

Ministry of Finance

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Pursuant to Article 29, paragraph 5 and Article 35, paragraph 3 of the Act on Administrative Cooperation in the Field of Taxes (Official Gazette 115/16), the Minister of Finance hereby issues the

ORDINANCE

ON THE AUTOMATIC EXCHANGE OF INFORMATION IN THE FIELD OF TAXATION

PART ONE

I. BASIC PROVISIONS

Article 1

This Ordinance lays down the rules for the implementation of Article 29, paragraph 5 of the Act on Administrative Cooperation in the Field of Taxation (hereinafter: Act), which stipulates the definitions of concepts, rules of reporting and due diligence necessary for the performance of automatic exchange of information on financial accounts, and Article 35, paragraph 3 of the Act, which lays down the content, form and rules for filing country-by-country reports necessary for the implementation of the automatic exchange of information on country-by-country reports.

Transposition and implementation of the European Union legislation

Article 2

This Ordinance transposes the provisions of the following European Directives into the legal order of the Republic of Croatia:

1. Annex I and Annex II of Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (hereinafter: Directive 2014/107/EU), and
2. Annex III of Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (SL L 146, 3. 6. 2016) (hereinafter: Council Directive (EU) 2016/881).

Definitions regarding the automatic exchange of information on financial accounts

Article 3

Articles 4 to 43 of this Ordinance prescribe the meaning of terms in the sense of automatic exchange of information on financial accounts from Article 58 and 100 of this Ordinance.

Definition of other jurisdiction

Article 4

The term "other jurisdiction" means:

1. other jurisdiction with which the Republic of Croatia has concluded a Multilateral agreement between the competent authorities on the automatic exchange of information on financial accounts pursuant to the Convention on mutual administrative assistance in the field of taxation with amendments to the protocol amending the Convention on mutual administrative assistance in the field of taxation, and which is based on the agreement for the exchange of information from Article 26 of this Act and included on the list published on the official website of the Tax Administration.

2. other jurisdiction with which the European Union has concluded an agreement pursuant to which that country provides the information from Article 26 of this Act to the Ministry of Finance, Tax Administration, and which is included on the list as published by the European Commission;

Term reporting financial institution

Article 5

A “reporting financial institution” is any Croatian financial institution that is not a non-reporting financial institution and which is resident in the Republic of Croatia, but excludes any branch of that financial institution located outside the Republic of Croatia, and any branch of a financial institution that is located in the Republic of Croatia, but is not resident in the Republic of Croatia.

Term Member State and/or other jurisdiction financial institution

Article 6

The term “Member State and/or other jurisdiction financial institution” is any financial institution and which is resident in a Member State and/or other jurisdiction, but excludes any branch of that financial institution located outside the Member State and/or other jurisdiction, and any branch of a financial institution that is not resident in the Member State and/or other jurisdiction, but is located in that Member State and/or other jurisdiction.

Term financial institution

Article 7

(1) A “financial institution” means a custodial institution, a depository institution, an investment entity, or a specified insurance company.

(2) A “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% of the entity's gross income during the shorter of:

1. the three-year period that ends on 31 December (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or

2. the period during which the entity has been in existence.

(3) A “depository institution” means any entity that accepts deposits in the ordinary course of a banking or similar business.

(4) An “investment entity” means any entity:

1. which primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:

a. trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;

b. individual and collective portfolio management; or

c. otherwise investing, administering, or managing financial assets or money on behalf of other persons; or

2. any entity whose gross income 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 investment entity described in point 1 of this Article.

(5) An entity is treated as primarily conducting as a business one or more of the activities described in paragraph 4, point 1 of this Article or an entity's gross income is primarily attributable to investing, reinvesting, or trading in financial assets for the purposes of paragraph 4, point 2 of this Article, if the entity's gross income attributable to the relevant activities equals or exceeds 50% of the entity's gross income during the shorter of:

1. the three-year period ending on 31 December of the year preceding the year in which the determination is made; or

2. the period during which the entity has been in existence.

(6) The term "investment entity" does not include an entity that is an active non-financial entity (NFE) where that entity meets any of the criteria from Article 37, points 4 to 7 of this Ordinance.

(7) The investment entity from paragraphs 4 and 5 of this Article are interpreted in a way that is in compliance with similar definitions of the term financial institutions in the recommendations of the Financial Action Task Force (FATF).

Term financial asset

Article 8

(1) A "financial asset" includes:

1. 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),

2. 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),

3. an insurance contract or annuity contract, or

4. any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, swap, insurance contract, or annuity contract.

(2) The term “financial asset” does not include a non-debt, direct interest in real property.

Term specified insurance company

Article 9

A “specified insurance company” means any entity that is an insurance company (or the holding company of an insurance company) which issues, or is obligated to make payments with respect to, a cash value insurance contract or an annuity contract, with the possibility of surrender of the contract, or is obliged to execute payments with regard to that contract.

Term non-reporting financial institution

Article 10

A “non-reporting financial institution” means any financial institution which is:

1. 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;
2. 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;
3. 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 points 1 and 2 of this Article, and is included in the list of non-reporting financial institutions referred to in Article 60, paragraph 1 of this Ordinance, provided that the status of such entity as a non-reporting financial institution does not hinder the effective exchange of information on financial accounts aimed at combatting tax fraud and evasion;
4. an exempt collective investment vehicle; or
5. 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 Article 58 of this Ordinance with respect to all reportable accounts of the trust.

Term governmental entity

Article 11

(1) The term “governmental entity” means the government of a Member State and/or other jurisdiction, any political subdivision of a Member State and/or other jurisdiction (which includes a state, province, county, or municipality), or any wholly owned agency or body of a Member State and/or other jurisdiction or of any one or more of the foregoing (each, a governmental entity). This category is comprised of the integral parts, controlled entities, and political subdivisions of a Member State and/or other jurisdiction.

(2) The term “integral part of a Member State and/or other jurisdiction” means any person, organisation, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of a Member State and/or other jurisdiction. The net earnings of the governing authority must be credited to its own account or to other accounts of the Member State and/or other jurisdiction, with no portion inuring to the benefit of any private person. An integral part does not include any natural person who is a sovereign, official, or administrator acting in a private or personal capacity.

(3) A “controlled entity” means an entity which is separate in form from the Member State and/or other jurisdiction or which otherwise constitutes a separate juridical entity, provided that:

1. the entity is wholly owned and controlled by one or more governmental entities directly or through one or more controlled entities;
2. 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; and
3. the entity's assets vest in one or more governmental entities upon dissolution.

(4) 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.

Term international organisation

Article 12

An “international organisation” means any international organisation or wholly owned agency or instrumentality thereof. This category includes any intergovernmental organisation (including a supranational organisation):

1. that is comprised primarily of governments;
2. that has in effect a headquarters or substantially similar agreement with the Republic of Croatia or with another Member State and/or other jurisdiction; and
3. the income of which does not inure to the benefit of private persons.

Term central bank

Article 13

The term “central bank” means an institution that is by law or government sanction the principal authority, other than the Government of the Republic of Croatia, or the government of another Member State and/or other jurisdiction, for issuing instruments intended to circulate as currency. Such an institution may include a body that is separate from the government of the Republic of Croatia, or the government of another Member State and/or other jurisdiction, whether or not owned in whole or in part by the Republic of Croatia, or other Member State and/or jurisdiction.

Term broad participation retirement fund

Article 14

The term “broad participation retirement fund” means a fund established to provide retirement, disability, or death benefits, or any combination thereof, to beneficiaries who 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:

1. does not have a single beneficiary with a right to more than 5% of the fund's assets;
2. is subject to government regulation and provides information reporting to the tax authorities; and
3. satisfies at least one of the following requirements:
 - a. 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;
 - b. the fund receives at least 50% of its total contributions (other than transfers of assets from other plans described in Articles 14 to 16 of this Ordinance or from retirement accounts described in Article 30, paragraph 2 of this Ordinance) from the sponsoring employers;
 - c. 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 Articles 14 to 16 of this Ordinance or retirement accounts described in Article 30, paragraph 2 of this Ordinance), or penalties apply to distributions or withdrawals made before such specified events; or
 - d. 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, annually, a kuna amount equivalent to USD 50,000, applying the rules set on account aggregation and currency translation from Article 94 of this Ordinance.

