



## ANNOUNCEMENT

*On the due diligence and reporting rules applicable to legal entity clients and other entity clients not classifying as legal entities, specified in Act XXXVII of 2013 on Certain Rules of International Public Administration Cooperation Related to Taxes and Other Public Duties (hereinafter: Tax Cooperation Act)*

**Effective from: 1 January, 2019.**

**Published on: 1 January, 2019.**

Clients classifying as non-natural persons (hereinafter: Legal entity clients) belonging in the corporate portfolio of OTP Bank Plc. on the basis of the Business Rules of the corporate division are subject to the provisions of this Announcement.

Business clients classifying as natural persons (such as sole traders, prime producers, natural persons holding a tax number) are subject to the provisions of the announcement entitled "*On the due diligence and reporting rules applicable to natural person clients, specified in Act XXXVII of 2013 on Certain Rules of International Public Administration Cooperation Related to Taxes and Other Public Duties (hereinafter: Tax Cooperation Act)*".

In October 2014, Hungary committed to applying the multilateral Competent Authority Agreement and Common Reporting Standard (hereinafter: **CRS**) on the automatic exchange of financial account information, developed by the OECD.

Thereafter, the Council of the European Union prescribed the application of the rules related to CRS in Directive 2014/107/EU (Council Directive of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (hereinafter: **DAC2**)).

Pursuant to the provisions of the Tax Cooperation Act effective from 1 January 2016, the domestic financial institutions are obliged to submit the taxpayers (i.e. banking clients) of the countries that committed to applying the CRS (hereinafter: Participating Jurisdictions) to a taxation due diligence procedure and report the result thereof to the tax authority of the country of their tax residence via the National Tax and Customs Administration (hereinafter: NTCA).

The list of the Participating Jurisdictions – also included at the end of this Announcement – is attached as **Annex 1 to Act CXC of 2015** on the Promulgation of the Multilateral Agreement between the Competent Authorities on the Automatic Exchange of Financial Account Information (hereinafter: the Act announcing the Agreement). The list of Participating Jurisdictions may be extended annually with the newly joining countries – entered into Annex 1 of the Act announcing the Agreement with an effective date of 1 January, 2017, or later.

With regard to the foregoing, starting from 1 January 2016 OTP Bank performs the taxation due diligence review of all new clients and performs the due diligence review of its existing clients as well.

## **Declaration**

### **1. For new clients:**

**Upon opening a new account** for account holders that on 31 December 2015 or later had no valid bank account (payment or savings account) or securities account (hereinafter collectively: account) with OTP Bank, **the account holder's residence for tax purposes shall be established.**

**The new account holding Legal Entity client shall, without exception, make a written declaration as to the fact whether or not the business entity or its beneficial owner is a foreign resident for tax purposes.**

**OTP Bank will not establish contractual relationship with Legal Entity clients refusing to make the declaration.**

If in relation to the declaration OTP Bank learns or has a good reason to assume that the original declaration is erroneous or unfounded, the Bank will obtain a valid declaration from the account holder on the basis of which the Legal Entity client's residence for tax purposes can be established.

If the new Legal Entity client makes a declaration to a country of residence for tax purposes which, according to the current legal provisions, is not a Participating Jurisdiction (i.e. no report is submitted to the given country via the NTCA), then the foreign tax number of the Legal Entity client and/or the foreign Tax Identification Number (TIN) and the date of birth of the beneficial owner are not recorded on the declaration (for a detailed description please see the section on data to be reported).

**If the country in question later joins the CRS agreement and as a result becomes a Participating Jurisdiction, then, in order to collect the missing data, OTP Bank will request the Legal Entity client in a separate letter to make a new declaration if the amount of savings of the Legal Entity client exceeds the amount stipulated for existing clients pursuant to the relevant Hungarian legislation either at the end of the year preceding the year when the country became a Participating Jurisdiction or at the end of any consecutive year, as follows.**

### **2. For existing clients:**

Existing Legal Entity clients who on 31 December, 2015, or in case of newly joining Participating Jurisdictions, on the last day of the fiscal year preceding the year of entering into Annex 1 of the Act announcing the Agreement, has a valid bank (payment, savings) or securities account with OTP Bank.

