

ATOZ ALERT

Luxembourg amends its CRS and FATCA Legislation

25 February 2020

On 20 February 2020, a draft law was presented to Parliament which introduces some amendments to the Luxembourg legislation governing CRS ("Common Reporting Standards") and FATCA ("Foreign Account Tax Compliance Act"), the two sets of rules dealing with the Automatic Exchange of Information in Luxembourg.

The changes to be introduced with effect as from next year are of importance since Luxembourg reporting financial institutions will be subject to additional obligations and lump sum penalties in case of non-compliance.

New zero-reporting obligation for both CRS and FATCA purposes

Even in the event of no reportable amounts, the financial institution ("FI") will now be required to file a zero-report annually before 30 June of the year following the end of the calendar year to which the information relates.

Requirement for Reporting Financial Institutions to keep records of the steps undertaken to comply with CRS and FATCA

A specific provision will be added to both the CRS law and the FATCA law according to which Luxembourg reporting FIs must keep (during 10 years) records of the steps undertaken and any evidence relied upon for the performance of the reporting and due diligence procedures. The draft law further provides that FIs are prevented from adopting practices intended to circumvent the reporting and due diligence procedures and are required to implement policies, procedures and IT systems which shall be proportionate to the nature, specificities and size of the FI.

The comments to the draft law clarify that an FI may still decide to mandate a service provider to fulfil its due diligence obligations. In such cases, the FI will have to make sure that the service provider has the required policies and procedures in place.

New penalties for non-compliance with CRS and FATCA rules

A flat penalty of EUR 10,000 is defined which may apply in case an FI does not comply with the zero-report obligation within the required deadline.

In addition, the maximum penalty of EUR 250,000 will now have a much broader scope of potential application as it will apply not only in case of missing or uncomplete reporting but also in case of non-compliance with any of the FI obligations provided by the CRS or FATCA laws.

Powers of investigation of the Luxembourg tax authorities clarified

The draft law clarifies the powers of investigation of the Luxembourg tax authorities which will now have, upon request, access, during 10 years, to the records of the steps undertaken, evidence relied upon for the performance of the reporting and due diligence procedures, policies and procedures and to the IT systems in place.

Implications

The draft law introduces new obligations for Luxembourg reporting financial institutions which must be taken very seriously given the related potential sanctions. Impacted FIs would be wise to react quickly and seek the advice of their FATCA and/or CRS service provider in order to ensure timely compliance. The fact that the powers of the tax authorities have been clarified and specified is also an indication that CRS and FATCA audits will most probably take place much more regularly, if not systematically.

In 2019, ATOZ Services set up a dedicated department focusing on these topics, including the reporting and due diligence related issues. Our team is on hand to assist you in this field of expertise.

Can we help? Do you have further questions?



JEAN-MICHEL CHAMONARD
Managing Partner
ATOZ Services

jean-michel.chamonard@atoz-services.lu
T +352 26 94 67 233



GILLES STURBOIS
Regulatory Reporting Director
ATOZ Services

gilles.sturbois@atoz-services.lu
T +352 26 94 67 209



SAMANTHA SCHMITZ
Chief Knowledge Officer
ATOZ Tax Advisers

samantha.schmitz@atoz.lu
T +352 661 830 235