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Tax Information Exchange Act¹

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Amended by the following acts

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15.03.2017	RT I, 31.03.2017, 1	01.04.2017
07.06.2017	RT I, 26.06.2017, 1	06.07.2017

Chapter 1 General Provisions

§ 1. Scope of application of Act

(1) This Act provides for the rights and obligations relating to international automatic exchange of information necessary for determination of the amount of tax liability related to direct taxes.

(2) The Taxation Act and Acts concerning a tax are primarily applied to the issues within the scope of application of this Act but not regulated in this Act.

(3) If the regulation of this Act is different from the provisions of a treaty, the provisions of the treaty apply.

§ 2. Terms

In this Act the terms are used in the following meaning:

- 1) the tax authority is the Tax and Customs Board;
- 2) a legal arrangement is an association of persons or pool of assets without the status of a legal person established pursuant to Estonian law or an Estonian branch of a foreign association of persons or pool of assets without the status of a legal person;
- 3) an information source is a person or legal arrangement, which, on the basis of this Act or any other legislation, provides data to the information provider to be used for the compliance with this Act;
- 4) a data subject is the data subject for the purposes of the Personal Data Protection Act;
- 5) an information provider is a person or legal arrangement which is granted rights and imposed obligations by this Act; the information provider is not the tax authority, information source or data subject;
- 6) a competent authority of a foreign state is a foreign person or body that is a competent authority pursuant to a treaty or the relevant legislation of the European Union;
- 7) the exchange of information is the automatic communication of information, needed to determine the amount of tax liability concerning direct taxes, on the basis of a treaty or under the relevant legislation of the European Union, from the tax authority to a competent authority of a foreign state and vice versa;
- 8) the automatic communication of information is the communication of information on a regular basis, without request, in a predetermined manner and volume;
- 9) the collection of information is the obtaining of information, necessary for the exchange of information, from the information provider and the requesting of information, necessary for the exchange of information, from the information provider by the tax authority.

§ 3. Collection of information

(1) The Taxation Act shall be applied to the activities of the tax authority related to the compliance with this Act and the Agreement between the Government of the Republic of Estonia and the Government of the United

States of America to Improve International Tax Compliance and to Implement FATCA (hereinafter the FATCA Agreement).

(2) The provisions concerning tax declarations provided for in the Taxation Act shall apply to the declarations established on the basis of this Act, taking into account the provisions of this Act.

(3) The tax authority collects information for the current year and five preceding calendar years.

§ 4. Exchange of information

(1) The tax authority shall have the right for the exchange of information.

(2) The exchange of information does not have to be mutual.

(3) The exchange of information may include all the information in the possession of the tax authority for the current year and five preceding calendar years, the exchange of which is prescribed by a treaty or relevant legislation of the European Union, including:

- 1) remuneration from employment and remuneration or service fees paid on the basis of a contract for services or authorisation agreement or any other contract under the law of obligations;
- 2) remuneration paid to members of management or supervisory bodies of a legal person;
- 3) the amount of insurance and insurance benefits paid under the life insurance contract;
- 4) pension paid;
- 5) income from immovable property.

(4) The tax authority may enter into inter-agency treaty with a competent authority of a foreign state to specify the functioning of the exchange of information.

§ 4¹. Non-European Union exchange of financial accounts and country-by-country report information

[RT I, 31.03.2017, 1 - entry into force 01.04.2017]

(1) The provisions of Chapters 1, 1¹ and 3 of this Act shall be applied also to the automatic exchange of financial accounts information in tax matters on the basis of Article 6 of the Convention on Mutual Administrative Assistance in Tax Matters (hereinafter Convention).

(1¹) The provisions of Chapters 1, 2² and 3 of this Act shall be applied also to the automatic exchange of country-by-country report information on the basis of Article 6 of the Convention.

[RT I, 31.03.2017, 1 - entry into force 01.04.2017]

(2) The tax authority has the notification and supervision obligation related to the exchange of financial accounts information in tax matters on the basis of Article 6 of the Convention.

[RT I, 09.02.2016, 1 – entry into force 10.02.2016]

§ 5. Restriction on use of information

(1) Information obtained by means of the collection of information and exchange of information shall be regarded as a tax secret for the purposes of the Taxation Act.

(2) Information obtained under a treaty may be disclosed by the tax authority under the conditions provided for in §§ 26-30 of the Taxation Act, taking into account the provisions of the treaty.

