

LAW
No. 4/2020

ON THE AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION¹
(as amended with Law no. 109/2020, date 29.7.2020)

Pursuant to Articles 78 and 83, point 1, of the Constitution, upon the proposal of the Council of Ministers,

PARLIAMENT
THE REPUBLIC OF ALBANIA

DECIDED:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

The subject matter of this law is the determination of rules and procedures regarding:

- a) the automatic exchange of financial account information, in implementation of the common reporting standard and the multilateral competent authority agreement for the automatic exchange of financial account information;
- b) the obligation of reporting financial institutions to collect and report certain financial information to the Competent Authority, in accordance with the Common Reporting Standard;
- c) the determination of the general terms and conditions related to the collection, processing, updating, interaction, comparison, storage, use, and archiving of information regarding the automatic exchange of financial account information in tax matters;
- c) the rights and obligations of the Competent Authority to ensure the effective implementation and compliance with the Common Reporting Standard, including the receipt and use of information.

Article 2

Purpose

This law aims to ensure the implementation of the Convention on Mutual Administrative Assistance in Tax Matters, the multilateral competent authority agreement for the automatic exchange of financial account information, for the avoidance of tax fraud and tax evasion, as well as the improvement of national and international tax compliance.

Article 3

¹ This law is partially approximated with Council Directive 2011/16/EU, dated 15 February 2011, "On administrative cooperation in the field of taxation and the repeal of Directive 77/799/EEC", as amended. CELEX number 32011L0016, Official Journal of the European Union, series L, no. 64, dated 11.3.2011, pages 1-12.

General principle

The automatic exchange of financial account information is carried out by applying the provisions on confidentiality and the protection of personal data, in accordance with the applicable national legislation.

Article 4

Subjects

The subjects of this law are reporting financial institutions in the Republic of Albania, which are charged with reporting reportable accounts held by reportable persons, according to the provisions established in this law.

Article 5

Definitions

1. In this law, the following terms have the following meanings:

a) “Competent Authority” is the tax administration, designated by this law to collect information from reporting financial institutions and to automatically exchange it with other jurisdictions, in accordance with the multilateral agreement in this area;

b) “Financial institution in the Republic of Albania” is:

i. any resident financial institution in the Republic of Albania, except for any branch of that financial institution located outside the territory of the Republic of Albania;

ii. any branch of a non-resident financial institution in the Republic of Albania, if such branch is established in the Republic of Albania;

iii. any custodial institution, depository institution, investment entities or a specified insurance company, according to the definitions of the Common Reporting Standard;

c) “Reporting financial institution” is any financial institution in the Republic of Albania that has the obligation to report clients’ financial activity to the tax administration;

c) “Reportable jurisdiction” is a jurisdiction identified in the published list, as defined in the bylaws issued for the implementation of this law;

d) “Reportable account” is an account held by the reporting financial institution, which, according to due diligence procedures in compliance with the Common Reporting Standards, has been identified as an account held by one or more reportable persons in relation to the other jurisdiction or by a passive non-financial entity with one or more controlling persons who are considered reportable persons in relation to the other jurisdiction;

dh) “Agreement” is the multilateral Competent Authority Agreement for the automatic exchange of financial account information, adopted by Decision No. 178, dated 9.3.2016, of the Council of Ministers, “On the adoption of the multilateral Competent Authority Agreement for the automatic exchange of financial account information”;

e) “Third party service provider” is the person who collects, maintains, and reports to the Competent Authority the information of reportable accounts on behalf of a reporting financial institution;

ë) “Reportable person” is an individual or entity identified as such by a reporting financial institution in the Republic of Albania, resident of another jurisdiction, according to due diligence procedures in compliance with the Common Reporting Standard;

f) “Common Reporting Standard” is the standard established by the Organisation for Economic Co-operation and Development (OECD) for the information to be reported by

financial institutions and that will be exchanged with the respective jurisdictions, which also includes the Commentary;

g) “Due diligence” are the procedures established for identifying 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, especially for those institutions that belong to more than one jurisdiction.

2. Any other term, defined differently in this law or in the decision of the Council of Ministers issued pursuant thereto, shall have the meaning it has at that time, according to other legal provisions in force in the Republic of Albania and in accordance with the meaning specified in the Common Reporting Standard.

