Law 30/2017 of 30 November, amending Law 19/2016 of 30 November on automatic exchange of financial account information in tax matters

Preamble

On 30 November 2016, the *Consell General* (Andorran Parliament) approved Law 19/2016 of 30 November on automatic exchange of information in tax matters, which was published in the Andorran Official Gazette *(Butlletí Oficial del Principat d'Andorra)* No. 77 of 22 December 2016. This Law entered into force on 1 January 2017.

Law 19/2016 of 30 November on automatic exchange of information in tax matters implements in Andorra the OECD's Standard of Automatic Exchange of Financial Account Information (Common Reporting Standard - CRS) with a view to improving international tax compliance on the basis of a reciprocal automatic exchange of information subject to a certain degree of confidentiality and other protections, including provisions limiting the use of the information exchanged thereunder and applying the respective data protection laws and practices.

This law governs the automatic exchange of information of financial accounts between the Principality of Andorra and other states pursuant to the applicable international agreements and conventions. The first convention is the Agreement between the European Union and the Principality of Andorra on the automatic exchange of financial account information to improve international tax compliance (the "EU Agreement"). The EU Agreement takes into consideration the progress made within the framework of the European Union and the OECD in relation to mutual administrative assistance in tax matters. The agreement was signed on 12 February 2016, the *Consell General* approved it on 20 October 2016 and it was published in the Andorran Official Gazette No. 67 on 16 November 2016. The edict published in the Andorran Official Gazette No. 1 of 4 January 2017 announced its entry into force on 1 January 2017.

Law 19/2016, of 30 November, on automatic exchange of information in tax matters also governs the automatic exchange of information based on other international agreements or conventions, provided that they apply the OECD Common Reporting Standard. Thus, the law sets out that the Multilateral Competent Authority Agreement on automatic exchange of information (the "MCAA") is the multilateral instrument that makes provision for the automatic exchange of information with the contracting states of the OECD Multilateral Convention pursuant to its article 6.

The MCAA implements the standard for automatic exchange of information in tax matters. Andorra signed the agreement on 3 December 2015, becoming the 75th signatory.

The Multilateral Convention on Mutual Administrative Assistance in Tax Matters is the result of the joint work of the Council of Europe and the OECD (the "OECD Multilateral Convention"). Andorra signed it on 5 November 2013 and it was published in the Andorran Official Gazette No. 46, of 12 August 2016.

The OECD Multilateral Convention entered into force on 1 December 2016, as per the edict published in the Andorran Official Gazette No. 56, of 5 October 2016.

The Ministry of Finance may negotiate bilateral agreements, to be approved by the *Consell General*, outwith the scope of the multilateral instrument that is the MCAA. The automatic exchange of information based on bilateral agreements also requires that the states meet the requirements set out in the first final provision of the Law.

This Law amends Law 19/2016, of 30 November, on automatic exchange of information in tax matters to include the list of states with which information will be automatically exchanged under the MCAA in 2019, with respect to 2018.

The list of states with which information on financial accounts will be automatically exchanged in 2019, with respect to 2018, under the MCAA requires, pursuant to paragraph 3 of the final first provision of the Law, the approval of the *Consell General*.

The list of 32 jurisdictions with which Andorra will automatically exchange information on financial accounts in 2019 seeks to extend the 2018 list to include G20, OECD and Global Forum participating states and various international financial centres.

The objective is to exchange information in 2019 automatically with these 32 additional states and jurisdictions:

- G20 states (India, Mexico, Canada, Brasil, China, Indonesia, Japan, Russian Federation and Saudi Arabia), OECD member states (Chile, Israel and Switzerland) and Global Forum on Tax Transparency members (Colombia, Costa Rica, Kuwait, Malaysia, Uruguay).

- States and jurisdictions with important sectoral or regional financial centres (Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Isle of Man, Jersey, Montserrat, Seychelles, Turks and Caicos Islands, Antigua and Barbuda, Cook Islands, Curaçao, Grenada, Mauritius, Saint Vincent and the Grenadines).

In the case of Switzerland, the Federal Council approved and published the message *(Message du Conseil fédéral)* on the automatic exchange of financial account information with 41 states and jurisdictions, the Principality of Andorra among them, to which information will be reported for the first time in 2019 with respect to 2018.

