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Luxembourg Tax Alert.

Automatic Exchange of Information - Update

24 October 2014

Directive on administrative cooperation politically agreed - Luxembourg to become an early adopter - Amended EUSD to be replaced by CRS

Introduction

Automatic exchange of information has become the standard way of administrative cooperation. The legal framework regarding automatic exchange is evolving rapidly:

- *In the current situation, the EU Savings Directive, already in place since 2005, applies regarding certain interest income. While Luxembourg still applied savings withholding tax under this Directive, as from 1 January 2015 the switch to automatic exchange of information under this Directive will be made. Additionally, the Administrative Cooperation Directive in its current version will apply as from 1 January 2015, in a first phase regarding information available in the hands of tax authorities on salaries, director's fees, pensions, life assurance and real estate income (with, in a second phase, mandatory exchange of information on certain of these categories of income). Finally, under the Luxembourg-US Intergovernmental Agreement, FATCA reporting will apply as from 2015 regarding 2014;*

- *While the amended version of the EU Savings Directive should have become applicable as from 1 January 2017, the (amended) EU Savings Directive will likely be repealed by the EU Commission in view of the application of the Common Reporting Standard (CRS) as from 2016. Political agreement on the draft amended Administrative Cooperation Directive, integrating the CRS into this Directive, was indeed reached during the ECOFIN of 14 October 2014, and will introduce the CRS reporting amongst all EU Member States as from 1 January 2016 (Austria may benefit from an extension of this deadline up to 1 January 2017)*

- *It is therefore likely that the last reporting under the EU Savings Directive will be due in 2016 regarding calendar year 2015, since the much broader CRS reporting will be due in 2017 regarding calendar year 2016. Alongside, FATCA reporting will of course continue to apply as well. As not only EU Member States will apply the CRS, but also many other OECD Members, it is likely that additional legal instruments will soon impose CRS reporting amongst additional (clusters of) jurisdictions.*

The European Council agreed on 14 October 2014 on a draft Directive amending the existing Directive 2011/16/EU on administrative cooperation in the field of taxation.

Automatic exchange of information obligations based on the OECD Common Reporting Standard (CRS) are integrated in this amended Directive, which will considerably extend the scope of the mandatory automatic exchange of information between EU tax administrations.

Based on the "political agreement" reached at the ECOFIN meeting, the automatic exchange of information included in the amended Directive should apply as from calendar year 2016, meaning a first automatic exchange of information between EU tax administrations would take place in 2017. Austria may benefit from an additional year to apply the new rules regarding 2017 (first reporting in 2018).

The new scope of the exchange of information is based on FATCA reporting and covers account balances, interest, dividend, capital gains and all types of income derived from financial assets (investment funds, insurance products, derivatives….).

Following these recent developments, the Commission is now considering to repeal the amended EU Savings Directive 2014/48/EU adopted on 24 March 2014 (which would normally have to be applied as from 1 January 2017).

CRS

The OECD developed a new standard for automatic exchange of financial account information in tax matters which has been approved by the OECD Council on 15 July 2014, released on 21 July 2014 and formally presented to the G20 Finance Ministers in September 2014.

The CRS (the template of Convention released by the OECD to implement the CRS) is based on the intergovernmental agreements (IGA) transposing FATCA reporting obligations, and will allow governments to obtain detailed account information from financial institutions and exchange that information automatically with other jurisdictions on an annual basis.

Before the October ECOFIN meeting, over 65 jurisdictions (including G20 countries) already committed to implement the Common Reporting Standard, out of which more than 40 jurisdictions as “early adopters”, aiming at an implementation date of 1 January 2016 with a first automatic exchange of information by September 2017.

Other financial centres

Most Dependent and Associated Territories applying the current EU Savings Directive through agreements with the EU Member States already committed to apply the CRS as from 2016 as early adopters (U.K.'s Crown Dependencies of Isle of Man, Guernsey and Jersey; the U.K.'s Overseas Territories of Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Gibraltar, Montserrat, and the Turks & Caicos Islands).

Switzerland, Monaco, Andorra, San Marino and Liechtenstein are applying measures equivalent to those included in the current EU Savings Directive. The EU Commission is mandated to sign revised tax agreements with those jurisdictions and intends to include the adoption of the CRS in the discussions. Switzerland has recently announced negotiating this new global standard for exchange of information with the EU. Many other financial centres have already agreed the adoption of the new standard (like Singapore), or should do so in the coming months.

Luxembourg

The Luxembourg Finance Minister has committed on 14 October 2014 to be part of the “early adopters” of the CRS through approving the application of the amended Directive as from 2016. This means that the current EU Savings Directive automatic exchange of information applicable with other EU countries as from January 1st, 2015 is expected to be only be in place for a single year. It will be replaced as from 2016 by the automatic exchange of information based on the updated Directive on administrative cooperation and the CRS.

Conclusion

In view of these recent developments, Financial Institutions will need to act rapidly:

- to be ready to apply the automatic exchange of information under the current EU Savings Directive as from 1 January 2015 (presumably for one year, as the Commission is considering to repeal the (amended) EU Savings Directive in view of the application of CRS reporting as from 1 January 2016 by (almost) all Member States);

- To be ready to upgrade to the automatic exchange of information under the revised Directive on administrative cooperation. This means obligations as to classification of investors and reporting need to be assessed to be ready to go live with the CRS as from 1 January 2016. In this respect, it will be possible to capitalize -to a large extent- on efforts that have been made in respect of FATCA implementation, although significant differences will need to be addressed as well.

If you have any queries regarding the above, please do not hesitate to contact us.

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