

## Operational Tax News

### Common Reporting Standard

18 March 2016

#### **Luxembourg Grand Ducal Decree containing the list of participating jurisdictions and exempt accounts published**

The Grand Ducal Decree of 15 March 2016 has been published. This decree contains the list of participating jurisdictions, and also confirms the list of exempt products, announced earlier by Luxembourg to the EU Commission.

#### **Participating jurisdictions and relevance of the list**

Luxembourg has chosen the approach to consider the signatories of the OECD Multilateral Competent Authority Agreement (“MCAA”) as participating; thus extending the notion, in accordance with one of the alternative transitional definitions, mentioned in the OECD CRS Implementation Handbook.

The list contains 78 MCAA signatories (i.e. the current list of 80 signatories, except of course Luxembourg, and except Saint Kitts and Nevis, as the OECD list as at 27 January 2016 was used, before the latter jurisdiction signed the MCAA). The list is also extended with the USA (a country that is not a MCAA signatory, but may have been considered to have equivalent automatic exchange measures in place in view of the reciprocal FATCA Model 1 IGA signed between the USA and Luxembourg).

The list is relevant in the context of the CRS classification of, and due diligence on, entities holding an “account” with a Luxembourg Financial Institution (e.g. holding an account with a Luxembourg bank, investment in a Luxembourg investment fund, debt or equity interest in a non-supervised holding company qualifying as Financial Institution). Indeed, the CRS classification rules contain a specific provision in case an “account” holder is located in a non-participating jurisdiction (whereby certain investment entities located in such non-participating jurisdictions are deemed to qualify as Passive NFE for CRS purposes; i.e. entities for which the controlling persons need to be identified and may be reportable). This specific rule does not apply in case of account holders located in participating jurisdictions; hence the importance of this list.

To be noted that each EU Member State (and other participating jurisdictions) should publish such list, and the approach as to the definition of this notion may differ amongst the countries concerned.

## Exempt accounts

The Grand Ducal Decree also contains the list of exempt accounts, which confirms what has been previously announced by Luxembourg to the EU Commission (and published in the Official Journal):

- pension schemes referred to in article 111 bis of the Luxembourg income tax law
- home savings schemes referred to in article 111, al. 1 of Luxembourg income tax law
- complementary pension schemes referred to in article 110 of the Luxembourg income tax law

The relevance of this list is to name explicitly a number of products that can be considered as exempt accounts for CRS purposes. However for products that are not included in the list, a separate analysis may still be required to determine whether any of the other exemptions defined under the CRS may apply.

## List of reportable jurisdiction to be published

What is still missing, and should be published later on this year through Grand Ducal Decree is the list of reportable jurisdictions. This list will provide certainty for Financial Institutions as to the countries regarding which effective automatic exchange of information needs to take place with the Luxembourg tax authorities, regarding tax resident individuals and entities (and controlling persons) of those countries.

## Regular updates expected

Both the list of participating jurisdictions (in view of expected additional MCAA signatories) and reportable jurisdictions (in view of expected additional legal instruments between the EU, respectively, Luxembourg, and non-EU jurisdictions to effectively start exchanging information), are evolutive, and will need to be updated regularly (in principle, at least on an annual basis).

The Grand Ducal Decree can be consulted [here](#).

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