

Act on the Automatic Exchange of Financial Account Information in Tax Matters (Financial Account Information Exchange Act)¹

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“Financial Account Information Exchange Act of 21 December 2015 (Federal Law Gazette I, p. 2531), as amended by Article 6 of the Act of 20 December 2016 (Federal Law Gazette I, p. 3000).”

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This Act serves to transpose into national law Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64 of 11 March 2011, p. 1; Mutual Assistance Directive) in the version of Directive 2014/107/EU (OJ L 359 of 16 December 2014, p. 1) and to implement the Act of 21 December 2015 on the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information of 29 October 2014 (CRS-MCAA) (Federal Law Gazette 2015 II, p. 1630).

Note

(+++ Text reference from: 31 December 2015 +++)

(+++ Legislator’s official reference to EC law:

Transposition of EU Directive 16/2011

(CELEX No: 32011L0016) +++)

The Act was passed as Article 1 of the Act of 21 December 2015, Federal Law Gazette I, p. 2531, by the Bundestag with the consent of the Bundesrat. It entered into force on 31 December 2015 pursuant to Article 8(1) of that Act.

¹ Note: This working translation of the *Gesetz zum automatischen Austausch von Informationen über Finanzkonten in Steuersachen (Finanzkonteninformationsaustauschgesetz - FKAustG)* is provided by the Language Service of the Federal Ministry of Finance. Only the German text of this Act is authentic.

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First Chapter

General provisions

Section 1 – Scope of application

(1) This Act applies to the automatic exchange of financial account information in tax matters with

1. Member States of the European Union on the basis of Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64 of 11 March 2011, p. 1; Mutual Assistance Directive) in the version of Directive 2014/107/EU (OJ L 359 of 16 December 2014, p. 1);
2. third countries which are parties to the Multilateral Agreement of 29 October 2014 between the Competent Authorities on the Automatic Exchange of Financial Account Information (Federal Law Gazette 2015 II, p. 1630, 1632), signed by the Federal Republic of Germany in Berlin, and have enshrined this agreement in their national law in a binding way, which are also parties to the Convention on Mutual Administrative Assistance in Tax Matters (Federal Law Gazette 2015 II, p. 966, 967), and which ensure that they satisfy the conditions set out in paragraph 1 of section 7, especially subparagraph 1(e), of the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information of 29 October 2014;
3. third countries that have concluded treaties with the European Union agreeing on the mutual exchange of financial account information as defined in Directive 2014/107/EU (OJ L 359 of 16 December 2014, p. 1), mentioned under number 1 above; and
4. third countries with which the Federal Republic of Germany has concluded an agreement on the exchange of information in tax matters under which an automatic exchange of information can be agreed.

(2) The definitions in section 19 and the other definitions under section 20 apply for the implementation of reporting and due diligence obligations.

Section 2 – Common Reporting Standard

Under the applicable reporting and due diligence obligations and the complementary reporting and due diligence rules, the Federal Central Tax Office shall, within the time frame set out in section 5 subsection (2) below in conjunction with section 27 below, exchange with the competent authority of each other Reportable Jurisdiction the following information provided to it by the Financial Institutions under this Act:

1. the name, address, TIN(s) and date and place of birth, in the case of an individual, of each Reportable Person that is an Account Holder of a Reportable Account and, in the case of any Entity that is an Account Holder and that, after application of the due diligence procedures in accordance with the Common Reporting Standard, is identified as having one or more Controlling Persons that is a Reportable Person, the name, address, and TIN(s) of the Entity and the name, address, TIN(s) and date and place of birth of each Reportable Person;
2. the account number or the functional equivalent in the absence of an account number;
3. the name and identifying number, if any, of the Reporting Financial Institution;
4. the account balance or account value, including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value, as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account;
5. in the case of any Custodial Account:
 - a) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account or with respect to the account during the calendar year or other appropriate reporting period; and
 - b) the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;
6. in the case of any Depository Account, the total gross amount of interest paid or credited to

the account during the calendar year or other appropriate reporting period; and

7. in the case of any account that is not a Custodial Account or a Depository Account, the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

Section 3 – Obligations of Financial Institutions

(1) When obtaining and forwarding information as defined in section 8 below, the Financial Institutions covered by this Act shall observe the reporting and due diligence obligations and the complementary reporting and due diligence rules set out in the present Act.

(2) The Financial Institutions covered by this Act shall collect, store and process the data and information insofar as this is necessary for fulfilling their obligations under subsection (1) above.

(3) The Financial Institutions under subsection (1) above shall retain the documentation generated in fulfilling the obligations under subsection (1) above for a period of ten years. This retention period begins at the end of the year

1. in which the Financial Institutions or service providers described in section 9 subsection (4) below collected the information under subsection (2) above; or
2. in which the account is closed, insofar as the documents under the first sentence above are needed to further fulfil the obligations under subsection (1) above.

Section 4 – Competent authority

For the purposes of this Act, the competent authority is the Federal Ministry of Finance, insofar as the Federal Central Tax Office is not competent under section 5 subsection (1) number 5b of the Fiscal Administration Act (*Finanzverwaltungsgesetz*).

Section 5 – Responsibilities of the Federal Central Tax Office

(1) The Reporting Financial Institutions shall provide the data under section 8 below electronically via remote data transmission, using an officially prescribed data set, to the

Federal Central Tax Office, as the competent authority defined in section 4 above, by 31 July 2017 for the first time. The Federal Ministry of Finance shall announce the officially prescribed data set in the Federal Tax Gazette.

(2) The Federal Central Tax Office shall provide the data received from the Financial Institutions under subsection (1) above to the competent authority of the other jurisdiction as defined in section 1 subsection (1) above. In addition, the Federal Central Tax Office shall store the data provided.

(3) The Federal Central Tax Office shall take receipt of data provided by another competent authority of a jurisdiction as defined in section 1 subsection (1) above, store them and forward them to the competent *Land* revenue authority for the purpose of conducting taxation procedures in accordance with section 88 subsections (3) and (4) of the Fiscal Code (*Abgabenordnung*).

(4) The Federal Central Tax Office is entitled to analyse the data provided to it under subsections (1) and (3) above for the purpose of fulfilling the tasks legally conferred upon the Federal Central Tax Office. This does not affect any analysis of the data carried out by the competent *Land* revenue authority.

(5) Data stored by the Federal Central Tax Office under subsections (2) and (3) above shall be retained for a period of 15 years from the time they are provided under the first sentence of subsection (2). The data shall be deleted after the expiry of one year of the retention period under the first sentence above. Where a notification of a change is received before the time set out in the second sentence above, the period under the first sentence above starts at the time when the notification of the change is received.

(6) The Federal Central Tax Office is responsible for monitoring compliance with the reporting and due diligence obligations, special due diligence obligations, and complementary reporting and due diligence rules for financial account information imposed upon Financial Institutions under this Act. Sections 193 to 203 of the Fiscal Code apply *mutatis mutandis*.

(7) The data collected and stored on the basis of this Act by the Federal Central Tax Office as a competent authority may be used only for the purposes specified in the underlying regulations under section 1 subsection (1) above.

(8) When the Federal Central Tax Office provides information to the Competent Authorities of

the contracting parties to the Agreement of 29 October 2014 specified in section 1 subsection (1) number 2, no consultation of participants under the section 117 subsection (4), third sentence, of the Fiscal Code is conducted.

Section 6 – Residence; time of first application

(1) To comply with the reporting and due diligence requirements under this Act, Financial Institutions shall collect, with respect to accounts maintained by them, information on the Account Holder's residence for tax purposes and attribute it to the Account Holder, regardless of whether the Account Holder or other customer is a Reportable Person as defined in the reporting and due diligence requirements under this Act. For the purpose of collecting information on the residence for tax purposes under the first sentence above, accounts maintained by the Financial Institutions are thus deemed to be accounts for which due diligence requirements under this Act must be met; this includes collecting the TIN.