(3) Information obtained pursuant to the relevant legislation of the European Union may be disclosed by the tax authority under the conditions provided for in §§ 26-30 of the Taxation Act, taking into account the provisions of the relevant legislation of the European Union.

§ 6. Information protection and processing

(1) The objective of the processing of information on the basis of this Act is:

- 1) to enable the tax authority and the competent authority of a foreign state to accurately and without doubt identify relevant taxable persons, to administer and enforce the legislation on taxes in cross-border situations, to evaluate the likelihood of tax evasions and to avoid further useless investigations;
- 2) to comply with obligations undertaken by the FATCA Agreement unspecified in clause 1) of this subsection.

(1¹) The tax authority is not permitted to use the data obtained in the course of the automatic exchange of country-by-country report information as the sole or main basis for transfer pricing adjustments specified in subsection 8 (2) of the Income Tax Act.

[RT I, 31.03.2017, 1 - entry into force 01.04.2017]

(2) Upon establishment of business relations the information provider shall notify the customer in a format which can be reproduced in writing of the collection, exchange and automatic communication of information carried out on the basis of this Act for the purposes of the Money Laundering and Terrorist Financing Prevention

Act. The provisions of the first sentence of this subsection shall not be applied to an information provider who has no obligation to submit the information collected for exchange of information to the tax authority.
[RT I, 09.02.2016, 1 – entry into force 10.02.2016]

(3) In addition to the obligations provided for in § 19 of the Personal Data Protection Act, the tax authority shall, at the request of the data subject, submit an extract of the information related thereto, obtained in the course of the collection of data for the current year and five previous calendar years and communicated in the course of the exchange of information, and of the authorisations granted on the basis of subsection 51⁷(2) of the Taxation Act concerning this information.

(4) If the data subject proves that information for the current year and five previous calendar years communicated to the tax authority in the course of the collection of information is incorrect due to the information provider, the information provider shall submit the corrected information to the tax authority at the earliest opportunity.

(5) The tax authority shall communicate the information corrected pursuant to subsection (4) of this section to the competent authority of a foreign state and requests deletion of the information previously communicated.

(6) If the data subject proves that the tax authority has, in the course of the exchange of information, communicated information for the current year and five previous calendar years to a competent authority of such a state where the data subject was not a tax resident in the period that the data concern, the tax authority shall request the competent authority of a foreign state to delete the corresponding information.

§ 7. Incurring costs

The tax authority and information provider shall bear their own costs relating to the compliance with this Act.

§ 8. Compliance with obligations of collection and exchange of information

(1) Upon receipt of the request the information source shall provide the information provider with the data in the absence of which the information provider shall not be able to comply with this Act. The data shall be submitted within 30 calendar days unless a shorter term is prescribed pursuant to this Act.
[RT I, 09.02.2016, 1 – entry into force 10.02.2016]

(2) The information source shall ensure the accuracy of data, used for compliance with this Act, upon the submission of the data to the information provider.

(3) The information provider shall keep all the evidence confirming the compliance with the obligations relating to the collection of information and other obligations pursuant to the FATCA Agreement for at least the current year and five preceding calendar years, taking into account the principle of purposefulness provided for in the Personal Data Protection Act.

(4) If the information provider finds that the information for the current year or five preceding calendar years communicated to the tax authority is incorrect due to the information provider, the information provider shall submit the revised information to the tax authority at the earliest opportunity.

Chapter 1¹

Automatic exchange of financial accounts information in tax matters in European Union

[RT I, 09.02.2016, 1 - entry into force 10.02.2016]

§ 8¹. Financial account

(1) For the purposes of this Chapter a financial account is an account kept by an Estonian financial institution, which satisfies all the requirements in accordance with the conditions provided for in Section 8 C of Annex I of the Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64, 11.03.2011, pp.1-12) (hereinafter the Directive).

(2) The financial account kept by the Estonian Central Securities Depository is a financial account which is opened on the basis of § 6¹ or subsection 11 (4) the Securities Register Maintenance Act, or the account manager of which is, for the purposes of the Securities Register Maintenance Act, a non-reporting financial institution.
[RT I, 26.06.2017, 1 - entry into force 06.07.2017]

(3) A financial account not specified in subsection (2) of this section is deemed to be kept by the account manager for the purposes of the Securities Register Maintenance Act.
[RT I, 26.06.2017, 1 - entry into force 06.07.2017]

(4) A financial account precluded from the exchange of information for the purposes of this Chapter is an account complying with Section 8 C(17) of Annex 1 of the Directive to which the reporting and due diligence measures shall not be applied.