Term narrow participation retirement fund

Article 15

The term “narrow participation retirement fund” means a fund established to provide retirement, disability, or death benefits to beneficiaries who are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that:

1. the fund has fewer than 50 participants;
2. the fund is sponsored by one or more employers that are not investment entities or passive NFEs;
3. the employee and employer contributions to the fund (other than transfers of assets from retirement accounts described in Article 30, paragraph 2 of this Ordinance) are limited by reference to earned income and compensation of the employee, respectively;
4. participants that are not residents of the Member State and/or other jurisdiction in which the fund is established are not entitled to more than 20% of the fund's assets; and
5. the fund is subject to government regulation and provides information reporting to the tax authorities.

Term pension fund of a government entity, international organisation or central bank

Article 16

The term “pension fund of a governmental entity, international organisation or central bank” means a fund established by a governmental entity, international organisation or central bank to provide retirement, disability, or death benefits to beneficiaries or participants who are current or former employees (or persons designated by such employees), or who 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.

Term qualified credit card issuer

Article 17

The term “qualified credit card issuer” means a financial institution satisfying the following requirements:

1. the financial institution 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; and
2. beginning on or before 1 January 2016, the financial institution implements policies and procedures either to prevent a customer from making an overpayment in excess of a kuna amount that corresponds to USD 50,000, or to ensure that any customer overpayment in excess of that amount is refunded to the customer within 60 days, in each case applying the rules for account aggregation and currency translation set forth in Article 94 of this Ordinance. 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.

Term exempt collective investment vehicle

Article 18

(1) The term “exempt collective investment vehicle” means 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.

(2) An investment entity that is regulated as a collective investment vehicle does not fail to qualify as an exempt collective investment vehicle from paragraph 1 of this Article, solely because the collective investment vehicle has issued physical shares in bearer form, provided that:

1. the collective investment vehicle has not issued, and does not issue, any physical shares in bearer form after 31 December 2015;
2. the collective investment vehicle retires all such shares upon surrender;
3. the collective investment vehicle performs the due diligence procedures set forth in Articles 60 to 94 of this Ordinance and reports any information required to be reported with respect to any such shares when such shares are presented for redemption or other payment; and
4. the collective investment vehicle has in place policies and procedures to ensure that such shares are redeemed or immobilised as soon as possible, and in any event prior to 1 January 2018.

Term financial account

Article 19

(1) The term “financial account” means an account maintained by a financial institution, and includes a depository account, a custodial account and:

1. 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:

a. renders investment advice to, and acts on behalf of the customer; or

b. 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;

2. in the case of a financial institution not described in accordance with point 1 of this Article, any equity or debt interest in the financial institution, if the class of interests was established with the purpose of avoiding reporting in accordance with Article 58 of this Ordinance; and

3. any cash value insurance contract and any annuity contract issued or maintained by a financial institution, other than a non-investment-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.

(2) The term “financial account” does not include any account that is deemed an excluded account in accordance with Article 30 of this Ordinance.

Term depositary account

Article 20

The term “depository account” includes any commercial, checking, savings, time, or account for the payment of pensions of civil servants or members of the armed forces, or an account that is evidenced by a certificate of deposit, certificate of pension of civil servants of members of the armed forces, 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.

Term custodial account

Article 21

The term “custodial account” means an account, other than an insurance contract or annuity contract, which holds one or more financial assets for the benefit of another person.

Term equity interest

Article 22

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.

Term insurance contract

Article 23

The term “insurance contract” means 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.

Term annuity contract

Article 24

The term “annuity contract” means 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 Member State and/or other jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years.

Term cash value insurance contract

Article 25

The term “cash value insurance contract” means an insurance contract, other than an indemnity reinsurance contract between two insurance companies, that has a cash value.

Term cash value

Article 26

(1) The term “cash value” means the greater of:

1. 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
2. the amount the policyholder can borrow under or with regard to the contract.

(2) Notwithstanding the foregoing in paragraph 1 of this Article, cash value does not include an amount payable under an insurance contract:

1. solely by reason of the death of an individual insured under a life insurance contract;
2. 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;
3. 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;
4. 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 paragraph 2 of this Article, or

5. 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.

Term pre-existing account

Article 27

(1) The term “pre-existing account” means a financial account maintained by a reporting financial institution as of 31 December 2015.

(2) Independent of paragraph 1 of this Article, a pre-existing any Financial Account of an Account Holder, regardless of the date such financial account was opened, if:

1. the account holder also holds with the reporting financial institution, or with a related entity within the same Member State and/or other jurisdiction as the reporting financial institution, a financial account that is a pre-existing account under paragraph 1 of this Article;

2. the reporting financial institution and, as applicable, the related entity within the same Member State and/or other 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 pre-existing accounts pursuant to this paragraph, as a single financial account for purposes of satisfying the standards of knowledge requirements set forth in Article 89 of this Ordinance, and for purposes of determining the balance or value of any of the financial accounts when applying any of the account thresholds;

3. with respect to a financial account that is subject to anti-money laundering and know your customer (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 pre-existing account from paragraph 1 of this Article; and

4. 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 the purposes of this Ordinance.

(3) The term “pre-existing individual account” means a pre-existing account held by one or more individuals.

(4) The term “pre-existing entity account” means a pre-existing account held by one or more entities.

Term new account

Article 28

(1) The term “new account” means a financial account maintained by a reporting financial institution opened on or after 1 January 2016 unless it is treated as a pre-existing account pursuant to Article 27, paragraph 2 of this Ordinance.

(2) The term “new individual account” means a new account held by one or more individuals.

(3) The term “new entity account” means a new account held by one or more entities.

Terms lower value account and higher value account

Article 29

(1) The term “lower value account” means a pre-existing individual account with an aggregate balance or value as of 31 December 2015 that does not exceed a kuna amount that corresponds to USD 1,000,000.

(2) The term “higher value account” means a pre-existing individual account with an aggregate balance or value that exceeds, as of 31 December 2015, or 31 December of any subsequent year, a kuna amount that corresponds to USD 1,000,000.

Term excluded account

Article 30

(1) The term “excluded account” means any of the accounts from paragraphs 2 to 10 of this Article.

(2) An excluded account means a retirement or pension account that satisfies the following requirements:

1. 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;

2. 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;

3. information on the account is reported to the tax authorities;

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

5. annual contributions are limited to a kuna amount that corresponds to USD 50,000 or less, or there is a maximum lifetime contribution limit to the account of a kuna amount that corresponds to USD 1,000,000 or less, in each case applying the rules for account aggregation and currency translation from Article 94 of this Ordinance.

(3) A financial account that otherwise satisfies the requirement of paragraph 2, point 5 of this Article 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 paragraphs 2 and 4 of this Article, or from one or more retirement or pension funds that meet the requirements of any of Articles 14 to 16 of this Ordinance;

(4) An excluded account means an account that satisfies the following requirements:

1. 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;

2. 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;

3. 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

4. annual contributions are limited to a kuna amount that corresponds to USD 50,000 or less, applying the rules for account aggregation and currency translation laid down in Article 94 of this Ordinance.

(5) A financial account that otherwise satisfies the requirement of paragraph 4, point 4 of this Article will be deemed to satisfy such requirement even when such financial account may receive assets or funds transferred from one or more financial accounts that meet the requirements of paragraphs 2 and 4 of this Article, or from one or more retirement or pension funds that meet the requirements of Articles 14 to 16 of this Ordinance.

