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# Tax Information Exchange Act<sup>1</sup>

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07.06.2017	RT I, 26.06.2017, 1	06.07.2017
21.11.2018	RT I, 07.12.2018, 1	17.12.2018
20.02.2019	RT I, 13.03.2019, 2	15.03.2019
18.12.2019	RT I, 21.12.2019, 22	01.01.2020

## 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.

### **§ 4<sup>1</sup>. 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, 1<sup>1</sup> 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).

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

(1<sup>1</sup>) The provisions of Chapters 1, 2<sup>2</sup> and 3 of this Act shall be applied also to the automatic exchange of country-by-country report information pursuant to a treaty and on the basis of Article 6 of the Convention.

[RT I, 07.12.2018, 1 - entry into force 17.12.2018]

(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.

(1<sup>1</sup>) 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 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 51<sup>7</sup>(2) of the Taxation Act concerning this information.

[RT I, 13.03.2019, 2 - entry into force 15.03.2019]

(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.

#### **§ 7<sup>1</sup>. Transactions and acts performed in order to avoid collection of information**

If it follows from the content of a transaction or act that it has been performed in order to avoid collection of information, it shall not be taken into account upon application of this Act.

[RT I, 07.12.2018, 1 - entry into force 17.12.2018]

#### **§ 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 1<sup>1</sup>**

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

## **§ 8<sup>1</sup>. 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 1 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 § 6<sup>1</sup> 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 of § 62 of the Funded Pensions Act, the payment of the surrender value of which to the policyholder has been precluded pursuant to subsection 63 (5<sup>4</sup>) of the Funded Pensions Act or the date of payment of insurance pension of which has fallen due;  
[RT I, 07.12.2018, 1 - entry into force 17.12.2018]
- 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]

## **§ 8<sup>2</sup>. 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]

## **§ 8<sup>3</sup>. 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]

#### **§ 8<sup>4</sup>. 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]

#### **§ 8<sup>5</sup>. 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]

#### **§ 8<sup>6</sup>. 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 8<sup>2</sup>(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]

#### **§ 8<sup>7</sup>. 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]

#### **§ 8<sup>8</sup>. 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, subparagraph 3;

[RT I, 21.12.2019, 22 - entry into force 01.01.2020]

3) [Repealed - RT I, 21.12.2019, 22 - entry into force 01.01.2020]

4) Part V, point A

(2) The reporting Estonian financial institution may apply the specifications provided for in Annex I (II) (A) (1), (2) and (4) and Annex I (IV) (A) of the FATCA Agreement upon taking due diligence measures. The specifications shall be applied in a uniform manner to all the financial accounts of a reporting Estonian financial institution.

[RT I, 21.12.2019, 22 - entry into force 01.01.2020]

#### **§ 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 2<sup>1</sup>**

## **Automatic exchange of information on preliminary decisions in European Union**

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

### **§ 20<sup>1</sup>. 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 § 91<sup>1</sup> 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]

### **§ 20<sup>2</sup>. 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 2<sup>2</sup>**

# **Exchange of country-by-country information in European Union**

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

### **§ 20<sup>3</sup>. 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]

### **§ 20<sup>4</sup>. 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]

### **§ 20<sup>5</sup>. 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-county report specified in subsection 203 (1) of this Act and submit the country-by-county 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]

### **§ 20<sup>6</sup>. 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 county-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]

### **§ 20<sup>7</sup>. 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 2<sup>3</sup>** **Automatic exchange of information on cross- border arrangements in European Union**

[RT I, 21.12.2019, 22 - entry into force 01.01.2020]

### **§ 20<sup>8</sup>. Cross-border arrangement**

(1) For the purposes of this Chapter, a cross-border arrangement is a transaction or chain of transactions involving a Member State of the European Union (hereinafter in this Chapter Member State) or a third country and which may affect taxation, exchange of information on financial accounts or identification of the beneficial owner.

(2) Taxation may be affected by a cross-border arrangement which meets at least one of the following conditions:

- 1) the persons participating in the arrangement are residents in different states or jurisdictions;
- 2) at least one of the persons participating in the arrangement is a resident in more than one state or jurisdiction at the same time;
- 3) at least one of the persons participating in the arrangement operates in a state or jurisdiction in which he is not resident.

(3) The exchange of information on financial accounts may be affected by a cross-border arrangement which disturbs or impedes the collection or exchange of tax information of financial accounts provided for in § 4<sup>1</sup> and Chapters 1<sup>1</sup> and 2 of this Act.