The amendment of Law 19/2016, of 30 November, on automatic exchange of information in tax matters incorporates the so-called “wider approach” with respect to the documentation obligations regarding the residence for tax purposes of account holders, until now limited to the account holders resident for tax purposes in a reportable state, so that all the accounts held by residents in other states shall be identified and documented in the same conditions.

By doing so, the future incorporation of new states with which Andorra will automatically exchange information, as approved by the *Consell General*, will not impose new documentation obligations on financial institutions as all accounts held by non-residents will have already been documented. In doing this, Andorra adopts the position of the majority of the member states of the OECD Global Forum.

The first reporting with new states will refer to the calendar year that begins after the inclusion of the state in question in the list of states approved by the *Consell General*. The exchange of information with these states cannot refer to previous periods. As such, the information to be reported by financial institutions will always refer to whole calendar years starting on 1 January of the year in which the reporting obligations with new states enter into force.

This law includes transitional provisions for those states for which the automatic exchange of information entered into force on 1 January 2017. It covers the European Union Member States, Gibraltar, and other states included in the list of states with which information will be automatically exchanged pursuant to the MCAA as of 1 January 2017, approved by the *Consell General*. For

these states, all temporal references in Law 19/2016, of 30 November, on automatic exchange of information in tax matters, in the wording given by this law, shall be understood as made to the immediately preceding year.

Finally, a new provision is included in the Law, setting out that the automatic exchange of information may be suspended with the states approved by the *Consell General* if, for any reason, each and every requirement set out in paragraph 1 of the first additional provision of Law 19/2016, of 30 November, on automatic exchange of information, is not met. The Government will assess these circumstances and will inform reporting financial institutions, by means of a technical communiqué, that information must not be reported with respect to the states in question. The suspension of the exchange of information will apply, in particular, to those cases referred to in paragraph 3 of article 7 of the MCAA, including -but not limited to- noncompliance with the provisions on confidentiality and data protection, a failure by the competent authority of the other state to provide timely or adequate information as required or the definition of the status of entities or accounts as "non-reporting financial institutions" and "excluded accounts" in a manner that frustrates the purposes of the Common Reporting Standard.

Article 1

Pursuant to paragraph 3 of the first additional provision of Law 19/2016, of 30 November, on automatic exchange of information in tax matter, the states and territories comprised in Annex IV are added to the list of states with which information will be automatically exchanged under the MCAA as of 2019, referred to 2018.

"Annex IV. List of states with which information is automatically exchanged pursuant to the OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters in 2019 with respect to 2018

State	Date of entry into force
1. Antigua and Barbuda	01.01.2018
2. Saudi Arabia	01.01.2018
3. Bermuda	01.01.2018
4. Brazil	01.01.2018
5. Canada	01.01.2018
6. Colombia	01.01.2018
7. Costa Rica	01.01.2018
8. Curaçao	01.01.2018
9. Grenada	01.01.2018
10. Guernsey	01.01.2018
11. Isle of Man	01.01.2018
12. Cayman Islands	01.01.2018
13. Cook Islands	01.01.2018
14. Turks and Caicos Islands	01.01.2018

State	Date of entry into force
15. British Virgin Islands	01.01.2018
16. India	01.01.2018
17. Indonesia	01.01.2018
18. Israel	01.01.2018
19. Japan	01.01.2018
20. Jersey	01.01.2018
21. Kuwait	01.01.2018
22. Malaysia	01.01.2018
23. Mauritius	01.01.2018
24. Mexico	01.01.2018
25. Montserrat	01.01.2018
26. Russia	01.01.2018
27. Saint Vincent and the Grenadines	01.01.2018
28. Seychelles	01.01.2018
29. Switzerland	01.01.2018
30. Uruguay	01.01.2018
31. Chile	01.01.2018
32. China	01.01.2018

Article 2

Paragraph 2 of article 7 of Law 19/2016, of 30 November, on automatic exchange of information in tax matters is amended as follows:

"2. The exchange of information upon request shall be executed in accordance with Law 10/2017, of 25 May, on the exchange of tax information upon request and spontaneous exchange of information in tax matters."