(6) An excluded account means 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:

1. 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;

2. the contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;

3. 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

4. the contract is not held by a transferee for value.

(7) An excluded account means 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.

(8) An excluded account means an account established in connection with any of the following:

1. a court order or judgment;

2. a sale, exchange, or lease of real or personal property, provided that the account satisfies the following requirements:

a. 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,

b. 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,

c. 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,

d. the account is not a margin or similar account established in connection with a sale or exchange of a financial asset, and

e. the account is not associated with an account described in paragraph 9 of this Article;

3. 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;

4. an obligation of a financial institution solely to facilitate the payment of taxes at a later time.

(9) An excluded account means a depository account that satisfies the following requirements:

1. 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

2. beginning on or before 1 January 2016, the financial institution implements policies and procedures either to prevent a customer from making an overpayment in excess of a kuna amount that corresponds to USD 50,000, or to ensure that any customer overpayment in excess of that amount is refunded to the customer within 60 days, in each case applying the rules for currency translation set forth in Article 94 of this Ordinance. 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;

(10) An excluded account means 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 paragraphs 4 to 9 of this Article, and is included in the list of excluded accounts referred to in Article 60, paragraph 1 of this Ordinance, provided that the status of such account as an excluded account does not frustrate the purposes of this Directive.

Term reportable account

Article 31

A “reportable account” means a financial account that is maintained by a Member State and/or other jurisdiction reporting financial institution and is 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 Articles 60 to 94 of this Ordinance.

Term reportable person

Article 32

A “reportable person” means a person of a Member State and/or other jurisdiction other than:

1. a corporation whose stock is regularly traded on one or more established securities markets;

2. any corporation that is a related entity of a corporation described in point 1 of this Article;

3. a governmental entity;

4. an international organisation;

5. a central bank; or

6. a financial institution.

Term person of a Member State or other jurisdiction

Article 33

A “person of a Member State and/or other jurisdiction” with regard to each Member State and/or other jurisdiction, means a natural person or entity that is resident in any other Member State and/or other jurisdiction under the tax laws of that other Member State and/or jurisdiction, or an estate of a decedent that was a resident of any other Member State and/or other jurisdiction. For this purpose, an entity such as a partnership, limited liability partnership or similar legal arrangement, which has no residence for tax purposes shall be treated as resident in the jurisdiction in which its place of effective management is situated.

Term controlling persons

Article 34

(1) The term “controlling persons” means the natural persons who exercise control over an entity.

(2) In the case of a trust, the term from paragraph 1 of this Article pertains to 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.

(3) In the case of a legal arrangement other than a trust, the term from paragraph 1 of this Article implies persons in equivalent or similar positions.

(4) The term “controlling persons” must be interpreted in a manner consistent with similar texts established in the definition of the term financial institutions in the Financial Action Task Force (FATF) Recommendations.

Term non-financial institution

Article 35

The term “non-financial institution” or NFE, implies any entity that is not a financial institution from Article 7 of this Ordinance.

Term passive non-financial entity

Article 36

The term “passive non-financial entity (NFE)” means:

1. any entity that is not a financial institution and that is not an active entity that is not a financial institution, or
2. an investment entity from Article 7, paragraph 4, point 2 of this Ordinance, which is not a financial institution of a Member State and/or other jurisdiction.

Term active non-financial entity

Article 37

The term “active non-financial entity (NFE)” means any entity that is not a financial institution, and that meets any of the following criteria:

1. less than 50% of the NFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50% 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;
2. the stock of the NFE is regularly traded on an established securities market or the NFE is a related entity of an entity whose stock is regularly traded on an established securities market;
3. the NFE is a governmental entity, an international organisation, a central bank, or an entity wholly owned by one or more of the foregoing;
4. 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;
5. 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;
6. 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;
7. 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; or
8. the NFE meets all of the following requirements:
 - a. it is established and operated in a Member State and/or other jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its Member State and/or other 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;
 - b. it is exempt from income tax in its Member State and/or other jurisdiction of residence;
 - c. it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
 - d. the applicable laws of the NFE's Member State and/or other jurisdiction of residence or the NFE's establishment 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

e. the applicable laws of the NFE's Member State and/or other jurisdiction of residence or the NFE's establishment 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 Member State and/or other jurisdiction of residence or any political subdivision thereof.

Term account holder

Article 38

(1) An “account holder” means 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 Ordinance, and such other person is treated as holding the account.

(2) 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.

Term anti-money laundering/know your customer procedures

Article 39

The term “anti-money laundering/know your customer (AML/KYC) procedures” means 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.

Term entity

Article 40

The term “entity” means a legal person or a legal arrangement, such as a corporation, partnership, trust, or foundation.

Term related entity

Article 41

An entity is a “related entity” of another entity if:

1. either entity controls the other entity;
2. the two entities are under common control; or
3. the two entities are investment entities described in Article 7, paragraph 4, point 2 of this Ordinance, are under common management, and such management fulfils the due diligence obligations of such

investment entities. For this purpose, control includes direct or indirect ownership of more than 50% of the vote and value in an entity.

Term tax identification number

Article 42

The term “taxpayer identification number (TIN)” means the identification number for the taxpayer or its functional equivalent in the absence of a taxpayer identification number.

Term documentary evidence

Article 43

(1) The term “documentary evidence” includes any of the following:

1. a certificate of residence issued by an authorised government body (for example, a government or agency thereof, or a municipality) of the Member State and/or other jurisdiction in which the payee claims to be a resident;
2. for natural persons, any valid identification issued by an authorised government body (for example, a government or agency thereof, or a municipality), that includes the natural person's name and is typically used for identification purposes;
3. 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 Member State and/or other jurisdiction in which it claims to be a resident or the Member State and/or other jurisdiction in which the entity was incorporated or organised;
4. any audited financial statement, third-party credit report, bankruptcy filing, or securities regulator's report.

(2) With respect to a pre-existing entity account, reporting financial institutions may use as documentary evidence any classification in the reporting financial institution's 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 pre-existing account, provided that the reporting financial institution does not know or does not have reason to know that such classification is incorrect or unreliable.

(3) The term “standardised industry coding system” means a coding system used to classify establishments by business type for purposes other than tax purposes.

Terms in the sense of the automatic exchange of country-by-country reports

Article 44

Articles 45 to 57 of this Ordinance lay down the definitions of terms in the sense of the automatic exchange of country-by-country reports from Articles 101 to 108 of this Ordinance.

Term group

Article 45

The term “group” means a collection of enterprises related through ownership or control such that it is either required to prepare consolidated financial statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange.

Term multinational enterprise group

Article 46

The term “multinational group or MNE group” means any group that includes two or more enterprises the tax residence for which is in different jurisdictions, or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction, and is not an excluded MNE group.

Term excluded MNE group

Article 47

The term “excluded MNE Group” means, with respect to any fiscal year of the group, a group having total consolidated group revenue of less than EUR 750,000,000 or an amount in Croatian kuna equivalent to EUR 750,000,000 as of January 2015 during the fiscal year immediately preceding the reporting fiscal year as reflected in its consolidated financial statements for such preceding fiscal year.

Term constituent entity

Article 48

The term “constituent entity” means any of the following:

1. any separate business unit of an MNE group that is included in the consolidated financial statements of the MNE group for financial reporting purposes, or would be so included if equity interests in such business unit of an MNE group were traded on a public securities exchange;
2. any such business unit that is excluded from the MNE group's consolidated financial statements solely on size or materiality grounds;
3. any permanent establishment of any separate business unit of the MNE group included in points 1 or 2 of this Article, provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes.

Term reporting entity

Article 49

(1) The term “reporting entity” means the constituent entity that is required to file a country-by-country report conforming to the requirements in Article 34, paragraph 1 of the Act in its jurisdiction of tax residence on behalf of the MNE group.

