

Enlargement of Automatic Exchange of Information between Tax Authorities

Further to the adoption by the EU Council of Directive 2015/2376/EU in December 2015 amending the automatic exchange of information between Member States as provided by Directive 2011/16/EU, the law dated July 23, 2016 (the « Law ») amending the law of March 29, 2013 on administrative cooperation in the field of taxation was published in the Luxembourg Official Gazette on July 28, 2016.

The Law aims at transposing into Luxembourg law the amended Directive 2011/16/EU on administrative cooperation in the field of taxation (the “**Directive**”) which revises the scope of the automatic exchange of information to specifically include cross-border advance tax decisions (“**ATDs**”) and advance pricing agreements (“**ATAs**”) issued by tax authorities as from January 1, 2017.

In summary, according to the Law, the automatic exchange of information procedure between EU Member States will apply as from January 1, 2017 to information regarding cross-border ATDs and APAs - including the ones issued within the 5 years preceding January 1, 2017 - as follows:

- For ATDs and APAs issued, amended or renewed between January 1, 2012 and December 31, 2013 information must be communicated by the tax authorities before January 1, 2018, provided that the ATD/APA was still valid as at January 1, 2014;
- For ATDs and APAs issued, amended or renewed between January 1, 2014 and December 31, 2016, information must be communicated by the tax authorities before January 1, 2018;
- For ATDs and APAs issued, amended or renewed as from January 1, 2017 information must be exchanged by the tax authorities within 3 months after the end of the semester of the civil year during which the ATD/APA was issued, amended or renewed.

According to the Law, information covered by the automatic exchange by the Luxembourg tax authorities to other EU competent authorities is the following:

- i) Name of the persons / group involved;
- ii) Type and summary of the ATD/APA;
- iii) Issue, amendment and renewal date as well as validity date;
- iv) Amounts involved;
- v) Other EU Member State(s) involved;
- vi) Other EU persons likely to be affected;
- vii) For APAs, description of the criteria used to determine the transfer pricing method as well as the method used.

Certain information must also be submitted to the EU Commission.

EU competent authorities are allowed to request the full text of the ATDs/APAs further to the communication of the relevant information by the Luxembourg tax authorities as well as other information according to the procedure of exchange of information upon request currently applicable.

As permitted by the Directive, the Law states that for ATDs and APAs issued, amended or renewed prior to April 1, 2016, when the turnover of the entity/group requesting the ATD/APA did not reach EUR 40 Mio (or equivalent) the automatic exchange of information by

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the Luxembourg tax authorities is not applicable. This exclusion is however not applicable to entities/group carrying on mainly financing or investment activities.

Information regarding ATDs or APAs covering individual(s) is also excluded from the scope of the automatic exchange of information.

Finally, restrictions to the automatic exchange are applicable regarding agreements concluded with third countries.



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