adequate measures to obtain those records;
  - (3) administrative procedures to verify Reporting Financial Institutions' compliance with the reporting and due diligence procedures; administrative procedures to follow up with a Reporting Financial Institution when undocumented accounts are reported;
  - (4) administrative procedures to ensure that the Entities and accounts defined in domestic law as Non-Reporting Financial Institutions and Excluded Accounts continue to have a low risk of being used to evade tax; and
  - (5) effective enforcement provisions to address non-compliance.
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## **ANNEX II**

### **COMPLEMENTARY REPORTING AND DUE DILIGENCE RULES FOR FINANCIAL ACCOUNT INFORMATION**

#### **1. CHANGE IN CIRCUMSTANCES**

A ‘change in circumstances’ includes any change that results in the addition of information relevant to a person's status or otherwise conflicts with such person's status. In addition, a change in circumstances includes any change or addition of information to the Account Holder's account (including the addition, substitution, or other change of an Account Holder) or any change or addition of information to any account associated with such account (applying the account aggregation rules described in points C(1), (2) and (3) of Section VII of Annex I) if such change or addition of information affects the status of the Account Holder.

If a Reporting Financial Institution has relied on the residence address test described in point B(1) of Section III of Annex I and there is a change in circumstances that causes the Reporting Financial Institution to know or have reason to know that the original Documentary Evidence (or other equivalent documentation) is incorrect or unreliable, the Reporting Financial Institution must, by the later of the last day of the relevant calendar year or other appropriate reporting period, or 90 calendar days following the notice or discovery of such change in circumstances, obtain a self-certification and new Documentary Evidence to establish the residence(s) for tax purposes of the Account Holder. If the Reporting Financial Institution cannot obtain the self-certification and new Documentary Evidence by such date, the Reporting Financial Institution must apply the electronic record search procedure described in points B(2) through (6) of Section III of Annex I.

#### **2. SELF-CERTIFICATION FOR NEW ENTITY ACCOUNTS**

With respect to New Entity Accounts, for the purposes of determining whether a Controlling Person of a Passive 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.

#### **3. RESIDENCE OF A FINANCIAL INSTITUTION**

A Financial Institution is ‘resident’ in a Member State if it is subject to the jurisdiction of such Member State (i.e., the Member State is able to enforce reporting by the Financial Institution). In general, where a Financial Institution is resident for tax purposes in a Member State, it is subject to the jurisdiction of such Member State and it is, thus, a Member State Financial Institution. In the case of a trust that is a Financial Institution (irrespective of whether it is resident for tax purposes in a Member State), the trust is considered to be subject to the jurisdiction of a Member State if one or more of its trustees are resident in such Member State except if the trust reports all the information required to be reported pursuant to this Directive with respect to Reportable Accounts maintained by the trust to another Member State because it is resident for tax purposes in such other Member State. However, where a Financial Institution (other than a trust) does not have a residence for tax purposes (e.g., because it is treated as fiscally transparent, or it is located in a jurisdiction that does not have an income tax), it is considered to be subject to the jurisdiction of a Member State and it is, thus, a Member State Financial Institution if:

- (a) it is incorporated under the laws of the Member State;

- (b) it has its place of management (including effective management) in the Member State; or
- (c) it is subject to financial supervision in the Member State.

Where a Financial Institution (other than a trust) is resident in two or more Member States, such Financial Institution will be subject to the reporting and due diligence obligations of the Member State in which it maintains the Financial Account(s).

#### **4. ACCOUNT MAINTAINED**

In general, an account would be considered to be maintained by a Financial Institution as follows:

- (a) in the case of a Custodial Account, by the Financial Institution that holds custody over the assets in the account (including a Financial Institution that holds assets in street name for an Account Holder in such institution);
- (b) in the case of a Depository Account, by the Financial Institution that is obligated to make payments with respect to the account (excluding an agent of a Financial Institution regardless of whether such agent is a Financial Institution);
- (c) in the case of any equity or debt interest in a Financial Institution that constitutes a Financial Account, by such Financial Institution;
- (d) in the case of a Cash Value Insurance Contract or an Annuity Contract, by the Financial Institution that is obligated to make payments with respect to the contract.