(2) The reporting entity may be the ultimate parent entity, the surrogate parent entity, or any entity described in accordance with Articles 102, 103 and 104 of this Ordinance.

Term ultimate parent entity

Article 50

The term “ultimate parent entity” means a constituent entity of an MNE group that meets the following criteria:

1. it owns directly or indirectly a sufficient interest in one or more other constituent entities of such MNE group such that it is required to prepare consolidated financial statements under accounting principles generally applied in its jurisdiction of tax residence, or would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence;
2. there is no other constituent entity of such MNE group that owns directly or indirectly an interest described in point 1 of this Article.

Term surrogate parent entity

Article 51

The term “surrogate parent entity” means one constituent entity of the MNE group that has been appointed by such MNE group, as a sole substitute for the ultimate parent entity, to file the country-by-country report in that constituent entity's jurisdiction of tax residence, on behalf of such MNE group, when one or more of the conditions set out in Article 102 of this Ordinance apply.

Term fiscal year

Article 52

The term “fiscal year” means an annual accounting period with respect to which the ultimate parent entity of the MNE group prepares its financial statements.

Term reporting fiscal year

Article 53

The term “reporting fiscal year” means that fiscal year the financial and operational results of which are reflected in the country-by-country report referred to in Article 34, paragraph 1 of the Act.

Term qualifying competent authority agreement

Article 54

The term “qualifying competent authority agreement” means an agreement that is between authorised representatives of an EU Member State and a non-EU jurisdiction that are parties to an international agreement and that requires the automatic exchange of country-by-country reports between the party jurisdictions.

Term international agreement

Article 55

The term “international agreement” means the multilateral Convention on Mutual Administrative Assistance in Tax Matters and the amendments to the protocol amending the Convention on Mutual Administrative Assistance in Tax Matters, any bilateral or multilateral tax convention, or any tax information exchange agreement to which the Member State is a party, and that by its terms provides legal authority for the exchange of tax information between jurisdictions, including automatic exchange of such information.

Term consolidated financial statements

Article 56

The term “consolidated financial statements” means the financial statements of an MNE group in which the assets, liabilities, income, expenses and cash flows of the ultimate parent entity and the constituent entities are presented as those of a single economic entity.

Term systemic failure

Article 57

The term “systemic failure” with respect to a jurisdiction means either that a jurisdiction has a qualifying competent authority agreement in effect with a member state but has suspended automatic exchange (for reasons other than those that are in accordance with the terms of that Agreement), or that a jurisdiction otherwise persistently failed to automatically provide to a Member State country-by-country reports in its possession of MNE groups that have constituent entities in that Member State.

PART TWO

CHAPTER I

AUTOMATIC EXCHANGE OF INFORMATION ON FINANCIAL ACCOUNTS

Section 1

Mandatory reporting on financial accounts

Article 58

(1) The reporting financial institution is obliged to deliver the following information to the Ministry of Finance, Tax Administration with regard to every reportable account kept by the reporting financial institution:

1. for each natural person who is a reportable person and an account holder:

- (a) name and surname
- (b) address of permanent residence
- (c) country(ies) of residence
- (d) tax identification number(s)
- (e) personal identification number (OIB)
- (f) date and place of birth

2. for each entity that is a reportable person and an account holder, which pursuant to Articles 79 to 94 of this Ordinance is identified as having one or more controlling persons, that are reportable persons:

(a) name

(b) address

(c) country(ies) of residence

(d) tax identification number(s)

(e) personal identification number (OIB)

(f) data for one or more controlling persons, who are reportable persons:

1. name and surname

2. address

3. country(ies) of residence

4. tax identification number(s)

5. personal identification number (OIB)

6. date and place of birth.

(2) In addition to the information from paragraph 1 of this Article, the reporting financial institution shall deliver the following information:

1. account number (or functional equivalent in the absence of an account number);

2. name and personal identification number (OIB) of the reporting financial institution;

3. 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;

4. in the case of a 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;

5. 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

6. in the case of any account not described in points 4 or 5 of this paragraph, 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.

(3) With the information from paragraph 2 of this Article, the currency in which each relevant amount is shown must be included.

(4) Notwithstanding paragraph 1, point 1 of this Article, for each reportable account that is a pre-existing account, it is not necessary to list the tax identification number(s) or dates of birth, if that tax identification number(s) or date(s) of birth are not in the records of the reporting financial institution, and that reporting financial institution is not required to collect such data pursuant to another legal framework. However, the reporting financial institution is required to take the appropriate measures to obtain the tax identification number(s) and date of birth for the pre-existing accounts by the end of the calendar year following the year in which the pre-existing account was identified as a reportable account.

(5) The TIN is not required to be reported if a TIN is not issued by the relevant Member State and/or other jurisdiction of residence.

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

1. the reporting financial institution is otherwise required to obtain and report it under domestic law or the reporting financial institution is or has been otherwise required to obtain and report it under any Union legal instrument in effect or that was in effect on 5 January 2015; and

2. it is available in the electronically searchable data maintained by the reporting financial institution.

Article 59

(1) The reporting financial institution shall deliver the information from Article 58 of this Ordinance to the Tax Administration by 30 June of the current year for the previous calendar year.

(2) The automatic exchange of information from Article 26 of the Act and Article 58 of this Ordinance is electronic, performed on the website of the Ministry of Finance, Tax Administration.

Article 60

(1) The list of entities to be considered as non-reporting financial institutions or as excluded accounts forms an integral part of this Ordinance pursuant to Article 29, paragraph 5 of the Act.

(2) An account is considered a reportable account as of the date it was identified as such, in accordance with the due diligence procedures in Articles 60 to 94 of this Ordinance, and unless otherwise provided, information with respect to a reportable account must be reported annually in the calendar year following the year to which the information relates.

(3) The balance or value of an account is determined as of the last day of the calendar year.

(4) 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.

(5) Reporting financial institutions may use service providers to fulfil the reporting and due diligence obligations from Articles 26 and 27 of the Act and Articles 60 to 94 of this Ordinance, though these obligations shall remain the responsibility of the reporting financial institutions. If the reporting financial institution uses external service providers, they shall act in accordance with the provisions of regulations governing anti-money laundering and terrorism financing (AML/KYC procedures).

(6) Reporting financial institutions may apply the due diligence procedures for new accounts to pre-existing accounts, and the due diligence procedures for high value accounts to lower value accounts.

Section 2

Due diligence for pre-existing individual accounts

Identifying lower value accounts

Article 61

For pre-existing lower value accounts of natural persons (individuals), the procedures from Articles 62 to 66 of this Ordinance shall apply.

Determining the residence address

Article 62

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 Member State and/or other jurisdiction in which the address is located for purposes of determining whether such individual account holder is a reportable person.

Electronic record search

Article 63

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 Article 62 of this Ordinance, the reporting financial institution must review electronically searchable data maintained by the reporting financial institution for any of the following indicia and apply Articles 64 to 66 of this Ordinance:

1. identification of the account holder as a resident of a Member State and/or other jurisdiction;
2. current mailing or residence address (including a post office box) in a Member State and/or other jurisdiction;
3. one or more telephone numbers in a Member State and/or other jurisdiction, where there is no telephone number in the Republic of Croatia;
4. standing instructions (other than with respect to a depository account) to transfer funds to an account maintained in a Member State and/or other jurisdiction;

5. currently effective power of attorney or signatory authority granted to a person with an address in a Member State and/or other jurisdiction; or

6. a “hold mail” instruction or “in-care-of” address in a Member State and/or other jurisdiction if the reporting financial institution does not have any other address on file for the account holder.

Changes of circumstances and value of the account

Article 64

(1) If none of the indicia listed in Article 63 of this Ordinance 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.

(2) If any of the indicia listed in Article 63 of this Ordinance 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 Member State and/or other jurisdiction for which an indicium is identified, unless it elects to apply the provisions of Article 66 of this Ordinance, and one of the exceptions in that subparagraph applies with respect to that account.

