

“Additional provision twenty-two. Reporting and due diligence obligations in relation to financial accounts in the context of mutual assistance”.

1. Financial institutions must identify the residence of persons holding or controlling certain financial accounts and provide the tax authorities with information in respect of such accounts, as provided for in Council Directive 2011/16/EU, of 15 February 2011, on administrative cooperation in the field of taxation, amended by Council Directive 2014/107/EU, of 9 December 2014, as regards mandatory automatic exchange of information in the field of taxation, and the provisions of the Multilateral Agreement between Competent Authorities on the automatic exchange of information on financial accounts.

Furthermore, persons holding or controlling financial accounts will be required to inform the financial institutions where these accounts are held of their tax residence. The obligations concerning identification of residence, reporting of information and the due diligence standards to be applied by financial institutions in respect of financial accounts held therein in order to identify the tax residence of the persons holding or controlling such accounts will be implemented by regulations.

2. Infringements and penalties arising from the failure to supply information under paragraph 1 of this additional provision are regulated by the provisions of Title IV of the Law.

3. Breach of the obligation to identify the residence of persons holding or controlling financial accounts in line with the standards of due diligence referred to in section 1 of this additional provision constitutes a tax infringement, provided such breach does not entail a breach of the obligation to furnish information with respect to the above accounts.

Communication to the financial institution of false, incomplete or inaccurate data in relation to the declarations required of persons holding or controlling financial accounts in order to identify their tax residence constitutes a tax infringement, where such circumstance gives rise to the incorrect identification of the tax residence of such persons.

4. The tax infringement referred to in the first paragraph of the preceding section shall be deemed serious in nature, and shall be penalised with a fixed fine of €200 for each person with respect to whom the breach has taken place.

The tax infringement referred to in the second paragraph of the preceding section shall be deemed serious in nature and shall be penalised with a fixed fine of €300.

5. With respect to the declarations required of persons holding or controlling financial accounts opened as from 1 January 2016 with a view to identifying their tax residence for the purposes provided for in this additional provision, failure to submit such declarations to the financial institution within 90 days of the date on which the application to open an account is made shall mean that the latter may not debit, credit, or perform any other transactions in such account until such time as the declaration is submitted.

6. The documentary evidence, declarations required of persons holding or controlling financial accounts and other information used in compliance with the reporting and due diligence obligations to which this additional provision refers must be available to the tax authorities until the end of the fourth year following that in which the financial account in question is closed.

7. Any financial institution required to report information in accordance with Directive 2011/16/EU must notify each person subject to this reporting obligation that their information, as stated in paragraph 3 bis of Article 8 of Directive 2011/16/EU, shall be reported to the tax authorities and disclosed to the relevant Member State pursuant to such Directive. They must be notified of this circumstance before 31 January of the calendar year following the first year in which the account is subject to the reporting obligations.

8. The provisions of paragraphs 5 and 6 shall also apply in relation to the reporting and due diligence obligations concerning financial accounts as provided for in the Agreement between the United States and the Kingdom of Spain to improve international tax compliance and implementation of the Foreign Account Tax Compliance Act - FATCA.

In addition, in the case of accounts opened during 2015 with respect to which the declarations referred to in paragraph 5 have been not provided at 1 January 2016, failure to provide the relevant documentation to the financial institution within 60 days of that date will mean that the financial institution will be unable to debit, credit, or perform any other operations on the account until such data is furnished.

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