(4) The identification of the beneficial owner may be affected by a cross-border arrangement which makes it difficult or impossible to identify the beneficial owner as defined in the Money Laundering and Terrorist Financing Prevention Act.

(5) The list of criteria for cross-border arrangements which refer to the risk of avoiding taxation, exchange of information on financial accounts or identification of the beneficial owner shall be established by a regulation of the minister responsible for the area.

[RT I, 21.12.2019, 22 - entry into force 01.01.2020]

### **§ 20<sup>9</sup>. Reportable arrangement**

A reportable arrangement is an arrangement covering exchange of information, which also concerns another Member State or a third country and for which is present at least one of the criteria specified in the regulation of the minister responsible for the area issued on the basis of subsection 20<sup>8</sup>(5) of this Act.

[RT I, 21.12.2019, 22 - entry into force 01.01.2020]

## **§ 20<sup>10</sup>. Information provider**

(1) For the purposes of this Chapter, an information provider is a person who has provided the service of design, marketing, organisation or making available for implementation or management of a reportable arrangement or a person who has provided assistance or advice upon provision of such service.

(2) A person who can be presumed not to have known or should not have known that the service provided or the assistance or advice provided upon the provision of the service was related to a reportable arrangement is not a information provider.

(3) A reporting information provider is an information provider who meets at least one of the following conditions:

- 1) the person is a resident in Estonia within the meaning of § 6 of the Income Tax Act;
- 2) the services related to the reportable arrangement are provided through a permanent establishment in Estonia owned by the person;
- 3) the person is founded in Estonia or its activities are regulated by the Estonian legislation;
- 4) the person is a member of an Estonian professional association which unites persons providing legal or tax advisory services.

[RT I, 21.12.2019, 22 - entry into force 01.01.2020]

## **§ 20<sup>11</sup>. Taxable person concerned**

For the purposes of this Chapter, the taxable person concerned shall be a person to whom the reportable arrangement has been made available for implementation or who is ready to implement it or has implemented its first stage.

[RT I, 21.12.2019, 22 - entry into force 01.01.2020]

## **§ 20<sup>12</sup>. Related persons**

(1) For the purposes of this Chapter, a related party is a person who participates in the management of the other person in a position that provides an opportunity to significantly influence the activities of another person and the person who holds more than 25 per cent of the share capital or stock or the total number of voting rights of one legal person or at least 25 per cent of the right to receive profit..

(2) Related persons are all persons who at the same time are related to the same person in any manner specified in subsection (1) of this section.

(3) A person who acts jointly with another person upon exercising the rights arising from voting rights or the rights arising from shareholding shall also be granted the rights specified above of that other person.

(4) The amount of indirect holding shall be determined by multiplying the size of the holding in the undertaking by the amount of holding in each successive subsidiary. A person who holds more than 50 per cent of the voting rights shall be considered to be the owner of 100 per cent of the voting rights.

(5) For the purposes of this Chapter, a natural person, his or her spouse or partner and his or her direct descendants and ascendants shall be treated as a single person.

[RT I, 21.12.2019, 22 - entry into force 01.01.2020]

## **§ 20<sup>13</sup>. Obligations of information provider**

(1) The information provider shall provide the following information known to them with regard to the reportable arrangement:

- 1) data enabling identification of the information providers and taxable persons concerned, including name, in case of a natural person the date and place of birth, residence, personal identification code or registry code and the number of registration as a taxable person, where available;
- 2) data enabling to identify persons related to the persons specified in clause 1) of this subsection;
- 3) criteria that make a cross-border arrangement into a reportable arrangement;
- 4) name of the arrangement, where available;
- 5) a summary of the content of the arrangement, including a description of the relevant business activities or transactions, without disclosing any business, industrial or professional secret, any marketing process or information the disclosure of which would be contrary to public policy;
- 6) date of commencement of the arrangement;
- 7) legal details of the arrangement;
- 8) monetary value of the arrangement;
- 9) a Member State to which the taxable person concerned is linked or which is likely to be affected by the reportable arrangement;

10) another person who is likely to be affected by the reportable arrangement and a Member State to which the person is linked;

11) reference number of the arrangement or part of the arrangement upon provision of additional information.

