

Automatic Exchange of Information Prepare for the Common Reporting Standard



As from 1 January 2016, Luxembourg banks, certain insurance companies, funds, certain non-supervised investment entities and certain PSF/CSP need to be ready to apply the Common Reporting Standard (CRS) and start capturing data for CRS reporting

Context

In the context of the global move towards tax transparency, Luxembourg already concluded an Inter-governmental Agreement (IGA Model 1) with the US in order to transpose FATCA obligations based on automatic exchange of information through the Luxembourg tax authorities. Additionally, as from 1 January 2015, Luxembourg unilaterally abandoned savings withholding tax under the current EU Savings Directive (EUSD) and consequently, switched to automatic exchange of Information (knowing the EU Savings Directive will be repealed as from 1 January 2016; date as from which the CRS goes live).

Consequently, the next agenda topic is the implementation of the CRS. More than 100 jurisdictions participate to this OECD initiative, out of which 74 formally signed the Competent Authority Agreement at OECD level. Based on an EU Directive, together with all EU Member States (except Austria, that has a one year deviation), Luxembourg will apply CRS reporting as from 2017 (reporting on calendar year 2016). Luxembourg published its draft law transposing the EU Directive, which is expected to be voted towards the end of 2015.

Luxembourg industry impact

Luxembourg banks, funds, as well as certain insurance companies, certain non-supervised investment entities and certain PSF/CSP need to act now to timely transpose these new reporting obligations.

Opportunities

As the CRS automatic exchange of information mechanics have been inspired by FATCA IGA

Model 1 mechanics, it will be possible to capitalise, to a large extent, on efforts that have been made in respect of FATCA implementation as to on-boarding processes, pre-existing accounts classification and reporting. It can also reasonably be expected that the CRS will use the same IT communication channels with the authorities as those used for FATCA.

However, there are significant differences between FATCA and the CRS as well, such as:

- the fact that the CRS is based on tax residence while FATCA is based on the broad concept of 'Specified US Persons' (certain persons could be reportable for both FATCA and CRS purposes)
- the absence of *de minimis* rules for individuals under the CRS and a different *de minimis* rule for entities
- the definition of in-scope and excepted products (life insurance, pension savings products, etc.), which is similar to FATCA, but where the legal wording differs slightly under the CRS
- the fact that there is only one deemed compliant status for investment funds under the CRS, as opposed to the multiple deemed compliant statuses possible for FATCA
- the look-through rules for certain investment entities in non-partner jurisdictions, presumed to be Passive NFE for CRS purposes (with in-scope controlling persons to be reported), while these entities could have a different FATCA status, which does not require controlling persons to be identified
- the absence of withholding under the CRS
- the fact that CRS reporting will not end with the EU Member States: additional bilateral and/or multilateral conventions are expected, that will impose CRS reporting between EU Member States and non-EU Member States. Agreements between the EU and Switzerland, Liechtenstein, Andorra and San Marino were already signed or reached; other agreements will follow soon.

Key challenges

Complying with CRS reporting implies significant challenges on the operating model of many Luxembourg financial institutions and other actors. In an international financial place like Luxembourg, it is expected that the number of account holders/investors to be reported, and the volume of data to be reported, will increase exponentially compared to the data exchanged for EUSD (applicable until 31 December 2015) and FATCA purposes. The EUSD has a very limited scope compared to the CRS (only 'interest' amounts are exchanged and several types of funds and products are out of scope of the EUSD), while the CRS covers all types of financial income and its product scope is much broader, e.g. including all types of investment funds. Additionally, the number

of FATCA reportable 'Specified US Persons' is relatively limited within ever large institutions, while CRS reporting will have to be carried out regarding all clients / investors that are tax residents of another Member State, and any (future) partner jurisdiction outside the EU.

Additionally, as the OECD CRS model is a minimum standard, it is not excluded that certain non-EU jurisdictions will require certain additional and/or slightly different data elements when negotiating their bilateral or multilateral conventions introducing CRS reporting in relation with their respective partner jurisdictions. These additional legal instruments will consequently need to be monitored and reporting system updates will be needed on a regular basis.

It is therefore expected that a need for more automated reporting systems, as well as a demand for outsourcing solutions, will arise.

Our Services

We propose tailor-made solutions to our clients in order to help them meet these new automatic exchange of information obligations, making the link between CRS and FATCA implementation. We offer a full range of services to support our clients in their CRS implementation project:

- Implementation advisory services, ranging from strategic positioning, taking into account the possible impact of the CRS considerations on earlier adopted FATCA strategies, to the definition of the target operating model, gap analysis regarding the current organisational processes and IT systems, compliance programmes, assistance and advice in drafting policies, procedures and control frameworks
- Dedicated technical advice, via ad hoc advice and flexible hotlines to cover 'day to day' queries
- Health-checks on FATCA implementation, making the link with and anticipating relevant CRS related matters
- Reporting outsourcing services for CRS and FATCA purposes

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