(5) A financial account other than specified in the Directive precluded from the exchange of information complying with Section 8 C(17) (g) of Annex 1 of the Directive is:

- 1) a pension contract for the purposes § 41 of the Funded Pensions Act;
- 2) an insurance contract for a supplementary funded pension for the purposes § 62 of the Funded Pensions Act;
- 3) a securities account where no other units are registered except for the units of mandatory and voluntary pension funds specified in the Funded Pensions Act.

[RT I, 09.02.2016, 1 – entry into force 10.02.2016]

§ 8². Financial accounts information in tax matters

(1) For the purposes of this Chapter financial accounts information in tax matters is the information specified in Article 8 (3a) of the Directive related to the keeping of a financial account submitted to the tax authority by a reporting Estonian financial institution.

(2) Reporting and due diligence measures for the purposes of this Chapter are reporting and due diligence measures applicable to identification of financial accounts information in tax matters provided for in Annexes 1 and 2 of the Directive.

(3) The exchange of information may include financial accounts information in tax matters.

(4) The type of income included in the financial accounts information in tax matters shall be determined and the type, balance or value of an account of the specified income shall be calculated in euros, taking account of the provisions of the Income Tax Act.

(5) The forms of the declarations of the financial accounts information in tax matters and the procedure for submission and fulfilling the declarations shall be established by a regulation of the minister responsible for the area.

[RT I, 09.02.2016, 1 – entry into force 10.02.2016]

§ 8³. Information provider

(1) For the purposes of this Chapter the information provider is an Estonian financial institution.

(2) For the purposes of this Chapter a reporting Estonian financial institution is an institution established or formed in Estonia or an Estonian branch of a foreign institution which complies with the conditions provided for in Section 8 A of Annex 1 of the Directive.

(3) For the purposes of this Chapter a non-reporting Estonian financial institution is an Estonian financial institution complying with the conditions provided for in Section 8B of Annex 1 of the Directive, which is released from applying reporting and due diligence measures.

(4) For the purposes of § 3 of the Funded Pension Act the mandatory pension fund and the voluntary pension fund are non-reporting Estonian financial institutions other than those specified in the Directive complying with the conditions provided for in Section 8 B (1) (c) of Annex 1 of the Directive.

[RT I, 09.02.2016, 1 - entry into force 10.02.2016]

§ 8⁴. Controlling person

Identification of the controlling person of a company for the purposes of this Chapter is based on the determination of the beneficial owner in the Money Laundering and Terrorist Financing Prevention Act.

[RT I, 09.02.2016, 1 - entry into force 10.02.2016]

§ 8⁵. Confirmation of account holder and controlling person

(1) The confirmation of an account holder that is a natural person and of the controlling person of the company that is a natural person is a confirmation of tax residency of the person in writing or in a format which can be reproduced in writing, which includes at least the following data::

- 1) the name of the account holder or of a controlling person of the company;
- 2) address of the place of residence;
- 3) tax residences;
- 4) the identification number(s) of the taxable person;
- 5) the date of birth;
- 6) the place of birth to the accuracy of the state or jurisdiction;

7) the time of submitting the confirmation.

(2) The account holder may submit the confirmation on behalf of the controlling person of the company who is a natural person.

[RT I, 09.02.2016, 1 - entry into force 10.02.2016]

§ 8⁶. Obligations of information provider

(1) The information provider shall refrain from any action aimed at circumventing the collection of financial accounts information in tax matters.

(2) A reporting Estonian financial institution shall apply the reporting and due diligence measures specified in subsection 8²(2) of this Act and shall identify annually the information in tax matters of the financial accounts kept thereby. The data of the non-resident account holder and the non-resident controlling person of the company and the data of such company shall be collected regardless of whether tax information is involved in the exchange of information.

(3) A reporting Estonian financial institution shall submit to the tax authority the financial accounts information in tax matters, established pursuant to subsection(2) of this section for the previous calendar year, by electronic declaration by 30 June annually.

[RT I, 09.02.2016, 1 - entry into force 10.02.2016]

§ 8⁷. Compliance with obligations through third party

A reporting Estonian financial institution may perform the obligations provided for in this Chapter through a third party. The reporting Estonian financial institution shall have liability for the compliance with the obligations.

[RT I, 09.02.2016, 1 - entry into force 10.02.2016]

§ 8⁸. Obligations of tax authority

(1) The tax authority shall have the notification and supervision obligation provided for in Article 8(7a) of the Directive.

