

Luxembourg newflash

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Common Reporting Standard

As you may have heard, the OECD Common Reporting Standard (“CRS”) issued last year took a big step towards a global and coordinated approach to automatic disclosure of income earned by individuals and organisations. As a measure to counter tax evasion, it builds upon other legislations aimed at information sharing, such as FATCA and the EU Savings Directive.

The Luxembourg Parliament (*Chambre des Députés*) is currently reviewing bill of law No. 6858 implementing the CRS (*i.e.* the OECD Multilateral Competent Authorities Agreement as well as the European Union Directive 2014/107/EU on mandatory automatic exchange of information in the field of taxation), which, once transposed (before the end of this year), will enter into force on 1 January 2016.

This law will substantially increase the compliance burden going forward for all investment funds, depositaries, private and retail banks, in short, for all entities holding accounts for residents of countries forming part of the CRS initiative (74 countries as of October 2015). These account-holding entities are all Financial Institutions (“FIs”) pursuant to the bill of law and will be required, as from 30 June 2017 (for taxable period 2016), to report to the Luxembourg tax authorities (*Administration des Contributions Directes*) any personal and financial information (*e.g.* interests, dividends and other incomes, proceeds from sales or redemptions, account balances) on accounts held by their investors/clients, provided they reside outside of Luxembourg in any one of the CRS participating countries. In order to be able to do so, Luxembourg FIs must, as from 1 January 2016, obtain sufficient knowledge of their account holders so as to detect any residency criteria that would give rise to a report on the referred accounts (“Reportable Account”). The Luxembourg tax authorities will then have up to 30 September 2017 (for the first reporting period) to report the information to the competent foreign authorities.

Although similar to FATCA in its concept and approach, the CRS law requires a significant upgrade of existing FATCA processes, essentially due to the substantial increase in the expected number of Reportable Accounts. We therefore strongly recommend that you:

i. Ensure you are CRS compliant with the following, before 1 January 2016:

- Contractual agreements respecting the CRS obligations and the data protection rules of the investors (GTC, management agreements, third party agreements);
- Client on-boarding forms including self-certification forms;
- Fund prospectus or subscription forms;
- Notification to the CNPD (National Commission for Data Protection).

ii. Prepare your compliance strategy for the 2016 and 2017 CRS obligations:

- Due diligence policy for preexisting accounts;
- Management of client data information and supporting documentation for all accounts;
- Reporting strategy for reportable accounts.

Should you need assistance on CRS or just want to discuss this e-mail, Arendt's legal and consulting teams can help you. Do not hesitate to send us your questions at aeoiteam@arendt.com or contact our experts at 26.09.10.77.60.

This publication is intended to provide information on recent legal developments and does not cover every aspect of the topics with which it deals. It was not designed to provide legal or other advice and it does not substitute for the consultation with legal counsel before any actual undertakings.
