Luxembourg adopts law to increase tax cooperation

The Council of the European Union has identified the need for increased communication between Member States, given the trends of globalization and the large number of cross-border transactions which makes it difficult for Member States to properly assess taxes due. In the Council’s view, this increasing difficulty affects the functioning of taxation systems and could lead to potential double taxation which could lead to tax evasion and fraud.

To address these issues, the Council published Directive 2011/16/EU which sets out the rules and procedures under which Member States must cooperate with each other to exchange information relevant to the administration and enforcement of national laws. The Directive has effect from 11 March 2011 and repeals Directive 77/799/EEC of 19 December 1977, which was considered too ineffective to amend.

At the heart of these measures is an increase in direct contact between the local tax authorities of Member States and the exchange of information concerning particular cases. The methods of exchange of information will, to a large extent, depend on the context of the Directive as follows: exchange of information on request, spontaneous exchange of information, presence in administrative offices and participation in administrative enquiries.

The Directive does not affect the application of the rules on mutual assistance in criminal matters.

Luxembourg extends cooperation on tax matters

On 29 March 2013, the Luxembourg Parliament adopted a law to transpose Directive 2011/16/EU (the Law). The Law was published in the Luxembourg official gazette on 4 April 2013 and entered into force with retroactive effect as from 1 January 2013.
The Law substantially extends the scope of administrative cooperation on tax matters, inter alia:

- Inclusion of information held by a bank or other type of financial institution in the scope of exchange of information on request
- Introduction of deadlines for the exchange of information
- Introduction of other forms of administrative cooperation

The following sections summarize how Luxembourg will implement administrative cooperation on tax-related matters in the future.

**Scope of the Law**
The scope of administrative cooperation covers both direct and indirect tax with the exclusion of VAT, customs and excise duties and compulsory social security contributions.

**Organization**
The Ministry of Finance appointed the Luxembourg Tax Authorities as the single central liaison office responsible for contacts with the European Commission.

**Exchange of information on request**
Upon request by the competent authority of each Member State, the Luxembourg Tax Authorities will communicate any information that relates to direct and indirect tax which it has in its possession or that it can obtain as a result of administrative enquiries.

The information (including bank data) will be communicated as soon as possible with a deadline of six months from the date of receipt. However, if the Luxembourg Tax Authorities are already in possession of the required information the information will be communicated with a deadline of two months from the date of receipt of the request. Under certain circumstances, these time limits can be negotiated between the Luxembourg Tax Authorities and the requesting authority.

Where the Luxembourg Tax Authorities takes the view that no administrative enquiry is necessary, it will immediately inform the requesting authority, giving its reasoning for reaching such decision within one month from the date of receipt of the request.

**Spontaneous exchange of information**
The Luxembourg Tax Authorities will spontaneously exchange information in the following cases:

- Where the Luxembourg Tax Authorities have grounds for supposing that there may be a loss of tax revenue in another Member State.
- Where a person secures a reduction in tax in Luxembourg which would give rise to an increase in (or liability to) tax in another Member State.
- Where there are transactions between persons liable to tax in Luxembourg and another Member State that are conducted through one or more countries such that there could be tax savings in either or both Member States.
- Where the Luxembourg Tax Authorities believe that a tax saving may result from artificial transfers of profits within a group of enterprises.
- Where information forwarded to Luxembourg by the competent authority of another Member State has enabled information to be obtained which may be relevant in assessing the liability to tax in the latter Member State.

The time limit for spontaneous exchange is one month or as soon as the information is available, whichever is earlier.

The new provisions slightly update the previously applicable provisions.

**Simultaneous control**
Where Luxembourg and another Member State wish to conduct simultaneous “controls” of one or more persons of common or complementary interest to them, the Luxembourg Tax Authorities must communicate this with the other Member State justifying its decision to do so.

**Sharing of best practices and experience**
There are other forms of administrative cooperation which can be realized through mutual presence in administrative offices and participation in administrative enquiries or with administrative notification or by sharing best practices and experiences.

**Administrative notification**
At the request of the competent authority of a Member State, the Luxembourg Tax Authorities will notify the addressee of any instruments and decisions which
emanate from the administrative authorities of the requesting Member State. The competent authority of a Member State may forward any documents by registered mail or electronically directly to a person within the territory of Luxembourg.

1 January 2015 – automatic exchange of information

In his annual State of the Nation speech, Luxembourg Prime Minister Jean-Claude Juncker announced on 10 April 2013, that Luxembourg will apply the “automatic exchange of information” on interest payments on debt claims made by Luxembourg financial operators to individuals resident in another EU Member State, with effect from 1 January 2015.

The automatic exchange of information in tax matters will be strictly limited to the exchange of information among competent tax authorities of Member States.

Further to the declaration made by Prime Minister Jean-Claude Juncker as well as the transposition of the current Law on the administrative cooperation in the field of taxation, the bilateral agreement with the US with respect the implementation of the Foreign Account Tax Compliance Act (FATCA)\(^1\) can be finalized and signed.

The above changes demonstrate Luxembourg’s continued commitment to increased transparency which should increase the perception of internationally-accepted tax practices and procedures adopted and implemented locally. This also strengthens Luxembourg’s leading role as a preferred jurisdiction for, among others, the financial services industry.

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Endnote

1. The US *Foreign Account Tax Compliance Act* (FATCA) agreement requires US depositors to declare their overseas accounts and requires foreign financial institutions to report on the balance and activities of its US account holders to American tax authorities.
Global Tax Alert

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