(2) The financial accounts information in tax matters communicated to the tax authority, which is not included in the exchange of information, shall be deleted by the tax authority.

[RT I, 09.02.2016, 1 - entry into force 10.02.2016]

Chapter 2 Compliance with FATCA Agreement

§ 9. Application of FATCA Agreement

Implementation of the FATCA Agreement is primarily based on the FATCA Agreement, taking into account the provisions of this Act.

§ 10. Information provider

(1) An information provider for the purposes of this Chapter is an Estonian financial institution.

(2) The Estonian financial institution is an institution established or constituted in Estonia in accordance with the conditions of Article 1 (1) (g) of the FATCA Agreement, including:

- 1) a credit institution and the Estonian branch of a foreign credit institution;
- 2) a savings and loan association;
- 3) investment firm and the Estonian branch of a foreign investment firm;
- 4) the management company and the Estonian branch of a foreign management company;
- 5) an investment fund;
- 6) an insurer engaged in life insurance and the Estonian branch of a foreign insurer;
- 7) Estonian Central Securities Depository.

[RT I, 26.06.2017, 1 - entry into force 06.07.2017]

(3) The financial accounts kept by the Estonian Central Securities Depository are financial accounts which are opened on the basis of subsection 11 (4) the Securities Register Maintenance Act, or the account manager of which is, for the purposes of the Securities Register Maintenance Act, a non-participating financial institution.

[RT I, 26.06.2017, 1 - entry into force 06.07.2017]

(4) The financial accounts not specified in subsection (3) of this section are deemed to be kept by the account manager for the purposes of the Securities Register Maintenance Act.
[RT I, 26.06.2017, 1 - entry into force 06.07.2017]

§ 11. Additional terms related to compliance with FATCA Agreement

(1) The representative of the Minister of Finance of Estonia is the tax authority for the purposes of Article 1 (1) (f) (2) of the FATCA Agreement.

(2) The controlling person for the purposes of Article 1 (1) (mm) of the FATCA Agreement is the beneficial owner for the purposes of the Money Laundering and Terrorist Financing Prevention Act.

(3) The confirmation of an account holder that is a natural person and of a controlling person of the company that is a natural person is a confirmation of the tax residency of the person in writing or in a format which can be reproduced in writing, which includes at least the following data:

- 1) the name of the account holder or of a controlling person of the company;
- 2) address of the place of residence;
- 3) tax residences;
- 4) the identification numbers or numbers of the taxable person;
- 5) the date of birth;
- 6) the place of birth to the accuracy of the state or;
- 7) the time of submitting the confirmation.

[RT I, 09.02.2016, 1 - entry into force 10.02.2016]

(4) The account holder may submit confirmation on behalf of the natural person who is controlling the company.

[RT I, 09.02.2016, 1 - entry into force 10.02.2016]

(5) The due diligence measures are the measures described in Annex I to the FATCA Agreement.

§ 12. Performance of obligations through third party

A reporting Estonian financial institution may perform the obligations provided for in this Chapter, including the obligation to submit the declaration, through a third party to the extent specified in Annex I (VI) (F) of the FATCA Agreement. The responsibility related to the compliance with the obligations relies on the reporting Estonian financial institution.

§ 13. Specifications of application of FATCA Agreement

(1) An Estonian financial institution does not have the right specified in Article 4 (7) of the FATCA Agreement.

(2) The entity accounts opened during the period of 1 July to 31 December 2014 may be considered as the pre-existing entity accounts by an Estonian financial institution. Upon treating these accounts as the pre-existing entity accounts the possibility of the postponement of taking due diligence measures provided for in Annex I (VI) (A) of the FATCA Agreement shall not be applied to these accounts.

§ 14. Specifications for application of due diligence measures

(1) Upon taking due diligence measures Annex I of the FATCA Agreement is not applied as provided in:
[RT I, 31.03.2017, 1 - entry into force 01.04.2017]

- 1) Part I, point C;
- 2) Part II, point A, subparagraphs 3 and 4;
- 3) Part III, point A;
- 4) Part V, point A

(2) The reporting Estonian financial institution may apply the specifications provided for in Annex I (II) (A) (1) and (2) and Annex I (IV) (A) of the FATCA Agreement upon taking due diligence measures, taking into account the provisions of subsection 13 (2) of this Act. The specifications shall be applied in a uniform manner to all the financial accounts of a reporting Estonian financial institution. Specifications may be applied prior to taking the due diligence measures.