(2) Before providing data for the first time under section 8 below, each Reporting Institution shall communicate in general terms or make available to each person concerned that data obtained under this Act will, to the extent required on the basis of this Act, be provided to the Federal Central Tax Office for the purpose of transmission to the Account Holder's jurisdiction of residence.

(3) Reporting Institutions shall provide the data collected under this Act to the Federal Central Tax Office by 31 July 2017 for the first time with respect to the 2016 tax year and by 31 July of each subsequent year in subsequent years.

Second Chapter

Reporting and due diligence requirements for financial account information

Section 7 – Reporting and due diligence requirements for financial account information

Sections 8 to 26 below set out the general reporting and due diligence requirements, special due diligence rules, and complementary reporting and due diligence rules that must be observed by Reporting Institutions to ensure that the Federal Central Tax Office can provide the data described in section 2 above to the competent authority of the other jurisdiction as defined in section 1 subsection (1) above by means of the automatic exchange of information.

Section 8 – General reporting requirements

(1) Subject to subsections (2), (3) and (4) below, each Reporting Financial Institution must, under section 5 subsection (1) above, report to the Federal Central Tax Office the following information to be collected with respect to each Reportable Account of such Reporting Financial Institution:

1. the name, address, jurisdiction(s) of residence as defined in section 1 subsection (1) above, TIN(s) and date and place of birth, in the case of an individual, of each Reportable Person that is an Account Holder of the account and, in the case of any Entity that is an Account Holder and that, after application of the due diligence procedures under sections 13, 14 to 17 below, is identified as having one or more Controlling Persons that is a Reportable Person, the name, address, jurisdiction(s) of residence and TIN(s) of the Entity and the name, address, jurisdiction(s) of residence, TIN(s) and date and place of birth of each Reportable Person;
2. the account number or the functional equivalent in the absence of an account number;
3. the name and identifying number, if any, of the Reporting Financial Institution;
4. the account balance or value, including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value, as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account;
5. in the case of any Custodial Account:
 - a) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account or with respect to the account during the calendar year or other appropriate reporting period; and
 - b) the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;
6. in the case of any Depository Account, the total gross amount of interest paid or credited to

the account during the calendar year or other appropriate reporting period; and

7. in the case of any account not described in number 5 or 6 above, the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

The information reported under numbers 4 to 7 above must identify the currency in which each amount is denominated.

(2) With respect to each Reportable Account that is a Preexisting Account, the TIN(s) and date of birth are not required to be reported if such TIN(s) or date of birth are not in the records of the Reporting Financial Institution and are not otherwise required to be collected by such Reporting Financial Institution under domestic law or other legal instruments of the European Union. However, a Reporting Financial Institution is required to use reasonable efforts to obtain the TIN(s) and date of birth with respect to Preexisting Accounts by the end of the second calendar year following the year in which such Preexisting Accounts were identified as Reportable Accounts.

(3) The TIN is not required to be reported if a TIN is not issued by the relevant jurisdiction.

(4) The place of birth is not required to be reported unless

1. the Reporting Financial Institution is or was otherwise required to obtain and report it under domestic law or the Reporting Financial Institution is or was required to obtain and report it under a legal instrument of the European Union that is still applicable or was applicable on 5 January 2015; and
2. it is available in the electronically searchable data maintained by the Reporting Financial Institution.

(5) When reporting data under subsection (1) above, Financial Institutions shall ensure that there are suitable state-of-the-art safeguards against unauthorised access, unauthorised alteration and unauthorised disclosure.

Section 9 – General due diligence requirements

(1) An account is treated as a Reportable Account beginning as of the date it is identified as

such pursuant to the due diligence procedures in sections 9 to 18 below. Unless otherwise provided, data with respect to a Reportable Account must be reported annually in the calendar year following the year to which the data relate.

(2) The balance or value of an account is determined as of the last day of the calendar year or other appropriate reporting period.

(3) Where a balance or value threshold is to be determined as of the last day of a calendar year, the relevant balance or value must be determined as of the last day of the reporting period that ends with or within that calendar year.

(4) Reporting Financial Institutions may use service providers to fulfil the reporting and due diligence obligations imposed on them under this Act, but these obligations remain the responsibility of the Reporting Financial Institutions.

(5) Reporting Financial Institutions may apply the due diligence procedures for New Accounts to Preexisting Accounts, and the due diligence procedures for High Value Accounts to Lower Value Accounts. Where a Reporting Financial Institution uses New Account due diligence procedures for Preexisting Accounts, the rules otherwise applicable to Preexisting Accounts continue to apply.

Section 10 – Due diligence for Preexisting Individual Accounts

(1) Sections 11 and 12 below apply for purposes of identifying Reportable Accounts among Preexisting Individual Accounts.

(2) Any Preexisting Individual Account that has been identified as a Reportable Account under sections 11 and 12 below is considered to be a Reportable Account in all subsequent years, unless the Account Holder ceases to be a Reportable Person.

Section 11 – Lower Value Accounts

(1) The following applies with respect to Lower Value Accounts:

1. Residence address: If the Reporting Financial Institution has in its records a current residence address for the individual Account Holder based on Documentary Evidence, the Reporting Financial Institution may treat the individual Account Holder as being a resident for tax purposes of the jurisdiction in which the address is located for purposes of determining whether such individual Account Holder is a Reportable Person;

2. Electronic record search: If the Reporting Financial Institution does not rely on a current residence address for the individual Account Holder based on Documentary Evidence as set forth in number 1 above, the Reporting Financial Institution must review electronically searchable data maintained by the Reporting Financial Institution for any of the following indicia and apply subsections (2) and (3) below:
- a) identification of the Account Holder as a resident of a Reportable Jurisdiction as defined in section 1 subsection (1) above;
 - b) current mailing or residence address, including a post office box, in a Reportable Jurisdiction as defined in section 1 subsection (1) above;
 - c) one or more telephone numbers in a Reportable Jurisdiction and no telephone number in the Federal Republic of Germany;
 - d) standing instructions, other than with respect to a Depository Account, to transfer funds to an account maintained in a Reportable Jurisdiction as defined in section 1 subsection (1) above;
 - e) currently effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction as defined in section 1 subsection (1) above; or
 - f) A “hold mail” instruction or “in-care-of” address in a Reportable Jurisdiction as defined in section 1 subsection (1) above, if the Reporting Financial Institution does not have any other address on file for the Account Holder.

If none of the indicia listed in the first sentence, number 2 above are discovered in the electronic search, then no further action is required until there is a change in circumstances that results in one or more indicia being associated with the account, or the account becomes a High Value Account. If any of the indicia listed in the first sentence, number 2, letters a through e above are discovered in the electronic search, or if there is a change in circumstances that results in one or more indicia being associated with the account, then the Reporting Financial Institution must treat the Account Holder as a resident for tax purposes of each Reportable Jurisdiction as defined in section 1 subsection (1) above for which an indicium is identified, unless the Reporting Financial Institution elects to apply subsection (3) below and one of the exceptions in such subsection applies with respect to that account.

- (2) If a “hold mail” instruction or “in-care-of” address is discovered in the electronic search

under subsection (1), first sentence, number 2 above, and no other address and none of the other indicia listed in subsection (1), first sentence, number 2, letters a through e above, are identified for the Account Holder, the Reporting Financial Institution must, in the order most appropriate to the circumstances, apply the paper record search described in section 12 subsection (1), first sentence, number 2 below, or seek to obtain from the Account Holder a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of such Account Holder. If the paper search fails to establish an indicium and the attempt to obtain the self-certification or Documentary Evidence is not successful, the Reporting Financial Institution must report the account to the Federal Central Tax Office as an undocumented account.