CHAPTER II THE REPORTING OBLIGATION

Article 6

Reporting to the Competent Authority

1. Every reporting financial institution in the Republic of Albania shall report to the Competent Authority the information on the annual reportable accounts, as specified in the bylaws issued pursuant to this law, by May 30 of the following year for which the information is collected, in accordance with the procedures established in Article 7 of this law.

2. If the reporting financial institution, after applying the due diligence procedures specified in Article 7 of this law, does not identify any account as a reportable account for a calendar year, it shall, within the deadline established in point 1 of this Article, submit to the Competent Authority a statement confirming that it has no reportable account for the reporting year.

3. The information must be submitted electronically, in a standardized format, using appropriate technology, in accordance with the bylaws issued pursuant to this law.

Article 7

Due diligence

1. For the purposes of Article 6 of this law, reporting financial institutions in Albania must act in accordance with the due diligence rules set out in the bylaws issued pursuant to this law, including the collection of self-certifications for all reportable financial accounts subject to this law.

2. Reporting financial institutions in the Republic of Albania are obliged to inform holders of reportable accounts about the processing of their personal data, within the framework of the due diligence process and the reporting obligation, conducted in accordance with this law and the bylaws issued pursuant thereto, prior to the commencement of the reporting process and in accordance with the legislation on the protection of personal data.

Article 8

Sharing of information within the same group or with third-party service providers

1. Reporting financial institutions in the Republic of Albania may share with service providers, third parties, or with other financial institutions that are part of the same group, the documentation and information collected regarding the holders of reportable accounts, for the purpose of fulfilling data collection, reporting and due diligence rules, as provided by Articles 6 and 7 of this law.

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2. Third-party service providers who hold the necessary documentation and information to enable data collection, due diligence procedures, and reporting obligations, as referenced in Articles 6 and 7 of this law, may, for the purposes of compliance by such financial institutions with the aforementioned obligations, share the relevant information and documentation they possess with reporting financial institutions in the Republic of Albania.

3. The reporting financial institution is responsible for reporting and for the implementation of due diligence rules, in accordance with this law and the bylaws enacted pursuant to it.

Article 9

Duties and powers of the Competent Authority

1. The Competent Authority, through its subordinate structures, may request information from any reporting financial institution in the Republic of Albania. With prior notification, it may enter the premises where its economic activity is carried out, for the purpose of verifying the fulfillment of the obligation specified by this law.

2. Within 15 working days from the submission of the written request by the Competent Authority, the reporting financial institution makes available the records or the data kept, pursuant to Article 10 of this law, as well as any other document required to conduct the verification of compliance with the obligation specified by this law.

3. At the request of the Competent Authority, a reporting financial institution in the Republic of Albania must provide additional explanations. The additional information, in addition to other obligations, includes:

- a) completion, signing and return of questionnaires or other written requests for information from the Competent Authority within 15 working days from the date of receipt of the request;
- b) meeting with employees of the Competent Authority during working hours, providing answers to addressed questions, as well as information regarding the implementation of this law.

4. The Competent Authority may notify the financial institution when it has reason to believe that an error may have resulted in inaccurate or incomplete information, or if the reporting is not in compliance with the applicable requirements and due diligence procedures, in accordance with the Common Reporting Standard.

Article 10

Data retention and the obligation to preserve them

1. The reporting financial institution in the Republic of Albania must establish, maintain and document due diligence procedures, in accordance with this law, which are designed to identify reportable accounts held by such financial institutions.

2. Reporting financial institution:

- a) keeps records that the institution receives or creates for the purpose of complying with the Common Reporting Standard, rules and procedures, including self-certifications, steps taken to identify reportable accounts and documented evidence. Such data is kept in electronic or paper format;
- b) keeps such data for a period of at least five years after the end of the period within which the institution must report the required information for reporting, according to the Common Reporting Standard. Upon completion of this term, such data shall be destroyed;
- c) takes the necessary technical and organizational measures to guarantee the security of personal data that is processed within the framework of this law.

