

CUATRECASAS, GONÇALVES PEREIRA



LEGAL FLASH | TAX

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AUTOMATIC EXCHANGE OF INFORMATION
OBLIGATION TO IDENTIFY AND REPORT THE TAX
RESIDENCE OF THE HOLDERS OF FINANCIAL
ACCOUNTS

Royal Decree 1021/2015, of November 13, establishing the obligation to identify the tax residence of persons who hold or control certain financial accounts and to provide information concerning them in the area of mutual assistance.

On November 17 last the above-mentioned Royal Decree was published in the Official State Gazette. It will come into force on January 1, 2016 and incorporates into our legislation the rules on reporting and the due diligence procedures established in Directive 2011/16/EU (amended by Directive 2014/107/EU as regards mandatory automatic exchange of information in the field of taxation) and the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (the Agreement), within the scope of the OECD, commonly known as the Common Reporting Standard (CRS).

Adopting as a starting point the FATCA regulations¹, the Royal Decree affects financial institutions (the definition of which comprises deposit institutions, custody institutions, insurance entities and investment entities), which will be obliged to supply to the Tax Authorities information regarding their customers. Submission of information shall take place, for the first time, in 2017, regarding the information of year 2016 corresponding to residents in the European Union or in any other country in relation to which the Agreement has taken effect or with which Spain has entered into an agreement in these terms.

This informative declaration will be yearly and will be made in the manner, place and within the period which may be determined by an Order of the Ministry for Finance and Public Administrations, which will include the list of countries or jurisdictions affected. The first supply of information will occur in the tax year 2017 and will be that relating to the data of the year 2016.

Article 5 of the Royal Decree indicates the information to be supplied relating to each of the accounts subject to reporting. This information includes the data identifying the holder (inter alia, jurisdiction of tax residence and tax identification number), the account number, the balance or value at year-end and the name and tax identification

¹ Agreement between the Kingdom of Spain and the United States of America, for the improvement of international tax compliance and the implementation of the Foreign Account Tax Compliance Act (FATCA), made in Madrid on May 14, 2013 (Official State Gazette, July 1, 2014).

Order HAP/1136/2014, of June 30, regulating certain issues related to the reporting and due diligence obligations established in the agreement between the Kingdom of Spain and the United States of America for the improvement of international tax compliance and the implementation of the U.S. Foreign Account Tax Compliance Act and approving the annual informative declaration of financial accounts of certain U.S. persons, form 290 (Official State Gazette, July 2, 2014).

number of the financial institution obliged to report. Certain specific items are also established for certain types of account. Furthermore, this Royal Decree establishes the obligation to obtain the tax identification number in relation to pre-existing accounts subject to reporting under the FATCA.

The rules contained in the Royal Decree will be interpreted in accordance with the OECD Commentaries².

In this context, it should be remembered that the twenty-second additional provision of General Taxation Law 58/2003, of December 17, establishes a system of infringements and penalties relating to the breach of the above-mentioned obligations by financial institutions and their customers. In addition, the General Taxation Law imposes the obligation on financial institutions to inform each individual subject to reporting, that the information relating to him/her will be reported to the Tax Authorities and transferred to the relevant Member State. Such reporting must be carried out before January 31 of the calendar year following the first year in which the account is an account subject to reporting.

Finally, it must be borne in mind that since the States involved are legislating in a manner similar to Spain, we may expect that the Spanish Authorities will automatically receive information regarding the accounts which residents in Spain have in the above-mentioned States.

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² OECD Commentaries on the Model Competent Authority Agreement and on the Common Reporting Standard (CRS).