

LAW

No. 4/2020

"FOR AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNTS INFORMATION"

Pursuant to articles 78, 83 point 1 of the constitution, upon the proposal of the Council of Ministers,

ASSEMBLY OF THE REPUBLIC OF ALBANIA

D E C I D E D:

CHAPTER I

GENERAL PROVISIONS

Article 1

Object

The object of this law is to set out the general rules for:

- a) Automatic exchange of financial accounts information, according to the Common Reporting Standard and the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information;
- b) Ensuring obligation of Reporting Financial Institutions in collecting and reporting certain financial information to the Competent Authority in accordance with the Common Reporting Standard;
- c) Determining the general terms and conditions relating to the collection, processing, updating, interaction, access, storage, use and archiving of information relating to the Automatic Exchange of Financial Account Information in Tax Matters;
- ç) The duties and competencies of the competent authority to ensure the effective implementation and compliance with the Common Reporting Standard, including access to and use of information.

Article 2

Scope of law

This law aims at ensuring the implementation of the Convention on Mutual Administrative Assistance in Tax Matters provisions and of the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information, to avoid tax fraud and tax evasion, as well as to improve international and national tax compliance,

Article 3
General principle

The Automatic Exchange of Information of Financial Accounts is carried out in accordance with the provisions of confidentiality and protection of personal data in compliance with the national legislation in force.

Article 4
Subject of law

The subject of this law are the Reporting Financial Institutions in the Republic of Albania for the purpose of reporting Reportable Accounts, held by reportable persons in accordance with the provision set out in this Law.

Article 5
Definitions

1. In this law, the following terms have these meanings:
 - a) “Competent Authority” means the Tax Administration competent by this law for collecting information from Reporting Financial Institutions and for its automatic exchange with other jurisdictions pursuant to the Multilateral Agreement in this area;
 - b) “Financial Institution in the Republic of Albania” means:
 - i) any Financial Institution that is resident in the Republic of Albania but excludes any branch of that financial institution that is located outside the Republic of Albania; and:
 - ii) any branch of a Financial Institution that is not resident in the Republic of Albania, if that branch is located in the Republic of Albania;
 - iii) any Custodial Institution, Depository Institution, Investment Entities, or a Specified Insurance Company as defined in the Common Reporting Standard;
 - c) “Reporting Financial Institution” means any Financial Institution in the Republic of Albania that has the obligation to report the financial activity of the clients to the tax administration;
 - ç) “Reportable Jurisdiction” means a Jurisdiction which is identified in a published list, according to the definitions in the bylaws issued for the implementation of this law;
 - d) “Reportable Account” means an account maintained by Reporting Financial Institution which according to the Due Diligence procedure, pursuant to the Common Reporting Standard, is identified as an account which is held by one or more Reportable Persons with the other jurisdiction or by one passive NFE, with one or

more controlling persons, which are considered reporting person with the other Jurisdiction;

dh) “Agreement” means the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information, approved by decision no. 178, dated on 9.3.2016, of the Council of Ministers, “On the approval of the multilateral agreement, of the Competent Authority, for the automatic exchange of financial account information”;

e) “Third party service providers” means the person, which will collect, keep and report the information on Reportable Accounts to the Competent Authority for a Reporting Financial Institution.

ë) “Reportable Person” means an individual or Entity that has been identified as such by a Reporting Financial Institution in the Republic of Albania as a resident of other Jurisdiction pursuant to the due diligence procedures in accordance with the Common Reporting Standard;

f) “Common Reporting Standard” means the international standard developed by the OECD for the information to be reported by the financial institutions and which will be exchanged with the relevant jurisdictions, which includes the Commentary;

g) “Due Diligence” means the procedures designed to identify Reportable Accounts held by Reportable Persons.

gj) “Commentary” is a detailed interpretation of each section of the Competent Authority Agreement and the Common Reporting Standard, which aims to ensure their proper implementation in all jurisdictions, as well as to avoid creating unnecessary costs for financial institutions, in particular those with operations in more than one jurisdiction.

2. Any other term, as otherwise provided in this Law, or in the decision of the council of ministers issued in its implementation, shall have the meaning which it has at that time, in accordance with the other legal provisions in force in the Republic of Albania and in accordance with its meaning defined in the Common Reporting Standard.

