

## **Decree through which the Regulation of the Register of Trust and Similar Legal Arrangements Service Providers is approved**

### **Explanatory memorandum**

Paragraph 6 of Article 68 of Law 21/2014 of 16 October on tax system basis prescribes to establish and develop through the regulation way a specific register of professionals or anyone else, resident or not, that operate in the Principality of Andorra and manage all sort of relations or fiduciary agreements, trusts, public or private foundations or any other similar instrument, whether or not subjected to the Andorran Law.

Therefore, the obligation to communicate to this register the information about the beneficiaries of the said relations or fiduciary agreements, trusts, public or private foundations or any other similar instrument is fixed, as well as the information about the persons that establish these agreements and payments to the potential beneficiaries of the rents obtained.

Furthermore, the additional second Provision of Law 14/2017 of 22 June on prevention and fight against money laundering and terrorist financing introduces that the professionals involved, acting on behalf of their client, or assisting in the planning or carrying out of transactions on behalf of their client related to the required inputs for the creation, operation or management of the companies and the creation, operation or management of the trusts, companies, associations, foundations or similar structures, and that are not registered in a professional association formally recognized to carry out their activity, must communicate to the competent Ministry for economy matters, before operating, the activities to be carried out. In accordance with the explanatory memorandum of Law 14/2017, with this communication, the Andorran authorities are able to control these activities based on a risk based approach of these operators. This obligation is considered fulfilled with respect to the service suppliers registered in the Register of Commerce and Industry that regulates Law 12/2013 on Commerce of 13 June, related to the activities included in the corresponding registration form of the exercise of the activity.

These Provisions are directed – among other objectives – to the control of trusts or foreign trusts that are not recognized by the Andorran Law and similar figures, subjected or not to the Andorran Law, which can be managed by directors or trustees that operate professionally or not into Andorran territory.

Paragraph 3 of Article 3 of Law 14/2017 defines the concept of beneficial owner with respect of trusts, foundations and similar structures to the trusts. This Law transfers to the Andorran legislation the Directive (EU) 2015/849 of the European Parliament and Council, of 20 May 2015, pursuant to the Monetary Agreement between the Principality of Andorra and the European Union. Thus, the legal business of trust may be considered the equivalent in the Andorran legal system of the foreign trust figure, also in relation to the Directive (EU) 2015/849 that in the Spanish and English versions refers to a *fideicomiso* as a translation of *trust*.

The Regulation approved through this Decree creates the Register of Trust and Similar Legal Arrangement Service Providers considering, particularly, the recommendations of the OECD Global Forum in the field of the compliance of international standards of information exchange for tax purposes and the recommendations of Moneyval about preventing money laundering and terrorist financing. The Regulation also considers the content of the recently approved Directive (EU) 2018/843 of 30 May 2018 that modifies Directive (EU) 2015/849 and regulates in detail the access to the information on trusts and their beneficial owners.

The public and private Andorran foundations are explicitly excluded from the application scope of this Regulation, since its legal frame allows the competent authorities to have access to the information required by Article 68.6 of Law 21/2014. Therefore, Articles 22 and following of Law 11/2008 force the Andorran foundations to carry out and fill, among others, the inventory and annual accounts register and formulate the annual accounts that must be annually presented to the Protectorate. Furthermore, the Regulation governing the beneficiaries' data recording and access in the registers of legal entities, approved by the Decree of 5 September 2018, controls the obligation to report to the Register of the Foundations all the information related to the beneficial owners.

The Regulation governs, specially, the obligation to be registered in the Register of National or Foreign Trusts and Similar Legal Arrangements Service Providers, the provision of information related to the beneficial owners, the updated maintenance of this information and the obligation to store documentation related to the compliance of the legal mandate contained in Paragraph 6 of Article 68 of Law 21/2014.

The Regulation is composed of sixteen articles, two transitional provisions and the 080-A, 080-B and 080-C forms, that are all part of its provisions.

Finally, this Decree approves, through the unique additional Provision, the optional form in order to facilitate the communication to the competent Ministry for economy matters that has to be submitted before the exercise of the activities referred to in the additional second Provision of Law 14/2017 of 22 June on prevention and fight against money laundering and terrorist financing.