3. If these records are kept in a language other than Albanian, upon the request of the Competent Authority, the reporting financial institution in the Republic of Albania must provide their translation into Albanian.

Article 11

Exchange of information on reportable accounts

(added point 2 with the law no. 109/2020, date 29.7.2020)

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, in accordance with the Common Reporting Standard, the Competent Authority exchanges, with other competent jurisdictions, within the first nine months of each year and automatically, the information obtained pursuant to the procedures and rules specified in this law and in the bylaws issued pursuant thereto.

2. Exceptionally for the first automatic exchange, the competent authority exchanges information with other competent jurisdictions by 31.12.2020.

CHAPTER III

SANCTIONS AND ADMINISTRATIVE APPEAL

Article 12

Offences administrative

1. Actions or omissions committed by reporting financial institutions or other responsible persons, which are in contradiction with the provisions of this law, are considered administrative offences and are punishable by a fine as follows:

a) failure to submit within the deadline the mandatory information to be reported, as specified by this law, 10,000 (ten thousand) ALL;

b) submission of inaccurate mandatory information to be reported, not in accordance with the requirement and the form specified in this law and the bylaws issued for its implementation, 50,000 (fifty thousand) ALL;

c) failure to provide the requested information by any holder of reportable accounts or other responsible person, in contradiction with the requirements of this law and the bylaws issued for its implementation, unless such information relates to a third person and it is proven that the omission was not intentional, is punishable by a fine of 1,000,000 (one million) ALL;

c) making a false declaration by any holder of reportable accounts or other responsible person, in contradiction with the requirements of this law and the bylaws issued for its implementation, is punishable by a fine of 1,500,000 (one million five hundred thousand) ALL;

d) obstruction by responsible persons, either directly or indirectly, with the aim of preventing the exercise of the rights and duties of the Competent Authority, as stipulated in this law and the bylaws issued for its implementation, is punishable by a fine of 1,000,000 (one million) ALL;

dh) incorrect application of the established rules on due diligence, as a result of negligence by the person responsible for applying them, is punishable by a fine of 100,000 (one hundred thousand) ALL;

e) Intentional commission of actions in violation of the established rules on due diligence, by responsible entities, is punishable by a fine of 250,000 (two hundred fifty thousand) ALL.

2. For other cases of administrative violations not foreseen in this law, the provisions set out in the applicable legislation on tax procedures in the Republic of Albania shall apply.

Article 13

Appeal

The subjects of this law have the right to appeal against the decision or action of the Competent Authority, pursuant to the applicable legislation on 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 intended to avoid or circumvent the obligations arising from this law and the bylaws issued in its implementation, shall be considered subject to these obligations, regardless of any agreement entered into or engagement in such practice.

CHAPTER IV CONFIDENTIALITY AND DATA PROTECTION

Article 15

Confidentiality

1. The information provided by reporting financial institutions in the Republic of Albania is confidential.

2. Any employee of the Competent Authority, the reporting financial institution, and any public official who has access to personal data processed under this law is required to sign a confidentiality statement, which is administered by the respective institutions in their capacity as employer.

3. The obligation to maintain confidentiality continues even after officials or employees are no longer employed by the Competent Authority, the reporting financial institution or the respective institution.

4. The information received from foreign competent authorities must be kept confidential, in accordance with international reporting standards and domestic legislation.

Article 16

Data protection

The processing of personal data, within the framework of the automatic exchange of financial account information for tax matters, is carried out in accordance with the legislation on personal data protection.

CHAPTER V FINAL PROVISIONS

Article 17

Interpretation

The provisions of this law and the bylaws issued pursuant to it shall be interpreted in accordance with the Commentary on the Common Reporting Standard.

Article 18

Bylaws

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

Article 19

Transitional provision

(as amended point 1 with law no. 109/2020, date 29.7.2020)

1. By way of exception for the first reporting, the reporting financial institution, after applying the due diligence procedures, shall report by 15 November 2020 all existing reportable accounts as of 1.1.2019, as well as reportable accounts opened during 2019, according to the obligation set forth in Article 6 of this law.

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

Article 20

Entry into force

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

**SPEAKER
Gramoz Ruçi**

Approved on 30.1.2020.