Existing bank (payment, savings) or securities accounts shall be subject to a due diligence procedure whose aggregate balance or value on 31 December, 2015, or in case of newly joining Participating Jurisdictions, **on the last day of the fiscal year preceding** the year of entering into Annex 1 of the Act announcing the Agreement, exceeded the amount expressed in Forint or in a foreign currency equivalent to **250.000,-USD**, as well as accounts whose balance on 31 December, 2015, or in case of newly joining Participating Jurisdictions, on the last day of the fiscal year preceding the year of entering into Annex 1 of the Act announcing the Agreement, did not exceed the mentioned amount but does exceed it at the end of any consecutive fiscal year.

**OTP Bank will request the Legal Entity clients concerned in a letter to make their declarations for residence for tax purposes.**

If the existing Legal Entity client later closes all its accounts with OTP Bank, and then enters into a new account relationship with OTP Bank, then it shall make a new declaration for residence for tax purposes.

The declaration on residence for tax purposes is available on the following link: <https://www.otpbank.hu/portal/en/Corporate>

At OTP Bank during the due diligence procedure and identification, both the existing and the new Legal Entity clients **shall make a joint** (pursuant to Act XIX. of 2014, the FATCA Act and the Tax Cooperation Act) **declaration as regards residence for tax purposes** in order for OTP Bank to establish the former's residence for tax purposes.

You may submit the declaration signed with the authorised signature in the branch managing the account or send it by post to the branch managing the account, whose address you may find on the account statement.

In case of any instrument not issued in the territory of Hungary or by the Jurisdiction of Hungary, the Bank may request the Client to submit a notarised public instrument, or an instrument with Apostille certificate or authenticated/legalised by Hungary's diplomatic mission abroad. In case of change in data (e.g. client's residence for tax purposes, change in the country of the registered seat, change in the data of the beneficial owner) a new declaration is required.

The client is obliged to notify the Bank within 5 (five) working days of having learnt of the changes.

#### **Account holders to be reported**

**OTP Bank is obliged to report** its Legal Entity clients to the **NTCA in the following cases** on the basis of the statement of the client in the declaration for residence for tax purposes or on the basis of the available data in the absence of a valid declaration for residence for tax purposes:

1. if the account holding Active or Passive Non-Financial **Legal Entity is** resident for tax purposes **in a Participating Jurisdiction.**

The country of residence for tax purposes is typically the country of the business entity's registered seat. Deviation is possible in the following cases:

- a) residence for tax purposes is determined by place of business administration and it is in a country different from the country of the registered seat;
- b) the entity operates as a branch office;
- c) the registered seat was transferred to another country which did not affect residence for tax purposes.

The Legal Entity client may only make a declaration for residence for tax purposes **other than the registered seat** as it appears in OTP Bank's register if it justifies its declaration for residence for tax purposes being other than the registered seat with documentary evidence pursuant to the provisions of the Tax Cooperation Act.

Documentary evidence:

- a) certificate of residence for tax purposes (certificate of residence for tax purposes issued by the tax authority) issued by the governmental organisation of the Participating Jurisdiction or other jurisdiction mandated to this end (in particular the government or its office, and/or local government);
- b) public instrument issued by the governmental body mandated to this end (in particular the government or its office, and/or local government), which contains the Legal Entity client's name and the address of the registered seat in the country or the territory of jurisdiction of residence for tax purposes as stated in the declaration made the client, or the name of the member state where the Legal Entity client was registered and/or established, other country or jurisdiction;
- c) audited financial report, credit report prepared by a third party, instrument certifying registration for bankruptcy or report prepared by the securities regulator.

