

In this issue:

**EU Savings Directive -
Switch to automatic
exchange of information**

Operational Tax News Savings Directive Update

22 August 2014



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Are you ready for the switch to exchange of information?

Background

Under the EU Savings Directive (Council Directive 2003/48/EC; hereinafter “the EUSD”) adopted in June 2003, Member States of the EU are required to provide to the tax authorities of another EU Member State information on cross-border interest payments to individual beneficial owners and “Residual Entities” in that other EU Member State. Similar or equivalent measures apply in a number of Third Countries (such as Switzerland and Monaco) and Dependent and Associated Territories (such as BVI, Cayman Islands, the Channel Islands, Aruba, Curaçao).

However, Luxembourg, Austria and Belgium have been allowed to apply savings withholding tax (currently at a rate of 35%) instead of exchange of information during a transitional period. The beneficiary of the payment is nevertheless entitled to request an alternative procedure to such withholding (automatic exchange of information and/or the specific tax certificate procedure mentioned in the Directive – in Luxembourg, it is up to the EUSD Paying Agent to decide whether he offers only one of these alternative procedures or leaves the choice to the beneficiary between both).

As from January 2010, Belgium already unilaterally abandoned the transitional withholding tax and switched to automatic exchange of information.

Luxembourg switching to automatic exchange of information

The Luxembourg government announced in April 2013 its decision to abandon the transitional savings withholding tax, and consequently switch to automatic exchange of information under the EUSD, as from 1 January 2015.

On 18 March 2014, the Luxembourg Ministry of Finance submitted draft bill of law No. 6668 to the Luxembourg Parliament to implement this switch. This bill will amend the Laws of 21 June 2005 implementing the EUSD, respectively ratifying the bilateral savings taxation agreements with the Dependent and Associated Territories, and should be voted soon.

Further to the draft law, EUSD Paying Agents will need to exchange annually the following data with the Luxembourg tax authorities:

- Identity and residence of the beneficial owner
- Name and address of the EUSD Paying Agent
- Account number or nature of debt claim generating interest within the meaning of the EUSD (e.g. bonds, fund shares or units identification)
- Total amount of such interest, or total amount of revenue, or total sales, redemption or reimbursement amount

For payments to Residual Entities, EUSD Paying Agents will need to exchange the name and address of the entity and the total amount of interest paid or attributed to the entity.

The exchange of information infrastructure remains unchanged with the secured data channel SOFiE, operated by Cetrel.

The first exchange of information due date under the draft law is 20 March 2016 regarding calendar year 2015.

Industry impact – Action required in Q4 2014

Not only the banking sector, but also the fund industry (and fund servicing industry) are impacted by this change:

- Banks and other EUSD Paying Agents (such as, typically, Transfer and Register Agents in the Fund industry) who already offered automatic exchange of information as an alternative to savings withholding tax have the necessary IT infrastructure and secured data channel with the Luxembourg tax authorities in place to transfer the data required. Nevertheless, IT systems will need to be adapted to abandon savings withholding and capture, as from 1 January 2015, the data required for all clients in scope of the EUSD;
- EUSD Paying Agents who only offered the tax certificate procedure as an alternative to savings withholding tax need to take additional action as their IT infrastructure may not contain capabilities to classify the clients in scope and capture the data required for exchange. Additionally, they will need to register as a EUSD Paying Agent with the Luxembourg tax authorities and contract with Cetrel to open the secured data channel with the authorities.

Specific point of reporting obligations in the absence of interest payments

The Luxembourg tax authorities recently confirmed that in case no interest is paid in the course of a given calendar year, no reporting obligations apply with respect to such accounts. Also note that the circular letter issued by the Luxembourg tax authorities on 16 January 2009 already stipulated that interest income of less than one Euro does not need to be reported.

Related developments

The above-mentioned switch to automatic exchange of information should be seen in a broader perspective; in particular:

- the amended EU Savings Directive (adopted on 24 March 2014 by the EU Council), which significantly extends the scope of the current EUSD (with, amongst others, reinforced look-through rules regarding payments made to a broad range of entities, trusts, foundations and similar legal arrangements, and provisions extending the scope to - basically - all investment funds under supervision and to certain life insurance contracts). This Directive will have to be transposed by Member States into their national laws before 1 January 2016 and will apply as from 1 January 2017;
- the exchange of information obligations under the FATCA IGA concluded by Luxembourg, applicable as from 2015 regarding 2014;
- the new standard for automatic exchange of financial account information in tax matters developed by the OECD and endorsed by the G20. Over 65 jurisdictions (including G20 countries) already committed to implement the Common Reporting Standard out of which about 40 jurisdictions as “early adopters”, aiming at an implementation date of 1 January 2016. It remains to be seen to what extent this standard may lead to harmonization of reporting and possibly “absorption” of the (amended) EUSD.

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

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