

Luxembourg issues Draft Law amending CRS and FATCA laws

EY Tax News Update: Global Edition

EY's Tax News Update: Global Edition is a free, personalized email subscription service that allows you to receive EY Global Tax Alerts, newsletters, events, and thought leadership published across all areas of tax. Access more information about the tool and registration [here](#).

Also available is our [EY Global Tax Alert Library](#) on ey.com.

Executive summary

The Luxembourg Government submitted to Parliament, on 20 February 2020, a Draft Law amending the amended Common Reporting Standard (CRS) Law of 18 December 2015 and the amended *Foreign Account Tax Compliance Act* (FATCA) Law of 24 July 2015.

The Draft Law introduces some new obligations for Luxembourg Reporting Financial Institutions (RFIs), clarifies other obligations, adapts the rules concerning the application of fines, and clarifies aspects of the Luxembourg Tax Authorities' (LTA) powers of investigation.

Detailed discussion

New CRS and FATCA obligations for Luxembourg RFIs

The Draft Law will require every Luxembourg RFI to:

- ▶ Set up policies, controls, procedures and IT systems, proportionate to the RFI's nature, specificities and size, to ensure the fulfilment of the RFI's CRS and FATCA reporting and due diligence obligations.
- ▶ Maintain registers of the actions undertaken and of evidence relied upon to ensure the execution of reporting and due diligence procedures, for 10 years after the end of the year during which the RFI was required to report information under CRS and/or FATCA.

- ▶ Submit a nil CRS report to the LTA with respect to any calendar year during which the RFI maintained no CRS reportable account, in the form required by the LTA and by 30 June of the following year. (The existing obligation to file a nil FATCA report where applicable continues to apply too and will now be included in the FATCA Law).

The Government's comments to the Draft Law indicate that the above does not preclude RFIs from using service providers to enable them to fulfil their obligations. However, RFIs remain responsible for the fulfilment of such obligations and should ensure that service providers relied upon have policies, controls, procedures and IT systems sufficient to meet the RFIs' compliance responsibilities.

RFIs are explicitly prohibited from adopting practices whose intent is the circumvention of CRS or FATCA reporting.

Clarification of the LTA's CRS and FATCA powers of investigation

The LTA's duty and powers of investigation are more explicitly extended to cover the RFI's compliance with all the RFI's obligations under the CRS Law and the FATCA Law, except for the RFI's private data protection duties.

The LTA will have access, upon request, to the above policies, controls, procedures and IT systems, set up to ensure the RFI's CRS and FATCA compliance, and to the above registers of actions undertaken and of evidence relied upon.

The LTA's powers of investigation will remain for ten years after the end of the year during which the RFI was required to report information under CRS and/or FATCA.

CRS and FATCA penalties

The Draft Law introduces changes to the fines set by the CRS Law and the FATCA Law:

- ▶ A fine of €10,000 may be applied to any RFI that files no CRS report (neither a nil report nor a report reporting accounts) by the reporting deadline.
- ▶ An RFI may be subject to a fine of up to €250,000 if an inspection or inquiry reveals a breach of any of its obligations under the CRS Law other than its personal data protection obligations.
- ▶ Also, if there are reportable accounts which the RFI has not reported or for which the RFI has reported lower amounts than the amounts to be reported, the fine may be increased by an amount of up to 0.5% of the unreported amounts.

Fines of the same amounts may apply to any RFI for corresponding breaches of the FATCA Law.

Entry into force

If adopted, enacted and published in 2020 as currently worded, the above changes introduced by the Draft Law will apply from 1 January 2021.

For additional information with respect to this Alert, please contact the following:

Ernst & Young Tax Advisory Services Sàrl, Luxembourg City

- ▶ Bart Van Droogenbroek, *Tax Leader* bart.van.droogenbroek@lu.ey.com
- ▶ Jacques Linon, *Banking & Insurance Tax Leader* jacques.linon@lu.ey.com
- ▶ Christian Daws christian.daws@lu.ey.com
- ▶ Marie Sophie Dervieu marie-sophie.dervieu@lu.ey.com

Ernst & Young Business Advisory Services Sarl, Luxembourg City

- ▶ Patrice Fritsch patrice.fritsch@lu.ey.com
- ▶ Dan Zandona dan.zandona@lu.ey.com

Ernst & Young LLP (United States), Financial Services International Tax Desks - Luxembourg, New York

- ▶ Jurjan Wouda Kuipers jurjan.woudakuipers@ey.com

Ernst & Young LLP (United States), Luxembourg Tax Desk, Chicago

- ▶ Alexandre J. Pouchard alexandre.pouchard@ey.com

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

© 2020 EYGM Limited.
All Rights Reserved.

EYG no. 001149-20Gbl

1508-1600216 NY
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.

ey.com