#### **5. TRUSTS THAT ARE PASSIVE NFEs**

An Entity such as a partnership, limited liability partnership or similar legal arrangement that has no residence for tax purposes, according to point D(3) of Section VIII of Annex I, shall be treated as resident in the jurisdiction in which its place of effective management is situated. For these purposes, a legal person or a legal arrangement is considered 'similar' to a partnership and a limited liability partnership where it is not treated as a taxable unit in a Member State under the tax laws of such Member State. However, in order to avoid duplicate reporting (given the wide scope of the term 'Controlling Persons' in the case of trusts), a trust that is a Passive NFE may not be considered a similar legal arrangement.

#### **6. ADDRESS OF ENTITY'S PRINCIPAL OFFICE**

One of the requirements described in point E(6)(c) of Section VIII of Annex I is that, with respect to an Entity, the official documentation includes either the address of the Entity's principal office in the Member State or other jurisdiction in which it claims to be a resident or the Member State or other jurisdiction in which the Entity was incorporated or organised. The address of the Entity's principal office is generally the place in which its place of effective management is situated. The address of a Financial Institution with which the Entity maintains an account, a post office box, or an address used solely for mailing purposes is not the address of the Entity's principal office unless such address is the only address used by the Entity and appears as the Entity's registered address in the Entity's organisational documents. Further, an address that is provided subject to instructions to hold all mail to that address is not the address of the Entity's principal office.

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**ANNEX III**

**FILING RULES FOR GROUPS OF MULTINATIONAL ENTERPRISES**

**SECTION I**

*DEFINED TERMS*

1. The term ‘Group’ means a collection of enterprises related through ownership or control such that it is either required to prepare Consolidated Financial Statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange.
2. The term ‘Enterprise’ means any form of conducting business by any person referred to in Article 3, point 11(b), (c) and (d).
3. The term ‘MNE Group’ means any Group that includes two or more enterprises the tax residence for which is in different jurisdictions, or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction, and is not an Excluded MNE Group.
4. The term ‘Excluded MNE Group’ means, with respect to any Fiscal Year of the Group, a Group having total consolidated group revenue of less than EUR 750 000 000 or an amount in local currency approximately equivalent to EUR 750 000 000 as of January 2015 during the Fiscal Year immediately preceding the Reporting Fiscal Year as reflected in its Consolidated Financial Statements for such preceding Fiscal Year.
5. The term ‘Constituent Entity’ means any of the following:
  - (a) any separate business unit of an MNE Group that is included in the Consolidated Financial Statements of the MNE Group for financial reporting purposes, or would be so included if equity interests in such business unit of an MNE Group were traded on a public securities exchange;
  - (b) any such business unit that is excluded from the MNE Group's Consolidated Financial Statements solely on size or materiality grounds;
  - (c) any permanent establishment of any separate business unit of the MNE Group included in points (a) or (b) provided  that  the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes.
6. The term ‘Reporting Entity’ means the Constituent Entity that is required to file a country-by-country report conforming to the requirements in Article 10(3) in its jurisdiction of tax residence on behalf of the MNE Group. The Reporting Entity may be the Ultimate Parent Entity, the Surrogate Parent Entity, or any entity described in point 1 of Section II.



