

## **Explanatory Statements to Decree No. 446/2015 Coll.**

### **Special Part**

#### **Ad Article 1:**

The Decree regulates the details of financial account reporting and due diligence requirements, namely due diligence procedures for Pre-existing Individual Accounts and New Individual Accounts, and due diligence procedures for Pre-existing Entity Accounts and New Entity Accounts, and special due diligence rules. Due diligence procedures concern the identification of accounts in relation to residents of Member States and residents of Contracting States of an international agreement.

#### **Ad Article 2:**

A Financial Account is treated as a Reportable Account from the date it is identified as such. Information with respect to a Reportable Account shall be reported annually in the calendar year following the calendar year or other appropriate reporting period to which the information relates.

The balance or value of a Financial Account is determined as of the last day of the calendar year or other appropriate period ending during the calendar year.

In order to comply with due diligence and reporting procedures, the Reporting Financial Institution may use service providers to fulfil the obligations on its behalf. However, the fulfilment of the obligations stipulated by the Act remains the responsibility of the Reporting Financial Institution.

The due diligence procedures for New Accounts may apply to Pre-existing Accounts, in which case the rules for Pre-existing Accounts shall still apply. Thus, the financial institution may determine tax residence of the holder of Pre-existing Lower Value Account based on the address of the current residence or place of business. Similarly, the due diligence procedures for High Value Accounts may be applied to Lower Value Accounts. For purposes of due diligence of Pre-existing Individual Accounts and Pre-existing Entity Accounts, all Account Holders and all Controlling Persons having their residence, place of business or located in a Member State or a Contracting State of an international agreement are reviewed. Based on Article 2(7), Account Holders having their residence, place of business or located in the Slovak Republic or in other State than a Contracting State of an international agreement are not reviewed. For the purposes of due diligence, international agreement means the Convention on Mutual Administrative Assistance and other international agreement entered into between the European Union and a third State, according to which the third State will provide information in similar extent as information specified in the Act.

#### **Ad Article 3:**

For purposes of identifying Reportable Accounts, there are reviewed Pre-existing Lower Value Individual Accounts that are Financial Accounts with balance or value as of 31 December 2015 that does not exceed the amount of USD 1,000,000. The identification of Accounts is performed by testing the address, applying the following procedure:

If the records contain an entry on the current residence address or place of business for the individual Account Holder, the Account Holder may be treated as being a resident of the Member State or Contracting State of an international agreement, in which the address is located. If it is not possible to rely on the current residence address for the individual Account Holder provided in the records, data stored electronically must be examined, where the following indicia are reviewed:

1. whether the Account Holder is resident of a Member State or resident of a Contracting State of an international agreement;
2. current mailing address or residence address;

3. existence of a telephone number in a Member State or in a Contracting State of an international agreement and no telephone number in the Slovak Republic;
4. standing instructions to transfer funds to an account maintained in a Member State or in a Contracting State of an international agreement; standing instruction to transfer funds to a Depository Account are not reviewed;
5. valid power of attorney or signatory authority currently in effect granted to a person with an address in a Member State or in a Contracting State of an international agreement; or
6. a “hold mail” instruction or “in-care-of” address in a Member State or in a Contracting State of an international agreement if no other address is on file.

If none of the indicia are discovered in the electronic search, then no further action is required. However, in the case of change in circumstances and one or more indicia associated with the account are discovered, or if a Lower Value Account becomes a High Value Account, the following procedure shall be applied:

- a) If one or more of the indicia listed in Points 1 to 5 are discovered, the Account Holder shall be treated as a resident for tax purposes of each Member State or each Contracting State of an international agreement, for which an indicium is identified.
- b) 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 Point 1 to 5 are identified for the Account Holder, the paper record search shall follow. A self-certification or other Documentary Evidence shall be requested from the Account Holder to determine the residence for tax purposes. If the self-certification or other Documentary Evidence is not obtained, the account shall be marked as undocumented and that fact shall be reported to the competent authority.

An Account Holder does not have to be treated as a resident of a Member State or a Contracting State of an international agreement if the Account Holder written documents confirm that it is a tax resident of the Slovak Republic.

#### **Ad Article 4:**

For purposes of identifying Reportable Accounts, Pre-existing High Value Individual Accounts are examined by reviewing indicia in electronically stored data. An account with a balance or value that exceeds, as of 31 December 2015, or 31 December of any subsequent year, the amount of USD 1,000,000 shall be treated as a Pre-existing High Value Individual Account.

If the electronically searchable database captures all the information, then a further paper record search does not need to be performed. If the electronic database does not capture all the information, the review of the current master file of the client follows. If the current master file of the client does not capture the information, then the review of documents obtained within the last five years follows, in which case the following documents are reviewed: the most recent Documentary Evidence collected with respect to the account, the most recent account opening contract or documentation, the most recent documentation obtained using the procedures set up for prevention and revealing of legalisation of proceeds of criminal activity and terrorist financing or for other regulatory purposes, any power of attorney or signature authority currently in effect, and any standing instructions to transfer funds currently in effect (other than with respect to a Depository Account).

