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## Luxembourg Tax Alert

24 April 2014



### Draft law submitted to the Luxembourg parliament on exchange of information on demand

The Luxembourg government has recently submitted a draft law (n°6680) to parliament on the exchange of information on demand.

The exchange of information on demand is one of the three main methods of exchanging information, along with the automatic exchange and the spontaneous exchange. An exchange of information on demand occurs when a jurisdiction requests another jurisdiction to provide information on a case-by-case basis. To answer the demand, the responding jurisdiction may ask the holder of the information (bank, taxpayer, etc.) to provide information for it to send back to the requesting jurisdiction.

Since 2009, Luxembourg has applied international standards for transparency and the exchange of information for tax purposes. However, in November 2013, Luxembourg received a noncompliant rating from the Global Forum on Transparency and Exchange of Information for Tax Purposes, an organization that conducts peer reviews to assess member states (more than 120 jurisdictions) on their level of compliance with internationally agreed standards for the exchange of information. This rating mainly was due to the way Luxembourg exchanges information on demand. Notably, the forum recommended that Luxembourg “should review its interpretation of the foreseeable relevance concept to conform with the standard” and “should exercise its powers to compel production of information and apply sanctions as appropriate.”

On 31 December 2013, the Luxembourg tax authorities issued a circular clarifying the way they interpret some concepts relating to the exchange of information on demand. The new draft law is another Luxembourg’s action to become compliant.

The key points of the draft law are the following:

- The procedure would apply to all requests for the exchange of information on demand received from another jurisdiction under one of the various international tax agreements to which Luxembourg is stakeholder, such as a double tax treaty, the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters (currently in the ratification process before the Luxembourg parliament) and laws transposing the 2010 European directive on mutual assistance for recovery and the 2011 European directive on administrative cooperation in the field of taxation.
- The Luxembourg tax authorities would be obligated to verify only whether a foreign jurisdiction's request is formally in line with the applicable treaty or law. If so, the Luxembourg tax authorities would execute the foreign request by sending an injunction notification to the data holder for the requested information. The foreign request would be viewed as confidential and could not be disclosed to the data holder.
- The data holder would be obligated to provide to the Luxembourg tax authorities the information requested in its complete form, without alteration, within one month of the injunction notification. If a document to be provided contains data connected with a third party, such data should not be hidden. Failure to comply (refusal to provide information within one month or alteration of the information) could result in a penalty of up to EUR 250,000.
- The requested data would be able to include data from prior to the entry into force of an applicable treaty or law, provided that the requested data is foreseeably relevant in determining the income tax base for a year following the entry into force of the treaty or law.
- In case of urgency or where the request is likely to undermine the chance of success of an investigation conducted by the requesting jurisdiction, the Luxembourg tax authorities would be able to prevent a data holder that is a credit institution, and its directors or employees, from disclosing the existence and content of the injunction notification to the client or taxpayer concerned. Otherwise, the data holder could be subject to a penalty of up to EUR 250,000.
- The procedural rules applicable before the courts would differ from the usual rules, to accelerate the treatment of requests for exchange of information on demand (i.e. the period of time to file a claim before the court would be shorter, judges would be required to issue a decision in a specific timeframe, etc.).

The Luxembourg parliament must now review, discuss and, if necessary, modify this draft law before it can be approved.

We will keep you updated on future developments in connection with this matter. Should you have any query in this respect, please feel free to contact us.

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