§ 15. General obligations of Estonian financial institutions

(1) An Estonian financial institution shall refrain from any action aimed at circumventing the collection of information related to the FATCA Agreement.

(2) If an Estonian financial institution has an affiliated entity or branch corresponding to the conditions specified in Article 4 (5) of the FATCA Agreement, the Estonian financial institution shall comply with the conditions provided for in Article 4 (5) (a) through (c) of the FATCA Agreement.

§ 16. Data collection obligation of reporting Estonian financial institution

(1) A reporting Estonian financial institution collects:

- 1) data specified in Article 2 (2) (a) of the FATCA Agreement for 2014 and subsequent years under the conditions specified in the same point with the specifications given in Article 3 (3) (a), Article 3 (4), Article 6 (4) and Annex II of the FATCA Agreement.
- 2) the data of payments made to the non-participating financial institutions in 2015 and 2016.

(2) Upon the collection of data provided for in subsection (1) of this section the reporting Estonian financial institution shall apply the due diligence measures given in Annex I to the FATCA Agreement, taking into account the provisions of §§ 13 and 14 of this Act.

(3) The type and amount in euros of the sums included in the data specified in clause (1) 1) of this section shall be determined, taking into account the provisions of the Income Tax Act.

(4) The type and amount of the sums included in the data specified in clause (1) 2) of this section shall be determined in euros, taking into account the provisions of subsection 36 (5) of the Income Tax Act.

(5) The data for the previous calendar year specified in subsection (1) of this section shall be collected by 30 June at the latest.

§ 17. Additional obligations of reporting Estonian financial institution

(1) In addition to the obligations specified in §§ 15 and 16 of this Act a reporting Estonian financial institution shall comply with the FATCA Agreement Article 4 (1):

- 1) registration requirements specified in point c;
- 2) requirements specified in point d if it meets the requirements for the Estonian financial institutions set out in the same point;
- 3) requirements specified in point e if it meets the requirements for the Estonian financial institutions set out in the same paragraph.

(2) A reporting Estonian financial institution shall immediately register with the State Revenue Service of the United States of America

§ 18. Collection and exchange of information

(1) A reporting Estonian financial institution shall submit a declaration to the tax authority electronically pursuant to subsection 16 (1) of this Act:

- 1) with the data collected for the calendar year by 30 June of the following year pursuant to clause 1);
- 2) with the data collected pursuant to clause 2) by 30 June 2016 and 30 June 2017 respectively.

(2) The tax authority shall communicate the information received on the basis of subsection (1) of this section to a competent authority of the United States of America electronically no later than by 30 September of the same year.

(3) The forms of declarations specified in subsection (1) of this section and the procedure for the submission and completion of them shall be established by a minister responsible for the area.

§ 19. Rights and obligations of tax authority

(1) The tax authority shall perform the functions of a competent authority under the FATCA Agreement unless a minister responsible for the area decides otherwise, taking into account the specifications provided for in this Act.

(2) The tax authority shall immediately take measures to eliminate a violation specified in Article 5 of the FATCA Agreement committed by Estonia or an Estonian financial institution and approach a competent authority of the United States of America if there is any doubt that the United States of America or a financial institution of the United States of America has committed a violation described in Article 5 of the FATCA Agreement.

(3) The tax authority shall have the right to conclude agreements with the United States of America for amendment of Appendix II of the FATCA Agreement under the terms and pursuant to the procedure provided for therein.

§ 20. Application of more favourable conditions

The minister responsible for the area shall approve of the application of more favourable conditions specified in Article 7 (2) of FATCA Agreement or refuse to approve thereof and shall notify the Treasury Department of the United States of America thereof.

Chapter 2¹

Automatic exchange of information on preliminary decisions in European Union

[RT I, 31.03.2017, 1 - entry into force 01.04.2017]

§ 20¹. Object of exchange of information

(1) The automatic exchange of information on preliminary decisions may include data concerning such binding preliminary decision of the tax authority specified in § 91¹ of the Taxation Act that deals with taxation of a cross-border operation or an issue related to creation of permanent establishment in a foreign state or another jurisdiction (hereinafter preliminary decision).

(2) For the purposes of subsection (1) of this section such operation or set of operations shall be cross-border in which:

- 1) at least one of the parties is a tax resident of another state or jurisdiction;
- 2) at least one of the parties is simultaneously a tax resident of several states or jurisdictions;
- 3) at least one of the parties is engaged in business activities in another state or jurisdiction through a permanent establishment and an operation or set of operations forms a part or the whole of the business activities of such permanent establishment;
- 4) the impact is cross-border.