Article 3

Sections I to VI of Annex I of Law 19/2016, of 30 November, on automatic exchange of information in tax matters are amended as follows:

"Section I: General requirements on reporting of information

A. The information to be reported with respect to each reportable account is the following:

a) the name, address, state or states of residence, TIN(s) or equivalent and, in the case of individuals, date and place of birth of each reportable person that is an

account holder. In the case of any entity that is an account holder and that, after application of the due diligence procedures consistent with Sections V, VI and VII of Annex I of this Law, is identified as having one or more controlling persons that is a reportable person, the name, address, state or states of residence and TIN(s) or equivalent of each reportable person;

b) the account number (or functional equivalent in its absence);

c) the name and identifying number of the reporting financial institution;

d) the account balance or value (including, in the case of a cash value insurance contractor annuity contract, the cash value or surrender value) as of the end of the relevant calendar year or, if the account was closed during such year or period, the date of closure of the account;

e) in the case of any custodial account:

i) the total gross amount in concept of interest, the total gross amount in concept 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; and

ii) the total gross proceeds from the sale or redemption of financial assets paid or credited to the account during the calendar year with respect to which the financial institution acted as a custodian, broker, nominee, or otherwise as an any agent for the account holder;

f) in the case of any depository account, the total gross amount of interest paid or credited to the account during the calendar year; and

g) in the case of an account not described in subparagraphs (e) and (f), the total gross amount paid or credited to the account holder during the calendar year with respect to which the financial institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the account holder during the calendar year.

The information reported must specify the currency in which each amount is denominated.

2. Notwithstanding the provisions of the paragraph above, the following exceptions are applicable with respect to the obligation to report:

a) the TIN(s) or equivalent and date of birth are not required to be reported with respect to reportable accounts that are preexisting accounts or with respect to each financial account that opened prior to becoming a reportable account, if such TIN(s) or equivalent and date of birth are not in the records of the reporting financial institution. However, a reporting financial institution will try to use reasonable efforts to obtain the TIN(s) or equivalent and date of birth with respect to preexisting accounts by the end of the second calendar year following the year in which preexisting accounts were identified as reportable accounts.

b) there will be no obligation to report the TIN(s) or equivalent if such TIN(s) or equivalent has not been issued by the state of residence of the account holder.

Section II. General due diligence requirements

A. An account is treated as a reportable account beginning as of the date it is identified as such pursuant to the due diligence procedures in Sections II to VII 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.

B. An Andorran reporting financial institution, which pursuant to the procedures described in sections II through VII, identifies any account as foreign account that is not a reportable account at the time the due diligence is performed, may rely on the outcome of such procedures to comply with future reporting obligations.

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

D. The Andorran reporting financial institutions may use service providers to fulfil the reporting and due diligence obligations imposed on such reporting financial institutions that, in any case, shall remain the responsibility of the reporting financial institutions.

E. The Andorran reporting financial institutions may apply the due diligence procedures for new accounts to preexisting accounts, and the due diligence procedures for high value accounts to lower value accounts, even though the rules otherwise applicable to preexisting accounts continue to apply.

Section III. Due diligence for preexisting individual accounts

The following procedures apply for preexisting individual accounts.

A. Accounts Not Subjected To Review, Identification, Or Reporting. A preexisting individual account that is a cash value insurance contract or an annuity contract is not required to be reviewed, identified or reported, when the selling of such cash value insurance contracts or annuity contracts to residents of a reportable state is effectively prevented by law.

B. Lower Value Accounts.

The following procedures apply with respect to lower value accounts.

1. Residence address. If the reporting financial institution has in its files 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 state in which the address is located for purposes of determining whether such individual account holder is a reportable person.

2. Electronic file search. If the reporting financial institution does not rely on the current residence address for the individual account holder based on documentary evidence as

set forth in paragraph B.1, the reporting financial institution must review available electronically searchable data for any of the following indicia and apply paragraphs B.3 to B.6:

a) identification of the account holder as a resident of another state;

b) current mailing or residence address (including a post office box) in another state;

c) one or various telephone numbers in another state and no telephone number in Andorra;

d) standing instructions (other than with respect to depository accounts) to transfer funds to an account maintained in another state;

e) currently effective power of attorney or signatory authority granted to a person with an address in another state; or

f) a “hold mail” instruction or “in-care-of” address in another state if the financial institution does not have any other address on its files for the account holder.