The paper record search does not need to be performed if the electronic database contains information on residence status for tax purposes, residence address or place of business address, mailing address of the Account Holder, the Account Holder's telephone number, in the case of accounts other than Depository Accounts, whether there are standing instructions to transfer funds to another account (other than Depository Accounts), whether there is a current “in-care-of” address or “hold mail” instruction for the Account Holder, whether there is any power of attorney or signatory authority for the account.

Any High Value Individual Account assigned to a relationship manager, including any High Value Individual Accounts aggregated with that Financial Account shall be deemed a Reportable Account.

If in the extended review of High Value Individual Accounts, none of the indicia are discovered and the account is not assigned to a relationship manager, no further action is required if there is no change in circumstances that results in one or more indicia being associated with the account.

If in the extended review of High Value Individual Accounts, one or more indicia are discovered, the account shall be deemed a Reportable Account with respect to each Member State for which an indicium is discovered (except for the case that Account Holders are residents of the Slovak Republic or of a State other than EU Member State or a Contracting State of an international agreement).

If only a “hold mail” instruction or “in-care-of” address is discovered in the extended review of High Value Individual Accounts, a self-certification or Documentary Evidence to establish the residence for tax purposes shall be obtained from the Account Holder. If such documents cannot be obtained, the account shall be reported as undocumented account to the competent authority.

The extended review procedures (except for the inquiry of the relationship manager) shall only be applied once. However, if the account is undocumented, these procedures shall be applied repeatedly on an annual basis until such account ceases to be undocumented.

If there is a change in circumstances that results in one or more indicia subject to review, the account shall be treated as a Reportable Account with respect to each Member State for which an indicium is identified (except for the case that Account Holders are residents of the Slovak Republic or of a State other than EU Member State or a Contracting State of an international agreement).

It is necessary to implement procedures to ensure that a relationship manager identifies any change in circumstances of an account. For example, if a relationship manager is notified that the Account Holder has a new mailing address in a Member State or in a Contracting State of an international agreement, the Reporting Financial Institution is required to treat the new address as a change in circumstances.

**Ad Article 5:**

For purposes of identifying Reportable Accounts, New Individual Accounts are examined so that upon account opening, a self-certification concerning Account Holder's residence for tax purposes is obtained. The correctness of the self-certification shall be assessed based on the information obtained in connection with the opening of the account, including any documentation obtained in compliance with the procedures set up for prevention and revealing of legalisation of proceeds of criminal activity and terrorist financing. If the self-certification establishes that the Account Holder is resident for tax purposes in a Member State or in a Contracting State of an international agreement, the self-certification must also contain the Account Holder's Taxpayer Identification Number and date of birth.

If there is a change in circumstances based on which it is discovered that the data in the original self-certification are incorrect or unreliable, a new self-certification containing correct data must be obtained and the residence for tax purposes will be established according to the new self-certification.

**Ad Article 6:**

The following procedures apply for purposes of reviewing Pre-existing Entity Accounts: Accounts or groups of accounts with an aggregate balance or value that does not exceed, as of 31 December 2015, the amount of USD 250,000 does not need to be reviewed. Only Pre-existing Entity Accounts held by Reportable Persons or by Passive NFEs with one or more Controlling Persons who are Reportable Persons shall be treated as Reportable Accounts.

Within the framework of review, information maintained for regulatory or customer relationship purposes, including information collected pursuant to the procedures set up for prevention and revealing of legalisation of proceeds of criminal activity and terrorist financing, need to be reviewed to determine whether the Account Holder is resident in a Member State or a Contracting State of an international agreement and whether the information includes a place of incorporation or organisation, or an address of the principal office of the Entity in a Member State or Contracting State of an international agreement. If the evaluation of the information indicates that the Account Holder is resident in a Member State or Contracting State of an international agreement, the account shall be treated as a Reportable Account, except for the cases when the Account Holder is not a Reportable Person.

Where the Account Holder is a Passive NFE with one or more Controlling Persons who are Reportable Persons and if any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account. To examine these facts, the following procedures are applied:

- a self-certification from the Account Holder must be obtained unless information is available that the Account Holder is an Active NFE or a Financial Institution other than an Investment Entity that is not a financial institution from a Member State or Contracting State of an international agreement;
- for the purposes of determining the Controlling Persons of an Account Holder, information collected and maintained pursuant to the procedures set up for prevention and revealing of legalisation of proceeds of criminal activity and terrorist financing may be relied on;
- the purposes of determining whether a Controlling Person of a Passive NFE is a Reportable Person, the information collected and maintained pursuant to the procedures set up for prevention and revealing of legalisation of proceeds of criminal activity and terrorist financing may be relied on. That procedure may be applied in the case of an account with an aggregate account balance or value that does not exceed the amount of USD 1,000,000, or a self-certification from the Account Holder may be relied on.