7. The term ‘Ultimate Parent Entity’ means a Constituent Entity of an MNE Group that meets the following criteria:
  - (a) it owns directly or indirectly a sufficient interest in one or more other Constituent Entities of such MNE Group such that it is required to prepare Consolidated Financial Statements under accounting principles generally applied in its jurisdiction of tax residence, or would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence;
  - (b) there is no other Constituent Entity of such MNE Group that owns directly or indirectly an interest described in point (a) in the first mentioned Constituent Entity.
8. The term ‘Surrogate Parent Entity’ means one Constituent Entity of the MNE Group that has been appointed by such MNE Group, as a sole substitute for the Ultimate Parent Entity, to file the country-by-country report in that Constituent Entity's jurisdiction of tax residence, on behalf of such MNE Group, when one or more of the conditions set out in point 1(b) of Section II apply.
9. The term ‘Fiscal Year’ means an annual accounting period with respect to which the Ultimate Parent Entity of the MNE Group prepares its financial statements.
10. The term ‘Reporting Fiscal Year’ means that Fiscal Year the financial and operational results of which are reflected in the country-by-country report referred to in Article 10(3).
11. The term ‘Qualifying Competent Authority Agreement’ means an agreement that is between authorised representatives of an EU Member State and a non-Union jurisdiction that are parties to an International Agreement and that requires the automatic exchange of country-by-country reports between the party jurisdictions.
12. The term ‘International Agreement’ means the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, any bilateral or multilateral tax convention, or any tax information exchange agreement to which the Member State is a party, and that by its terms provides legal authority for the exchange of tax information between jurisdictions, including automatic exchange of such information.
13. The term ‘Consolidated Financial Statements’ means the financial statements of an MNE Group in which the assets, liabilities, income, expenses and cash flows of the Ultimate Parent Entity and the Constituent Entities are presented as those of a single economic entity.
14. The term ‘Systemic Failure’ with respect to a jurisdiction means either that a jurisdiction has a Qualifying Competent Authority Agreement in effect with a Member State but has suspended automatic exchange (for reasons other than those that are in accordance with the terms of that Agreement), or that a jurisdiction otherwise persistently failed to automatically provide to a Member State country-by-country reports in its possession of MNE Groups that have Constituent Entities in that Member State.

## SECTION II

### *GENERAL REPORTING REQUIREMENTS*

1. A Constituent Entity resident in a Member State which is not the Ultimate Parent Entity of an MNE Group shall file a country-by-country report with respect to the Reporting Fiscal Year of an MNE Group of which it is a Constituent Entity, if the following criteria are satisfied:
  - (a) the entity is resident for tax purposes in a Member State;
  - (b) one of the following conditions applies:
    - (i) the Ultimate Parent Entity of the MNE Group is not obligated to file a country-by-country report in its jurisdiction of tax residence;
    - (ii) the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the Member State is a party but does not have a Qualifying Competent Authority Agreement in effect to which the Member State is a party by the time specified in Article 10(1) for filing the country-by-country report for the Reporting Fiscal Year;
    - (iii) there has been a Systemic Failure of the jurisdiction of tax residence of the Ultimate Parent Entity that has been notified by the Member State to the Constituent Entity resident for tax purposes in the Member State.

Without prejudice to the obligation of the Ultimate Parent Entity referred to in Article 10(1) or its Surrogate Parent Entity to file the first country-by-country report for the Fiscal Year of the MNE Group commencing on or after 1 January 2016, Member States may decide that the obligation for Constituent Entities set out in point 1 of this Section shall apply for country-by-country reports with respect to the Reporting Fiscal Years commencing on or after 1 January 2017 onwards.

A Constituent Entity resident in a Member State as defined in the first paragraph of this point shall request its Ultimate Parent Entity to provide it with all information required to enable it to meet its obligations to file a country-by-country report, in accordance with Article 10(3). If despite that, that Constituent Entity has not obtained or acquired all the required information to report for the MNE Group, this Constituent Entity shall file a country-by-country report containing all information in its possession, obtained or acquired, and notify the Member State of its residence that the Ultimate Parent Entity has refused to make the necessary information available. This shall be without prejudice to the right of the Member State concerned to apply penalties provided for in its national legislation and this Member State shall inform all Member States of this refusal.

Where there are more than one Constituent Entities of the same MNE Group that are resident for tax purposes in the Union and one or more of the conditions set out in point (b) apply, the MNE Group may designate one of such Constituent Entities to file the country-by-country report conforming to the requirements of Article 10(3) with respect to any Reporting Fiscal Year within the deadline specified in Article 10(1) and to notify the Member State that the filing is intended to satisfy the filing requirement of all the Constituent Entities of such MNE Group that are resident for tax purposes in the Union. That Member State shall, pursuant to Article 10(2), communicate the country-by-country report received to any other

Member State in which, on the basis of the information in the country-by-country report, one or more Constituent Entities of the MNE Group of the Reporting Entity are either resident for tax purposes or are subject to tax with respect to the business carried out through a permanent establishment.