(3) Notwithstanding a finding of indicia under subsection (1), first sentence, number 2 above, a Reporting Financial Institution is not required to treat an Account Holder as a resident of a Reportable Jurisdiction as defined in section 1 subsection (1) above if:

1. The Account Holder information contains a current mailing or residence address in the Reportable Jurisdiction as defined in section 1 subsection (1) above, one or more telephone numbers in the Reportable Jurisdiction as defined in section 1 subsection (1) above (and no telephone number in the Federal Republic of Germany) or standing instructions, with respect to Financial Accounts other than Depository Accounts, to transfer funds to an account maintained in a Reportable Jurisdiction as defined in section 1 subsection (1) above, and the Reporting Financial Institution obtains, or has previously reviewed and maintains a record of:
 - a) a self-certification from the Account Holder of the jurisdiction(s) of residence of such Account Holder that does not include such Reportable Jurisdiction; and
 - b) Documentary Evidence establishing the Account Holder's non-reportable status;
2. the Account Holder information contains a currently effective power of attorney or signatory authority granted to a person with an address in the jurisdiction in question and the Reporting Financial Institution obtains, or has previously reviewed and maintains a record of:
 - a) a self-certification from the Account Holder of the jurisdiction(s) of residence of such Account Holder that does not include Reportable Jurisdictions; or
 - b) Documentary Evidence establishing the Account Holder's non-reportable status.

(4) Review of Preexisting Individual Accounts that are Lower Value Accounts must be completed by 31 December 2017.

Section 12 – High Value Accounts

(1) The following enhanced review procedures apply with respect to High Value Accounts:

1. Electronic record search: The Reporting Financial Institution must review electronically searchable data maintained by the Reporting Financial Institution for any of the indicia listed in section 11, subsection (1), first sentence, number 2 above;
2. Paper record search: If the Reporting Financial Institution's electronically searchable databases include fields for, and capture, all of the data described in number 3 below, then a further paper record search is not required. If the electronic databases do not capture all of these data, then with respect to a High Value Account, the Reporting Financial Institution must also review the current customer master file and, to the extent that the information is not contained in the current customer master file, the following documents associated with the account and obtained by the Reporting Financial Institution within the last five years for any of the indicia described in section 11, subsection (1), first sentence, number 2 above:
 - a) The most recent Documentary Evidence collected with respect to the account;
 - b) The most recent account opening contract or documentation;
 - c) The most recent documentation obtained by the Reporting Financial Institution pursuant to AML/KYC Procedures or for other regulatory purposes;
 - d) Any power of attorney or signature authority forms currently in effect; and
 - e) Any standing instructions, other than with respect to a Depository Account, to transfer funds currently in effect;
3. A Reporting Financial Institution is not required to perform the paper record search described in the first sentence, number 2 above to the extent the Reporting Financial Institution's electronically searchable information includes the following:
 - a) The Account Holder's residence status;
 - b) The Account Holder's residence address and mailing address currently on file with the

Reporting Financial Institution;

- c) The Account Holder's telephone number(s) currently on file, if any, with the Reporting Financial Institution;
- d) In the case of Financial Accounts other than Depository Accounts, whether there are standing instructions to transfer funds in the account to another account, including an account at another branch of the Reporting Financial Institution or another Financial Institution;
- e) Whether there is a current "in-care-of" address or "hold mail" instruction for the Account Holder; and
- f) Whether there is any power of attorney or signatory authority for the account.

In addition to the electronic and paper record searches described in the first sentence, numbers 1 and 2 above, the Reporting Financial Institution must treat as a Reportable Account any High Value Account assigned to a relationship manager, including any Financial Accounts aggregated with that High Value Account, if the relationship manager has actual knowledge that the Account Holder is a Reportable Person.

(2) If none of the indicia listed in section 11, subsection (1), first sentence, number 2 above are discovered in the enhanced review of High Value Accounts described in subsection (1) above, and the account is not identified as held by a Reportable Person under subsection (1), second sentence above, then further action is not required until there is a change in circumstances that results in one or more indicia being associated with the account.

(3) If any of the indicia listed in section 11, subsection (1), first sentence, number 2, letters a through e above are discovered in the enhanced review of High Value Accounts described in subsection (1) above, or if there is a subsequent change in circumstances that results in one or more indicia being associated with the account, then the Reporting Financial Institution must treat the account as a Reportable Account with respect to each jurisdiction for which an indicium is identified unless it elects to apply section 11 subsection (3) above and one of the exceptions in such subsection applies with respect to that account.

(4) If a "hold mail" instruction or "in-care-of" address is discovered in the enhanced review of High Value Accounts described in subsection (1) above, and no other address and none of the other indicia listed in section 11, subsection (1), first sentence, number 2, letters a through e

above are identified for the Account Holder, then the Reporting Financial Institution must obtain from such Account Holder a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of the Account Holder. If the Reporting Financial Institution cannot obtain such self-certification or Documentary Evidence, it must report the account to the Federal Central Tax Office as an undocumented account.

(5) If a Preexisting Individual Account is not a High Value Account as of 31 December 2015, but becomes a High Value Account as of the last day of a subsequent calendar year, the Reporting Financial Institution must complete the enhanced review procedures described in subsection (1) above with respect to such account within the calendar year following the calendar year in which the account becomes a High Value Account. If based on this review such account is identified as a Reportable Account, the Reporting Financial Institution must report the required information about such account with respect to the year in which it is identified as a Reportable Account and subsequent years on an annual basis, unless the Account Holder ceases to be a Reportable Person.

(6) Once a Reporting Financial Institution applies the enhanced review procedures described in subsection (1) above to a High Value Account, the Reporting Financial Institution is not required to re-apply such procedures, other than the relationship manager inquiry described in subsection (1), second sentence, to the same High Value Account in any subsequent year unless the account is undocumented where the Reporting Financial Institution shall re-apply them annually until such account ceases to be undocumented.

(7) If there is a change of circumstances with respect to a High Value Account that results in one or more indicia described section 11 subsection (1), first sentence, number 2 above being associated with the account, then the Reporting Financial Institution must treat the account as a Reportable Account with respect to each Reportable Jurisdiction for which an indicium is identified unless it elects to apply section 11 subsection (3) above and one of the exceptions in such subsection applies with respect to that account.

(8) A Reporting Financial Institution must implement procedures to ensure that a relationship manager identifies any change in circumstances of an account. For example, if a relationship manager is notified that the Account Holder has a new mailing address in a Reportable Jurisdiction as defined in section 1 subsection (1) above, the Reporting Financial Institution is required to treat the new address as a change in circumstances and, if it elects to apply section 11 subsection (3) above, is required to obtain the appropriate documentation from the

Account Holder.

(9) Review of Preexisting Individual Accounts that are High Value Accounts must be completed by 31 December 2016.

Section 13 – Due diligence for New Individual Accounts

(1) The subsections below apply for purposes of identifying Reportable Accounts among New Individual Accounts.

(2) With respect to New Individual Accounts, upon account opening, the Reporting Financial Institution must obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Financial Institution to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures.

(3) If the self-certification under subsection (2) establishes that the Account Holder is resident for tax purposes in a Reportable Jurisdiction, the Reporting Financial Institution must treat the account as a Reportable Account and the self-certification must also include the Account Holder's TIN with respect to such Reportable Jurisdiction, subject to section 8 subsection (3), and date of birth.

(4) If there is a change of circumstances with respect to a New Individual Account that causes the Reporting Financial Institution to know, or have reason to know, that the original self-certification is incorrect or unreliable, the Reporting Financial Institution cannot rely on the original self-certification and must obtain a valid self-certification that establishes the residence(s) for tax purposes of the Account Holder.

Section 14 – Due diligence for Preexisting Entity Accounts

(1) The subsections below apply for purposes of identifying Reportable Accounts among Preexisting Entity Accounts.