Special rules for “hold mail” and “in care of” addresses

Article 65

(1) If a “hold mail” instruction or “in-care-of” address is discovered in the electronic search and no other address and none of the other indicia listed in Article 63 of this Ordinance 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 Article 68 of this Ordinance, or seek to obtain from the account holder a self-certification or documentary evidence to establish residence(s) for tax purposes of such account holder.

(2) 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 competent authority of its Member State as an undocumented account.

Non-residence in a Member State or other jurisdiction

Article 66

Notwithstanding Article 63 of this Ordinance, the reporting financial institution is not required to treat an account holder as a resident of a Member State and/or other jurisdiction if:

1. the account holder information contains a current mailing or residence address in that Member State and/or other jurisdiction, one or more telephone numbers in that Member State and/or other jurisdiction (and no telephone number in the Republic of Croatia) or standing instructions (with respect to financial accounts other than depository accounts) to transfer funds to an account maintained in a Member State and/or other jurisdiction, 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 Member State(s) and/or other jurisdiction(s) of residence of such account holder that does not include that Member State and/or other 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 that Member State and/or other jurisdiction, 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 Member State(s) and/or other jurisdiction(s) of residence of such account holder that does not include that Member State and/or other jurisdiction; or

b. documentary evidence establishing the account holder's non-reportable status.

Section 3

Enhanced review procedures for high value accounts

Electronic database searches

Article 67

With respect to high value accounts, from Article 29, paragraph 2 of this Ordinance, the reporting financial institution must review electronically searchable data maintained by the reporting financial institution for any of the indicia described in Article 63 of this Ordinance.

Paper record search

Article 68

(1) If the reporting financial institution's electronically searchable databases include fields for, and capture all of the information described in Article 69 of this Ordinance, then a further paper record search is not required.

(2) If the electronic databases do not capture all of this information, then with respect to a high value account, the reporting financial institution must also review the current customer master file and, to the extent 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 Article 63 of this Ordinance:

1. the most recent documentary evidence collected with respect to the account;

2. the most recent account opening contract or documentation;

3. the most recent documentation obtained by the reporting financial institution pursuant to AML/KYC procedures or for other regulatory purposes;

4. any power of attorney or signature authority forms currently in effect; and

5. any standing instructions (other than with respect to a depository account) to transfer funds currently in effect.

Article 69

A reporting financial institution is not required to perform the paper record search described in Article 68 of this Ordinance to the extent the reporting financial institution's electronically searchable information includes the following:

1. the account holder's residence status;
2. the account holder's residence address and mailing address currently on file with the reporting financial institution;
3. the account holder's telephone number(s) currently on file, if any, with the reporting financial institution;
4. 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);
5. whether there is a current "in-care-of" address or "hold mail" instruction for the account holder; and
6. whether there is any power of attorney or signatory authority for the account.

Additional knowledge on the account holder

Article 70

In addition to the electronic and paper record searches described in Articles 67 and 68 of this Ordinance, 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.

Effects of finding indicia for high value accounts

Article 71

(1) If none of the indicia listed in Article 63 of this Ordinance are discovered in the enhanced review of high value accounts, and the account is not identified as held by a reportable person in Article 70 of this Ordinance, 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.

(2) If any of the indicia listed in Article 63, paragraphs 1 to 5 of this Ordinance are discovered in the enhanced review of high value accounts, 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 Member State and/or other jurisdiction for which an indicium is identified, unless it elects to apply Article 66 of this Ordinance and one of the exceptions that applies with respect to that account.

(3) If a "hold mail" instruction or "in-care-of" address is discovered in the enhanced review of high value accounts, and no other address and none of the other indicia listed in Article 63, paragraphs 1 to 5 of this Ordinance are identified for the account holder, 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 Ministry of Finance, Tax Administration as an undocumented account.

Changes to high value accounts

Article 72

(1) If a pre-existing 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 Articles 67 to 74 of this Ordinance with respect to such account within the calendar year following the year in which the account becomes a high value account.

(2) If based on the review from paragraph 1 of this Article, 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.

Reapplication of account reviews

Article 73

Once a reporting financial institution applies the enhanced review procedures described in Articles 67 to 74 of this Ordinance for a high value account, the reporting financial institution is not required to reapply such procedures, other than the relationship manager inquiry described in Article 70 of this Ordinance, to the same high value account in any subsequent year unless the account is undocumented where the reporting financial institution should reapply them annually until such account ceases to be undocumented.

Changes in circumstances

Article 74

(1) If there is a change of circumstances with respect to a high value account that results in one or more indicia described in Article 63 of this Ordinance being associated with the account, then the reporting financial institution must treat the account as a reportable account with respect to each Member State and/or other jurisdiction for which an indicium is identified, unless it elects to apply Article 66 of this Ordinance and one of the exceptions that applies with respect to that account.

(2) A reporting financial institution must implement procedures to ensure that a relationship manager identifies any change in circumstances of an account, particularly if a relationship manager is notified that the account holder has a new mailing address in a Member State and/or other jurisdiction, the reporting financial institution is required to treat the new address as a change in circumstances and, if it elects to apply Article 66 of this Ordinance, is required to obtain the appropriate documentation from the account holder.

Time limits for account reviews and reporting

Article 75

(1) Review of pre-existing high value individual accounts must be completed by 31 December 2016. Review of pre-existing lower value individual accounts must be completed by 31 December 2017.

(2) Any pre-existing individual account that has been identified as a reportable account must be treated as a reportable account in all subsequent years, unless the account holder ceases to be a reportable person.

Section 4
Due diligence of new individual accounts

Residence statement

Article 76

(1) With respect to new individual accounts, upon account opening, the reporting financial institution must obtain the self-certification of residence of the account holder.

(2) The self-certificate of residence of the account holder from paragraph 1 of this Article 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) The self-certificate of residence from paragraph 1 of this Article implies the statement of the account holder stating their residence for tax purposes.

Article 77

If the self-certification establishes that the account holder is resident for tax purposes in a Member State and/or other jurisdiction, the reporting financial institution must treat the account as a reportable account and the self-certification must also include the account holder's tax identification number (TIN) with respect to such Member State and/or other jurisdiction, except in the case the said Member State and/or other jurisdiction of residence does not issue the TIN, and must also include the date of birth.

Changes in circumstances

Article 78

(1) 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.

(2) Reporting financial institutions shall obtain a valid self-certificate of residence of the account holder that establishes the residence of the account holder for tax purposes within 90 days of the onset of the changes in circumstances from paragraph 1 of this Account.

Section 5

Due diligence of pre-existing entity accounts

Determining account balances

Article 79

(1) If the aggregate account balance or value of a pre-existing entity account does not exceed, as of 31 December 2015, a kuna amount that corresponds to USD 250,000, then the reporting financial institution

is not required to be reviewed, identified, or reported as a reportable account until the aggregate account balance or value exceeds that amount as of the last day of any subsequent calendar year, unless the reporting financial institution elects otherwise, either with respect to all pre-existing entity accounts or, separately, with respect to any clearly identified group of such accounts.

(2) If the aggregate account balance or value of a pre-existing entity account exceeds, as of 31 December 2015, a kuna amount that corresponds to USD 250,000, and a pre-existing entity account that does not exceed, as of 31 December 2015, that amount but the aggregate account balance or value of which exceeds such amount as of the last day of any subsequent calendar year, must be reviewed in accordance with the procedures set forth in Articles 81 to 83 of this Ordinance.

Reportable accounts

Article 80

Pre-existing entity accounts described in Article 79, paragraph 2 of this Ordinance, 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.

Mandatory account review procedures

Article 81

A reporting financial institution must apply the review procedures from Articles 82 and 83 of this Ordinance to pre-existing entity accounts from Article 79, paragraph 2 of this Ordinance 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.