Where a Constituent Entity cannot obtain or acquire all the information required to file a country-by-country report, in line with Article 10(3), then such Constituent Entity shall not be eligible to be designated to be the Reporting Entity for the MNE Group in accordance with the fourth paragraph of this point. This rule shall be without prejudice to the obligation of the Constituent Entity to notify the Member State of its residence that the Ultimate Parent Entity has refused to make the necessary information available.

2. By derogation from point 1, when one or more of the conditions set out in point 1(b) apply, an entity described in point 1 shall not be required to file a country-by-country report with respect to any Reporting Fiscal Year if the MNE Group of which it is a Constituent Entity has made available a country-by-country report in accordance with Article 10(3) with respect to such Fiscal Year through a Surrogate Parent Entity that files that country-by-country report with the tax authority of its jurisdiction of tax residence on or before the date specified in Article 10(1) and that, in case the Surrogate Parent Entity is tax resident in a jurisdiction outside the Union, satisfies the following conditions:
  - (a) the jurisdiction of tax residence of the Surrogate Parent Entity requires filing of country-by-country reports conforming to the requirements of Article 10(3);
  - (b) the jurisdiction of tax residence of the Surrogate Parent Entity has a Qualifying Competent Authority Agreement in effect to which the Member State is a party by the time specified in Article 10(1) for filing the country-by-country report for the Reporting Fiscal Year;
  - (c) the jurisdiction of tax residence of the Surrogate Parent Entity has not notified the Member State of a Systemic Failure;
  - (d) the jurisdiction of tax residence of the Surrogate Parent Entity has been notified no later than the last day of the Reporting Fiscal Year of such MNE Group by the Constituent Entity resident for tax purposes in its jurisdiction that it is the Surrogate Parent Entity;
  - (e) a notification has been provided to the Member State in accordance with point 4.
3. Member States shall request that any Constituent Entity of an MNE Group that is resident for tax purposes in that Member State notifies the Member State whether it is the Ultimate Parent Entity or the Surrogate Parent Entity or the Constituent Entity designated under point 1, no later than the last day of the Reporting Fiscal Year of such MNE Group. Member States may extend that deadline to the last day for filing of a tax return of that Constituent Entity for the preceding fiscal year.
4. Member States shall request that where a Constituent Entity of an MNE Group, that is resident for tax purposes in that Member State, is not the Ultimate Parent Entity nor the Surrogate Parent Entity nor the Constituent Entity designated under point 1, it shall notify the Member State of the identity and tax residence of the Reporting Entity, no later than the last day of the Reporting Fiscal Year of such MNE Group. Member States may extend that deadline to the last day for filing of a tax return of that Constituent Entity for the preceding fiscal year.

5. The country-by-country report shall specify the currency of the amounts referred to in that report.



Table 2 List of all the Constituent Entities of the MNE Group included in each aggregation per tax jurisdiction

Name of the MNE Group:

Fiscal Year concerned:

Tax Jurisdiction	Constituent Entities Resident in the Tax Jurisdiction	Tax Jurisdiction of Organisation or Incorporation if Different from Tax Jurisdiction of Residence	Main Business Activity(ies)												
			Research and Development	Holding or Managing Intellectual Property	Purchasing or Procurement	Manufacturing or Production	Sales, Marketing or Distribution	Administrative, Management or Support Services	Provision of Services to Unrelated Parties	Internal Group Finance	Regulated Financial Services	Insurance	Holding Shares or Other Equity instruments	Dormant	Other <sup>1</sup>
	1.														
	2.														
	3.														
	1.														
	2.														
	3.														

<sup>1</sup> Please specify the nature of the activity of the Constituent Entity in the 'Additional information'.

### Table 3: Additional information

Name of the MNE Group:

Fiscal Year concerned:

Please include any further brief information or explanation you consider necessary or that would facilitate the understanding of the compulsory information provided in the country-by-country report

#### *B. General instructions for filling in the country-by-country report*

##### 1. Purpose

The template shall be used for reporting a multinational enterprise's (MNE) Group allocation of income, taxes and business activities on a tax jurisdiction-by-tax jurisdiction basis.

##### 2. Treatment of branches and permanent establishments

The permanent establishment data shall be reported by reference to the tax jurisdiction in which it is situated and not by reference to the tax jurisdiction of residence of the business unit of which the permanent establishment is a part. Residence tax jurisdiction reporting for the business unit of which the permanent establishment is a part shall exclude financial data related to the permanent establishment.