(2) The following applies with respect to Entity Accounts that are not required to be reviewed, identified or reported:

Unless the Reporting Financial Institution elects otherwise, either with respect to all Preexisting

Entity Accounts or, separately, with respect to any clearly identified group of such accounts, a Preexisting Entity Account with an aggregate account balance or an aggregate account value that does not exceed \$250,000 as of 31 December 2015, is not required to be reviewed, identified, or reported as a Reportable Account until the aggregate account balance or value exceeds this amount as of the last day of any subsequent calendar year.

(3) The following applies with respect to Entity Accounts that are subject to review:

A Preexisting Entity Account that has an aggregate account balance or an aggregate account value that exceeds \$250,000 as of 31 December 2015, and a Preexisting Entity Account that has an aggregate account balance or an aggregate account value that does not exceed this amount as of 31 December 2015 but does exceed this amount as of the last day of any subsequent calendar year, must be reviewed in accordance with the procedure set forth in subsection (5) below.

(4) The following applies with respect to Entity Accounts with respect to which reporting is required:

With respect to Preexisting Entity Accounts described in subsection (3) above, only accounts that are held by one or more Entities that are Reportable Persons, or by Passive NFEs with one or more Controlling Persons who are Reportable Persons, shall be treated as Reportable Accounts.

(5) For Preexisting Entity Accounts described in subsection (3) above, a Reporting Financial Institution must apply the following review procedures to determine whether the account is held by one or more Reportable Persons, or by Passive NFEs with one or more Controlling Persons who are Reportable Persons:

1. The following applies for the purpose of determining whether the Entity is a Reportable Person:
 - a) Review information maintained for regulatory or customer relationship purposes, including information collected pursuant to AML/KYC Procedures, to determine whether the information indicates that the Account Holder is resident in a Reportable Jurisdiction. For this purpose, information indicating that the Account Holder is resident in a Reportable Jurisdiction includes a place of incorporation or organisation, or an address, in a Reportable Jurisdiction;
 - b) If the information indicates that the Account Holder is resident in a Reportable

Jurisdiction, the Reporting Financial Institution must treat the account as a Reportable Account unless it obtains a self-certification from the Account Holder, or reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person.

2. The following applies for the purpose of determining whether the Entity is a Passive NFE with one or more Controlling Persons who are Reportable Persons: With respect to an Account Holder of a Preexisting Entity Account, including an Entity that is a Reportable Person, the Reporting Financial Institution must determine whether the Account Holder is a Passive NFE with one or more Controlling Persons who are Reportable Persons. If any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account. In making these determinations the Reporting Financial Institution should follow the guidelines listed in letters a to c below in the order most appropriate under the circumstances:
 - a) For purposes of determining whether the Account Holder is a Passive NFE, the Reporting Financial Institution must obtain a self-certification from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution other than an Investment Entity described in section 19 number 6 letter b below that is not a Participating Jurisdiction Financial Institution;
 - b) For purposes of determining the Controlling Person of an Account Holder, a Reporting Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures;
 - c) For the purposes of determining whether a Controlling Person of a Passive NFE is a Reportable Person, a Reporting Financial Institution may rely on:
 - aa) information collected and maintained pursuant to AML/KYC Procedures in the case of a Preexisting Entity Account held by one or more NFEs with an aggregate account balance or an aggregate account value that does not exceed \$1,000,000; or
 - bb) a self-certification from the Account Holder or such Controlling Person of the Reportable Jurisdiction(s) as defined in section 1 subsection (1) above or any

other jurisdiction(s) in which the Controlling Person is resident for tax purposes.

Section 15 – Timing of review and additional procedures applicable to Preexisting Entity Accounts

(1) Review of Preexisting Entity Accounts with an aggregate account balance or an aggregate account value that exceeds \$250,000 as of 31 December 2015 must be completed by 31 December 2017.

(2) Review of Preexisting Entity Accounts with an aggregate account balance or an aggregate account value that does not exceed \$250,000 as of 31 December 2015, but exceeds this amount as of 31 December of a subsequent year, must be completed within the calendar year following the year in which the aggregate account balance or aggregate account value exceeds this amount.

(3) If there is a change of circumstances with respect to a Preexisting Entity Account that causes the Reporting Financial Institution to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the Reporting Financial Institution must re-determine the status of the account in accordance with the procedures set forth in section 14 subsection (5) above.

Section 16 – Due diligence for New Entity Accounts

(1) The subsections below apply for purposes of identifying Reportable Accounts among New Entity Accounts.

(2) For New Entity Accounts, a Reporting Financial Institution must apply the following review procedures to determine whether the account is held by one or more Reportable Persons, or by Passive NFEs with one or more Controlling Persons who are Reportable Persons:

1. Determine whether the entity is a Reportable Person:
 - a) Obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Financial Institution to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures; if the Entity certifies that it is not resident for tax purposes, the

Reporting Financial Institution may rely on the address of the principal office of the Entity to determine the residence of the Account Holder;

- b) If the self-certification indicates that the Account Holder is resident in a Reportable Jurisdiction, the Reporting Financial Institution must treat the account as a Reportable Account unless it reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person with respect to such Reportable Jurisdiction.

The following applies for the purpose of determining whether the Entity is a Passive NFE with one or more Controlling Persons who are Reportable Persons: With respect to an Account Holder of a New Entity Account, including an Entity that is a Reportable Person, the Reporting Financial Institution must determine whether the Account Holder is a Passive NFE with one or more Controlling Persons who are Reportable Persons. If any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account. In making these determinations the Reporting Financial Institution should follow the guidelines listed in this first sentence, numbers 1 and 2, in the order most appropriate under the circumstances.

2. For purposes of determining whether the Account Holder is a Passive NFE, the Reporting Financial Institution must rely on a self-certification from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution other than an Investment Entity described in section 19 number 6 letter b below that is not a Participating Jurisdiction Financial Institution.
- (3) For purposes of determining the Controlling Persons of an Account Holder, a Reporting Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures.
- (4) For purposes of determining whether a Controlling Person of a Passive NFE is a Reportable Person, a Reporting Financial Institution may rely on a self-certification from the Account Holder or such Controlling Person.

Section 17 – Special due diligence rules

- (1) A Reporting Financial Institution may not rely on a self-certification or Documentary

Evidence if the Reporting Financial Institution knows or has reason to know that the self-certification or Documentary Evidence is incorrect or unreliable.

(2) The following applies with respect to Financial Accounts held by individual beneficiaries of a Cash Value Insurance Contract or an Annuity Contract and with respect to Group Cash Value Insurance Contracts or Group Annuity Contracts:

1. A Reporting Financial Institution may presume that an individual beneficiary, other than the owner, of a Cash Value Insurance Contract or an Annuity Contract receiving a death benefit is not a Reportable Person and may treat such Financial Account as other than a Reportable Account unless the Reporting Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Reportable Person. A Reporting Financial Institution has reason to know that a beneficiary of a Cash Value Insurance Contract or an Annuity Contract is a Reportable Person if the information collected by the Reporting Financial Institution and associated with the beneficiary contains indicia as described in section 11 above. If a Reporting Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Reportable Person, the Reporting Financial Institution must follow the procedures in section 11 above;
2. A Reporting Financial Institution may treat a Financial Account that represents a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract as a Financial Account that is not a Reportable Account until the time when payment of an amount is due to the employee or certificate holder or beneficiary, if the Financial Account that represents a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract meets the following requirements:
 - a) the Group Cash Value Insurance Contract or Group Annuity Contract is issued to an employer and covers twenty-five or more employees or twenty-five or more certificate holders;
 - b) the employees or certificate holders are entitled to receive any contract value equivalent to their interests and to name beneficiaries for the benefit payable upon the employee's death; and
 - c) the aggregate amount payable to any employee or certificate holder or beneficiary does not exceed \$1,000,000.