3. If none of the indicia listed in paragraph B.2 are discovered in the electronic search, then no further action is required until there is a change in circumstances from which one or various indicia are associated with the account, or the account becomes a high value account.

4. If any of the indicia listed in paragraphs B.2 (a) to (e) are discovered in the electronic search, or if there is a change in circumstances from which one or various indicia are associated with the account, then the financial institution must treat the account holder as a resident for tax purposes of each state for which indicia are identified, unless it elects to apply paragraph B.6 and one of the exceptions in that paragraph applies with respect to that account.

5. If a “hold mail” instruction or “in-care-of” address is discovered in the electronic search and no other address and no other indicium listed in paragraph B.2 (a) to (e) are identified, the financial institution must, in the order most appropriate to the circumstances, apply the paper file search described in paragraph C.2, or seek to obtain from the account holder a self-certification or documentary evidence to establish the residence(s) for tax purposes of such account holder. If the paper search fails to establish an indicium and the attempt to obtain the self-certification or documentary evidence is not successful, the financial institution must report the account to Ministry of Finance as an undocumented account.

6. Notwithstanding a finding of indicia listed in paragraph B.2, a financial institution is not required to treat an account holder as a resident of another state if:

(a) the account holder information contains a current mailing or residence address in the referred state, one or various telephone numbers in that state (and no telephone number in Andorra) or standing instructions (with respect to financial accounts other than depository accounts) to transfer funds to an account maintained in the referred state, and the financial institution obtains, or has previously reviewed and maintains a file of:

(i) a self-certification from the account holder of the state(s) of residence of such account holder that does not include the referred state; and

(ii) documentary evidence establishing the account holder's residence for tax purposes in another state.

(b) the account holder information contains a currently effective power of attorney or signatory authority granted to a person with an address in the referred state, and the financial institution obtains, or has previously reviewed and maintains a file of:

(i) a self-certification from the account holder of the state(s) of residence of such account holder that does not include the referred state; or

(ii) documentary evidence establishing the account holder's residence for tax purposes in another state.

C. Enhanced review procedures for high value accounts

The following procedures apply with respect to high value accounts.

1. Electronic file search. With respect to high value accounts, the financial institution must review electronically searchable data maintained by the financial institution for any of the indicia described in paragraph B.2.

2. Paper file search. If the financial institution's electronically searchable databases include fields for, and register, all of the information described in paragraph C.3, then a further paper file search is not required. If the electronic databases do not capture all of that information, then with respect to a high value account, the 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 financial institution within the last five years for finding any of the indicia described in paragraph B.2:

a) the most recent documentary evidence collected with respect to the account;

b) the most recent account opening contract or documentation;

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

d) any power of attorney or signature authority forms currently in effect;

e) any standing instructions currently in effect (other than with respect to depository accounts) to transfer funds to a reportable state.

3. Exception when databases contain sufficient information. The financial institution is not required to perform the paper file search described in paragraph C.2 when the financial institution's electronically searchable information includes the following:

a) the account holder's status with respect to its residence;

b) the account holder's residence address and mailing address currently on file with the reporting financial institution;

c) the account holder's telephone number(s) currently on file, if any, with the financial institution;

d) in the case of financial accounts other than depository accounts, reference to whether there are standing instructions to transfer funds in the account to another account (including accounts at another branch of the financial institution or another financial institution);

e) reference to whether there is a current "in-care-of" address or "hold mail" instruction for the account holder; and

f) reference to whether there is any power of attorney or signatory authority for the account.

4. Relationship manager inquiry for account knowledge. In addition to the electronic and paper file searches described in paragraphs C.1 and C.2, the 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 knowledge that the account holder is a reportable person.

5. Effect of Finding Indicia.

a) If none of the indicia listed in paragraph B.2 are discovered in the enhanced review of high value accounts, and the account is not identified as held by a resident for tax purposes in another state pursuant to paragraph C.4, 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.

b) If any of the indicia listed in paragraphs B.2 (a) to (e) 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 financial institution must treat the account holder as a resident for tax purposes with respect to each state for which an indicium is identified unless it elects to apply paragraph B.6 and one of the exceptions in that paragraph applies with respect to that account.

c) 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 paragraphs B.2 (a) to (e) are identified for the account holder, the financial institution must obtain from such account holder a self-certification or documentary evidence to determine the residence(s) for tax purposes of the account holder. If the financial institution cannot obtain such self-certification or documentary evidence, it must report the account to the Ministry of Finance as an undocumented account.