CHAPTER II

REPORTING OBLIGATION

Article 6

Reporting to the Competent Authority

1. Each Reporting Financial Institution in the Republic of Albania, shall report to the Competent Authority the information on annual Reportable Accounts specified in the bylaws pursuant to this law, within 30 May of the year following the end of the calendar year to which the information relates and pursuant to the procedures specified in Article 7 of this Law.

2. If a Reporting Financial Institution applies the Due Diligence procedures described in Article 7 of this Law for a calendar year and no account is identified as a Reportable Account, the institution shall

file, within the deadline specified in point 1 of this article, to the Competent Authority, a declaration which confirms that the institution maintains no such Reportable Accounts in respect of that year.

3. The information shall be filed electronically using such technology and such form in accordance with the bylaws pursuant to this law.

Article 7 **Due Diligence**

1. For the purpose of article 6 of this law, the Reporting Financial Institutions in Albania shall comply with the Due Diligence rules foreseen in the bylaws pursuant to this law, including the collection of self-certifications for all the Reportable Financial Accounts, subject of this law.

2. Reporting Financial Institutions in the Republic of Albania have the obligation to inform their Reportable Account Holders on the processing of their personal data to comply with the Due Diligence and Reporting obligations set out in this Law and in the bylaws pursuant to this law, before the initiation of the reporting process and in accordance with the Personal Data Protection Legislation.

Article 8 **Sharing information within of the same group or with third party service providers**

1. Reporting Financial Institutions in the Republic of Albania may share with third-party service providers or with other financial institutions that are part of the same group records and information collected with respect to Reportable Account Holders for the purpose of complying with the data collection, reporting and Due Diligence obligations referred to in Article 6 and 7 of this law.

2. Third party service providers maintaining the documentation and the information necessary to fulfil data collection, due diligence and reporting obligations referred in article 6 and 7 of this law may share the relevant documentation and information with the Reporting Financial Institutions in the Republic of Albania for the purposes of such financial institutions' compliance with the abovementioned obligations.

3. The Reporting Financial Institution remains responsible for the reporting and correct application of the due diligence obligations set out in this Law and in the bylaws pursuant to this law.

Article 9 **Duties and Competencies of the Competent Authority**

1. The Competent Authority, through its subordinate structures, may request information from a Reporting Financial Institution of the Republic of Albania. With prior notification, may enter into the premises where the economic activity is being exercised, with the purpose of auditing the fulfilment of the obligation set out by this law.

2. Within 15 working days from the submission of the written request of the Competent Authority, the reporting financial institution shall make available to the Competent Authority records, or data kept according to the article 10 of this law, as well as any other documents required to carry out the auditing of the fulfilment of the obligations set out by this law.

3. At the request of the Competent Authority, a Reporting Financial Institution in the Republic of Albania shall provide additional explanations. Additional information, in addition to other obligations, contains:
 - a) Completing, signing and returning questionnaires or other written requests for information from the Competent Authority within 15 working days from the date the request has been received;
 - b) Meeting with the employees of the Competent Authority during working hours, answering questions and providing information regarding the implementation of this law.
4. The Competent Authority may notify the Reporting Financial Institution when it has reason to believe that an error may have led to inaccurate or incomplete information, or if the reporting does not comply with the applicable requirements and the Due Diligence procedures in accordance with the Common Reporting Standard.

Article 10
Record keeping and data saving obligations

1. A Reporting Financial Institution in the Republic of Albania shall establish, maintain and document the Due Diligence procedures required to be applied by this law that are designed to identify Reportable Accounts maintained by such financial institution.
2. A Reporting Financial Institution shall:
 - a) keep records that the institution obtains or creates for the purpose of complying with the Common Reporting Standard and these Rules and Procedures, including self-certifications, steps taken in identifying the Reportable Accounts and records of Documentary Evidence. Such records should be maintained either in electronic form or paper based;
 - b) retain those records for a period of at least five years after the end of the period within which the institution must report the information required to be reported under the Common Reporting Standard. At the end of this period these data will be destroyed;
 - c) take the necessary technical and organizational measures to guarantee the security of personal data which are processing according to this law.
3. If these records are maintained in a language other than Albanian, on the basis of a request of the Competent Authority, Reporting Financial Institution in the Republic of Albania shall provide a translation into the Albanian language.