##### 3. Period covered by the annual template

The template shall cover the Fiscal Year of the reporting MNE. For Constituent Entities, at the discretion of the reporting MNE, the template shall reflect on a consistent basis either of the following information:

- (a) information for the Fiscal Year of the relevant Constituent Entities ending on the same date as the Fiscal Year of the reporting MNE, or ending within the 12 month period preceding such date;
- (b) information for all the relevant Constituent Entities reported for the Fiscal Year of the reporting MNE.

##### 4. Source of data

The reporting MNE shall consistently use the same sources of data from year to year in completing the template. The reporting MNE may choose to use data from its consolidation reporting packages, from separate entity statutory financial statements, regulatory financial statements, or internal management accounts. It is not necessary to reconcile the revenue, profit and tax reporting in the template to the Consolidated Financial Statements. If statutory financial statements are used as the basis for reporting, all amounts shall be translated to the stated functional currency of the reporting MNE at the average exchange rate for the year stated in the 'Additional information' section of the template. Adjustments need not be made, however, for differences in accounting principles applied from tax jurisdiction to tax jurisdiction.

The reporting MNE shall provide a brief description of the sources of data used in preparing the template in the 'Additional information' section of the template. If a change is made in the source of data used from year to year, the reporting MNE shall explain the reasons for the change and its consequences in the 'Additional information' section of the template.

C. *Specific instructions for filling in the country-by-country report*

1. Overview of allocation of income, taxes and business activities by tax jurisdiction (Table 1)

1.1. Tax jurisdiction

In the first column of the template, the reporting MNE shall list all of the tax jurisdictions in which Constituent Entities of the MNE Group are resident for tax purposes. A tax jurisdiction is defined as a State as well as a non-State jurisdiction which has fiscal autonomy. A separate line shall be included for all Constituent Entities in the MNE Group deemed by the reporting MNE not to be resident in any tax jurisdiction for tax purposes. Where a Constituent Entity is resident in more than one tax jurisdiction, the applicable tax treaty tie breaker shall be applied to determine the tax jurisdiction of residence. Where no applicable tax treaty exists, the Constituent Entity shall be reported in the tax jurisdiction of the Constituent Entity's place of effective management. The place of effective management shall be determined with internationally agreed standards.

1.2. Revenues

In the three columns of the template under the heading 'Revenues', the reporting MNE shall report the following information:

- (a) the sum of revenues of all the Constituent Entities of the MNE Group in the relevant tax jurisdiction generated from transactions with associated enterprises;
- (b) the sum of revenues of all the Constituent Entities of the MNE Group in the relevant tax jurisdiction generated from transactions with independent parties;
- (c) the total of the sums referred to in points (a) and (b).

Revenues shall include revenues from sales of inventory and properties, services, royalties, interest, premiums and any other amounts. Revenues shall exclude payments received from other Constituent Entities that are treated as dividends in the payer's tax jurisdiction.

1.3. Profit (loss) before income tax

In the fifth column of the template, the reporting MNE shall report the sum of the profit (loss) before income tax for all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. The profit (loss) before income tax shall include all extraordinary income and expense items.

1.4. Income tax paid (on cash basis)

In the sixth column of the template, the reporting MNE shall report the total amount of income tax actually paid during the relevant Fiscal Year by all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. Taxes paid shall include cash taxes paid by the Constituent Entity to the residence tax jurisdiction and to all other tax jurisdictions. Taxes paid shall include withholding taxes paid by other entities (associated enterprises and independent enterprises) with respect to payments to the Constituent Entity. Thus, if company A resident in tax jurisdiction A earns interest in tax jurisdiction B, the tax withheld in tax jurisdiction B shall be reported by company A.

1.5. Income tax accrued (current year)

In the seventh column of the template, the reporting MNE shall report the sum of the accrued current tax expense recorded on taxable profits or losses of the year of reporting of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. The current tax



expense shall reflect only operations in the current year and shall not include deferred taxes or provisions for uncertain tax liabilities.