Upon a proposal of the Ministry of Finance, the Government, during the session dated 6 February 2019, approved this Decree that contains the following:

#### Sole Article

The Regulation of the Register of Trust and Similar Legal Arrangements Service Providers has been approved and will enter into force the next day following its publication in the *Butlletí Oficial del Principat d'Andorra* (official journal of Andorra).

#### Additional Provision

The information to be provided to the competent Ministry for economy matters before the exercise of the activity referred to in the second additional Provision of

Law 14/2017 of 22 June, on prevention and fight against money laundering and terrorist financing, can be communicated through the form “Communication before the commencement of the activity. Second additional Provision of Law 14/2017”.

This form is optional in order to facilitate to the persons under obligation the fulfilment of the obligation to provide previous information. The information can be reported in another written format that contains all the required information according to the second additional Provision of Law 14/2017.

The obligation to report is considered to be filled in the case of the service providers registered in the Commerce and Industry Register that regulates Law 12/2013 of 13 June, of Commerce, with respect to the activities included in the corresponding form of the exercise of the activity.

#### Final Provision

This Decree will enter into force the next day following its publication in the *Butlletí Oficial del Principat d'Andorra*.

### **Regulation of the Register of Trust and Similar Legal Arrangements Service Providers**

#### **Chapter one. General Provisions**

##### Article 1. Scope

1. This Regulation governs the register of persons that operate in the Principality of Andorra and manage relations or any kind of trust agreements, trusts, foreign public or private foundations or any other similar instrument, subjected or not to the Andorran Law in the terms fixed by Paragraph 6 of Article 68 of Law 21/2014 of 16 October on the tax organisation basis.

The register is named “Register of Trust and Similar Legal Arrangements Service Providers”.

2. They are considered as similar legal instruments to trusts for the purposes of this Regulation, the relations or trusts agreements of any kind, other similar arrangements and the similar legal structures referred to in Article 3 of Law 14/2017 of 22 June on prevention and fight against money laundering and terrorist financing.

3. The provisions of this Regulation are not applicable to managers of foundations created according to the Andorran legislation, who are governed by their specific legislation and, specially, by the Regulation of registration and access to the beneficial owner information in the legal entities registers.

##### Article 2. Organisation of the Register

The Register is attached to the Ministry of Finance and has a unitary nature throughout the national territory.

### Article 3. *Persons subjected to register and provide information to the Register*

1. The obligations to register and provide information that governs this Regulation are applicable to any kind of person, resident or not, that carries out the activity of management referred to in Article 1, whether professional or not.

For the purposes of this Regulation, these persons are named *persons under obligation*.

2. They have the status of service providers that operate in the Principality of Andorra, for the purposes of this Regulation, the service providers residing in the Principality of Andorra in any case and the no-residing when they establish business relations or acquire real assets on Andorran territory on behalf of trusts and similar legal arrangements.

3. The persons under obligation operating in the Principality of Andorra and who are not considered as residents are required to appoint a representative person residing in the Principality of Andorra in order to fulfil their legal obligations and meet the possible information requirements coming from the competent authorities.

### Article 4. *Beneficial owners*

They have the status of beneficial owners, for the purposes of this Regulation, those defined in Article 3 of Law 14/2017 of 22 June on prevention and fight against money laundering and terrorist financing.

### Article 5. *Functions of the Register*

The functions of the Register are to:

- a) Register persons under obligation to be registered and provide information.
- b) Register the information related to the beneficial owners of the trusts, foreign foundations and similar legal arrangements, referred to in article 1 and keep it up-to-date.
- c) Enable the access to the information registered to the competent authorities in the terms set out by this Regulation.

### Article 6. *System of the Register*

1. The Register must be kept according to the personal record, so that each person under obligation is assigned a personal record identified with the Tax Registration Number (TRN).

2. The personal record must be open during the first recording and has the necessary annex or sheets, sequentially numbered in order to make the corresponding entries.