6. If a preexisting individual account is not a high value account as of 31 December 2017, but becomes a high value account as of the last day of a subsequent calendar year, the financial institution must conduct the enhanced review procedures with respect to such account within the calendar year following the year in which the account becomes a high value account. If, based on that review such account is identified as a reportable account, the financial institution must report the required information 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.

7. Once applied the enhanced review procedures described in paragraph C to a high value account, the financial institution is not required to re-apply such procedures in any subsequent years, other than the relationship manager inquiry, unless the account is undocumented. In the latter case, the financial institution should re-apply them annually until such account is documented.

8. If there is a change of circumstances with respect to a high value account from which one or more indicia described in paragraph B.2 may be associated with the account, then the financial institution must treat the account as a reportable account with respect to each reportable state for which an indicium is identified unless it elects to apply paragraph B.6 and one of the exceptions in that paragraph applies with respect to that account.

9. Financial institutions must implement procedures to ensure that relationship managers identify 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 another state, the financial institution is required to treat the new address as a change in circumstances and, if it elects to apply paragraph B.6, is required to obtain the appropriate documentation from the account holder.

D. Terms for the review of preexisting accounts

Review of preexisting high value individual accounts must be completed by 31 December 2018. Review of preexisting lower value individual accounts must be completed by 31 December 2019 within two years of the entry into force of the applicable international agreement or convention.

Section IV. Due diligence for new individual accounts

The following procedures apply to new individual accounts.

A. Upon account opening, the financial institution must obtain a self-certification, which may be part of the account opening documentation, that allows the financial institution to determine the account holder's residence o residences for tax purposes. The financial institution must confirm the reasonableness of the self-certification based on the information obtained by the financial institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC procedures.

B. If the self-certification establishes that the account holder is resident for tax purposes in a reportable state, the financial institution must treat the account as a reportable account and the self-certification must also include the account holder's TIN with respect to the state of residence for tax purposes (subject to paragraph D of Section I) and account holder's date of birth.

C. 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 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.

Section V. Due diligence for preexisting entity accounts

The following procedures apply to preexisting entity accounts.

A. Entity accounts not required to be reviewed, identified or reported

Unless the financial institution elects otherwise, either with respect to all preexisting entity accounts or, separately, with respect to any clearly identified group, preexisting entity accounts with an aggregate account balance or value that does not exceed USD 250,000 as of 31 December 2017, 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.

B. Entity accounts subject to review

A preexisting entity account that has an aggregate account balance or value, as of 31 December 2017, that exceeds USD 250,000, and a preexisting entity account that has an aggregate account balance or value that does not exceed the referred amount, as of 31 December 2017, but that does exceed such amount as of the last day of any subsequent calendar year, must be reviewed in accordance with the procedures set forth in paragraph D.

C. Entity accounts with respect to which reporting may be required

With respect to preexisting entity accounts described in paragraph B, only accounts that are held by one or various entities that are resident for tax purposes in another state, or by passive NFEs with one or more controlling persons who are resident for tax purposes in another state, may be treated as reportable accounts.

D. Review procedures for identifying entity accounts with respect to which reporting is required

With respect to preexisting entity accounts described in paragraph B, financial institutions must apply the following review procedures:

1. Determination of whether the entity is a reportable person

a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures) to determine the account holder's residence. For this purpose, information indicating the account holder's residence includes the place of incorporation or organisation, or an address in the referred state.

b) If the information indicates that the account holder is a reportable person, the financial institution must treat the account as a reportable account unless it obtains a self-certification from the entity account holder, or may reasonably determine, based on information in its possession or that is publicly available, that the entity account holder is not a reportable person.