(3) The automatic exchange of information does not include data concerning such preliminary decision that deals only with the taxation of operations between natural persons.

[RT I, 31.03.2017, 1 - entry into force 01.04.2017]

§ 20². Information communicated with regard to preliminary decision

(1) The tax authority may communicate to all the competent authorities of the member states of the European Union the following data with regard to the preliminary decision:

- 1) data enabling identification of the taxable person and, where necessary, data concerning the group of persons into which the person belongs;
- 2) summary of the contents, guided by the obligation of maintaining business secrecy;
- 3) date of issue of the preliminary decision;
- 4) date of beginning and end of the potential duration of validity of the preliminary decision;
- 5) type of the preliminary decision;
- 6) monetary value of the relevant act or set of acts if it is referred to in the preliminary decision or agreement;
- 7) reference to another member state of the European Union whom the preliminary decision is likely to affect;
- 8) reference to a person, located or operating in another member state of the European Union, who is likely to be affected by the preliminary decision.

(2) Information is not automatically exchanged with regard to the natural persons related to the acts dealt with in the preliminary decision.

(3) The tax authority may communicate information on the preliminary decision noted in clauses (1) 3)-7) of this section to the European Commission.

[RT I, 31.03.2017, 1 - entry into force 01.04.2017]

Chapter 2²

Exchange of country-by-country information in European Union

[RT I, 31.03.2017, 1 - entry into force 01.04.2017]

§ 20³. Country-by-country report

(1) For the purposes of this Act the country-by country report shall be such report concerning multinational enterprise groups which includes:

- 1) aggregate information on multinational enterprise groups relating to the amount of revenue, profit or loss before income tax, income tax paid and income tax accrued, stated share capital, accumulated earnings, number of employees and tangible assets other than cash or cash equivalents with regard to each such state and jurisdiction in which the multinational enterprise group operates, and;

2) information enabling identification of the members of the multinational enterprise group, including information concerning the state or jurisdiction of tax residency of the member of the group or under the legislation of which it is formed if it is different from the jurisdiction of tax residency, and information on the main business activities of the members of the group.

(2) A multinational enterprise group specified in subsection (1) of this section shall be a group defined in point (3) of Section 1 of Annex III to Directive, of which at least one member is a tax resident of other jurisdiction, including through permanent establishment (hereinafter group)..

(3) The country-by country report may be included in the exchange of information.

(4) The format of a country-by country report and the procedure for submission and performance thereof shall be established by a regulation of the minister responsible for the area.

[RT I, 31.03.2017, 1 - entry into force 01.04.2017]

§ 20⁴. Information provider

The information provider for the purposes of this chapter is a reporting entity that is a tax resident of Estonia in compliance with the definition of point (6) of Section 1 of Annex III to Directive, who may be:

1) an ultimate parent entity that is a tax resident of Estonia, as defined in point (7) of Section 1 of Annex III to Directive;

2) a surrogate parent entity that is a tax resident of Estonia, as defined in point (8) of Section 1 of Annex III to Directive or

3) in the case of occurrence of facts specified in point (1) of Section 1 of Annex III to Directive other accounting entity that is a tax resident of Estonia who is not a parent entity of the group..

[RT I, 31.03.2017, 1 - entry into force 01.04.2017]

§ 20⁵. Obligations of information provider

(1) The reporting entity that is a tax resident of Estonia shall collect the information necessary for submission of the country-by-country report specified in subsection 203 (1) of this Act and submit the country-by-country report to the tax authority by 31 December of the calendar year following the financial year that is a reporting year.

(2) Other reporting entity that is a tax resident of Estonia, who is not the parent entity of the group:

1) shall request the ultimate parent entity of the group communication of all information required for the performance of the reporting obligation provided for in subsection (1) of this section;

2) shall submit the country-by country report also in the case of a failure to obtain all the information required to perform the reporting obligation;

3) shall notify the tax authority of the refusal of the ultimate parent entity of the group to communicate any information required for the performance of the reporting obligation.

(3) If the ultimate parent entity of the group or the surrogate parent entity of the group pursuant to point (2) of Section 2 of Annex III to Directive submits the country-by-country report on behalf of the group to the tax authority of the residency state or jurisdiction of the group, a member of the group that is a tax resident of Estonia shall not have the reporting obligation.

