

UPDATED CRS PARTICIPATING & REPORTABLE JURISDICTIONS LISTS **REMINDER: CRS & FATCA REPORTING DUE BY THE END OF THE MONTH**

On 17 May 2017, the Luxembourg tax authorities published the Grand-Ducal regulation updating both the list of countries considered as Participating Jurisdictions for the purpose of the Common Reporting Standard (CRS) and the list of countries considered as Reportable Jurisdictions.

Participating Jurisdiction vs. Reportable Jurisdiction

A Participating Jurisdiction is a country that is recognized to have committed to adopt CRS. The Luxembourg Participating Jurisdiction list has an impact on the due diligence obligations of Reporting Luxembourg Financial Institutions ("FIs"). When an entity account holder is resident in a country which is not a Participating Jurisdiction and classified as "investment entity managed by another FI", the Reporting Luxembourg FI has to identify, and potentially report, the Controlling Persons of that entity.

A Reportable Jurisdiction is a country with which Luxembourg has an agreement in place to exchange information under CRS. Not all Participating Jurisdictions are included in the Reportable Jurisdictions list. The Reportable Jurisdictions list has an impact on the reporting that Reporting Luxembourg FIs have to prepare and submit to the Luxembourg tax authorities ("Administration des Contributions Directes") ("LTA").

Publication of Updated Lists

The Grand-Ducal Regulation dated 16 May 2019 and published in Memorial A n°316 of 17 May 2016 amended the Participating Jurisdictions list and the Reportable Jurisdictions list as follows:

- Participating Jurisdictions list: addition of Azerbaijan, Bahamas,

Bahrain, United Arab Emirates, Ecuador, Hong Kong, Kazakhstan, Lebanon, Liberia, Macau, Nigeria, Pakistan, Panama, Qatar, Singapore, Turkey and Vanuatu.

- Reportable Jurisdictions list: addition of Nigeria as from the 2018 reporting but deletion of Brunei Darussalam, Dominica and Trinidad & Tobago from the reporting list.

The Luxembourg Participating Jurisdictions list covers 103 countries while the Luxembourg Reportable Jurisdictions list applicable as from the forthcoming 2018 reporting identifies 87 countries.

Consolidated versions of both lists can be found on the LTA's CRS webpage.

CRS and FATCA reporting due in one month

Based on the new list of CRS Reportable Jurisdictions, Reporting FIs have to identify the accounts that are subject to 2018 reporting that shall be submitted electronically to the LTA by 30 June 2019.

For FATCA purposes, Reporting FIs have to identify U.S. Reportable Accounts and report them electronically to the LTA by 30 June 2019.

The information transmitted by the Reporting FIs encompasses personal details of the account holder and/or controlling person as well as financial information (i.e. account balance, dividends and interest received, sale/redemption proceeds and certain other data).

The reports must be filed under the form of an XML schema using one of the two mandatory transmission channels approved by the LTA: Fundsquare with its e-file solution or SIX Payment Services with its SOFiE solution.

The LTA has until 30 September 2019 to report the information to the competent foreign authorities (including the U.S. IRS for FATCA).

Reminders on Nil Report obligations (CRS vs FATCA)

For FATCA purposes, even if a Luxembourg Reporting FI has no U.S. Reportable Account to report, it has to submit a Nil report.

For CRS purposes, the applicable Circular specified that filing a CRS Nil report in the absence of CRS Reportable Accounts is optional. However, in the latest update of their [CRS FAQ, dated 9 May 2019](#), the LTA recommends that, in order to facilitate the monitoring of compliance with reporting requirements, Reporting FIs submit a Nil report.

Deregistration and reporting obligations

As a reminder for entities that have recently deregistered from the IRS FATCA webpage, the LTA Circular provides that should an entity be registered as FI as at 1 January of a year and hence appears on the IRS lists of GIIN as of that date, the LTA would still expect a reporting for that year.

Practically, should a Luxembourg entity appear on the IRS list of GIIN as at 1 January 2018 and deregistered only subsequently, it is expected to file a 2018 reporting by 30 June 2019.

Control of the CRS and FATCA compliance and penalties

The LTA controls the correct implementation of the due diligence rules by Reporting FIs as well as reporting procedures for both FATCA and CRS.

In case of non-compliance, penalties may apply:

- Should a Reporting FI fail to comply with the due diligence rules or fail to implement reporting procedures, it may incur an administrative fine up to EUR 250.000.
- In the case of missing, late, incomplete or false reporting, the Reporting FIs may incur an administrative penalty of up to 0,5% of the amounts that should have been reported, with a minimum of EUR 1.500.

The LTA monitors the submission of the annual reporting, and Reporting Luxembourg FIs which have failed to file their reporting over the last couple of years have been subject to penalties.

Wrap up

With the publication of the updated list of Reportable Jurisdictions, Reporting Luxembourg FIs should now prepare the forthcoming reporting to be submitted by 30 June 2019, including the prior fulfilment of their information obligation towards reportable individuals in line with data protection rules.

HOW BDO CAN HELP

- Helping you determine your CRS and FATCA status and understand the applicable operational consequences.
- Assisting you globally or on a tailor-made basis with the implementation of the CRS and FATCA requirements (e.g. performing a functional review of the operating procedures, more specifically with respect to AML/KYC documentation, client classification, management of changes of circumstances, establishing written manuals and directives as well as specific trainings).
- Providing support/solutions to prepare and transmit reports to the tax authorities through our IT solution: [eCRS](#)
- Acting as your outsourced agent in respect with the fulfillment of your CRS and FATCA obligations (due diligence & reporting), e.g. BDO Luxembourg may act as your FATCA Sponsoring Entity.
- Conducting a health check review in order to certify the effectiveness of the internal controls over documentation, identification and reporting. Recommendations and solutions may be proposed to remediate any insufficiency that might be discovered.

For more information on the services BDO may render, please visit our webpages dedicated to our Operational Tax services offering by clicking [here](#). If you would like to discuss in more detail any aspect of the CRS and FATCA rules, or need assistance with respect to the implementation of their requirements, please contact one of the Key Contact.

KEY CONTACTS



Gerdy Roose
Tax Partner
+352 45 123 371
gerdy.roose@bdo.lu



Sylvie Maestri
Tax Director
+352 45 123 589
sylvie.maestri@bdo.lu



Bertrand Pradalier
Tax Senior Manager
+352 45 123 517
bertrand.pradalier@bdo.lu

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