## **Chapter Two.** *Registration of the persons under obligation*

### *Article 7. Information related to the persons under obligation*

The natural persons under obligation must provide to the Register the following data:

- a) Name and surnames.
- b) Date of birth
- c) Nationality and country of residence.
- d) Address in the Principality of Andorra or abroad.
- e) Tax registration number
- f) Nature and scope of the management activity referred to in article 1 that generates the obligation to register.

2. In the event that the persons under obligation are legal entities, trusts or other similar legal arrangements, they must provide to the Register the following data:

- a) Business name or complete naming.
- b) Business address in the Principality of Andorra or abroad.
- c) Tax registration number.
- d) Beneficial owners of the person under obligation.
- e) Legal representative.
- f) Nature and scope of the management activity referred to in Article 1 that generates the obligation to register.

3. In the event that the obliged persons are not residing in the Principality of Andorra, they have to provide, additionally, the data of their representative person in the Principality of Andorra as follows:

- a) Name and surnames.
- d) Address in the Principality of Andorra.
- c) Tax registration number.
- d) Date of the representation agreement.

4. The data are provided through the form 080-A, before the activity starts.

The representation of the persons under obligation must be proved to the Register, which may request a translation in Catalan of the provided documentation when it's redacted in another language.

#### *Article 8. Registration made by the Register*

The Register makes the corresponding entries in the personal record of the person, within a period of fifteen calendar days from the date of receipt of the information.

If the forms don't contain the information required by article 7, the Register informs the registrant and grants a maximum period of five business days to fulfil it.

### **Chapter three.** *Provision and update of the information to the Register for the persons under obligation*

#### *Article 9. Information related to the beneficial owners*

1. The persons under obligation provide to the Register the beneficial owners data as follows:

- a) Name and surnames.
- b) Date of birth.
- c) Nationality and country of residence of the beneficial owner.
- d) Nature and scope of their beneficial owner's condition.

2. The data provision is made through a form number 080-B, within the period of fifteen calendar days from the commencement date of the management activity of the obliged person because of his status of trustee or similar.

3. The Register makes the entries corresponding to the personal record of the persons under obligation in order to enter the information within a maximum period of fifteen calendar days from the date of receipt of the corresponding forms.

If the forms don't contain the information required by this Article, the Register informs the registrant and grants a maximum period of five business days to complete it.

#### *Article 10: Update of the registered information*

1. The persons under obligation provide to the Register the information related to the changes with regard to the information previously provided.

The possible changes generated by this obligation to provide information are, among others, the change of representative, the cessation of the activity of the person under obligation and the change of beneficial owners.

The provision of information is made within a period of fifteen calendar days from the agreement or deal decided in the Principality of Andorra that leads to the change.

2. When the change occurs because of agreements or deals that don't take place in the Principality of Andorra, the persons under obligation must provide the information related to this fact to the Register within a period of two months from the date of approbation of the agreement or deal.

3. The provision of information referred to in this Article is made through the forms number 080-A and 080-B, used to provide the updated information.

The Register keeps the related information updated by making the corresponding entries within a period of two months from the date of receipt of the information.

If the forms don't contain the information required by this Regulation, the Register informs the registrant and grants a maximum period of five business days to complete it.

#### *Article 11. Provision of information related to rents and benefits obtained and payments to beneficiaries*

1. The obliged persons must provide every year to the Register the information about rents and benefits obtained by the trusts, foreign foundations and similar legal arrangements, distributed or not, and payments to beneficiaries.

The persons under obligation provide this information to the Register annually through the form number 080-C, until 31 March following the calendar year referred to in the information provision.

2. The persons under obligation who cease the activity which generates the obligation of registration in the Register, provide the information required in the Article within the period of three months from the date of entry of the deregistration. The provided information corresponds to the calendar previous year if it has not been provided yet to the Register and to the calendar year period that has passed until the entry of deregistration.

3. The Register makes the entry corresponding to the personal record of the persons under obligation in order to enter the information within a period of fifteen calendar days from the date of receipt of the corresponding forms.

If the forms don't contain the information required in this Article, the Register informs the registrant and grants a maximum period of five business days to complete it.

