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Luxembourg Newsflash - 27 February 2020

FATCA & CRS reporting in Luxembourg: new draft bill submitted to the Parliament

On 20 February 2020, the Luxembourg government filed with Parliament the draft bill of law n°7527 modifying both the CRS law of 18 December 2015 and the FATCA law of 24 July 2015 (the "Draft Bill").

The proposed measures of the Draft Bill aim at bringing Luxembourg law into line with the evaluation of the Global Forum on Transparency and Exchange of Information for Tax Purposes. The Draft Bill clarifies the Luxembourg Reporting Financial Institutions' obligations as well as the applicable statute of limitations of the Luxembourg Tax Authorities' powers of investigation in order to reinforce legal certainty and finally aligns FATCA and CRS rules in order to create a cohesive approach.

Nil reporting's extension to CRS

While nil reporting is optional under CRS and mandatory under FATCA, the Draft Bill will set an obligation for Luxembourg Reporting Financial Institutions to file a "nil report" in the absence of reportable accounts under CRS.

In the absence of such "nil report", a Luxembourg Reporting Financial Institution will be exposed to a fine of €10,000. Such fine will be applicable under both FATCA and CRS laws.

Clarifications of Luxembourg Reporting Financial Institutions' obligations

Per the Draft Bill, Luxembourg Reporting Financial Institutions will be explicitly required to document actions taken and evidence used in a specific register in order to ensure the fulfilment of their reporting and due diligence obligations. Such register shall be kept for a period of ten years as from the end of the calendar year in which they were required to communicate the information.

In addition, Luxembourg Reporting Financial Institutions will need to adopt internal processes proportional to their nature, size and particularities (IT systems, procedures, policies, etc.) for the purpose of fulfilling their FATCA and CRS obligations.

The Draft Bill further proposes to introduce an explicit provision aiming at preventing Luxembourg Reporting Financial Institutions from adopting practices to circumvent their reporting obligations.

Clarifications of Luxembourg Tax Authorities' powers of investigation

The Draft Bill clarifies that the applicable statute of limitations of the Luxembourg tax authorities' powers of investigation under FATCA and CRS will be ten years as from the end of the calendar year in which the Luxembourg Reporting Financial Institution is required to disclose information. This is in line with their prerogatives with respect to direct taxes. The powers of investigation of the Luxembourg tax authorities includes the right of access to the register mentioned above as well as the internal processes put in place by the Luxembourg Reporting Financial Institution.

Following verification, a Luxembourg Reporting Financial Institution may incur a fine of up to €250,000 if it is found to have not complied with its obligations under FATCA/CRS, which can be increased by a maximum of 0.5% of the amounts not disclosed. Before the modification, the €250,000 fine was applicable only in the event of non-compliance under due diligence obligations.

The aforementioned provisions are expected to enter into force as from 1 January 2021 if the Draft Bill is enacted this year.

How can we help?

The Tax Law partners and your usual contacts at Arendt are at your disposal to further assist you on the impact assessment of these new obligations. Our dedicated FATCA/CRS reporting team at Arendt Regulatory & Consulting is also available to help you in the preparation of your forthcoming CRS reporting obligations and the definition of your FATCA/CRS policies, procedures and supporting IT solutions.

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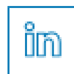
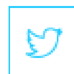

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