2. Residence of the controlling persons of a passive NFE.

The financial institution must identify whether the account holder is a passive NFE with one or more controlling persons resident for tax purposes in another states. If any of the controlling persons of the passive NFE is a reportable person, then the account is treated as a reportable account. In making these determinations the financial institution must follow the guidance in paragraphs D.2 (a) to (c) in the order most appropriate under the circumstances.

a) Determination of whether the account holder is a passive NFE

For purposes of determining whether the account holder is a passive NFE, the financial institution must obtain a self-certification from the entity account holder to establish its status, unless it may reasonably determine, based on the information in its possession or that is publicly available, that the entity account holder is an active NFE or a financial institution other than an investment entity described in paragraph A.6 (b) of Section VIII that is not resident in a participating state.

b) Determination of the controlling persons of an account holder

For the purposes of determining the controlling persons of an entity account holder, a financial institution may rely on information collected and maintained pursuant to the application of the AML/KYC procedures.

c) Determination of the residence of a controlling person of a passive NFE

For the purposes of determining the residence of a controlling person of a passive NFE, a financial institution may rely on:

(i) information collected and maintained pursuant to AML/KYC procedures in the case of a preexisting entity account held by one or various passive NFEs and with an aggregate account balance or value that does not exceed USD 1,000,000; or

(ii) a self-certification from the entity account holder or from the controlling persons with respect to the state(s) in which the controlling person(s) are resident for tax purposes. If a self-certification is not provided, the reporting financial institution will establish such residence(s) by applying the procedures described in paragraph C of Section III.

E. Timing of review and additional procedures applicable to preexisting entity accounts

1. Review of preexisting entity accounts with an aggregate account balance or value that exceeds USD 250,000, as of 31 December 2017, must be completed by 31 December 2019.

2. Review of preexisting entity accounts with an aggregate account balance or value that does not exceed USD 250,000, as of 31 December 2017, but that 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.

3. If there is a change of circumstances with respect to a preexisting 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 financial institution must re-determine the status of the account in accordance with the procedures set forth in paragraph D.

Section VI. Due diligence for new entity accounts

The following procedures apply to new entity accounts.

A. Review procedures for identifying entity accounts with respect to which reporting may be required

With respect to new entity accounts, financial institutions must apply the following review procedures:

1. Determination of the residence of the entity

a) Obtain a self-certification, which may be part of the account opening documentation, that allows to determine the account holder's residence(s) for tax purposes and confirm 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 application of AML/KYC procedures. If the entity certifies that it has no residence for tax purposes, the financial institution may rely on the address of the principal office of the entity to determine its residence.

b) If the self-certification indicates that the entity account holder is resident for tax purposes in a reportable state, the 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 entity account holder is not a reportable person.

2. Determination of the residence of the controlling persons of a passive NFE

The reporting financial institution must identify whether the account holder is a passive NFE with one or more controlling persons and determine the residence for tax purposes of such controlling 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 financial institution must follow the guidance in paragraph A.2 (a) to (c) in the order most appropriate under the circumstances.

a) Determination of whether the account holder is a passive NFE

For purposes of determining whether the account holder is a passive NFE, the financial institution must obtain a self-certification from the account holder to establish its status, unless it may reasonably determine that, based on the information in its possession or that is publicly available, the account holder is an active NFE or a financial institution other than an investment entity described in paragraph A.6 (b) of Section VIII resident in a non-participating state.

b) Determination of controlling persons of an entity account holder

For purposes of determining the controlling persons of an entity account holder, the financial institution may rely on information collected and maintained pursuant to the application of the AML/KYC procedures.

c) Determination of the residence of a controlling person of a passive NFE

For purposes of determining the residence of a controlling person of a passive NFE, the financial institution may rely on a self-certification from the account holder or such controlling person."

Article 4

Section VII.B of Annex I of Law 19/2016, of 30 November, on automatic exchange of information in tax matters is amended as follows:

"*B. Alternative procedures applicable to financial accounts held by individual beneficiaries of a cash value insurance contract or an annuity contract and for a group cash value insurance contract or group annuity contract*

A 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 treat the financial account as non-reportable, unless the financial institution has actual knowledge, or reason to know, that the beneficiary is a reportable person. A 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 financial institution contains any of the indicia of residence in another state listed in paragraph B of Section III. If a financial institution has actual knowledge, or reason to know, that the beneficiary is a reportable person, the institution must follow the procedures established in paragraph B of Section III.