**In case of an account holding Legal Entity client resident for tax purposes in a Participating Jurisdiction, the account holder is obliged to provide its tax identification number used in income tax in the Participating Jurisdiction, if the Participating Jurisdiction issues such a number.**

2. if **the beneficial owner** of the Legal Entity client classifying as a Passive Non-Financial Legal Entity (see: Terms) is resident for tax purposes **in a Participating Jurisdiction**.

In this case, the organisational representative of the account holding Legal Entity client is obliged to provide the TIN of the beneficial owner used in income tax (**if the Participating Jurisdiction issues such a number**) and his date and place of birth, with the proviso that in the absence of which OTP Bank will not establish a contractual relationship with the client.

One beneficial owner may be resident for tax purposes in several Participating Jurisdictions, therefore several residences for tax purposes may be indicated in the declaration.

If the Passive Non-Financial Legal Entity has a beneficial owner resident for tax purposes in a Participating Jurisdiction, then the Bank is obliged to report the Legal Entity – indicating the beneficial owner – to the NTCA.

OTP Bank will report the existing client, even if the Legal Entity client did not submit a valid declaration but according to the available data it can be classified as reportable.

In the absence of a valid declaration by the existing Passive Non-Financial Legal Entity from 1 January 2019 the residence for tax purposes of beneficial owner is determined taking account of the permanent registered address (or address of regular stay) which was reported during the due diligence procedure and identification of client.

### **Reporting to the tax authorities of the Participating Jurisdictions**

If the account holding Legal Entity client or at least one beneficial owner of the account holding Passive Non-Financial Legal Entity client is resident for tax purposes in a Participating Jurisdiction, OTP Bank – starting from 30 June 2017 – will send annual reports to NTCA with the data content specified in the relevant legislation until the residence for tax purposes concerned changes.

The Bank will advise the Legal Entity client of the fact of the reporting in writing within 30 (thirty) days after submitting the data to NTCA.

If the Legal Entity client or at least one of its beneficial owners is resident for tax purposes in the USA, then please see the Client Advice on FATCA and act according to its provisions.

Pursuant to the current legal requirements, reporting to NTCA may take place in case of residence for tax purposes in the following Participating Jurisdictions, **in addition to the USA**. The list may be expanded in the future.

Concurrently to this Announcement becoming effective, the Announcement published on 1 January, 2018, effective from 1 January, 2018, on the due diligence and reporting rules applicable to clients, specified in Act XXXVII of 2013 on Certain Rules of International Public Administration Cooperation Related to Taxes and Other Public Duties (hereinafter: Tax Cooperation Act).

The amendment to this Announcement is deemed necessary due to expansion of Participating Jurisdiction from 1 January 2019.

## **PARTICIPATING JURISDICTIONS:**

### **From 1 January, 2016:**

1. Albania		France	Marshall Islands
2. Anguilla		Ghana	Mauritius
3. Antigua Barbuda	and	Gibraltar	Mexico
4. Argentina		Greece	Montserrat
5. Aruba		Grenada	Germany
6. Australia		Guernsey	Republic of Niue
7. Austria		Netherlands	Norway
8. Barbados		Croatia	Italy
9. Belgium		India	Portugal
10. Belize		Indonesia	Romania
11. Bermuda		Ireland	Saint Lucia
12. British Virgin Islands		Iceland	Saint Vincent and the Grenadines
13. Bulgaria		Japan	Samoa
14. Chile		Jersey	San Marino
15. Cyprus		Cayman Islands	Seychelles
16. Cook Islands		Canada	Sint Maarten
17. Costa Rica		Colombia	Spain
18. Curaçao		Korea	Switzerland
19. Czech Republic		Poland	Sweden
20. Denmark		Latvia	Slovak Republic
21. South Africa		Liechtenstein	Slovenia
22. United Kingdom		Lithuania	Turks and Caicos Islands
23. Estonia		Luxemburg	New Zealand
24. Faroe Islands		Malta	
25. Finland		Isle of Man	