(2) The information specified in subsection (1) of this section shall be submitted by the information provider to the tax authority within 30 calendar days as of the day following the day on which the reportable arrangement becomes available for implementation, as of the day following the day when the reportable arrangement becomes ready for implementation or the day on which the first act was made for implementation of the reportable arrangement, dependent on which day arrives earlier.

(3) Every three months the information provider shall submit new or additional information specified in clauses (1) 1), 2), 6), 9) and 10) of this section with regard to such reportable arrangement that has been developed, marketed, ready for implementation or available in a form that does not require significant adjustment for implementation.

(4) An information provider shall have the right not to provide information with regard to the reportable arrangement if it accused the information provider or a person specified in clause 64 (1) 5) of the Taxation Act of committing a misdemeanor or a criminal offense.

(5) The tax authority shall assign a unique reference number to each arrangement or part of the arrangement submitted for the first time. The information provider shall notify all other persons who have provided services, assistance or advice in connection with the same arrangement or part of the arrangement of the above reference number

(6) The composition of the data to be submitted with regard to a reportable arrangement shall be established by a regulation of the minister responsible for the area.  
[RT I, 21.12.2019, 22 - entry into force 01.01.2020]

#### **§ 20<sup>14</sup>. Transfer of obligations of information provider**

(1) An information provider shall have the right not to perform the obligations provided for in § 20<sup>13</sup> of this Act if performance of the obligations would constitute a violation of the obligation to keep professional secrecy arising from the law.

(2) An information provider shall notify another information provider related to the reportable arrangement or, in the absence of such information provider, the taxable person concerned of a failure to perform the obligations provided for in § 20<sup>13</sup> of this Act.

(3) Upon failure to comply with the obligations provided for in § 20<sup>13</sup> of this Act, the obligations of the information provider shall be transferred to the other information provider concerned who has been notified thereof or, in the absence of such information provider, to the taxable person concerned.  
[RT I, 21.12.2019, 22 - entry into force 01.01.2020]

#### **§ 20<sup>15</sup>. Reporting country of information provider**

(1) If the information provider becomes liable for reporting obligation in more than one Member State, one of which is Estonia, and the connection with Estonia is first on the list below, the information provider shall submit the information pursuant to § 20<sup>13</sup> of this Act to the Tax and Customs Board. The connection between the information provider and the Member State may be the following:

- 1) the information provider is a resident thereof;
- 2) the information provider has a permanent establishment there through which it provides services related to the reportable scheme;
- 3) the information provider is established there or its activities are subject to the legislation of that state;
- 4) the information provider is a member of a professional association of that state, which unites persons who provide legal or tax advisory services.

(2) If the information provider becomes liable for reporting in more than one Member State pursuant to subsection (1) of this section, the information provider shall have the right to disregard the obligations provided for in § 20<sup>13</sup> of this Act if the information provider has evidence that the obligations have been performed in another Member State.

[RT I, 21.12.2019, 22 - Entry into force 01.01.2020]

#### **§ 20<sup>16</sup>. Multiplicity of information providers**

Where, pursuant to this Chapter, there is more than one reporting information provider regarding the same reportable arrangement, the information provider shall have the right to disregard the obligations provided for in § 20<sup>13</sup> of this Act if the information provider has evidence that the obligations have been performed by another reporting information provider.

[RT I, 21.12.2019, 22 - entry into force 01.01.2020]

### **§ 20<sup>17</sup>. Reporting obligation of taxable person concerned**

The information provider provided for in this Chapter shall be the taxable person concerned, where the person who has provided the service related to development, marketing, making available for organization of its implementation or management of a reportable arrangement, has no obligation to provide information on such arrangement in any of the Member States or if there is no such person. The obligation provided for in subsection § 20<sup>13</sup>(3) of this Act shall not transfer to the taxable person concerned.  
[RT I, 21.12.2019, 22 - entry into force 01.01.2020]

### **§ 20<sup>18</sup>. Reporting country of taxable person**

(1) If a taxable person is required to report in more than one Member State, one of which is Estonia, and the connection with Estonia appears first in the list below, the taxable person shall submit the information pursuant to subsection 20<sup>13</sup>(1) of this Act to the Tax and Customs Board. The connection of a taxable person with a Member State may be as follows:

- 1) the taxable person is a resident thereof;
- 2) the taxable person has a permanent establishment there, which benefits from a reportable arrangement;
- 3) the taxable person receives income or earns profits there, but is not resident there and has no permanent establishment there;
- 4) the taxable person is active there but is not resident there and has no permanent establishment there.