[RT I, 31.03.2017, 1 - entry into force 01.04.2017]

§ 20⁶. Notification obligation of member of group

(1) In the case of occurrence of the facts specified in point (1) of Section 2 of Annex III to Directive and in the case the group has more than one member that complies with the definition of the reporting entity, the group may notify the tax authority of the appointment of one member of the group to submit the country-by-country report on behalf of the group. Such member of the group shall be ensured access within the group to all the information that is required for submission of the country-by-country report.

(2) Each member of the group that is a tax resident of Estonia shall notify the tax authority whether it is a reporting entity specified in § 204 of this Act. The obligation provided for in this subsection shall not be an obligation for the purposes of clause 2 5) of this Act.

(3) If a member of the group that is a tax resident of Estonia is not a reporting entity, it notifies the tax authority of which of the members of the group is a reporting entity and of the tax residency of such entity.

(4) The notification obligation shall be performed within six months as of the end of the financial year that is the reporting year of the group.

(5) Upon failure to perform the notification obligation provided for in this section the tax authority may require the performance of the obligation provided for in subsection 205 (1) of this Act from any member of the group that is a tax resident of Estonia.

[RT I, 31.03.2017, 1 - entry into force 01.04.2017]

§ 20⁷. Obligations of tax authority

The tax authority shall notify all the member states of the European Union of the refusal of the ultimate parent entity of the group to communicate to the reporting entity that is a tax resident of Estonia information that is required for the submission of the country-by country report.

[RT I, 31.03.2017, 1 - entry into force 01.04.2017]

Chapter 3 Supervision

§ 21. Supervisory authority

The tax authority shall exercise supervision over the compliance with this Act and the legislation issued on the basis thereof pursuant to the procedure provided for in the Taxation Act.

§ 22. Penalty payment

[RT I, 31.03.2017, 1 - entry into force 01.04.2017]

(1) If the information provider fails to perform the obligations provided for in § 8⁶ and §§ 15-18 and 205 of this Act, the tax authority may designate additional term for the performance of obligations and issue a warning of imposing penalty payment pursuant to § 136 of the Taxation Act.

[RT I, 31.03.2017, 1 - entry into force 01.04.2017]

(2) If the information provider has failed to perform the obligations by the due date specified in the warning, the penalty payment specified in the warning is required to be paid thereby. The tax authority shall submit a claim for payment of penalty to the obligated person by an order, determine the term of payment and issue a warning that in case of a failure to pay the penalty within the time limit, the claim shall be subject to compulsory execution pursuant to §§ 128-132 of the Taxation Act.

(3) In order to enforce the performance of the obligations the amount of penalty payment may not exceed 3,300 euros, whereas it may not exceed 1,300 euros for the first event and 2,000 euros in the second event.

(4) The provisions of this section shall be applied also to a member of the group that is a tax resident of Estonia upon a failure to perform the notification obligation provided for in § 206.

[RT I, 31.03.2017, 1 - entry into force 01.04.2017]

Chapter 4 Implementing Provisions

§ 23. Notification of information processing and collection of identification numbers of reporting persons

(1) The information provider shall inform in a format which can be reproduced in writing all customers with whom a business relationship for the purposes of the Money Laundering and Terrorist Financing Prevention Act was created before the entry into force of this Act, of the collection, exchange and automatic communication of information pursuant to this Act at the latest on 30 March 2015. The provisions of the first sentence of this subsection shall not be applied to the information provider who has no obligation to submit information for the exchange of information to the tax authority on the basis of Chapter 2 of this Act.

[RT I, 09.02.2016, 1 - entry into force 10.02.2016]

(1¹) The information provider not specified in subsection (1) of this section, who has created business relationship with customers for the purposes of the Money Laundering and Terrorist Financing Prevention Act during the time when subsection 6 (2) of this Act had not been applied thereto, shall notify such customers in a format which can be reproduced in writing of the collection, exchange and automatic communication of information on the basis of this Act within three calendar months as of the time subsection 6 (2) of this Act was applied to the information provider.

[RT I, 09.02.2016, 1 - entry into force 10.02.2016]

(2) In order to enforce compliance with the obligation provided for in clause 16 (1) 1) of this Act, the reporting Estonian financial institution shall notify the account holder, who or the controlling person of whom has been determined as a US person whose Taxpayer Identification Number of the United States of America is not known, of the deficiency of the customer data established as a result of the taking of due diligence measures no

later than on 30 June 2016. The specified account holder shall submit the Taxpayer Identification Number of the United States of America to the reporting Estonian financial institution no later than on 31 December 2016.