### **From 1 January, 2017:**

1. Andorra	5. China	9. Nauru
2. Brazil	6. Kuwait	10. Russian Federation
3. Greenland	7. Malaysia	11. Saint Kitts and Nevis
4. Israel	8. Monaco	

### **From 1 January, 2018:**

1. Azerbaijan	7. Mayotte	13. Pakistan
2. Bahrein	8. Réunion	14. Saudi Arabia
3. United Arab Emirates	9. Saint-Barthelemy	15. Singapore
4. French Guiana	10. Bonaire, Sint Eustatius and Saba	16. Turkey
5. Guadeloupe	11. Lebanon	
6. Martinique	12. Nigeria	

**From 1 January, 2019:**

1. Bahama islands
2. Hong-Kong
3. Qatar
4. Kazahstan
5. Liberia
6. Macao
7. Panama
8. Uruguay

## Terms

**Active Non-financial Entity:** *all Non-financial Entities that satisfy any of the conditions below:*

- a) less than 50 per cent of its gross income for the preceding tax year is passive income and less than 50 per cent of the assets held by the Non-financial Entity during the preceding tax year are assets that generate or are held for generating passive income;
- b) its shares are regularly traded in an established securities market or it is the Related Entity of an Entity the shares of which are regularly traded in an established securities market;
- c) it is a Governmental Entity, an International Organisation, a Central Bank, or an Entity wholly owned by one or more of the foregoing Organisations/Entities;
- d) substantially all of its activities is related to holding (in full or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, with the proviso that the Entity does not qualify as an Active Non-financial Entity if it functions as or with the designation of an investment fund, including private equity funds, venture capital funds, funds specialised in leveraged buyout, or any investment vehicle the purpose of which is to acquire or finance companies and then hold interests in those companies as capital assets for investment purposes;
- e) at present it pursues no activity and has not pursued any activity earlier either, but it is investing capital into assets with the intention to operate a business other than that of a Financial Institution, provided that 24 months after its foundation it no longer satisfies this condition;
- f) it has not been a Financial Institution in the last five years preceding the tax year, and it is in the process of liquidating its assets or reorganising its activity in order to continue or restart operations other than those of a Financial Institution;
- g) it is primarily engaged in financing and hedging transactions with, or for the benefit of Non-Financial Institution Related Entities, provided that the group of the said Related Entities primarily pursues activities other than those of a Financial Institution; or
- h) it satisfies all of the following requirements:
  - it was established and is operated in the Member State or other state of its residence or in another jurisdiction based on its residence exclusively for religious, charitable, scientific, artistic, cultural, sports or educational purposes or it was established and is operated in the Member State or other state of its residence or in another jurisdiction based on its residence and it is a professional organisation, industrial association, chamber of commerce, employee organisation, agricultural or horticultural organisation, civil organisation or an organisation operating solely for the purpose of promoting social welfare;
  - it is exempted from income tax in the Member State or other state of its residence or in another jurisdiction based on its residence;
  - it has no shareholders or members who have a proprietary or beneficial interest in the Entity's income or assets;
  - the applicable laws of the Member State or other state of its residence or another jurisdiction based on its residence or its articles of association do not permit that any income or assets of the Entity is distributed to, or applied for the benefit of a private person or a non-charitable Entity, except when this takes place within the framework of the charitable activities pursued by it, or paid as a reasonable compensation for services rendered, or as payment representing the fair market value of a property purchased by the Entity; and
  - the applicable laws of the Member State or other state of its residence or another jurisdiction based on its residence or its articles of association prescribe that upon its liquidation or dissolution all of its assets should be distributed to a Governmental Entity or other non-profit organisation, or to the government or any administrative subdivision of the Member State or other state of its residence or another jurisdiction based on its residence.