(3) The term “Group Cash Value Insurance Contract” refers to a Cash Value Insurance Contract that:

1. provides coverage on individuals who are affiliated through an employer, trade association, employee organisation, or other association or group; and
2. charges a premium for each member of the group, or member of a class within the group, that is determined without regard to the individual health characteristics other than age, gender, and smoking habits of the member or class of members of the group.

(4) The term “Group Annuity Contract” refers to an Annuity Contract under which the obligees are individuals who are affiliated through an employer, trade association, employee organisation, or other association or group.

Section 18 – Account balance aggregation and currency

(1) For purposes of determining the aggregate balance or the aggregate value of Financial Accounts held by an individual, a Reporting Financial Institution is required to aggregate all Financial Accounts maintained by the Reporting Financial Institution, or by a Related Entity, but only to the extent that the Reporting Financial Institution’s computerised systems link the Financial Accounts by reference to a data element such as client number or TIN, and allow account balances or account values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described.

(2) For purposes of determining the aggregate balance or the aggregate value of Financial Accounts held by an Entity, a Reporting Financial Institution is required to take into account all Financial Accounts maintained by the Reporting Financial Institution, or by a Related Entity, but only to the extent that the Reporting Financial Institution’s computerised systems link the Financial Accounts by reference to a data element such as client number or TIN, and allow account balances or account values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described.

(3) For purposes of determining the aggregate balance or the aggregate value of Financial Accounts held by a person to determine whether a Financial Account is a High Value Account, a Reporting Financial Institution is also required, in the case of any Financial Accounts that a

relationship manager knows, or has reason to know, are directly or indirectly owned, controlled, or established, other than in a fiduciary capacity, by the same person, to aggregate all such accounts.

(4) All amounts denominated in euros shall be read to include equivalent amounts in other currencies under domestic law.

Section 19 – Definitions

For the purposes of this Act, the following definitions apply:

1. Reporting Financial Institution: any Participating Jurisdiction Financial Institution that is not a Non-Reporting Financial Institution;
2. Participating Jurisdiction Financial Institution means
 - a) any Financial Institution that is resident in a Participating Jurisdiction, but excludes any branch of that Financial Institution that is located outside such Participating Jurisdiction, or
 - b) any branch of a Financial Institution that is not resident in a Participating Jurisdiction, if that branch is located in such Participating Jurisdiction;
3. Financial Institution: means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company;
4. Custodial Institution means any Entity that holds, as a substantial portion of its business, Financial Assets for the account of others. An Entity holds Financial Assets for the account of others as a substantial portion of its business if the Entity's gross income attributable to the holding of Financial Assets and related financial services equals or exceeds 20 per cent of the Entity's gross income during either:
 - a) the three-year period that ends on December 31 or on the final day of a non-calendar year accounting period prior to the year in which the determination is being made; or
 - b) the period during which the Entity has been in existence, whichever is shorter;
5. Depository Institution means any Entity that accepts deposits in the ordinary course of a banking or similar business.

6. Investment Entity: any Entity
- a) that primarily conducts as a business one or more of the following activities or operations for a customer:
 - aa) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange instruments, interest rate instruments and index instruments; transferable securities; or commodity futures trading;
 - bb) individual and collective portfolio management; or
 - cc) otherwise investing, administering, or managing Financial Assets or money on behalf of other persons; or
 - b) the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Entity defined in letter a above.

An Entity primarily conducts as a business one or more of the activities described in the first sentence of letter a above, or an Entity's gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets the first sentence of letter b above, if the Entity's gross income attributable to the relevant activities equals or exceeds 50 per cent of the Entity's gross income during either

- a) the three-year period ending on 31 December of the year preceding the year in which the determination is made; or
- b) the period during which the Entity has been in existence, whichever is shorter.

The term Investment Entity does not include an Entity that is an Active NFE because it meets any of the criteria in number 42 letters d through g below. This paragraph shall be interpreted in a manner consistent with similar language set forth in the definition of financial institutions in the Financial Action Task Force (FATF) Recommendations.

7. The term Financial Asset includes a security (for example, a share of stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness),

partnership interest, commodity, swap (for example, interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements), Insurance Contract or Annuity Contract, or any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, swap, Insurance Contract, or Annuity Contract. The term Financial Asset does not include a non-debt, direct interest in real property;

8. Specified Insurance Company: any Entity that is an insurance company or the holding company of an insurance company that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract;
9. Non-Reporting Financial Institution: any Financial Institution that is:
 - a) a Governmental Entity, International Organisation or Central Bank, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution;
 - b) a Broad Participation Retirement Fund; a Narrow Participation Retirement Fund; a Pension Fund of a Governmental Entity, International Organisation or Central Bank; or a Qualified Credit Card Issuer;
 - c) any other Entity that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the Entities described in letters a and b above, and is included in the list of Non-Reporting Financial Institutions under Article 8(7a) of Directive 2014/107/EU, provided that the status of such Entity as a Non-Reporting Financial Institution does not frustrate the purposes of this Act; this also applies with respect to third countries. The list of third countries and any changes to the list will be published by the Federal Ministry of Finance in a separate circular in Part I of the Federal Tax Gazette;
 - d) an Exempt Collective Investment Vehicle; or
 - e) a trust to the extent that the trustee of the trust is a Reporting Financial Institution and reports all information required to be reported pursuant to section 8 above with respect to all Reportable Accounts of the trust;
10. Governmental Entity: the government of a jurisdiction, any political subdivision of a

jurisdiction, which, for the avoidance of doubt, can include a state, province, county, or local authority, among others, or any wholly owned agency or instrumentality of a Reporting Jurisdiction or of another jurisdiction or of any one or more of the foregoing (each, a “Governmental Entity”). A Governmental Entity is comprised of

- a) the integral parts;
- b) the controlled entities; and
- c) the political subdivisions

of a jurisdiction. An integral part of a Reporting Jurisdiction means any person, organisation, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of a jurisdiction. The net earnings of the governing authority must be credited to its own account or to other accounts of the jurisdiction, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity. A controlled entity means an Entity that is separate in form from the jurisdiction or that otherwise constitutes a separate juridical entity, provided that:

- a) The Entity is wholly owned and controlled by one or more Governmental Entities directly or through one or more controlled entities;
- b) The Entity’s net earnings are credited to its own account or to the accounts of one or more Governmental Entities, with no portion of its income inuring to the benefit of any private person;
- c) The Entity’s assets vest in one or more Governmental Entities upon dissolution.

Income does not inure to the benefit of private persons if such persons are the intended beneficiaries of a governmental programme, and the programme activities are performed for the general public with respect to the common welfare or relate to the administration of some phase of government. Notwithstanding the foregoing, however, income is considered to inure to the benefit of private persons if the income is derived from the use of a governmental entity to conduct a commercial business, such as a commercial banking business, that provides financial services to private persons;

- 11. International Organisation: any international organisation or wholly owned agency or

instrumentality thereof. An International Organisation includes any intergovernmental organisation, including a supranational organisation, that

- a) is comprised primarily of governments;
 - b) has in effect a headquarters or substantially similar agreement with the jurisdiction;
and
 - c) the income of which does not inure to the benefit of private persons;
12. Central Bank: an institution that is by law or government sanction the principal authority, other than the government of the jurisdiction itself, issuing instruments intended to circulate as currency. Such an institution may include an instrumentality that is separate from the government of the jurisdiction, which may be owned in whole or in part by the jurisdiction.
13. Broad Participation Retirement Fund: a fund established to provide retirement, disability, or death benefits, or any combination thereof, to beneficiaries that are current or former employees, or persons designated by such employees, of one or more employers in consideration for services rendered, provided that the fund:
- a) does not have a single beneficiary with a right to more than 5 per cent of the fund's assets;
 - b) is subject to government regulation and provides information to the tax authorities;
and
 - c) satisfies at least one of the following requirements:
 - aa) The fund is generally exempt from tax on investment income, or taxation of such income is deferred or taxed at a reduced rate, due to its status as a retirement or pension plan;
 - bb) The fund receives at least 50 per cent of its total contributions, other than transfers of assets from other plans described in numbers 13 through 15, or from retirement and pension accounts described in number 34 letter a below, from the sponsoring employers;
 - cc) Distributions or withdrawals from the fund are allowed only upon the

occurrence of specified events related to retirement, disability, or death, except rollover distributions to other retirement funds described in numbers 13 through 15 or retirement and pension accounts described in number 34 letter a below, or penalties apply to distributions or withdrawals made before such specified events; or

dd) Contributions, other than certain permitted make-up contributions, by employees to the fund are limited by reference to earned income of the employee or may not exceed \$50,000 annually, applying the rules set forth in section 18 above for account aggregation and currency translation.

