Luxembourg Tax Alert

25 March 2014

Luxembourg switches to automatic exchange of information under the current EU Savings Directive, and agrees with the amended EU Savings Directive scope extension.

The EU Savings Directive, applicable since July 2005, requires Member States to exchange information automatically on interest payments made by paying agents located in one member state to individuals resident in another member state (and to specific types of entities, called “Residual Entities”).

Currently 26 member States apply automatic exchange of information under the EU Savings Directive. However, two member States – Austria and Luxembourg – still apply a 35% savings withholding tax instead of the automatic exchange of information (which is however foreseen as an option at the request of the beneficiary of the payment). Several “Third Countries” (such as Switzerland) and “Dependent and Associated Territories” (such as the Channel Islands, BVI and Cayman Islands) apply similar or equivalent measures under the form of savings withholding tax or exchange of information.

In the context of the negotiation of an Intergovernmental Agreement (IGA) with the USA (that foresees automatic exchange of tax information with the USA, within the context of implementing FATCA), Luxembourg already announced last year that it would unilaterally move to automatic exchange of information for EU Savings Directive purposes as from 1 January 2015.

Consequently, as from this date, Luxembourg will automatically exchange information with the other EU member states on interest (as defined in the currently applicable EU Savings Directive) paid cross-border to individuals and “Residual Entities” with permanent address in the EU. The same will apply in the relation with those Dependent and Associated Territories having reciprocity clauses in their bilateral savings taxation agreements concluded with Luxembourg. On 18 March 2014, the Luxembourg government submitted to the parliament a draft bill implementing such changes into Luxembourg tax law.

Apart from this, on 20 March 2014, Luxembourg and Austria dropped their opposition

Luxembourg
Tax Department

The Tax department is a dedicated team of highly skilled tax professionals providing comprehensive consultancy and compliance services.

Our solid knowledge of local and international regulations, combined with our wide experience, allow us to serve our clients in a tailored, responsive and value-added manner.

If you need further information, please refer to your usual Deloitte contact person or contact:

Pascal Noël
Partner | Cross-Border Tax
+352 451 452 571
pnoel@deloitte.lu

Alain Verbeken
Directeur | Cross-Border Tax
+352 451 452 513
alverbeken@deloitte.lu

to the adoption of the amended EU Savings Directive (which has been in the EU legislative pipeline since 2008). The new text aims to close the loopholes identified under the current Directive. This move is linked to the commitment of the EU Commission to implement a level playing field with the 5 Third Countries having implemented equivalent measures under the scope of the current EU Savings Directive. The EU Commission is asking Switzerland, Liechtenstein, Monaco, Andorra and San Marino to update their agreements with the EU to reflect the revised scope of the EU Saving Directive but also to commit to implement, as early adopter, the new single global standard for automatic exchange of information developed by the OECD and endorsed by the G20.

This updated Directive was adopted by the European Council on 24 March 2014 without any discussion and includes the following changes:

- All types of regulated investment funds investing in debt claims will be covered by the Directive. In practice, this means that non-UCITS ("part II") SICAV, SIF-SICAV and SICAR will be covered by the amended Directive;
- Certain life insurance products will be covered by the amended Directive (such as certain unit linked life insurance contracts but subject to grandfathering for contracts subscribed before 1 July 2014);
- The concept of Residual Entities will be extended to all EU entities not subject to effective taxation (while the definition under the currently applicable EU Savings Directive is much more restrictive). In practice, payments made to a significantly broader range of entities, trusts, foundations, and similar legal arrangements within the EU will become reportable (such as e.g. German KG, UK LP, Dutch Stichting, trusts in several Member States);
- Look-through rules will apply regarding payments made to "blacklisted" entities, trusts, foundations and similar legal arrangements outside the EU (such as Bermuda trusts, HK Private Limited Companies, Panama foundations, etc.).

This new Directive will have to be transposed by Member States before 1 January 2016 and will apply as from 1 January 2017.

These developments are linked to the adoption of the automatic exchange of information as a new standard at G20 level, and is also related to other initiatives such as FATCA, the EU Mutual Assistance Directive on Administrative Cooperation (expected to be amended by the end of 2014 in order to enlarge its scope to all forms of financial income and account balances), the OECD Convention on Mutual Administrative Assistance in Tax Matters and the corresponding Common Reporting Standard on automatic exchange of information.

Luxembourg financial institutions will need to closely monitor these developments in order to ensure timely implementation and coordination with their FATCA implementation project.