§ 23¹. Implementation of Chapter 1¹ of this Act

(1) A reporting Estonian financial institution shall apply the reporting and due diligence measures specified in Chapter 1¹ of this Act and collect information concerning financial accounts opened in 2016 for the first time by 31 December 2016.

(2) A reporting Estonian financial institution shall apply reporting and due diligence measures and collect information for pre-existing financial accounts for the first time as follows:

- 1) for pre-existing individual high value accounts in accordance with the conditions of Section 8 C (15) of Annex 1 of the Directive by 31 December 2016;
- 2) for pre-existing individual lower value accounts in accordance with the conditions of Section 8 C (14) of Annex 1 of the Directive by 31 December 2017;
- 3) for pre-existing entity accounts in accordance with the conditions provided for in Section 5 E (1) of Annex 1 of the Directive by 31 December 2017.

(3) Upon application of reporting and due diligence measures provided for in Annexes 1 and 2 of the Directive the reporting Estonian financial institutions may:

- 1) apply due diligence measures prescribed for new financial accounts to all pre-existing financial accounts, as well as the due diligence measures prescribed for high value financial accounts to all lower value financial accounts;
- 2) rely on the current address of the place of residence of an individual account holder upon identification of his or her tax residency if the reporting Estonian financial institution has no ground to doubt the accuracy of the data;
- 3) apply due diligence measures with regard to the pre-existing entity accounts and submit information about them after the total balance or value of the financial accounts exceeds the maximum rate specified in Section 5 E (1) of Annex 1 of the Directive;
- 4) consider as pre-existing such financial account which is opened at any time by the account holder of the pre-existing account in the same financial institution and which is treated by the financial institution as one financial account together with other financial accounts of such person, to which due diligence measures applicable on the basis of the Money Laundering and Terrorist Financing Prevention Act are extended and upon opening of which the account holder is required to submit only information specified in the Directive;
- 5) collect information concerning gross proceeds from the sale or redemption of financial assets for the first time by one year later than the term provided for in this section..

(4) Upon identification of the financial account for the purposes of subsection (3) of this section a reporting Estonian financial institution shall apply rules related to account balance aggregation and currency rules provided for in Section 7 C of Annex 1 of the Directive. The negative account balance aggregation or value received as a result of applying the specified rules shall be deemed as a zero value.

(5) The specifications provided for in subsection (3) of this section shall be uniformly applied to all financial accounts kept by a reporting Estonian financial institution.
[RT I, 09.02.2016, 1 - entry into force 10.02.2016]

§ 23². Implementation of Chapter 2 of this Act

A reporting Estonian financial institution shall have the right specified in clause 23¹(3) 4) of this Act also upon performance of the obligations deriving from Chapter 2 of this Act in accordance with the FATCA agreement.
[RT I, 09.02.2016, 1 - entry into force 10.02.2016]

§ 23³. Implementation of Chapter 2¹ of this Act

(1) The tax authority may communicate information to a competent authority of a member state of the European Union and the European Commission concerning such preliminary decisions which have been issued since 1 January 2012.

(2) The preliminary decision issued during the period from 1 January 2012 to 31 December of 2013 is included in the automatics exchange of information if it is valid as at 1 January 2017.

(3) The tax authority shall communicate the data concerning the preliminary decisions specified in subsection (1) of this section, which have been issued before 1 January 2017, to each member state of the European Union and the European Commission by 31 December of 2017.
[RT I, 31.03.2017, 1 - entry into force 01.04.2017]

§ 23⁴. Implementation of Chapter 2² of this Act

(1) The provisions of Chapter 2² of this Act shall be applied to data concerning such financial year that begins on 1 January 2016 or at a later date.

(2) A reporting entity that is not a parent entity of the group shall submit the country-by country report for the first time for the financial year that begins on 1 January 2017 or at a later date.
[RT I, 31.03.2017, 1 - entry into force 01.04.2017]

§ 24.–§ 28.[Omitted from this translation.]

§ 29. Entry into force

This Act shall enter into force on 1 January 2015.

¹COUNCIL DIRECTIVE 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJL 64, 11.03.2011, pp. 1-12), amended by directives 2014/107/EU (OJL 359, 16.12.2014, pp. 1-29), (EU) 2015/2376 (EU) 2015/2376 (OJL 332, 18.12.2015, pp. 1-10), (EU) 2016/881 (OJL 146, 03.06.2016, pp. 8-21) and (EU) 2016/2258 (OJL 342, 16.12.2016, pp. 1-3).
[RT I, 31.03.2017, 1 - entry into force 01.04.2017]