Germany: New legislation on the automatic exchange of financial account information

The Bundesrat (upper house of the German parliament) approved the Law on the Automatic Exchange of Financial Account Information (Finanzkonten-Informationsaustauschgesetz) on 18 December 2015. Financial institutions face new reporting obligations and duties of care under this law. The new legislation requires financial institutions to provide the German Federal Central Tax Office (Bundeszentralamt für Steuern) with financial account information of reportable persons in order to strengthen the tax authorities' capabilities in their fight against tax evasion.

Financial account information for the year 2016 will be the first information which has to be transmitted to the German Federal Central Tax Office by 31 July 2017.

Implementation of the Multilateral Competent Authority Agreement

The OECD developed with the G20 countries the Common Reporting Standard to tackle tax avoidance and evasion and to improve tax compliance. This Common Reporting Standard became subject of the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information which was signed by Germany and 50 other countries. The Law on the Automatic Exchange of Financial Account information implements this agreement into German law.

The new legislation is part of a series of new laws which tackle the issue of tax evasion. This process started with the Convention on Mutual Administrative Assistance in Tax Matters in 1988 and continued with the implementation of the Mutual Assistance Directive and the Convention between Germany and the USA on the Foreign Account Tax Compliance Act (FATCA). Therefore, the new legislation does not establish completely new obligations and duties of care for the financial institutions because most of the obligations under the new law are already subject to the Convention between Germany and the USA on FACTA.

In practice, a two-step procedure of the transfer of financial account information will apply: financial institutions will transfer the relevant financial account information to the German Federal Central Tax Office (1st step). The German Federal Central Tax Office will then automatically transfer the information to the competent tax authorities of the other jurisdictions which have entered into the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (2nd step).

Uniform standard for data

The exchange of financial account information shall be done by simple procedures in order to enable the tax authorities to use the information without any further investigation. Precise instructions are necessary given the vast amount of information that has to be properly allocated to the respective taxpayer.
For this reason, the new law provides a common reporting standard regarding the automatic exchange of financial account information by financial institutions. Financial institutions in the meaning of the law are custodians, credit institutions, investment companies or specified insurance companies.

The information to be exchanged is, with respect to each reportable account of another jurisdiction:

a) In the case of an individual: the name, address, tax identification number, date and place of birth of each reportable person that is an account holder of the account;

b) In the case of an entity: the name, address, and tax identification number of the entity and the name, address, tax identification number and date and place of birth of each controlling person that is a reportable person;

c) The account number (or functional equivalent in the absence of an account number);

d) The name and identifying number of the reporting financial institution;

e) The account balance or 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;

f) All other capital gains including redemption amounts and proceeds from the sale of financial assets, which have been credited.

Rules regarding the financial institutions’ duties of care are added to these reporting obligations. Individual high-value accounts are subject to further monitoring obligations of the financial institutions. An account is deemed to be a high-value account if it holds more than $1,000,000.00. These further obligations shall allow a safer identification of the actual recipient of capital income.

The financial institutions will be required to save and to process the financial account information. They will have to store documents which can be reviewed by the German Federal Central Tax Office in the event of an audit. If a financial institution violates against one of its obligations under the Law on the Automatic Exchange of Financial Account Information, it can be fined an amount of up to EUR 50,000.00.

The first automatic exchange of financial account information has to be carried out by 31 July 2017 and will concern financial account information for the year 2016.

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