Article 11
Exchange of information on Reportable Accounts

1. In accordance with the provisions of the Convention on Mutual Administrative Assistance in Tax Matters, as well as based on the reporting and due diligence rules, consistent with the Common Reporting Standard, the Competent Authority exchanges on an automatic basis with

- the other competent jurisdictions, within first 9 months of each year, the information obtained based on the procedures and rules specified in this law and in the bylaws pursuant to this law.
2. Exceptionally for the first automatic exchange, the competent authority exchanges information with other competent jurisdictions within 31.12.2020. (Amended with law No. 109/2020, dated on 29.07.2020. Published in the Official Gazette No. 146, dated on 07.08.2020).

CHAPTER III

SANCTIONS AND APPEAL

Article 12

Administrative violations

1. Actions or omissions committed by reporting financial institutions or other responsible persons that are contrary to the provisions of this law are considered administrative violations and are punishable by a fine as follows:

a) overdue submission of mandatory reporting information required by this law, 10 000 (ten thousand) ALL;

b) incorrect submission of mandatory information to report, not in accordance with the need and form set forth in this law and the bylaws pursuant to this law, 50 000 (fifty thousand) ALL;

c) failure to provide the information required by any reportable account holder or other responsible person, contrary to the requirements of this law and the bylaws pursuant to this law, unless such information concerns to a third party and proves that the omission was not intentional, is punished with a fine of 1 000 000 (one million) ALL;

ç) making a false statement by any account holder or other responsible person, contrary to the requirements of this law and the bylaws pursuant to this law, is punished with a fine of 1 500 000 (one million and five hundred thousand) ALL;

d) obstruction by the responsible persons, directly or indirectly, of the exercise of the rights and duties of the Competent Authority set forth in this law and in the bylaws pursuant to this law, is punished with a fine of 1 000 000 (one million) ALL;

dh) incorrect application of the rules established on Due Diligence, as a result of negligence by the person who has the duty to implement them is punishable by a fine of 100,000 (one hundred thousand) ALL;

e) intentionally committing actions contrary to the rules established on due diligence, by the responsible entities, is punished with a fine of 250,000 (two hundred and fifty thousand) ALL.

2. For other cases of administrative violations not provided for in this law, the provisions provided by the legislation in force for tax procedures in the Republic of Albania shall apply.

Article 13

Claims

The subjects of this law have the right to claim against the decisions or actions of the Competent Authority, according to the legislation in force for tax procedures in the Republic of Albania.

Article 14

Rule against avoidance

The financial institution, intermediary, service provider or any other person, who enters into an agreement or engages in a practice, which aims to avoid or circumvent the obligations arising by this law and bylaws pursuant to this law, is considered subject to these obligations, regardless of the agreement entered into or the engagement in this practice.

CHAPTER IV

CONFIDENTIALITY AND SECURITY OF DATA

Article 15

Confidentiality

1. The information provided by the Reporting Financial Institutions in the Republic of Albania is confidential.
2. Any employee of the Competent Authority, the Reporting Financial Institution and any public office that has access to the personal data processed under this law shall have the obligation to sign a confidentiality statement administered by the relevant Institutions involved as the employer;
3. Obligation to maintain confidentiality continues even after the officials or employees are no longer employed by the Competent Authority, Reporting Financial Institution or relevant institution;
4. The information obtained from foreign Competent Authorities shall be kept confidential in accordance with the reporting international standards and domestic legislation.

Article 16

Data security

Processing of personal data within the process of automatic exchange of financial account information on tax matters shall be carried out in accordance with the law on the protection of personal data.

CHAPTER V

FINAL PROVISIONS

Article 17
Interpretation

The provision of this Law and the bylaws pursuant to this law shall be interpreted in accordance with the Commentary of the Common Reporting Standard.

Article 18
Bylaws

The Council of Minister is in charge of issuing bylaws pursuant to Articles 4, 5, 6, 7, 8, 11, 12 and 14 of this law, no later than 3 months from the date of its entry into force.

Article 19
Transitional provisions

1. Exceptionally for the first reporting period, the reporting financial institution, after applying the due diligence procedures, reports within 15 November 2020 for all existing reportable accounts on 1.1.2019, as well as reportable accounts opened during 2019, according to the obligation defined in article 6 of this law. (Amended with Law No. 109/2020, dated on 29.07.2020. Published in the Official Gazette No. 146, dated on 07.08.2020).

2. For reporting in subsequent years, the reporting financial institution reports to the tax administration within May 30th, for the reportable accounts of the previous calendar year.

Article 20
Entry into force

This law comes into force 15 days after its publication in the Official Gazette.

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President of the Assembly of the Republic of Albania

Gramoz Ruçi

Approved on 30.1.2020

Approved on 29.07.2020