

Flash News

Luxembourg parliament adopted the law ratifying the US-Luxembourg Intergovernmental Agreement (the IGA) implementing the US “Foreign Account Tax Compliance Act” (FATCA) on 1 July 2015

2 July 2015

On 1 July 2015, the Luxembourg Parliament adopted the law ratifying the IGA signed on 28 March 2014 and under the terms of which FATCA will be applied in Luxembourg (the FATCA Law). In addition to the IGA itself, some new obligations and sanctions are developed in the FATCA Law, in particular the obligation to inform beforehand each reported individual. Reporting Luxembourg Financial Institutions should proceed to the first FATCA reporting by 31 July 2015 at the latest.

On 30 March 2015, the Luxembourg parliament published the FATCA Law in draft form. Afterwards, the draft FATCA Law was amended notably to follow the opinion of the National Commission for Data Protection.

On 1 July 2015, the Luxembourg parliament has adopted the FATCA Law and the State Council has granted a second vote waiver.

The key elements contained in the FATCA Law are further detailed in the following sections:

Reporting:

The deadline for the reporting to be done by Reporting Luxembourg Financial Institutions (FIs) to the Luxembourg tax authorities, i.e. 30 June is confirmed. Even though the FATCA Law is silent on this point, for the first reporting, the Luxembourg tax authorities have exceptionally postponed the deadline to 31 July 2015.

According to the commentaries of the FATCA Law, Reporting Luxembourg FIs are required to file a report with the Luxembourg tax authorities even though they have not identified any US Reportable Accounts. In practice, they will have to file a nil report.

Privacy rules:

Reporting Luxembourg FIs cannot invoke any professional secrecy to refuse to report (in particular the banking secrecy).

Reporting Luxembourg FIs should inform each reported individual that information will be collected and reported.

The FATCA Law explicitly refers to the Luxembourg law on data privacy and protection for the elements to be communicated to the client before the reporting. The Reporting Luxembourg FIs must communicate to the reported individuals the following:

- the Luxembourg FI is responsible for the personal data processing;
- the personal data is intended to be used for the purpose of the IGA;
- the data will be reported to the Luxembourg tax authorities and the US tax authorities;
- for each information request sent to client/investor, the answer from the client/investor will be mandatory, and the potential consequences in case of failure (e.g. reporting of this client/investor); and
- the reported individual has the right to access the data/financial information reported to the Luxembourg tax authorities as well as to rectify those data.

Besides, data elements used in the context of FATCA cannot be stored longer than what is necessary under the IGA.

Penalties:

In case a Reporting Luxembourg FI does not apply the due diligence rules or does not put in place procedures in view of the reporting, it will expose itself to a penalty of maximum EUR 250,000.

In case of absence, late, incomplete or erroneous reporting, a Reporting Luxembourg FI would be subject to a penalty of 0.5% of the amounts that should have been reported, with a minimum of EUR 1,500 (applicable in case of nil reporting for instance).

Due diligence:

As from the reporting of the 2017 data (that should occur on 30 June 2018 at the latest) and of the subsequent years' data, the Reporting Luxembourg FIs should do everything possible to obtain and report the US TIN/Taxpayer Identification Numbers).

Bearer shares:

According to the commentaries of the FATCA Law, the depositary of bearer shares must be a Reporting FI. The depositary should perform all the obligations under the IGA on behalf and in the name of the FI that has issued the bearer shares.

Even though this comment has been criticised in the Chamber of Commerce's opinion during parliamentary debates, it is still included in the FATCA Law. This point needs to be clarified by the Luxembourg tax authorities in their guidelines to come. Hopefully, they will allow the depositary of bearer shares to be a Non-Reporting FI.

What's next?

Now that the FATCA Law has been voted, we expect the Luxembourg tax authorities to issue their guidelines very soon.

The Luxembourg tax authorities have already issued a second draft of their IT circular ECHA – n°3 on 30 June 2015, confirming notably the obligation for Reporting Luxembourg FIs to use for reporting purposes the secured transmission channels offered by:

- CETREL S.A. (SOFiE product); or
- FUNDSQUARE, branch of the Luxembourg Stock Exchange (E-FILE product).

In parallel, regarding the implementation of the amended Directive on Administrative Cooperation (DAC) containing the Common Reporting Standard, Luxembourg should provide the European Commission, by 31 July 2015, with the list of entities and accounts that are to be treated, respectively, as Non-Reporting FIs and Excluded Accounts.

For more information, please contact us:

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