Determining whether the entity is a reportable person

Article 82

In order to determine whether the entity is a reportable person, the reporting financial institution shall perform the following review procedures:

1. 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 Member State and/or other jurisdiction, for which purpose, information indicating the residence of the account holder and shall include a place of incorporation, seat or address in a Member State and/or other jurisdiction.
2. if the information indicates that the account holder is resident in a Member State and/or other 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.

Determining whether the entity is a passive non-financial entity

Article 83

(1) With respect to an account holder of a pre-existing entity account (including an entity that is a reportable person), the reporting financial institution must determine whether the account holder is a

passive NFE that is not a financial institution with one or more controlling persons who are reportable persons.

(2) If any of the controlling persons of a passive NFE is a reportable person, then the account must be treated as a reportable account, and in making these determinations, the reporting financial institution must act in accordance with points 1 to 3 of this paragraph, in the order most appropriate under the circumstances:

1. to determine 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 Article 7, paragraph 4, point of this Ordinance that is not a financial institution of a Member State and/or other jurisdiction.

2. to determine the controlling persons of an account holder, a reporting financial institution may rely on information collected and maintained pursuant to AML/KYC procedures.

3. to determine whether a controlling person of a passive NFE is a reportable person, a reporting financial institution may rely on:

a. information collected and maintained pursuant to AML/KYC procedures in the case of a pre-existing entity account held by one or more NFEs with an aggregate account balance or value that does not exceed a kuna amount that corresponds to USD 1,000,000; or

b. a self-certification from the account holder or such controlling person of the Member State(s) and/or other jurisdiction(s) in which the controlling person is resident for tax purposes.

Timing of review with regard to account balances

Article 84

(1) The review of pre-existing entity accounts with an aggregate account balance or value that exceeds, as of 31 December 2015, a kuna amount that corresponds to USD 250,000, must be completed by 31 December 2017.

(2) The review of pre-existing entity accounts with an aggregate account balance or value that does not exceed, as of 31 December 2015, a kuna amount that corresponds to USD 250,000 but exceeds that 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 value exceeds such amount.

Changes in circumstances

Article 85

If there is a change of circumstances with respect to a pre-existing 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 Article 81 of this Ordinance.

Section 6

Due diligence of new entity accounts

Procedures for verifying new entity accounts

Article 86

For new entity accounts, a reporting financial institution must apply the review procedures from Articles 87 and 88 of this Ordinance 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.

Determining whether the entity is a reportable person

Article 87

(1) In determining whether the entity is a reportable person, the reporting financial institution obtains the self-certification, which may be part of the account opening documentation, that allows the reporting financial institution to determine the account holder's residence 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 has no residence 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.

(2) If the self-certification indicates that the account holder is resident in a Member State and/or other 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 Member State and/or other jurisdiction.

Determining whether the entity is a passive NFE

Article 88

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 must act in accordance with points 1 to 3 of this Article, in the order most appropriate under the circumstances.

1. to determine 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 Article 7, paragraph 4, point 2 of this Ordinance that is not a participating jurisdiction financial institution.

2. to determine the controlling persons of an account holder, a reporting financial institution may rely on information collected and maintained pursuant to AML/KYC procedures.

3. to determine 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 7

Special due diligence rules

Additional rules in performing due diligence

Article 89

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.

Alternative procedures for insurance contracts

Article 90

(1) A reporting financial institution may apply the alternative procedures from Articles 91 to 93 of this Ordinance for financial accounts held by individuals who are beneficiaries of insurance contracts or annuity contracts and for group cash value insurance contracts or annuity contracts.

(2) 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.

(3) 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 Articles 61 to 66 of this Ordinance. 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 Articles 61 to 66 of this Ordinance.

Group cash value insurance contracts

Article 91

The term “group cash value insurance contract” means a cash value insurance contract that:

1. provides coverage on individuals who are affiliated through an employer, trade association, labour union, 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.

Group annuity contracts

Article 92

The term “group annuity contract” means an annuity Contract under which the obligees are individuals who are affiliated through an employer, trade association, labour union, or other association or group.

Group cash value insurance contracts and group annuity contracts

Article 93

A reporting financial institution may treat a financial account that is 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 date on which an amount is payable to the employee/certificate holder or beneficiary, if the

financial account that is a member's interest in a group cash value insurance contract or group annuity contract meets the following requirements:

1. the group cash value insurance contract or group annuity contract is issued to an employer and covers 25 or more employees/certificate holders;
2. the employees/certificate holders are entitled to receive any contract value related to their interests and to name beneficiaries for the benefit payable upon the employee's death; and
3. the aggregate amount payable to any employee/certificate holder or beneficiary does not exceed a kuna amount that corresponds to USD 1,000,000.

Account balance aggregation and currency rules

Article 94

(1) For purposes of determining the aggregate balance or 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 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 in this paragraph.

(2) For purposes of determining the aggregate balance or 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.

(3) All amounts denominated in kuna shall be calculated to include equivalent amounts in other currencies, by application of the median exchange rate of the Croatian National Bank on the date of determining the state or value of the financial accounts.

Section 8

Complementary reporting and due diligence rules for financial account information

Changes in circumstances

Article 95

(1) A "change in circumstances" includes any change that results in the addition of 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 Article 94 of this Ordinance, 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 test from Article 62 of this Ordinance 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 obtain a self-certification and new documentary evidence to establish the residence(s) for tax purposes of the account holder, no later than:

1. the last day of the relevant calendar year or other appropriate reporting period, or
2. 90 calendar days following the notice or discovery of such change in circumstances.

(3) 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 Articles 63 to 66 of this Ordinance.

Self-certification for new entity accounts

Article 96

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.

Residence of a financial institution

Article 97

(1) A financial institution is resident in a Member State and/or other jurisdiction if it is subject to the jurisdiction of such Member State and/or other jurisdiction (i.e., the Member State or other jurisdiction is able to enforce reporting by the financial institution). In general, where a financial institution is resident for tax purposes in a Member State and/or other jurisdiction, it is subject to the jurisdiction of such Member State and/or other jurisdiction and it is, thus, a financial institution of a Member State and/or other jurisdiction.

(2) In the case of a trust that is a financial institution (irrespective of whether it is resident for tax purposes in a Member State and/or other jurisdiction), the trust is considered to be subject to the jurisdiction of a Member State and/or other jurisdiction if one or more of its trustees are resident in such Member State and/or other jurisdiction, except if the trust reports all the information required to be reported pursuant to this Ordinance with respect to reportable accounts maintained by the trust to another Member State and/or other jurisdiction because it is resident for tax purposes in such other Member State and/or 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 Member State and/or other jurisdiction and it is, thus, a financial institution of the Member State and/or other jurisdiction if:

1. it is incorporated under the laws of the Member State and/or other jurisdiction;
2. it has its place of management (including effective management) in the Member State and/or other jurisdiction; or
3. it is subject to financial supervision in the Member State and/or other jurisdiction.

(3) Where a financial institution (other than a trust) is resident in two or more Member States and/or other jurisdictions, such financial institution will be subject to the reporting and due diligence obligations of the Member State and/or other jurisdiction in which it maintains its financial account(s).

Account maintained

Article 98

In general, an account would be 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 the 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.

Trusts

Article 99

An entity such as a partnership, limited liability partnership or similar legal arrangement that has no residence for tax purposes, according to Article 33 of this Ordinance, 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 Member State and/or other jurisdiction under the tax laws of such Member State and/or other jurisdiction. 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.

Address of the entity's principle office

Article 100

(1) The official documentation of an entity may be deemed documentary evidence if it includes the address of the entity's principal office in the Member State and/or other jurisdiction in which it claims to be a resident or the Member State and/or other jurisdiction in which the entity was incorporated or organised, in accordance with Article 43, paragraph 1, point 3 of this Ordinance.