#### **Chapter four.** *Access to the information contained in the Register by the competent authorities*

The tax administration, the Ministry of Finance, the UIFAND (Financial Intelligence Unit of Andorra), the legal authorities, the Public Prosecutor, and any

other competent authority access to the information contained in the Register, in the terms established in its specific regulation.

## **Chapter five.** *Other obligations of the persons under obligation*

### *Article 13. Record keeping*

1. The persons under obligation are obliged to obtain and keep the appropriate, precise and updated information about the beneficial owners of the relations or trust agreements, trusts, foreign foundations and similar arrangements referred to in Article 1.

2. The persons under obligation must keep, during a minimum period of fifteen years, a copy of the whole documentation related to the provision of information required in Paragraph 6 of Article 68 of Law 21/2014 of 16 October, on the tax organisation basis and, specially, the following:

a) In the case of the beneficial owners, the official identity document including a photograph.

b) In the case of beneficial owners of legal persons, additionally, some of the following documents: the instrument of incorporation, the last activities report and financial statements approved and deposited in a public register, a certificate of validity issued by the corresponding company register, the certificate of incorporation or other documentation coming from a source equivalent to the mentioned above attesting the name or the business name, the form and the existence of the beneficial owner.

c) The documents that regulate the existence and the internal rules of the relations or trusts agreements, trusts, foreign foundations and similar arrangements referred to in article 1.

d) The documents attesting the powers of the person under obligation who performs the activity which generates the obligation to register and, if necessary, of his representative.

e) The supporting documents and records of payments to the beneficiaries of the rents obtained from their management and whatever profit-sharing.

### *Article 14. Communication of the condition of trust and similar legal arrangements service providers*

The persons under obligation report their condition to the financial entities and other persons under obligation to implement measures of due diligence for preventing and fighting against money laundering and terrorist financing when they establish a business relationship or carry out a casual transaction regardless of its amount.

## **Chapter six. Other provisions**

### *Article 15. Processing through telematic means and updating of forms*

The Government can approve the required procedures so that the forms included in this Regulation can be submitted respectively to the Register through telematic means.

The Ministry of Finance can update the forms of this Regulation, by publishing the corresponding Ministerial Order.

### *Article 16. Sanctions regime*

The non-compliance of the tax obligations established by this Regulation developing Paragraph 6 of Article 68 of Law 21/2014 of 16 October on the tax organisation basis constitutes a breach of the duty to provide data, reports or histories with a tax transcendence, in the terms established in Letter c of Paragraph 2 of article 127, and the quantification of the sanctions is determined in the terms established in Letter c of Paragraph 2 of Article 128 of the same Law.

### *First transitory Provision. Submission of forms*

The persons under obligation who in the date of entry into force of this Regulation operate in the Principality of Andorra must submit to the Register the forms included in this Regulation under the terms of Articles 7 and 9, within a period of three months from the date of entry into force of this Regulation.

### *Second transitory Provision. Period of documentation keeping*

The period of documentation keeping referred in Article 14 of this Regulation does not apply to the cases in which on the date of entry into force of this Regulation, the period of documentation keeping previously required to the obliged person has been exceeded.

What is made public for the general awareness.

Andorra la Vella, 6 February 2019

Antoni Martí Petit  
Head of Government

**Government of Andorra**

**Communication of commencement of activity<sup>1</sup>**

**1. Data of the professional**

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Name and surnames or business name:

TRN:

Legal representative:

TRN:

Address:

Town postal code:

Country:

Email:

Land-line/mobile:

**2. Data of the activity**

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Business name:

Address:

Town postal code:

Country:

Email:

Land-line/mobile:

Activities to be carried out:

**3. Attached documentation**

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**4. Date and signature**

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Place and date:

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Signature of the person under obligation

### **Applicable legislation**

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- Qualified Law on protection of personal data of 18 December 2003
- Law 14/2017 on prevention and fight against money laundering and terrorist financing of 22 June
- Regulation of the Register of Trust and Similar Legal Arrangements Service Providers
- Agreement that regulates the personal data file of the Tax Information Register of the Finance and Civil Service Ministry of 4 December 2013

*1. Second additional Provision of Law 14/2017 on preventing and combating money laundering and terrorism financing of 22 June.*