(2) If the taxable person concerned is subject to reporting obligations in more than one Member State pursuant to subsection (1) of this section, the taxable person shall be entitled to disregard the obligations provided for in § 20<sup>13</sup> of this Act if the taxable person has evidence that the obligations have been performed in another Member State.

[RT I, 21.12.2019, 22 - entry into force 01.01.2020]

### **§ 20<sup>19</sup>. Multiplicity of taxable persons concerned**

(1) Where there is more than one accountable taxable person concerned pursuant to this Chapter, the information pursuant to subsection 20<sup>13</sup>(1) of this Act shall be submitted to the tax authority by the taxable person concerned who has agreed with the information provider to develop the reportable arrangement or, in the absence of such person, by such taxable person concerned who manages the implementation of the arrangement.

(2) The taxable person concerned shall have the right not to perform the obligations provided for in § 20<sup>13</sup> of this Act if he has evidence that the obligations have been performed by another taxable person concerned.

[RT I, 21.12.2019, 22 - entry into force 01.01.2020]

## **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) In the case of a failure to perform the obligations of the information provider arising from this Act, the tax authority may set an additional term for the performance of obligations and issue a warning of imposing penalty payment pursuant to § 136 of the Taxation Act.

[RT I, 21.12.2019, 22 - entry into force 01.01.2020]

(2) The penalty payment specified in the warning is required to be paid in the case of a failure of the information provider or, in the case provided for by law, by a taxable person concerned to perform the obligations by the due date specified in the warning. The tax authority shall submit a claim for payment of penalty to the obligated person by an order, shall 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.

[RT I, 21.12.2019, 22 - entry into force 01.01.2020]

(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]

(1<sup>1</sup>) 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.

### **§ 23<sup>1</sup>. Implementation of Chapter 1<sup>1</sup> of this Act**

(1) A reporting Estonian financial institution shall apply the reporting and due diligence measures specified in Chapter 1<sup>1</sup> 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]

(6) With regard to an insurance contract which is not precluded from the exchange of information provided in clause 8<sup>1</sup>(5) 2) of this Act a reporting Estonian financial institution shall apply the reporting and due diligence measures specified in Chapter 1<sup>1</sup> of this Act and shall collect information for the first time by 31 December 2020.  
[RT I, 07.12.2018, 1 - entry into force 17.12.2018]

### **§ 23<sup>2</sup>. Implementation of Chapter 2 of this Act**

(1) A reporting Estonian financial institution shall have the right specified in clause 23<sup>1</sup>(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]

(2) The provisions of subsection 8<sup>1</sup>(5) and subsection 23<sup>1</sup>(6) of this Act shall also be applied upon the performance of obligations arising from Chapter 2 of this Act.  
[RT I, 07.12.2018, 1 - entry into force 17.12.2018]

### **§ 23<sup>3</sup>. Implementation of Chapter 2<sup>1</sup> 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 automatic 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]

### **§ 24<sup>4</sup>. Implementation of Chapter 2<sup>2</sup> of this Act**

(1) The provisions of Chapter 2<sup>2</sup> 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]

### **§ 25<sup>5</sup>. Implementation of Chapter 2<sup>3</sup> of this Act**

(1) The provisions of Chapter 2<sup>3</sup> of this Act shall be applied to such reportable arrangements which are made available for implementation, which are ready for implementation or for the implementation of which the first act is made on 1 July 2020 or on a date later thereof.

(2) The information provider shall submit information specified in subsection 20 13 (1) of this Act for the first time by 31 August 2020 for such reportable arrangements the implementation of which was commenced within the period of 25 June 2018 until 30 June 2020.  
[RT I, 21.12.2019, 22 - entry into force 01.01.2020]

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

### **§ 29. Entry into force**

This Act shall enter into force on 1 January 2015.

<sup>1</sup>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), amended by Directives 2014/107/EU (OJ L 359, 16.12.2014, pp. 1–29), (EU) 2015/2376 (OJ L 332, 18.12.2015, pp. 1–10), (EU) 2016/881 (OJ L 146, 03.06.2016, pp. 8–21), (EU) 2016/2258 (OJ L 342, 16.12.2016, pp. 1–3) and (EU) 2018/822 (OJ L 139, 05.06.2018, pp. 1–13). [RT I, 21.12.2019, 22 - entry into force 01.01.2020]