14. Narrow Participation Retirement Fund: a fund established to provide retirement, disability, or death benefits to beneficiaries that are current or former employees, or persons designated by such employees, of one or more employers in consideration for services rendered, provided that:
- a) The fund has fewer than 50 participants;
 - b) The fund is sponsored by one or more employers that are not Investment Entities or Passive NFEs;
 - c) The employee and employer contributions to the fund, other than transfers of assets from retirement and pension accounts described in number 34 letter a below, are limited by reference to earned income and compensation of the employee, respectively;
 - d) Participants that are not residents of the jurisdiction in which the fund is established are not entitled to more than 20 per cent of the fund's assets; and
 - e) The fund is subject to government regulation and provides information to the tax authorities;
15. Pension Fund of a Governmental Entity, International Organisation or Central Bank: a fund established by a Governmental Entity, International Organisation or Central Bank to provide retirement, disability, or death benefits to beneficiaries or participants that are current or former employees, or persons designated by such employees, or that are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the Governmental Entity,

International Organisation or Central Bank.

16. Qualified Credit Card Issuer: a Financial Institution that
 - a) is a Financial Institution solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the card and the overpayment is not immediately returned to the customer;
 - b) beginning on or before 1 January 2016, implements policies and procedures either to prevent a customer from making an overpayment in excess of \$50,000, or to ensure that any customer overpayment in excess of this amount is refunded to the customer within 60 days, in each case applying the rules set forth in section 18 above for account aggregation and currency translation. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns;

17. Exempt Collective Investment Vehicle: an Investment Entity that is regulated as a collective investment vehicle, provided that all of the interests in the collective investment vehicle are held by or through individuals or Entities that are not Reportable Persons, except a passive NFE with Controlling Persons who are Reportable Persons. An Investment Entity that is regulated as a collective investment vehicle does not fail to qualify under this number as an Exempt Collective Investment Vehicle, solely because the collective investment vehicle has issued physical shares in bearer form, provided that:
 - a) the collective investment vehicle has not issued, and does not issue, any physical shares in bearer form after 31 December 2015;
 - b) the collective investment vehicle retires upon surrender all shares that are not in collective custody;
 - c) the collective investment vehicle performs the due diligence procedures listed in sections 9 through 18 above and reports any information required to be reported with respect to bearer share certificates and the corresponding dividend coupons when these certificates or coupons are presented for redemption or other payment; and
 - d) The collective investment vehicle has in place policies and procedures to ensure that bearer share certificates that are not in collective custody and corresponding dividend coupons that have not yet matured are redeemed or immobilised as soon as possible,

and in any event prior to 1 January 2017.

18. Financial Account: an account maintained by a Financial Institution. The term “Financial Account” includes a Depository Account, a Custodial Account and
- a) in the case of an Investment Entity, any equity or debt interest in the Financial Institution. Notwithstanding the foregoing, the term “Financial Account” does not include any equity or debt interest in an Entity that is an Investment Entity solely because it
 - aa) renders investment advice to, and acts on behalf of, or
 - bb) manages portfolios for, and acts on behalf of, a customer for the purpose of investing, managing, or administering Financial Assets deposited in the name of the customer with a Financial Institution other than such Entity;
 - b) in the case of a Financial Institution not described in letter a above, any equity or debt interest in the Financial Institution, if the class of interests was established with a purpose of avoiding reporting in accordance with section 8 above; and
 - c) any Cash Value Insurance Contract and any Annuity Contract issued or maintained by a Financial Institution, other than a noninvestment-linked, non-transferable immediate life annuity that is issued to an individual and monetises a pension or disability benefit provided under an account that is an Excluded Account.

The term “Financial Account” does not include any account that is an Excluded Account;

19. Depository Accounts: any commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a Financial Institution in the ordinary course of a banking or similar business. A Depository Account also includes an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon;
20. Custodial Account: an account other than an Insurance Contract or Annuity Contract that holds one or more Financial Assets for the benefit of another person;
21. Equity Interest: The term “Equity Interest” means, in the case of a partnership that is a

Financial Institution, either a capital or profits interest in the partnership. In the case of a trust that is a Financial Institution, an Equity Interest is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust. A Reportable Person will be treated as being a beneficiary of a trust if such Reportable Person has the right to receive directly or indirectly, for example, through a nominee, a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust;

22. Insurance Contract: a contract, other than an Annuity Contract, under which the issuer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk;
23. Annuity Contract: a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals. The term also includes a contract that is considered to be an Annuity Contract in accordance with the law, regulation, or practice of the jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years;
24. Cash Value Insurance Contract: an Insurance Contract, other than an indemnity reinsurance contract between two insurance companies, that has a Cash Value;
25. Cash Value: the term “Cash Value” means the greater of
 - a) the amount that the policyholder is entitled to receive upon surrender or termination of the contract, determined without reduction for any surrender charge or policy loan, and
 - b) the amount the policyholder can borrow under or with regard to the contract.

Notwithstanding the first sentence above, the term “Cash Value” does not include an amount payable under an Insurance Contract:

- a) solely by reason of the death of an individual insured under a life insurance contract;
- b) as a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;
- c) as a refund of a previously paid premium (less cost of insurance charges whether or not actually imposed) under an Insurance Contract, other than an investment-linked life

insurance or annuity contract, due to cancellation or termination of the contract, decrease in risk exposure during the effective period of the contract, or arising from the correction of a posting or similar error with regard to the premium for the contract;

- d) as a policyholder dividend, other than a termination dividend, provided that the dividend relates to an Insurance Contract under which the only benefits payable are described in letter b above; or
- e) as a return of an advance premium or premium deposit for an Insurance Contract for which the premium is payable at least annually if the amount of the advance premium or premium deposit does not exceed the next annual premium that will be payable under the contract;

26. Preexisting Account: a Preexisting Account is

- a) a Financial Account maintained by a Reporting Financial Institution as of 31 December 2015;
- b) any Financial Account of an Account Holder, regardless of the date such Financial Account was opened, if:
 - aa) the Account Holder also holds with the Reporting Financial Institution or with a Related Entity within the same jurisdiction as the Reporting Financial Institution a Financial Account that is a Preexisting Account under letter a above;
 - bb) the Reporting Financial Institution and, as applicable, the Related Entity within the same jurisdiction as the Reporting Financial Institution, treats both of the aforementioned Financial Accounts, and any other Financial Accounts of the Account Holder that are treated as Preexisting Accounts under this letter b, as a single Financial Account for purposes of satisfying the standards of knowledge requirements set forth in section 17 subsection (1) above, and for purposes of determining the balance or value of any of the Financial Accounts when applying any of the account thresholds;
 - cc) with respect to a Financial Account that is subject to AML/KYC Procedures, the Reporting Financial Institution is permitted to satisfy such AML/KYC Procedures for the Financial Account by relying upon the AML/KYC Procedures performed for the Preexisting Account described in letter a above;

and

dd) the opening of the Financial Account does not require the provision of new, additional or amended customer information by the Account Holder other than for purposes of this Act;