If there is a change in circumstances based on which it is found out that the data in the original self-certification or other documentation associated with an account is incorrect or unreliable, Pre-existing Entity Accounts must be repeatedly reviewed pursuant to Section 1.

**Ad Article 7:**

The following procedures must be applied to determine whether the account is held by one Controlling Person or by one or more Reportable Persons, or by Passive NFEs with one or more Controlling Persons who are Reportable Persons:

A self-certification concerning the Account Holder's residence for tax purposes shall be obtained and the reasonableness of such self-certification based on the information obtained in connection with the opening of the account including any documentation collected pursuant to the procedures set up for prevention and revealing of legalisation of proceeds of criminal activity and terrorist financing shall be confirmed. If the Entity certifies that it has no residence for tax purposes, the address of the principal office of the Entity may be relied on to determine the residence of the Account Holder.

If the self-certification indicates that the Account Holder is resident in a Member State or Contracting State of an international agreement, the Financial Account must be treated as a Reportable Account, unless it is reasonably determined based on information available that the Account Holder is not a Reportable Person.

It must be determined, whether the Account Holder is a Passive NFE with Controlling Persons who are Reportable Persons. If at least one 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 procedure referred to in paragraphs 1 to 3 must be applied in the order that is the most adequate concerning the given circumstances. According to the first paragraph, for purposes of determining whether the Account Holder is a Passive NFE, the data from a self-certification from the Account Holder must be relied on unless information is available, based on which these facts can be reasonably determined. According to the second paragraph, for purposes of determining the Controlling Persons of an Account Holder, information collected and maintained pursuant to the procedures set up for prevention and revealing of legalisation of proceeds of criminal activity and terrorist financing may be relied on. According to the third paragraph, for purposes of determining whether a Controlling Person of a Passive NFE is a Reportable Person, a self-certification from the Account Holder or such Controlling Person may be relied on.

**Ad Article 8:**

A self-certification or Documentary Evidence may not be used as basis to confirm information if it is obvious that they are incorrect or unreliable.

**Ad Article 9:**

If it is presumed that the individual beneficiary, other than the Account Holder, of a Cash Value Insurance Contract or an Annuity Contract receiving a death benefit is not a Reportable Person, the Financial Account of such person may be treated as other than a Reportable Account unless other evidence proves that the beneficiary is a Reportable Person. It is assumed that an individual beneficiary of a Cash Value Insurance Contract or an Annuity Contract is a Reportable Person if the information obtained in relation to that individual contain the indicia specified in Article 3(1)(b), in which case the procedures referred to in Article 3 shall apply.

**Ad Article 10:**

A Financial Account that is a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract may be treated 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. That procedure may be applied if the Group Cash Value Insurance Contract or Group Annuity Contract is issued to an employer and covers 25 or more employees or certificate holders, the employee or certificate holder is entitled to receive any contract value related to their interests pursuant to the contract and to name beneficiaries for the benefit payable upon the employee's death, the aggregate amount payable to any employee or certificate holder or beneficiary does not exceed the amount of USD 1,000,000.

This Article further stipulates the particulars that must be met by a Cash Value Insurance Contract and Annuity Contract so that the Reporting Financial Institution could act in compliance with the above-mentioned procedure.

**Ad Article 11:**

For purposes of determining the aggregate balance or value of Financial Accounts held by an individual, all Financial Accounts maintained by the Reporting Financial Institution, or by a Related Entity must be aggregated, but only to the extent that the computerised systems link the Financial Accounts by reference to a data element such as client number or Taxpayer Identification Number. Similar procure shall apply for purposes of determining the aggregate balance or value of Financial Accounts held by an Entity, where the data allowing the link are, for example, client number or Taxpayer Identification Number. 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 determining the aggregate balance or value of Financial Accounts held by a person, any Financial Accounts that a relationship manager of the financial institution knows, or has reason to know, are directly or indirectly owned, controlled, or established, other than in a fiduciary capacity, by the same person, must be aggregated.

For the purposes of the Decree and also for the purposes of the Act on Automatic Exchange of Financial Account Information in the Field of Taxation and on the Amendment to Certain Acts, Taxpayer Identification Number (hereinafter referred to as “the TIN”) means a unique combination of

digits and/or letters determined by the relevant State for tax purposes. An overview of TINs is provided, for instance, on the OECD website: <http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-identification-numbers/#d.en.347759> or the European Commission website contain a Module for online verification of TIN [https://ec.europa.eu/taxation\\_customs/tin/](https://ec.europa.eu/taxation_customs/tin/). An equivalent of TIN means, for instance, social insurance number, personal number or civil identification number (for example, Birth Register No. in Slovakia), resident identification number in the case of individuals and, in the case of entities, for instance, business identification number, company number or code (Company Registration No.).

