

Luxembourg Tax Alert

Grand Ducal Decree of 23 July 2016 – Amendment of CRS Participating Jurisdictions list

28 July 2016

The Luxembourg government recently decided to update the list of Participating Jurisdictions attached to the Grand Ducal Decree of 15 March 2016, executing article 2 (4) of the law of 18 December 2016 transposing EU Directive 2014/107/EU. In this respect, a Grand Ducal Decree of 23 July 2016 was published on 28 July 2016. Since Luxembourg considers the OECD MCAA signatories as Participating Jurisdictions, the list needed to be updated with the latest signatories Saint Kitts and Nevis, Israel and the Russian Federation. The list will need to be further updated in the future since other countries are expected to sign the MCAA (in fact, the updated Grand Ducal Decree was based on the OECD MCAA list of 3 June 2016, which has already been updated again by the OECD on 28 June 2016, in view of the latest signatory of the MCAA, Nauru). Additionally, the USA were removed from the list contained in the Grand Ducal Decree of 23 July 2016 as the USA cannot be considered as a Participating Jurisdiction. The Grand Ducal Decree can be consulted [here](#).

Participating and Reportable Jurisdictions – Not to be confused

The notion of Participating and Reportable jurisdictions is often confused. A Reportable Jurisdiction is a jurisdiction with whom effective automatic exchange of information has been agreed. According to the Luxembourg position, a Participating Jurisdiction is a jurisdiction that signed the OECD MCAA, but is not necessarily already a Reportable Jurisdiction.

For example, the Russian Federation recently signed the OECD MCAA and will henceforth, based on the above-mentioned update of the Grand Ducal Decree be considered as a Participating Jurisdiction; however the Russian Federation will, from a Luxembourg perspective, only become a Reportable Jurisdiction once the EU or Luxembourg sign an additional legal instrument with the Russian Federation to start effective automatic exchange of information according to the CRS principles.

This means in practice that, in case a Luxembourg bank e.g. has an entity account holder that is a Russian tax resident entity, self-certifying its CRS status as an Active NFE, the Luxembourg bank:

- would not need to apply the above mentioned additional rule to verify whether the entity is not a *deemed* Passive NFE as the Russian Federation is a Participating Jurisdiction (of course, as for any account holder, whether resident in a

Participating Jurisdiction or not, the bank would need to investigate any *reasons to know* the bank may have that this classification self-certified by the entity could be erroneous);

- would not have to report the account of the entity as Russia is not a Reportable Jurisdiction yet.

As from the moment effective automatic exchange of information according to the CRS principles would apply between Luxembourg and Russia, Russia would become a Reportable Jurisdiction, and the Luxembourg bank would in principle report the account of the entity (with certain exceptions).

Should the same entity be a tax resident of Panama (which is not a Participating Jurisdiction as the country did not sign the OECD MCAA yet), the Luxembourg bank should apply the above-mentioned additional rule in order to verify whether the entity is not a *deemed* Passive NFE; and if so, the Luxembourg bank should:

- not report the account of the entity itself, as Panama is not a Reportable Jurisdiction;
- however the bank should identify the controlling persons of the entity, and report these controlling persons should they be tax resident of a Reportable Jurisdiction (e.g. tax resident of another EU Member State)

The list of Reportable Jurisdictions should still be published through a second Grand Ducal Decree, expected in Q4 2016.

Proposed amendments to the AML Directive and to the Directive on Administrative Cooperation

We refer to the alert issued on 13 July 2016, which can be consulted [here](#).

One of the important effects of the draft AML Directive is related to the proposed amendment that "the indication of ownership or control (...) is reduced to 10% whenever the legal entity is a Passive Non-Financial Entity as defined in Directive 2011/16/EU". For identifying controlling persons of Passive NFE for the purposes of the latter Directive, Luxembourg Reporting FI's currently need to, in view of the reference to AML principles in this respect, determine in a first step who are the individuals holding directly or indirectly interest or voting rights in the entity based on a 25% threshold (in the absence of such persons, additional steps are applicable to identify who are the controlling persons). The proposed reduction of the threshold to 10% may of course give rise to an additional workload. The proposed Directive mentions an implementation date on 1 January 2017, which would be relatively challenging in this respect as well.

Do not hesitate to contact us in case you would have any questions.

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