27. New Account: a Financial Account maintained by a Reporting Financial Institution opened on or after 1 January 2016, unless it is treated as a Preexisting Account under number 26 letter b above.
28. Preexisting Individual Account: a Preexisting Account held by one or more individuals;
29. New Individual Account: a New Account held by one or more individuals;
30. Preexisting Entity Account: a Preexisting Account held by one or more Entities;
31. Lower Value Account: a Preexisting Individual Account with an aggregate balance or an aggregate value as of 31 December 2015 that does not exceed \$1,000,000;
32. High Value Account: a Preexisting Individual Account with an aggregate balance or an aggregate value that exceeds \$1,000,000 as of 31 December 2015 or 31 December of any subsequent year;
33. New Entity Account: a New Account held by one or more Entities;
34. Excluded Account: any of the following accounts:
 - a) a retirement or pension account that satisfies the following requirements:
 - aa) the account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits, including disability or death benefits;
 - bb) the account is tax-favoured, i.e. contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate;
 - cc) information reporting to the tax authorities is required with respect to the account;

dd) withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and

ee) either

aaa) annual contributions are limited to \$50,000 or less; or

bbb) there is a maximum lifetime contribution limit to the account of \$1,000,000 or less, in each case applying the rules set forth in section 18 above for account aggregation and currency translation.

A Financial Account that otherwise satisfies the requirement of number 34 letter a double letter ee above will not fail to satisfy such requirement solely because such Financial Account may receive assets or funds transferred from one or more Financial Accounts that meet the requirements of this number 34 letters a or b or from one or more retirement or pension funds that meet the requirements of numbers 13 through 15;

b) an account that satisfies the following requirements:

aa) the account is subject to regulation as an investment vehicle for purposes other than for retirement and is regularly traded on an established securities market, or the account is subject to regulation as a savings vehicle for purposes other than for retirement;

bb) the account is tax-favoured; contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate;

cc) withdrawals are conditioned on meeting specific criteria related to the purpose of the investment or savings account (for example, the provision of educational or medical benefits), or penalties apply to withdrawals made before such criteria are met; and

dd) annual contributions are limited to \$50,000 or less, applying the rules set forth in section 18 above for account aggregation and currency translation.

A Financial Account that otherwise satisfies the requirement of number 34 letter b

double letter dd above will not fail to satisfy such requirement solely because such Financial Account may receive assets or funds transferred from one or more Financial Accounts that meet the requirements of this number 34 letters a or b or from one or more retirement or pension funds that meet the requirements of numbers 13 through 15;

- c) a life insurance contract with a coverage period that will end before the insured individual attains age 90, provided that the contract satisfies the following requirements:
 - aa) periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age 90, whichever is shorter;
 - bb) the contract has no contract value that any person can access by withdrawal, loan, or otherwise without terminating the contract;
 - cc) the amount, other than a death benefit, payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges, whether or not actually imposed, for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract; and
 - dd) the contract is not held by a transferee for value;
- d) an account that is held solely by an estate if the documentation for such account includes a copy of the deceased's will or death certificate;
- e) an account established in connection with any of the following:
 - aa) a court order or judgement;
 - bb) a sale, exchange, or lease of real or personal property, provided that the account satisfies the following requirements:
 - aaa) the account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a Financial Asset that is deposited in the account in connection with the sale,

- exchange, or lease of the property;
- bbb) the account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease;
 - ccc) the assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee, including to satisfy such person's obligation, when the property is sold, exchanged, or surrendered, or the lease terminates;
 - ddd) the account is not a margin or similar account established in connection with a sale or exchange of a Financial Asset; and
 - eee) the account is not associated with an account described in this number 34 letter f below;
- cc) an obligation of a Financial Institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time;
 - dd) an obligation of a Financial Institution solely to facilitate the payment of taxes at a later time;
- f) a Depository Account that satisfies the following requirements:
 - aa) the account exists solely because a customer makes a payment in excess of a balance due with respect to a credit card or other revolving credit facility and the overpayment is not immediately returned to the customer; and
 - bb) beginning on or before 1 January 2016, implements policies and procedures either to prevent a customer from making an overpayment in excess of \$50,000, or to ensure that any customer overpayment in excess of this amount is refunded to the customer within 60 days, in each case applying the rules set forth in section 18 above for currency translation. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns;

- g) any other account that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the accounts described in letters a through f above, and is included in the list of Excluded Accounts under Article 8(7a) of Directive 2014/107/EU, provided that the status of such account as an Excluded Account does not frustrate the purposes of this Act. This list also applies with respect to third countries. The list of third countries and any changes to the list will be published by the Federal Ministry of Finance in a separate circular in Part I of the Federal Tax Gazette;
35. Reportable Account: an account maintained by a Reporting Financial Institution of a jurisdiction and held by one or more Reportable Persons or by a Passive NFE with one or more Controlling Persons that is a Reportable Person, provided it has been identified as such pursuant to the due diligence procedures described in sections 9 through 18 above;
36. Reportable Person: a Reportable Jurisdiction Person other than:
- a) a corporation the stock of which is regularly traded on one or more established securities markets;
 - b) any corporation that is a Related Entity of a corporation described in letter a above;
 - c) a Governmental Entity;
 - d) an International Organisation;
 - e) a Central Bank; or
 - f) a Financial Institution;
37. Reportable Jurisdiction Person with respect to each Reportable Jurisdiction: an individual or Entity that is resident in any other Reportable Jurisdiction under the tax laws of such jurisdiction, or an estate of a decedent that was a resident of any other Reportable Jurisdiction. For this purpose, an Entity such as a partnership, limited liability partnership or similar legal arrangement that has no residence for tax purposes shall be treated as resident in the jurisdiction in which its place of effective management is situated.
38. Participating Jurisdiction: the term “Participating Jurisdiction” includes:
- a) another Member State of the European Union; or

- b) another jurisdiction
 - aa) with which the Federal Republic of Germany has concluded a treaty or agreement pursuant to which such other jurisdiction will provide the information specified in section 8 above, and
 - bb) which is identified in a list published by the Federal Republic of Germany and notified to the European Commission;
 - cc) another jurisdiction
 - aaa) with which the European Union has concluded a treaty pursuant to which such other jurisdiction will provide the information specified in section 8 above; and
 - bbb) which is identified in a list published by the European Commission;
39. Controlling Persons: the natural persons who exercise control over an Entity. In the case of a trust, such term means the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term “Controlling Persons” shall be interpreted in a manner consistent with the Recommendations of the Financial Action Task Force, published on the website of the Federal Financial Supervisory Authority;
40. NFE: any Entity that is not a Financial Institution;
41. Passive NFE: a Passive NFE is
- a) any NFE that is not an Active NFE; or
 - b) an Investment Entity described in number 6, first sentence, letter b above that is not a Participating Jurisdiction Financial Institution;
42. Active NFE: any NFE that meets at least one of the following criteria:
- a) less than 50 per cent of the NFE’s gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50 per cent of the

assets held by the NFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;

- b) the stock of the NFE is regularly traded on an established securities market or the NFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;
- c) the NFE is a Governmental Entity, an International Organisation, a Central Bank , or an Entity wholly owned by one or more of the foregoing;
- d) substantially all of the activities of the NFE consist of holding, in whole or in part, the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an Entity does not qualify for this status if the Entity functions or holds itself out as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
- e) the NFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFE does not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFE;
- f) the NFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganising with the intent to continue or recommence operations in a business other than that of a Financial Institution;
- g) the NFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution;
- h) the NFE meets all of the following requirements:
 - aa) it is established and operated in its jurisdiction of residence exclusively for

religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare;

- bb) it is exempt from income tax in its jurisdiction of residence;
 - cc) it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
 - dd) the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents do not permit any income or assets of the NFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE has purchased; and
 - ee) the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents require that, upon the NFE's liquidation or dissolution, all of its assets be distributed to a Governmental Entity or other non-profit organisation, or escheat to the government of the NFE's jurisdiction of residence or any political subdivision thereof;
43. For the purposes of this Act, the exchange of information is the systematic provision of predefined information about persons who are resident in other Reportable Jurisdictions to the jurisdiction of residence in question without prior request at pre-established regular intervals.