The financial institution may treat a financial account that is an interest in a group cash value insurance contract or group annuity contract as non-reportable account until the date on which an amount is payable to the employee/certificate holder or to the beneficiary, if the financial account that is an interest in a group cash value insurance contract or group annuity contract meets the following requirements:

a) that the policyholder of the group cash value insurance contract or group annuity contract is the employer and covers 25 or more employees/certificate holders;

b) the employee/certificate holders are entitled to receive any service related to their interests and to designate beneficiaries for the benefit payable upon the employee's death; and

c) that the aggregate amount payable to any employee/certificate holder or beneficiary does not exceed USD 1,000,000.

The term "group cash value insurance contract" means a cash value insurance contract that
(i) offers coverage on individuals who are associated through an employer, trade association, labour union, or other association or group; and (ii) charges a premium for each member of the group (or member of a group category) the amount of which is

determined without regard to the individual health characteristics other than age, gender, and smoking habits of the member (or category of members) of the group.

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

Article 5

Sections VIII.B.8 and 9 of Annex I of Law 19/2016, of 30 November, on automatic exchange of information in tax matters are amended as follows:

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

a) the financial institution is a financial institution solely because it is an issuer of credit cards that only accepts deposits when a customer makes a payment in excess of a balance due with respect to transactions conducted with the card and the overpayment is not immediately returned to the customer; and

b) beginning on 1 January 2018, the financial institution implements policies and procedures either to prevent a customer from making an overpayment in excess of 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 set forth in paragraph C.A of Section VII for account aggregation and currency translation. 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.

9. 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.

An investment entity that is regulated as a collective investment vehicle does not fail to qualify under paragraph B.9 as an exempt collective investment vehicle, solely because the collective investment vehicle has issued physical shares in bearer form, provided that:

a) the collective investment vehicle does not issue any physical shares in bearer form after 31 December 2017;

b) the collective investment vehicle retires all such shares upon surrender;

c) the collective investment vehicle performs the due diligence procedures set forth in Sections II to VII 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

d) 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 by 31 December 2019."

Article 6

Sections VIII.C.8, 9 and 10 of Annex I of Law 19/2016, of 30 November, on automatic exchange of information in tax matters are amended as follows:

"8. The term "cash value" means the greater of the following amounts: (i) the amount that the policyholder is entitled to receive as a consequence of surrender or termination of the contract (determined without reduction for any surrender charge or policy loan), and (ii) the amount the policyholder can borrow under or with regard to the contract. However, the term "cash value" does not include an amount payable under an insurance contract:

a) solely by reason of the death of the individual insured under a life insurance contract;

b) as a personal injury or sickness benefit or other benefit providing indemnification of an economic loss upon the occurrence of the event insured against;

c) 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 a new calculation of a posting or similar error with regard to the premium for the contract;

d) in concept of a dividend paid to the policyholder of the insurance (other than a termination dividend) provided that the dividend relates to an insurance contract under which the only benefits payable are described in paragraph C.8 b); or

e) as a return of an advance premium or premium deposit for an insurance contract for which the premium is paid 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.

9. The term "preexisting account" means:

a) a financial account maintained by a financial institution as of 31 December 2017.

b) any financial account regardless of the date such financial account was opened, if:

(i) the account holder also holds with the financial institution or with a related entity within Andorra a financial account that is a preexisting account under paragraph C.9 a);

(ii) the financial institution, and, as applicable, the related entity within Andorra, treats both of the aforementioned financial accounts, and any other financial accounts of the holder that are treated as preexisting accounts, as a single financial account for the purposes of satisfying the standards of knowledge

requirements set forth in paragraph A of Section VII, and for the purposes of determining the balance or value of any of the financial accounts when applying any of the account thresholds;

(iii) with respect to a financial account that is subject to AML/KYC procedures, the financial institution is permitted to apply such AML/KYC procedures for the financial account by relying upon the AML/KYC procedures performed for the preexisting account; and

(iv) 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 Act.

10. The term "new account" means a financial account opened in a financial institution on or after 1 January 2018, unless it is treated as a preexisting account under paragraph C.9."

Article 7

Sections VIII.C.14 and 15 of Annex I of Law 19/2016, of 30 November, on automatic exchange of information in tax matters are amended as follows:

"14. The term "lower value account" means a preexisting financial account with aggregate balance or value, as of 31 December 2017, that does not exceed USD 1,000,000.