#### 1.6. Stated capital

In the eighth column of the template, the reporting MNE shall report the sum of the stated capital of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. With regard to permanent establishments, the stated capital shall be reported by the legal entity of which it is a permanent establishment unless there is a defined capital requirement in the permanent establishment tax jurisdiction for regulatory purposes.

#### 1.7. Accumulated earnings

In the ninth column of the template, the reporting MNE shall report the sum of the total accumulated earnings of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction as of the end of the year. With regard to permanent establishments, accumulated earnings shall be reported by the legal entity of which it is a permanent establishment.

#### 1.8. Number of employees

In the tenth column of the template, the reporting MNE shall report the total number of employees on a full-time equivalent (FTE) basis of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. The number of employees may be reported as of the year-end, on the basis of average employment levels for the year, or on any other basis consistently applied across tax jurisdictions and from year to year. For this purpose, independent contractors participating in the ordinary operating activities of the Constituent Entity may be reported as employees. Reasonable rounding or approximation of the number of employees is permissible, providing that such rounding or approximation does not materially distort the relative distribution of employees across the various tax jurisdictions. Consistent approaches shall be applied from year to year and across entities.

#### 1.9. Tangible assets other than cash and cash equivalents

In the eleventh column of the template, the reporting MNE shall report the sum of the net book values of tangible assets of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. With regard to permanent establishments, assets shall be reported by reference to the tax jurisdiction in which the permanent establishment is situated. Tangible assets for this purpose do not include cash or cash equivalents, intangibles, or financial assets.

### 2. List of all the Constituent Entities of the MNE Group included in each aggregation per tax jurisdiction (Table 2)

#### 2.1. Constituent Entities resident in the tax jurisdiction

The reporting MNE shall list, on a tax jurisdiction-by-tax jurisdiction basis and by legal entity name, all the Constituent Entities of the MNE Group which are resident for tax purposes in the relevant tax jurisdiction. As stated in point 2 of the general instructions with regard to permanent establishments, however, the permanent establishment shall be listed by reference to the tax jurisdiction in which it is situated. The legal entity of which it is a permanent establishment shall be noted.

#### 2.2. Tax jurisdiction of organisation or incorporation if different from tax jurisdiction of residence

The reporting MNE shall report the name of the tax jurisdiction under whose laws the Constituent Entity of the MNE Group is organised or incorporated if it is different from the tax jurisdiction of residence.

### 2.3. Main business activity(ies)

The reporting MNE shall determine the nature of the main business activity(ies) carried out by the Constituent Entity in the relevant tax jurisdiction, by ticking one or more of the appropriate boxes.

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## ANNEX IV

### HALLMARKS

#### **Part I. Main benefit test**

Generic hallmarks under category A and specific hallmarks under category B and under points C1(b)(i), (c) and (d) may only be taken into account where they fulfil the ‘main benefit test’.

That test will be satisfied if it can be established that the main benefit or one of the main benefits which, having regard to all relevant facts and circumstances, a person may reasonably expect to derive from an arrangement is the obtaining of a tax advantage.

In the context of hallmark under point 1 of category C, the presence of conditions set out in points C1(b)(i), (c) or (d) can not alone be a reason for concluding that an arrangement satisfies the main benefit test.

#### **Part II. Categories of hallmarks**

##### *A. Generic hallmarks linked to the main benefit test*

1. An arrangement where the relevant taxpayer or a participant in the arrangement undertakes to comply with a condition of confidentiality which may require them not to disclose how the arrangement could secure a tax advantage vis-à-vis other intermediaries or the tax authorities.
2. An arrangement where the intermediary is entitled to receive a fee (or interest, remuneration for finance costs and other charges) for the arrangement and that fee is fixed by reference to:
  - (a) the amount of the tax advantage derived from the arrangement; or
  - (b) whether or not a tax advantage is actually derived from the arrangement. This would include an obligation on the intermediary to partially or fully refund the fees where the intended tax advantage derived from the arrangement was not partially or fully achieved.
3. An arrangement that has substantially standardised documentation and/or structure and is available to more than one relevant taxpayer without a need to be substantially customised for implementation.