Section 20 – Miscellaneous

For the purposes of this Act, the following definitions apply:

1. Account Holder: the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account. A person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as holding the account for purposes of this Act, and such other person is treated as holding the account.

In the case of a Cash Value Insurance Contract or an Annuity Contract, the Account Holder is any person entitled to access the Cash Value or change the beneficiary of the contract. If no person can access the Cash Value or change the beneficiary, the Account Holder is any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract. Upon the maturity of a Cash Value Insurance Contract or an Annuity Contract, each person entitled to receive a payment under the contract is treated as an Account Holder;

2. AML/KYC Procedures: the customer due diligence procedures of a Reporting Financial Institution pursuant to the anti-money laundering or similar requirements to which such Reporting Financial Institution is subject;
3. Entity: a legal person or a legal arrangement, such as a corporation, partnership, trust, or foundation;
4. an Entity: a “Related Entity” of another Entity if
 - a) either Entity controls the other Entity;
 - b) the two Entities are under common control; or
 - c) the two Entities are Investment Entities described in section 19 number 6, first sentence, letter b above, have common management, and management complies with due diligence requirements for such Investment Entities. For this purpose control includes direct or indirect ownership of more than 50 per cent of the vote and value in an Entity;
5. TIN: Taxpayer Identification Number, or functional equivalent in the absence of a Taxpayer Identification Number;
6. Documentary Evidence: includes any of the following:
 - a) a certificate of residence issued by an authorised government body, for example a government or agency thereof, or a municipality, of the jurisdiction in which the payee claims to be a resident;
 - b) with respect to an individual, any valid identification issued by an authorised government body (for example, a government or agency thereof, or a municipality), that includes the individual’s name and is typically used for identification purposes;

- c) with respect to an Entity, any official documentation issued by an authorised government body (for example, a government or agency thereof, or a municipality) that includes the name of the Entity and either the address of its principal office in the jurisdiction in which it claims to be a resident or the jurisdiction in which the Entity was incorporated or organised;
- d) any audited financial statement, third-party credit report, bankruptcy filing, or securities regulator's report.

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

Third Chapter

Complementary reporting and due diligence rules for financial account information

Section 21 – Change in circumstances

(1) A “change in circumstances” includes any change that results in the addition of new information relevant to a person's status or otherwise conflicts with such person's status. In addition, a change in circumstances includes any change or addition of information to the Account Holder's account, including the addition, substitution, or other change of an Account Holder, or any change or addition of information to any account associated with such account, applying the account aggregation rules described in section 18 above, if such change or addition of information affects the status of the account holder.

(2) If a Reporting Financial Institution has relied on the residence address review described in section 11 subsection (1), first sentence, number 1 above and there is a change in circumstances

that causes the Reporting Financial Institution to know or have reason to know that the original Documentary Evidence or other equivalent documentation is incorrect or unreliable, the Reporting Financial Institution must, by the later of the last day of the relevant calendar year or other appropriate reporting period, or 90 calendar days following the notice or discovery of such change in circumstances, obtain a self-certification and new Documentary Evidence to establish the residence(s) for tax purposes of the Account Holder. If the Reporting Financial Institution cannot obtain the self-certification and new Documentary Evidence by such date, the Reporting Financial Institution must apply the electronic record search procedure described in section 11 subsection (1), first sentence, number 2 and subsections (2) and (3) above.

Section 22 – Self-certification for New Entity Accounts

With respect to New Entity Accounts, for the purposes of determining whether a Controlling Person of a Passive NFE is a Reportable Person, a Reporting Financial Institution may only rely on a self-certification from either the Account Holder or the Controlling Person.

Section 23 – Residence of a Financial Institution

(1) A Financial Institution is resident in a Reporting Jurisdiction if it is subject to the jurisdiction of such Reporting Jurisdiction. A Financial Institution is subject to the jurisdiction of the Reporting Jurisdiction that is able to enforce the reporting obligations of the Financial Institution. In general, where a Financial Institution is resident for tax purposes in a Reporting Jurisdiction, it is subject to the jurisdiction of such Reporting Jurisdiction and it is, thus, a Reporting Jurisdiction Financial Institution.

(2) In the case of a trust that is a Financial Institution, irrespective of whether it is resident for tax purposes in a Reporting Jurisdiction, the trust is considered to be subject to the jurisdiction of a Reporting Jurisdiction if one or more of its trustees are resident in such Reporting Jurisdiction except if the trust reports all the information required to be reported pursuant to Directive 2014/107/EU or pursuant to the CRS-MCAA with respect to Reportable Accounts maintained by the trust to another Reporting Jurisdiction because it is resident for tax purposes in such other jurisdiction. However, where a Financial Institution other than a trust does not have a residence for tax purposes (e.g. because it is treated as fiscally transparent, or it is located in a jurisdiction that does not have an income tax), it is considered to be subject to the jurisdiction of a Reporting Jurisdiction and it is, thus, a Reporting Jurisdiction Financial Institution if:

1. it is incorporated under the laws of the Reporting Jurisdiction;
2. it has its place of management, including effective management, in the Reporting Jurisdiction; or
3. it is subject to financial supervision in the Reporting Jurisdiction.

(3) Where a Financial Institution, other than a trust, is resident in two or more Reporting Jurisdictions, the reporting and due diligence obligations of the Reporting Jurisdiction in which it maintains the Financial Account(s) apply.

Section 24 – Account maintained

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

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

Section 25 – Trusts that are Passive NFEs

(1) An Entity such as a partnership, limited liability partnership or similar legal arrangement that has no residence for tax purposes under section 19 number 37 above shall be treated as resident in the jurisdiction in which its place of effective management is situated. For these purposes, a legal person or a legal arrangement is considered similar to a partnership and a limited liability partnership where it is not treated as a taxable unit in a Reportable Jurisdiction under the tax laws of such Reportable Jurisdiction.

(2) However, in order to avoid duplicate reporting given the wide scope of the term

“Controlling Persons” in the case of trusts, a trust that is a Passive NFE may not be considered a similar legal arrangement.

Section 26 – Address of an Entity’s principal office

Pursuant to section 20 number 6 letter c above, official documentation must include either the address of the Entity’s principal office in the jurisdiction in which it claims to be a resident or the jurisdiction in which the Entity was incorporated or organised. The address of the Entity’s principal office is generally the place in which its place of effective management is situated. The address of a Financial Institution with which the Entity maintains an account, a post office box, or an address used solely for mailing purposes is not the address of the Entity’s principal office unless such address is the only address used by the Entity and appears as the Entity’s registered address in the Entity’s organisational documents. Further, an address that is provided subject to instructions to hold all mail to that address is not the address of the Entity’s principal office.

Section 27 – Application

(1) The Federal Central Tax Office as the competent authority shall carry out the automatic provision of information under section 1 above in conjunction with sections 2 and 4 above by 30 September each year for the previous calendar year, beginning on 30 September 2017 for 2016.

(2) The Reporting Financial Institutions shall provide the data described in section 8 above electronically via remote data transmission, using an officially prescribed data set, to the Federal Central Tax Office, beginning on 30 September 2017 for 2016.

Section 28 – Administrative fines

(1) An administrative offence will be deemed to have been committed by any person who violates section 8 subsection (1), first sentence above by intentionally or recklessly failing to report information, or failing to report information correctly, completely or in good time. The administrative offence may be punished with a monetary fine of up to 50,000 euros.

(2) The administrative authority as defined in section 35 subsection (1) number 1 of the Administrative Offences Act (*Gesetz über Ordnungswidrigkeiten*) is the Federal Central Tax Office.