15. The term "high value account" means a preexisting financial account with aggregate balance or value that exceeds USD 1,000,000, as of 31 December 2017 or 31 December of any subsequent year."

Article 8

Section VIII.E.6.c of Annex I of Law 19/2016, of 30 November, on automatic exchange of information in tax matters is amended as follows:

"c) with respect to an entity, any official documentation issued by an authorised government body to this effect (for example, an administration or an agency thereof, or a local entity) that includes the name of the entity and either the address of its principal office in the state in which it claims to be a resident for tax purposes or the state in which the entity was incorporated or organised."

Article 9

Last paragraph of section 3 of Annex II of Law 19/2016, of 30 November, on automatic exchange of information in tax matters is amended as follows:

"Where a "financial institution" (other than a trust) is resident in two or more "participating States" (Andorra or another "participating State"), such "financial institution" is subjected

to the reporting and due diligence obligations of the “participating State” in which it maintains the “financial account(s)”.”

Article 10

The sole transitional provision of Law 19/2016, of 30 November, on automatic exchange of information in tax matters is amended as follows:

“Sole transitional provision. ***Transitional regime for states with which automatic exchange of information is applicable since 1 January 2017***

1. This transitional provisions applies to the states or jurisdictions with which automatic exchange of information is applicable since 1 January 2017, i.e., European Union Member states, Gibraltar, and other states included in the list of states with which information is automatically exchanged pursuant to the MCAA as of 1 January 2017, approved by the *Consell General.*

2. For the purposes of this transitional provision, references made in sections III.C.6, III.D, V.A, V.B, V.E.1 and 2, VIII.B.8.b, VIII.B.9.a, VIII.C.10, VIII.C.14 and VIII.C.15 to the dates 31 December 2017, 1 January 2018, 31 December 2018 and 31 December 2019 must be made to 31 December 2016, 1 January 2017, 31 December 2017 and 31 December 2018, respectively.

3. Review of preexisting accounts whose account holder, or the controlling person of the account holder that is a passive NFE, is resident for tax purposes in one of the states referred to in paragraph 1 of this provision must be carried out in the following deadlines:

a) pre-existing high value accounts held by an individual: until 31 December 2017.

b) pre-existing low value accounts held by an individual: until 31 December 2018.

c) pre-existing accounts held by entities: until 31 December 2018.

4. The first automatic reporting of information referred to in article 6 of this Law with respect to pre-existing accounts whose account holder, or the controlling person of the account holder that is a passive NFE, is resident for tax purposes in one of the states referred to in paragraph 1 of this provision, must be carried out once the maximum period for account review set out in the previous paragraph has elapsed, in the following deadlines:

d) pre-existing high value accounts held by an individual: until 30 June 2018.

e) pre-existing low value accounts held by an individual: until 30 June 2019.

f) pre-existing accounts held by entities: until 30 June 2019.”

Article 11

Paragraphs 3 and 4 of the first final provision of Law 19/2016, of 30 November, on automatic exchange of information in tax matters is amended, and a new paragraph 5 is added, as follows:

"3. The inclusion of the states with which information will be automatically exchanged within the framework of the MCAA or the adoption of bilateral agreements with other states requires, in any case, the approval of the Consell General, according to the applicable legislative procedure. The inclusion of new states will enter into force on 1 January following the approval by the *Consell General*.

4. The Ministry of Finance shall periodically publish in the Official Gazette, and at least at the beginning of every calendar year, the list of states with which information will be automatically exchanged based on the OECD Standard for Automatic Exchange of Financial Account Information, indicating the date from which such exchange applies for each state.

The first automatic reporting referred to in article 6 of this Law refers to the calendar year starting on 1 January in which the inclusion of the state in question in the list approved by the *Consell General* enters into force. The exchange of information with the states in question will not refer to prior periods.

5. The Ministry of Finance may suspend the automatic exchange of information with the states included in the lists approved by the *Consell General* if, for any reason, each and every requirement set out in paragraph 1 at the time the exchange of information is not met. The Ministry of Finance will assess these circumstances and will inform reporting financial institutions, by means of a technical communiqué, that information must not be reported with respect to the states in question. Likewise, the Ministry of Finance will inform reporting financial institutions of the termination of the suspension."

Sole final provision. Entry into force

This law will enter into force on 1 January 2018.