

## Common Reporting Standard - Luxembourg law on automatic exchange of information in tax matters published

### Operational Tax News

31 December 2015

#### Automatic exchange of information in tax matters throughout the EU as from 2016

The Luxembourg law of 18 December 2015 relating to the automatic exchange of information in tax matters (hereinafter also referred to as “the Luxembourg Law”) has been published in the Official Journal on 24 December 2015.

The Luxembourg Law transposes EU Directive 2014/107/EU relating to the mandatory automatic exchange of information in tax matters, and enters into force on 1 January 2016. The latter Directive introduces “Common Reporting Standard” based reporting throughout the EU, and becomes applicable as from 1 January 2016 (with an exception for Austria, where the Directive becomes applicable as from 1 January 2017 at the latest).

Under the Luxembourg Law, Luxembourg financial institutions (“FIs”, a notion including not only banks, but also investment funds, certain insurers, certain corporate service providers and professionals of the financial sector and certain non-supervised investment entities) have to provide, before the 30 June of each year, to the Luxembourg tax authorities, reportable information corresponding to the previous calendar year (for the first time, on or before 30 June 2017 regarding calendar year 2016). The information to be reported about a “reportable account” includes, in the case of an individual (tax resident in another EU Member State), the reportable person’s name, address, tax identification number, date and place of birth, balance of the account and the total gross amount paid or credited to the account in respect of the relevant reporting period. Information to be provided slightly varies depending on the type of account (e.g. custodial account, depositary account). Also “reportable accounts” held by entities tax resident in an EU Member State will (with certain exceptions) be reportable. Finally, specific reporting will be required relating to persons that are tax resident of another EU Member State, and are controlling persons of certain types of entities, whether these entities are tax resident of an EU Member State or not.

As from 1 January 2016, FIs will need to apply new on-boarding rules in order to obtain, through self-certification, confirmation from new clients as to their country of tax residency and Tax Identification Numbers (“TIN”), as well as to the controlling persons of certain types of EU and non-EU entities (qualifying as so-called “Passive NFE”). The Luxembourg law does allow the so-called “wider approach”, meaning FIs are allowed to also obtain relevant information, such as TINs of (currently) non-reportable persons.

As well-known, Common Reporting Standard based exchange of information will become applicable quickly in relation to a growing number of non-EU jurisdictions. The “wider approach” will facilitate things for FIs, as they can already obtain relevant confirmations from non-EU clients as well, and will (unless changes in circumstances occurred or reasons to know apply) not need to get back to those clients to obtain such confirmations as and when the country of tax residence of those clients become reportable jurisdictions. Templates of self-certification forms were made available by amongst others the Luxembourg banking and fund associations.

For pre-existing clients (i.e. persons who opened an account before 1 January 2016), a due diligence needs to be carried out in order to determine their tax residence. Depending on whether the client is an individual or entity, and depending on the balance of the account, the due diligence deadline is different:

- Review of high value individual accounts (with an account balance or value in excess of 1.000.000 USD) should be completed by 31 December 2016 (based on a “reinforced” set of due diligence rules);
- For other individual accounts, and for entity accounts, FIs will have until 31 December 2017 to comply with their due diligence obligations. A particularity exists for entities, since it is allowed (but not obligatory) to carve out from review pre-existing entity accounts with an aggregate account balance or value that does not exceed 250.000 USD. No such “de minimis” threshold exists for individual accounts

Several options exist under the Luxembourg Law as to the way the due diligence is to be carried out (e.g. it is allowed to optionally apply the “reinforced” high value accounts due diligence rules to all accounts), meaning each FI needs to determine its own approach in this respect.

Additionally, FIs need to bear in mind that under the Luxembourg data protection law (and the specific provisions as to data protection contained in the Luxembourg Law), notification obligations exist as from the moment data is collected. These obligations are likely to be managed by FIs through general terms of business, subscription documents in the case of funds, and separate notifications to the relevant persons.