(2) 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.

(3) 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.

CHAPTER II AUTOMATIC EXCHANGE OF COUNTRY-BY-COUNTRY REPORTS

Section 1 General reporting requirements

Article 101

With the exception of the ultimate parent entity from Article 35, paragraph 1 of the Act, the entity submitting country-by-country reports on behalf of a multinational entity (MNE) group may be a constituent entity in a MNE group as laid down by Articles 102 to 105 of this Ordinance.

Obligations of a constituent entity resident in the Republic of Croatia

Article 102

A constituent entity that is resident in the Republic of Croatia for tax purposes, and which is not the ultimate parent entity of an MNE Group, shall file a country-by-country report with respect to the reporting fiscal year of an MNE Group of which it is a constituent entity, if one of the following criteria are satisfied:

1. the ultimate parent entity of the MNE Group is not obligated to file a country-by-country report in its jurisdiction of tax residence;
2. the jurisdiction in which the ultimate parent entity is resident for tax purposes applies a current international agreement to which the Republic of Croatia is a party, but does not have the qualifying competent authority agreement to which the Republic of Croatia is a party by the expiry of the period of 12 months from the last day of the reporting fiscal year for which the country-by-country report is filed;
3. there has been a systemic failure of the jurisdiction of tax residence of the ultimate parent entity that has been notified by the Ministry of Finance, Tax Administration to the constituent entity resident for tax purposes in the Republic of Croatia.

Article 103

(1) The constituent entity from Article 102 of this Ordinance shall request its ultimate parent entity to provide it with all information required to enable it to meet its obligations to file a country-by-country report, in accordance with Article 34, paragraph 1 of the Act.

(2) If the constituent entity from Article 102 of this Ordinance has not obtained or acquired all the required information to report for the MNE Group, this constituent entity shall file a country-by-country report containing all information in its possession, obtained or acquired.

(3) The constituent entity from Article 102 of this Ordinance shall notify the Ministry of Finance, Tax Administration that the ultimate parent entity has refused to make the necessary information available, no later than 12 months from the last day of the reporting fiscal year for which the country-by-country report is filed.

(4) The Ministry of Finance, Tax Administration notifies all other Member States of this refusal to submit the information pursuant to paragraph 3 of this Article.

Article 104

(1) Where there are more than one constituent entities of the same MNE Group that are resident for tax purposes in the European Union and one or more of the conditions set out in Article 102 of this Ordinance apply, the MNE group may designate one of such constituent entities from Article 102 of this Ordinance to file the country-by-country report for the MNE group.

(2) The constituent entity from paragraph 1 of this Article shall submit the country-by-country report to the Ministry of Finance, Tax Administration pursuant to Article 34, paragraph 1 of the Act, within the deadline from Article 106, paragraph 1 of this Ordinance, and notify that the filing is intended to satisfy the filing requirement of all the constituent entities of such MNE group that are resident for tax purposes in the European Union.

(3) If the Ministry of Finance, Tax Administration received the country-by-country report in accordance with paragraph 2 of this Article, then it shall communicate the country-by-country report received to any other Member State in which, on the basis of the information in the country-by-country report, one or more constituent entities of the MNE group of the reporting entity are either resident for tax purposes or are subject to tax with respect to the business carried out through a permanent establishment.

(4) Where a constituent entity from paragraphs 1 and 2 of this Article cannot obtain or acquire all the information required to file a country-by-country report, in line with Article 34, paragraph 1 of the Act, then such constituent entity shall not be eligible to be designated to be the reporting entity for the MNE group in the sense of this Article.

(5) The constituent entity from paragraphs 1 and 2 of this Article notifies the Ministry of Finance, Tax Administration that the ultimate parent entity has refused to make the necessary information available.

Surrogate parent entity

Article 105

(1) The entity from Article 102 of this Ordinance shall not be required to file a country-by-country report with respect to any reporting fiscal year if at least one of the conditions from Article 102 of this Ordinance are applied, and if the MNE group of which it is a constituent entity has made available a country-by-country report in accordance with Article 34, paragraph 1 of the Act within the deadline from Article 106, paragraph 1 of this Ordinance with the tax authority of its jurisdiction of tax residence, in case the surrogate parent entity is a tax resident in a jurisdiction outside the European Union, satisfies the following conditions:

1. the jurisdiction of tax residence of the surrogate parent entity requires filing of country-by-country reports conforming to the requirements of Article 34, paragraph 1 of the Act;
2. the jurisdiction of tax residence of the surrogate parent entity has a qualifying competent authority agreement in effect to which the Republic of Croatia is a party by the time specified in Article 106, paragraph 1 of this Ordinance for filing the country-by-country report for the reporting fiscal year;
3. the jurisdiction of tax residence of the surrogate parent entity has not notified the Republic of Croatia of a systemic failure;
4. the jurisdiction of tax residence of the surrogate parent entity has been notified no later than the last day of the reporting fiscal year of such MNE group by the constituent entity resident for tax purposes in its jurisdiction that it is the surrogate parent entity;
5. a notification has been provided to the Ministry of Finance, Tax Administration in accordance with Article 107, paragraph 2 of this Ordinance.

(2) The surrogate parent entity resident in the Republic of Croatia for tax purposes files the country-by-country report from Article 34, paragraph 1 of the Act within the deadline listed in Article 106, paragraph 1 of this Ordinance.

Deadlines and manner of submission of the country-by-country report

Article 106

(1) The surrogate parent entity from Article 35, paragraph 1 of the Act or other entity reporting in accordance with this Ordinance shall deliver the country-by-country report from Article 34, paragraph 1 of this Act to the Ministry of Finance, Tax Administration for the reporting fiscal year within a deadline of 12 months from the last day of the reporting fiscal year for which the country-by-country report is filed.

(2) The delivery of information on the country-by-country report is performed electronically, on the basis of country-by-country reporting form which is an integral part of this Ordinance, pursuant to Article 109 of this Ordinance.

Article 107

(1) The constituent entity of an MNE group that is resident for tax purposes in the Republic of Croatia notifies the Ministry of Finance, Tax Administration whether it is the ultimate parent entity or the surrogate parent entity or the constituent entity as stipulated in Articles 102, 103 and 104 of this Ordinance, no later than four months after the end of the period for which the income tax is determined in accordance with special regulations governing the taxation of income.

(2) The constituent entity of an MNE group, that is resident for tax purposes in the Republic of Croatia, and which is not the ultimate parent entity nor the surrogate parent entity nor the constituent entity designated under Articles 102, 103 and 104 of this Ordinance shall notify the Ministry of Finance, Tax Administration of the identity and tax residence of the reporting entity, no later than four months after the end of the period for which the income tax is determined in accordance with special regulations governing the taxation of income.

Currency

Article 108

The country-by-country report shall specify the currency of the amounts referred to in that report.

Section 2

Content of the country-by-country report

Article 109

(1) The proposed template of the country-by-country report is an integral part of this Ordinance.

(2) The template from paragraph 1 of this Article is used for reporting the allocation of income, taxes, and business activities of the MNE group by tax jurisdictions.

Treatment of branch offices and permanent establishments

Article 110

The permanent establishment data shall be reported by reference to the tax jurisdiction in which it is situated and not by reference to the tax jurisdiction of residence of the business unit of which the permanent establishment is a part. Residence tax jurisdiction reporting for the business unit of which the permanent establishment is a part shall exclude financial data related to the permanent establishment.

Period covered by the annual template

Article 111

The template of the country-by-country report covers the fiscal year of the reporting MNE. For constituent entities, at the discretion of the reporting MNE, the template shall reflect on a consistent basis either of the following information:

1. information for the fiscal year of the relevant constituent entities ending on the same date as the fiscal year of the reporting MNE, or ending within the 12 month period preceding such date;
2. information for all the relevant constituent entities reported for the fiscal year of the reporting MNE.