***[Tax Cooperation Act, Annex 1, Section VIII, point D/8]***

***Passive Non-financial Entity:***

- a) a Non-financial Entity that is not an Active Non-financial Entity; or
- b) an Investment Entity the business activity of which comprises of the following activities and operations performed for or on behalf of its clients:
  - trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign currency; exchange rate, interest rate and index-based instruments; transferable securities; or commodity futures trading;
  - individual and collective portfolio management; or
  - otherwise investing or managing financial assets on commission basis;AND it is not the Financial Institution of any Participating Jurisdiction, or
- c) an Investment Entity the gross income of which is primarily earned by investing, reinvesting or trading in Financial Instruments, provided that the Entity is managed by another Entity that is a Depository Institution, a Custodian Institution, a Specified Insurance Company **and** that is not the Financial Institution of any Participating Jurisdiction.

***[Tax Cooperation Act, Annex 1, Section VIII, point D/7]***

***International Organisation:*** any International Organisation, or an agency or body wholly owned by it. This includes any intergovernmental organisation (including supranational organisations)

- a) comprised primarily of governments;
- b) that have an effective seat agreement with Hungary; and
- c) the income of which does not devolve upon private individuals.

***[Tax Cooperation Act, Annex 1, Section VIII, point B/3]***

***Central Bank:*** is the institution – with the exception of the government of Hungary – that issues instruments circulated as means of payment based on a law or government decree. A body separated from the Government of Hungary, irrespective whether it is owned in part or in full by Hungary, may form part of the Central Bank.

***[Tax Cooperation Act, Annex 1, Section VIII, point B/4]***

***Financial Institution:*** any Custodian, Depository Institution, Investment Entity or Specified Insurance Company.

***[Tax Cooperation Act, Annex 1, Section VIII, point A/3]***

***Custodian:*** any Entity that, as an essential part of its business activity, holds Financial Instruments available for the account of others. This activity is performed when at least 20 per cent of the Entity's gross income realised from the holding of Financial Instruments and the providing of related financial services is generated during the shorter of the following two periods:

- a) a three-year period ending on 31 December of the year preceding the tax year when the assessment of the activity is performed; or
- b) the duration of the Entity's existence.

***[Tax Cooperation Act, Annex 1, Section VIII, point A/4]***

***Depository Institution:*** an Entity that accepts deposits as part of its usual banking or similar business activity.

***[Tax Cooperation Act, Annex 1, Section VIII, point A/5]***

**Investment Entity:** an Entity,

- a) the business activity of which comprises primarily of the following activities and operations performed for or on behalf of its clients:
  - trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign currency; exchange rate, interest rate and index-based instruments; transferable securities; or commodity futures trading;
  - individual and collective portfolio management; or
  - otherwise investing or managing financial assets on commission basis; or
- b) the gross income of which is primarily earned by investing, reinvesting or trading in Financial Instruments, provided that the Entity is managed by another Entity that is a Depository Institution, a Custodian Institution, a Specified Insurance Company or an Investment Entity referred to in subsection a) of Section A/6.

The business activity of an Entity comprises of the activity mentioned in subsection a) of Section A/6, and for the purpose of subsection b) of Section A/6 the gross income of an Entity originates primarily from investment, reinvestment or trading in Financial Instruments, if the gross income of the Entity from the respective activity accounts for at least 50 per cent of its full gross income generated during the shorter of the following two periods:

- a) a three-year period ending on 31 December of the tax year preceding the tax year when the assessment of the activity is performed; or
- b) the duration of the Entity's existence.

The concept of the Investment Entity does not comprise the Active Non-Financial Legal Entity fulfilling any of the conditions listed under items D/8. d)-g)

***[Tax Cooperation Act, Annex 1, Section VIII, points A/6. – 6.2]***

**Beneficial owner:** is the natural person who:

1. possesses, directly or indirectly, at least 25 per cent of the votes or the ownership interest in a legal entity or other organisation, or
2. has a qualifying holding\*, or
3. for the benefit of whom the legal entity or other organisation submitted the transaction order.

If based on the above the beneficial owner cannot be determined, the executive officer shall qualify as beneficial owner.