## **Automatic exchange of information with non-EU jurisdictions as from 2016, 2017, 2018...**

More than 100 jurisdictions have either already signed the Multilateral Competent Authority Agreement at OECD level (currently 78 jurisdictions) or declared officially to wish to participate to such automatic exchange of information as from 2017 (on calendar year 2016), 2018 (on calendar year 2017) or later. It is difficult to predict as from when exactly agreements between the EU, respectively certain EU Member States, and such non-EU jurisdictions will be signed. Nevertheless, things already moved rapidly in respect of Switzerland, Liechtenstein, San Marino, Andorra, and Monaco, where the EU already concluded agreements (or is in a very advanced stage of negotiations) to amend (in reality, replace) the existing savings taxation agreements in order to achieve Common Reporting Standard based exchange of information as from 2017 (in respect of calendar year 2016) in the case of Liechtenstein and San Marino, and as from 2018 (in respect of calendar year 2017) in the case of Switzerland, Andorra and Monaco.

Similar exchange of information will rapidly come into place in the relation with the “Dependent and Associated” Territories, such as Jersey, Guernsey, Isle of Man, Cayman Islands, BVI, etc.

This implies that FIs will not only have to ensure correct reporting on calendar year 2016 in respect of tax residents of other EU Member States, but will already need to track relevant classification and financial information relating to tax residents of Liechtenstein, San Marino and certain of the Dependent and Associated Territories as from calendar year 2016.

## **Tax audits to be expected**

The Luxembourg tax authorities are expected to verify the procedures put in place by FIs to meet the automatic exchange of information requirements and the reasonable diligence applied in respect of the Luxembourg Law (and similar legal instruments imposing automatic exchange of information). Luxembourg tax authorities will also specifically verify whether FIs did not implement mechanisms to circumvent that the exchange of information takes place.

FIs who do not comply with the Luxembourg Law classification and reporting obligations may incur a fine of maximum 250.000 EUR. Additionally, failure to report, late submission or inaccurate information submission may trigger a fine of 0.5% of the amounts which should have been reported (with a minimum of 1.500 EUR).

## **Further publications by Grand Ducal decree expected soon**

Each EU Member State and the EU Commission will publish lists of both the “Participating Jurisdictions” and the “Reportable Jurisdictions”. The list of Participating Jurisdictions will in particular be relevant in respect of the classification of entities, since FIs need to be able to determine which jurisdictions are non-participating. Indeed, certain investment entities in non-participating jurisdictions are deemed to qualify as Passive NFE (which means the controlling persons of such entities also need to be determined, and may be reportable as well). The list of “Reportable Jurisdictions” will be relevant for FIs to confirm which tax residents are effectively reportable towards the Luxembourg tax authorities.

These lists should be published beginning of 2016.

# Your contacts

**Eric Centi**

Partner | International Tax-GFSI  
Tel/Direct: +352 451 452 162  
ecenti@deloitte.lu

**Pascal Eber**

Partner - Operations Excellence  
Tel: +352 451 452 649  
peber@deloitte.lu

**Alain Verbeken**

Director | International Tax-GFSI  
Tel/Direct: +352 451 452 513  
alverbeken@deloitte.lu

Deloitte Luxembourg  
560, rue de Neudorf  
L-2220 Luxembourg

Tel: +352 451 451  
Fax: +352 451 452 401  
www.deloitte.lu

Deloitte is a multidisciplinary service organisation which is subject to certain regulatory and professional restrictions on the types of services we can provide to our clients, particularly where an audit relationship exists, as independence issues and other conflicts of interest may arise. Any services we commit to deliver to you will comply fully with applicable restrictions.

Due to the constant changes and amendments to Luxembourg legislation, Deloitte cannot assume any liability for the content of this leaflet. It shall only serve as general information and shall not replace the need to consult your Deloitte advisor.

**About Deloitte Touche Tohmatsu Limited:**

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see [www.deloitte.com/lu/about](http://www.deloitte.com/lu/about) for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

Deloitte provides audit, tax, consulting and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries, Deloitte brings world-class capabilities and deep local expertise to help clients succeed wherever they operate. Deloitte has in the region of 200,000 professionals, all committed to becoming the standard of excellence.

© 2015 Deloitte General Services

Designed and produced by MarCom at Deloitte Luxembourg