**Ad Article 12:**

A change in circumstances includes any change that results in addition or change of information. A change in circumstances also 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. If residence address of the Account Holder is used to determine the residence of the Account Holder and if there is a change in circumstances, by the later of the last day of the relevant calendar year or other appropriate reporting period, or 90 calendar days following the notice or discovery of such change in circumstances, a self-certification and new Documentary Evidence must be obtained. If the self-certification and new Documentary Evidence cannot be obtained by such date, the electronic record search procedure must be applied.

**Ad Article 13:**

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

**Ad Article 14:**

If a Financial Institution is resident in the Slovak Republic, it may be deemed a Financial Institution of the Slovak Republic. A trust that is a Financial Institution is considered resident in the Slovak Republic if one or more of its trustees are resident in the Slovak Republic (regardless of whether the trust itself is resident in the Slovak Republic), except where the trust is a resident for tax purposes of a Member State or other Contracting State of an international agreement and reports all the information with respect to Reportable Accounts maintained by the trust to the relevant State of residence.

Where a Financial Institution other than a trust does not have a residence for tax purposes, it shall be treated as a Financial Institution of the Slovak Republic if it is incorporated under the laws of the Slovak Republic, has its place of management (including effective management) in the Slovak Republic or is subject to financial supervision in the Slovak Republic. Where a Financial Institution (other than a trust) is resident for tax purposes in two or more Member States or in two or more Contracting States of an international agreement, the reporting and due diligence procedures shall be applied in the State where it maintains the Financial Account.

**Ad Article 15:**

A Custodial Account shall be deemed to be maintained by a Financial Institution if the Financial Institution holds custody over the assets in the account. A Depository Account shall be considered an account maintained by a Financial Institution if the Financial Institution is obligated to make payments with respect to the account, excluding an agent of a Financial Institution. A Cash Value Insurance Contract or an Annuity Contract shall be considered an account maintained by a Financial Institution if the Financial Institution is obligated to make payments with respect to the contract. Any equity or debt interest is a Financial Account maintained by a Financial Institution.

**Ad Article 16:**

An Entity that does not have residence for tax purposes according to Article 6(3) of the Act shall be treated as resident for tax purposes of the State, in which its place of effective management is situated.

For these purposes, a legal person or a legal arrangement may be considered similar legal arrangement to a partnership where it is not treated as a taxable entity under the tax laws of the Slovak Republic. A trust that is a Passive NFE may not be considered a similar legal arrangement.

**Ad Article 17:**

The Entity's address is usually identical to its place of effective management. 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. 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.

**Ad Article 18:**

Reasonable efforts may be considered an act aimed at obtaining the TIN(s) and date of birth of the Account Holder. These efforts shall be used at least once a year, in the period between the identification of the Pre-existing Account as Reportable Account and the end of the second calendar year following the year in which the Financial Account was identified as Reportable Account. Reasonable efforts include, in particular, contacting the Account Holder by mail, in person or by phone, the electronic search in the records kept by the Related Entity of the Reporting Financial Institution in compliance with the rules for aggregation of Financial Accounts. The reasonable efforts do not lead automatically to Financial Account cancellation, blocking or transfer, or imposing requirements upon the Account Holder, or any restricting of the Account Holder's access to their Financial Account. The reasonable efforts may also be used after the time limit stipulated in this Section.

**Ad Article 19:**

Due diligence of Pre-existing Lower Value Individual Accounts must be completed by 31 December 2017. 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.

If a Pre-existing Individual Account is not identified as a High Value Account as of 31 December 2015, but becomes a High Value Account as of the last day of the following calendar year, the Reporting Financial Institution must complete extended review procedures described in Article 4 during the calendar year following the year when the account became a High Value Account.

If such an account is identified as a Reportable Account based on the review, the Reporting Financial Institution must report the required information with respect to the year, in which the account was identified as a Reportable Account and subsequent years on an annual basis, unless the Account Holder ceases to be a Reportable Person.

Reporting Financial Institutions must complete review of Pre-existing High Value Entity Accounts by 31 December 2016. Any Pre-existing Entity 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.

Due diligence of Pre-existing Entity Accounts with an aggregate account balance or value that exceeds, as of 31 December 2015, an amount denominated in euros that corresponds to USD 250,000, must be completed by 31 December 2017. Review of Pre-existing Entity Accounts with an aggregate account balance or value that does not exceed, as of 31 December 2015, an amount denominated in euros 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.

**Ad Article 20:**

This Decree transposes in the Slovak laws 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.

**Ad Article 21:**

This Article stipulates that the Decree shall enter into force on 1 January 2016.