##### *B. Specific hallmarks linked to the main benefit test*

1. An arrangement whereby a participant in the arrangement takes contrived steps which consist in acquiring a loss-making company, discontinuing the main activity of such company and using its losses in order to reduce its tax liability, including through a transfer of those losses to another jurisdiction or by the acceleration of the use of those losses.
2. An arrangement that has the effect of converting income into capital, gifts or other categories of revenue which are taxed at a lower level or exempt from tax.

3. An arrangement which includes circular transactions resulting in the round-tripping of funds, namely through involving interposed entities without other primary commercial function or transactions that offset or cancel each other or that have other similar features.

*C. Specific hallmarks related to cross-border transactions*

1. An arrangement that involves deductible cross-border payments made between two or more associated enterprises where at least one of the following conditions occurs:
  - (a) the recipient is not resident for tax purposes in any tax jurisdiction;
  - (b) although the recipient is resident for tax purposes in a jurisdiction, that jurisdiction either:
    - (i) does not impose any corporate tax or imposes corporate tax at the rate of zero or almost zero; or
    - (ii) is included in a list of third-country jurisdictions which have been assessed by Member States collectively or within the framework of the OECD as being non-cooperative;
  - (c) the payment benefits from a full exemption from tax in the jurisdiction where the recipient is resident for tax purposes;
  - (d) the payment benefits from a preferential tax regime in the jurisdiction where the recipient is resident for tax purposes.
2. Deductions for the same depreciation on the asset are claimed in more than one jurisdiction.
3. Relief from double taxation in respect of the same item of income or capital is claimed in more than one jurisdiction.
4. There is an arrangement that includes transfers of assets and where there is a material difference in the amount being treated as payable in consideration for the assets in those jurisdictions involved.

*D. Specific hallmarks concerning automatic exchange of information and beneficial ownership*

1. An arrangement which may have the effect of undermining the reporting obligation under the laws implementing Union legislation or any equivalent agreements on the automatic exchange of Financial Account information, including agreements with third countries, or which takes advantage of the absence of such legislation or agreements. Such arrangements include at least the following:
  - (a) the use of an account, product or investment that is not, or purports not to be, a Financial Account, but has features that are substantially similar to those of a Financial Account;
  - (b) the transfer of Financial Accounts or assets to, or the use of jurisdictions that are not bound by the automatic exchange of Financial Account information with the State of residence of the relevant taxpayer;
  - (c) the reclassification of income and capital into products or payments that are not subject to the automatic exchange of Financial Account information;

- (d) the transfer or conversion of a Financial Institution or a Financial Account or the assets therein into a Financial Institution or a Financial Account or assets not subject to reporting under the automatic exchange of Financial Account information;
  - (e) the use of legal entities, arrangements or structures that eliminate or purport to eliminate reporting of one or more Account Holders or Controlling Persons under the automatic exchange of Financial Account information;
  - (f) arrangements that undermine, or exploit weaknesses in, the due diligence procedures used by Financial Institutions to comply with their obligations to report Financial Account information, including the use of jurisdictions with inadequate or weak regimes of enforcement of anti-money-laundering legislation or with weak transparency requirements for legal persons or legal arrangements.
2. An arrangement involving a non-transparent legal or beneficial ownership chain with the use of persons, legal arrangements or structures:
    - (a) that do not carry on a substantive economic activity supported by adequate staff, equipment, assets and premises; and
    - (b) that are incorporated, managed, resident, controlled or established in any jurisdiction other than the jurisdiction of residence of one or more of the beneficial owners of the assets held by such persons, legal arrangements or structures; and
    - (c) where the beneficial owners of such persons, legal arrangements or structures, as defined in Directive (EU) 2015/849, are made unidentifiable.

*E. Specific hallmarks concerning transfer pricing*

1. An arrangement which involves the use of unilateral safe harbour rules.
2. An arrangement involving the transfer of hard-to-value intangibles. The term 'hard-to-value intangibles' covers intangibles or rights in intangibles for which, at the time of their transfer between associated enterprises:
  - (a) no reliable comparables exist; and
  - (b) at the time the transaction was entered into, the projections of future cash flows or income expected to be derived from the transferred intangible, or the assumptions used in valuing the intangible are highly uncertain, making it difficult to predict the level of ultimate success of the intangible at the time of the transfer.
3. An arrangement involving an intragroup cross-border transfer of functions and/or risks and/or assets, if the projected annual earnings before interest and taxes (EBIT), during the three-year period after the transfer, of the transferor or transferors, are less than 50 % of the projected annual EBIT of such transferor or transferors if the transfer had not been made.