Source of data

Article 112

(1) The reporting MNE shall consistently use the same sources of data from year to year in completing the template of the country-by-country report.

(2) The reporting MNE may choose to use data from its consolidation reporting packages, from separate entity statutory financial statements, regulatory financial statements, or internal management accounts.

(3) It is not necessary to reconcile the revenue, profit and tax reporting in the template to the consolidated financial statements. If statutory financial statements are used as the basis for reporting, all amounts shall be translated to the stated functional currency of the reporting MNE at the average exchange rate for the year stated in the "Additional information" section of the template.

(4) Adjustments need not be made, however, for differences in accounting principles applied from tax jurisdiction to tax jurisdiction.

(5) The reporting MNE shall provide a brief description of the sources of data used in preparing the template in the "Additional information" section of the template. If a change is made in the source of data used from year to year, the reporting MNE shall explain the reasons for the change and its consequences in the "Additional information" section of the template.

Tax jurisdiction

Article 113

(1) In the first column of the template, in the part providing an outline of the allocation of income, taxes and business activities by tax jurisdiction (Table 1 of the proposed template), the reporting MNE shall list all of the tax jurisdictions in which constituent entities of the MNE group are resident for tax purposes.

(2) A tax jurisdiction is defined as a jurisdiction which has fiscal autonomy, regardless of whether it is a state or is a non-state.

(3) A separate line shall be included for all constituent entities in the MNE group deemed by the reporting MNE not to be resident in any tax jurisdiction for tax purposes.

(4) Where a constituent entity is resident in more than one tax jurisdiction, the provisions of the agreement on the avoidance of dual taxation shall be applied to determine the tax jurisdiction of residence.

(5) Where no applicable tax treaty on the avoidance of dual taxation exists, the constituent entity shall be reported in the tax jurisdiction of the constituent entity's place of effective management.

(6) The place of effective management shall be determined with internationally agreed standards.

Revenues

Article 114

(1) In the three columns of the template under the heading "Revenues", the reporting MNE shall report the following information:

1. the sum of revenues of all the constituent entities of the MNE group in the relevant tax jurisdiction generated from transactions with related parties;
2. the sum of revenues of all the constituent entities of the MNE group in the relevant tax jurisdiction generated from transactions with independent parties;
3. the total of the sums referred to in points 1 and 2 of this paragraph.

(2) Revenues shall include revenues from sales of inventory and properties, services, royalties, interest, premiums and any other amounts.

(3) Revenues shall exclude payments received from other constituent entities that are treated as dividends in the payer's tax jurisdiction.

Profit (loss) before income tax

Article 115

(1) In the fifth column of the template, the reporting MNE shall report the sum of the profit (loss) before income tax for all the constituent entities resident for tax purposes in the relevant tax jurisdiction.

(2) The profit (loss) before income tax shall include all extraordinary income and expense items.

Income tax paid (on cash basis)

Article 116

(1) In the sixth column of the template, the reporting MNE shall report the total amount of income tax actually paid during the relevant fiscal year by all the constituent entities resident for tax purposes in the relevant tax jurisdiction.

(2) Taxes paid shall include cash taxes paid by the constituent entity to the residence tax jurisdiction and to all other tax jurisdictions.

(3) Taxes paid shall include withholding taxes paid by other entities (associated enterprises and independent enterprises) with respect to payments to the constituent entity. Thus, if company A resident in tax jurisdiction A earns interest in tax jurisdiction B, the tax withheld in tax jurisdiction B shall be reported by company A.

Income tax accrued (current year)

Article 117

(1) In the seventh column of the template, the reporting MNE shall report the sum of the accrued current tax expense recorded on taxable profits or losses of the year of reporting of all the constituent entities resident for tax purposes in the relevant tax jurisdiction.

(2) The current tax expense shall reflect only operations in the current year and shall not include deferred taxes or provisions for uncertain tax liabilities.

Stated capital

Article 118

(1) In the eighth column of the template, the reporting MNE shall report the sum of the stated capital of all the constituent entities resident for tax purposes in the relevant tax jurisdiction.

(2) With regard to permanent establishments, the stated capital shall be reported by the legal entity of which it is a permanent establishment unless there is a defined capital requirement in the permanent establishment tax jurisdiction for regulatory purposes.

Accumulated earnings

Article 119

In the ninth column of the template, the reporting MNE shall report the sum of the total accumulated earnings of all the constituent entities resident for tax purposes in the relevant tax jurisdiction as of the end of the year. With regard to permanent establishments, accumulated earnings shall be reported by the legal entity of which it is a permanent establishment.

Number of employees

Article 120

(1) In the tenth column of the template, the reporting MNE shall report the total number of employees on a full-time equivalent (FTE) basis of all the constituent entities resident for tax purposes in the relevant tax jurisdiction. The number of employees may be reported as of the year-end, on the basis of average employment levels for the year, or on any other basis consistently applied across tax jurisdictions and from year to year.

(2) For this purpose, independent contractors participating in the ordinary operating activities of the constituent entity may be reported as employees. Reasonable rounding or approximation of the number of employees is permissible, providing that such rounding or approximation does not materially distort the relative distribution of employees across the various tax jurisdictions. Consistent approaches shall be applied from year to year and across entities.

Tangible assets other than cash and cash equivalents

Article 121

(1) In the eleventh column of the template, the reporting MNE shall report the sum of the net book values of tangible assets of all the constituent entities resident for tax purposes in the relevant tax jurisdiction.

(2) With regard to permanent establishments, assets shall be reported by reference to the tax jurisdiction in which the permanent establishment is situated. Tangible assets for this purpose do not include cash or cash equivalents, intangibles, or financial assets.

List of all constituent entities in the MNE group included in each aggregation by tax jurisdiction

Article 122

(1) The reporting MNE shall list, on a tax jurisdiction-by-jurisdiction basis and by legal entity name, all the constituent entities of the MNE group which are resident for tax purposes in the relevant tax jurisdiction.

(2) In accordance with Article 110 of this Ordinance, with regard to permanent establishments, the permanent establishment shall be listed by reference to the tax jurisdiction in which it is situated. The legal entity of which it is a permanent establishment shall be noted.

(3) The reporting MNE shall report the name of the tax jurisdiction under whose laws the constituent entity of the MNE group is organised or incorporated if it is different from the tax jurisdiction of residence.

(4) The reporting MNE shall determine the nature of the main business activity(ies) carried out by the constituent entity in the relevant tax jurisdiction, by ticking one or more of the appropriate boxes.

PART THREE TRANSITIONAL AND FINAL PROVISIONS

Article 123

(1) The ultimate parent entity from Article 35, paragraph 1 of the Act or its surrogate parent entity from Article 105 of this Ordinance shall submit to the Ministry of Finance, Tax Administration the first country-by-country report from Article 34, paragraph 1 of the Act for the reporting fiscal year beginning on 1 January 2016 or after that date, no later than 12 months from the last day of that reporting fiscal period.

(2) By way of derogation from paragraph 1 of this Article, the constituent entity from Article 102 of this Ordinance shall submit to the Ministry of Finance, Tax Administration the first country-by-country report from Article 34, paragraph 1 of the Act for the reporting fiscal year beginning on 1 January 2017 or after that date, no later than 12 months from the last day of that reporting fiscal period.

(3) As of the date of entry of this Ordinance into force, the Ordinance on the automatic exchange of information in the field of taxation (Official Gazette 69/16) shall cease to have effect.

Article 124

This Ordinance shall be published in the Official Gazette, and shall enter into effect on the eighth day from the date of its publication in the Official Gazette.

Class: 011-01/16-01/63

Reg no: 513-07-21-11/17-13

Zagreb, 16 February 2017

Minister of Finance
Zdravko Marić, PhD, m. p.

Please include any further brief information or explanation you consider necessary or that would facilitate the understanding of the compulsory information provided in the country-by-country report