Government of Andorra

**Register of Trust and Similar Legal Arrangements Service Providers**

Registration

Modification

Deregistration

**1. Data of the person under obligation**

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Natural person

Legal person

Entities without legal personality

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Name and surnames or business name:

TRN:

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Legal representative:

TRN:

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Date of birth:

Nationality:

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Residence in Andorra:

Yes

No

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Address:

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Town postal code:

Country:

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Email:

Land-line/mobile:

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**2. Representative in Andorra**

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Name and surnames:

TRN:

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Date of the representation agreement:

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Address:

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Town postal code:

Country:

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Email:

Land-line/mobile:

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**3. Beneficial owners of the person under obligation**

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Name and surnames

Date of birth

Nationality

Country of residence

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**4. Nature and scope of the management activity**

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**5. Deregistration from the Register of Trust and Similar Legal Arrangements Service Providers**

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Date of deregistration:

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Reason:

**6. Attached documentation**

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**7. Date and signatures**

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Place and date:

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Signature of the person under obligation

Signature of the representative in Andorra

### **Applicable legislation**

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- Qualified Law on protection of personal data of 18 December 2003
- Law 21/2014 on tax system basis of 16 October
- Law 14/2017 on prevention and fight against money laundering and terrorist financing of 22 June
- Regulation of the Register of Trust and Similar Legal Arrangements Service Providers
- Regulation of the tax application of 11 February 2015
- Agreement that regulates the personal data file of the Tax Information Register of the Finance and Civil Service Ministry of 4 December 2013

Government of Andorra

**Register of Beneficial Owners of Trusts and Similar Legal Arrangements**

Registration

Modification

Deregistration

**1. Data of the person under obligation**

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Name and surnames or business name:

TRN:

Legal representative:

TRN:

Email:

Land-line/mobile:

**2. Data of the trust, public or private foreign foundation or similar legal arrangements**

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Name and surnames or business name:

TRN:

Address:

Town postal code:

Country:

Legal representative:

TRN:

Email:

Land-line/mobile:

**3. Beneficial owners of the trust, public or private foreign foundation or similar legal arrangements**

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Name and surnames

Date of birth

Nationality

Country of residence

**4. Nature and scope of the beneficial owner status**

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## 5. Attached documentation

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## 6. Date and signatures

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Place and date:

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Signature of the registrant

## Applicable legislation

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- Qualified Law on protection of personal data of 18 December 2003
- Law 21/2014 on tax system basis of 16 October
- Law 14/2017 on prevention and fight against money laundering and terrorist financing of 22 June
- Regulation of the Register of Trust and Similar Legal Arrangements Service Providers
- Regulation of the tax application of 11 February 2015
- Agreement that regulates the personal data file of the Tax Information Register of the Finance and Civil Service Ministry of 4 December 2013

Government of Andorra

**Information related to rents and profits obtained and payment to beneficiaries**

**1. Data of the person under obligation**

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Name and surnames or business name:

TRN:

Legal representative:

TRN:

Email:

Land-line/mobile:

**2. Data of the trust, public or private foreign foundation or similar legal arrangements**

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Name and surnames or business name:

TRN:

Address:

Town postal code:

Country:

Legal representative:

TRN:

Email:

Land-line/mobile:

**3. Data of the beneficiary, rents and profits obtained and payments during the financial year**

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Name and surnames

Date of birth

Nationality

Country  
residence

of Amount

**4. Nature and scope of the rents and benefits obtained, distributed or not, and payments to beneficiaries**

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## 5. Attached documentation

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## 6. Date and signatures

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Place and date:

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Signature of the registrant

## Applicable legislation

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- Qualified Law on protection of personal data of 18 December 2003
- Law 21/2014 on tax system basis of 16 October
- Law 14/2017 on prevention and fight against money laundering and terrorist financing of 22 June
- Regulation of the Register of Trust and Similar Legal Arrangements Service Providers
- Regulation of the tax application of 11 February 2015
- Agreement that regulates the personal data file of the Tax Information Register of the Finance and Civil Service Ministry of 4 December 2013