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## ANNEX V

### **Part A**

Repealed Directive with list of the successive amendments thereto  
(referred to in Article 35)

Council Directive 2011/16/EU	(OJ L 64, 11.3.2011, p. 1)
Council Directive 2014/107/EU	(OJ L 359, 16.12.2014, p. 1)
Council Directive (EU) 2015/2376	(OJ L 332, 18.12.2015, p. 1)
Council Directive (EU) 2016/881	(OJ L 146, 3.6.2016, p. 8)
Council Directive (EU) 2016/2258	(OJ L 342, 16.12.2016, p. 1)
Council Directive (EU) 2018/822	(OJ L 139, 5.6.2018, p. 1)

### **Part B**

Time-limits for transposition into national law and dates of application  
(referred to in Article 35)

<b>Directive</b>	<b>Time-limit for transposition</b>	<b>Date of application</b>
Directive 2011/16/EU	1 January 2013 (1 January 2015 as regards Article 8)	
Directive 2014/107/EU	31 December 2015	1 January 2016 (1 January 2017 as far as Austria is concerned)
Directive (EU) 2015/2376	31 December 2016	1 January 2017
Directive (EU) 2016/881	4 June 2017	5 June 2017
Directive (EU) 2016/2258	31 December 2017	1 January 2018
Directive (EU) 2018/822	31 December 2019	1 July 2020

## ANNEX VI

### CORRELATION TABLE

Directive 2011/16/EU	This Directive
Articles 1 to 7	Articles 1 to 7
Article 8(1), (2) and (3)	Article 8(1), (2) and (3)
Article 8(3a)	Article 8(4)
Article 8(6)	Article 8(5)
Article 8(7)	Article 8(6)
Article 8(7a)	Article 8(7)
Article 8(8)	Article 8(8)
Article 8a(1)	Article 9(1)
Article 8a(2)	–
Article 8a(3)	Article 9(2)
Article 8a(4)	Article 9(3)
Article 8a(5)	Article 9(4)
Article 8a(6)	Article 9(5)
Article 8a(7)	Article 9(6)
Article 8a(8)	Article 9(7)
Article 8a(9)	–
Article 8a(10)	Article 9(8)
Article 8aa	Article 10
Article 8ab	Article 11
Article 8b(1)	–
Article 8b(2)	Article 12
Article 9	Article 13
Article 10	Article 14
Article 11	Article 15

Article 12	Article 16
Article 13	Article 17
Article 14	Article 18
Article 15	Article 19
Article 16	Article 20
Article 17	Article 21
Article 18	Article 22
Article 19	Article 23
Article 20(1) to (4)	Article 24(1) to (4)
Article 20(5), first subparagraph	Article 24(5), first and second subparagraph
Article 20(5), second subparagraph	Article 24(5), third subparagraph
Article 20(5), third subparagraph	Article 24(5), fourth subparagraph
Article 20(6)	Article 24(6)
Article 21(1) to (4)	Article 25(1) to (4)
Article 21(5), first and second subparagraphs	Article 25(5), first subparagraph
Article 21(5), third subparagraph	Article 25(5), second subparagraph
Article 21(5), fourth subparagraph	Article 25(5), third subparagraph
Article 21(6)	Article 25(6)
Article 22(1)	Article 26(1)
Article 22(1a)	Article 26(2)
Article 22(2)	Article 26(3)
Article 23	Article 27
Article 23a	Article 28
Article 24	Article 29
Article 25(1)	Article 30(1)
Article 25(1a)	Article 30(2)
Article 25(2)	Article 30(3)



Article 25(3)	Article 30(4)
Article 25(4)	Article 30(5)
Article 25a	Article 31
Article 26	Article 32
Article 27	Article 33
Article 28	Article 35
Article 29	Article 34
Article 30	Article 36
Article 31	Article 37
Annexes I to IV	Annexes I to IV
–	Annex V
–	Annex VI

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