

FATCA

Luxembourg Tax Alert

Luxembourg draft Law available – Deadlines, data protection obligations and sanctions framework detailed

Already in March 2014, Luxembourg signed a Model 1 IGA with the U.S., in order to implement automatic exchange of information in the context of FATCA.

The Council of the Luxembourg Government reached agreement on 6 March 2015 on the draft law ratifying and implementing the Luxembourg IGA. The draft law was rendered public on 27 March 2015. The package also contains the French language version of the Luxembourg IGA.

Other than approving the text of the Luxembourg IGA and reconfirming certain principles and flexibilities of this IGA (such as the option to apply the definitions of the IRS Regulations instead of the definitions of the IGA), the draft Law contains the following new proposed provisions:

- **Deadline for reporting and zero reporting:** the draft Law confirms the annual reporting deadline of 30 June (as already announced in the draft Circular Letter ECHA 2 released by the Luxembourg tax authorities). The Commentaries to the draft Law also confirm that a zero reporting obligation would be maintained.
- **Data protection – information obligations:** the draft Law contains explicit reference to the data protection law of 2 August 2002 (as amended), in order to remind reporting financial institutions of their obligation to inform each reportable individual on the information that will be collected and transferred according to the IGA. This notification will need to be made in advance, according to the principles of the above-mentioned law. Additionally, both the Luxembourg tax authorities and any reporting financial institution are obliged to inform reportable individuals on any security breach related to his data in case this security breach could harm the individual's personal data protection or private life. Reporting financial institutions will need to ensure to cover these obligations in their FATCA procedures urgently, as the information obligations will need to be met before the first FATCA reporting deadline of 30 June 2015.

Similar obligations will also apply relating to the Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (i.e. in the context of application of the Common Reporting Standard (CRS) according to this Directive), that will be applicable as from 1 January 2016.

- **Tax audits and sanctions:** the draft Law explicitly refers to the fact that the Luxembourg tax authorities will verify the procedures put in place by financial institutions to meet the automatic exchange of information obligations under the Luxembourg IGA, and the reasonable diligence applied in respect of these obligations. Additionally, the draft Law mentions that Luxembourg tax authorities will in particular verify whether financial institutions did not implement mechanisms to avoid data communication would take place. The Commentaries contain an illustrative example of such avoidance, where a financial institution would immobilise its bearer securities with a depository institution that is not a reporting financial institution.

The draft Law also contains the sanctions framework. On the one hand, in case reasonable diligence obligations would not be met, or in case exchange of information mechanisms would not have been sufficiently implemented, a reporting financial institution could incur an administrative fiscal fine of maximum 250.000€. On the other hand, in case reporting obligations would not have been met, or in case of late, incomplete or incorrect exchange of information, a reporting financial institution would be exposed to an administrative sanction of 0,5% of the amounts that should have been communicated, with a minimum of 1.500€.

Next steps

As a next step, the draft Law should go through the Parliamentary approval process. However, it seems the legal reference of the IGA would first be changed, and an additional exchange of letters between the US and Luxembourg will take place. The signed Luxembourg IGA indeed refers to the Protocol of 20 May 2009 to the Luxembourg-US double taxation treaty. This Protocol was ratified by Luxembourg in 2010, but has still not been ratified today by the US. An alternative (unsigned) version of the Luxembourg IGA, appended to the draft Law, therefore refers to the legal basis of the Convention of 25 January 1988 on Mutual Administrative Assistance in Tax Matters instead.

To be noted that, at this stage, it can also not be excluded that certain modifications would still be made to the text of the draft Law.

Once the draft Law is voted, the Luxembourg Tax Authorities will likely quickly release the two draft circular letters published earlier this year (draft Circular Letters ECHA-2 and ECHA-3) in their final version.

Your contacts

Pascal Noël

Partner | Tax - Global Financial Services Industry

Tel/Direct: +352 451 452 571

pnoel@deloitte.lu

Eric Centi

Partner | Tax - Global Financial Services Industry

Tel/Direct: +352 451 452 162

ecenti@deloitte.lu

Pascal Eber

Partner | Operations Excellence

Tel/Direct: +352 451 452 649

peber@deloitte.lu

Alain Verbeken

Director | Tax - Global Financial Services Industry

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 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

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 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