

**COMMISSION de SURVEILLANCE  
du SECTEUR FINANCIER**

In case of discrepancies between the French and the English text, the French text shall prevail

Luxembourg, 27 March 2015

**CIRCULAR CSSF 15/609**

**Re:            Developments in automatic exchange of tax information and anti-money laundering in tax matters**

Ladies and Gentlemen,

Following the circular letter of 3 December 2012 concerning, among others, the ICMA Charter (Private Wealth Management Charter of Quality), the CSSF would stress that it is crucial that all supervised entities, each for its part, their executives (authorised management and board of directors) and their employees continue their efforts to put in place proper procedures and infrastructures as regards automatic exchange of tax information. This concerns automatic exchange both with the other EU Member States and third countries (including, in particular, the exchange with the United States within the FATCA regulation).

Moreover, the CSSF would like to draw attention on certain future amendments to the European regulatory framework on prevention of the use of the financial system for the purpose of anti-money laundering and terrorist financing through the adoption of the new "anti-money laundering" directive. In this context, the scope of the predicate money-laundering offences will, indeed, be extended to certain criminal offences in tax matters.

In order to safeguard the good reputation of the Luxembourg financial sector, the CSSF hereby reminds all concerned their obligations arising from these developments. In particular, the CSSF requests supervised entities and their executives (authorised management and board of directors) to verify that they have put in place internal governance, and, in particular, the technical and human resources as well as the necessary internal controls to prevent, identify and eliminate the risks that would arise from a non-compliance of their activities with the regulatory framework in question. It is essential that all professionals of the financial sector and their employees are aware of these risks, such as, in particular, the legal and operational risks and the individual and collective reputational risks for the financial centre.

## **1. Amendments to the Savings Directive and adoption of the law of 25 November 2014**

The law of 25 November 2014 amending the amended law of 21 June 2005 transposing into Luxembourg law Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments (the "Savings Directive") is the first step towards the implementation of an automatic exchange of information with the other EU Member States.

This law of 25 November 2014 introduced on 1 January 2015, based on the scope of application of the Savings Directive, the automatic exchange of information on interest payments that paying agents established in Luxembourg make for natural persons resident in another EU Member State in order that these beneficial owners are taxed in accordance with the legal provisions of their Member State of residence while safeguarding the confidentiality of data without tax consequences.

The automatic exchange of information concerns interest payments within the meaning of Article 6 of the Savings Directive as from 1 January 2015 in favour of natural persons or paying agents upon receipt (within the meaning of the Savings Directive) having their residence in another Member State.

It is recalled that the paying agents have until 20 March 2016 to provide the competent authority with the information relating to the interest paid in 2015.

## **2. Amendments to the Administrative Cooperation Directive**

The second step of the implementation of the automatic exchange of information is the amendment of Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation (the "Administrative Cooperation Directive"). This directive implements into European law the OECD standard for automatic exchange of financial account information in tax matters.

The scope of application of the revised Administrative Cooperation Directive is more extended than that of the Savings Directive. It extends to interests, dividends and other income, as well as account balances and proceeds from disposal of financial assets.

Moreover, the revised Administrative Cooperation Directive applies not only to natural persons, but adopts a look-through approach by applying also (i) to legal persons, (ii) to associations of persons recognised as having the capacity to perform legal acts, but lacking the status of a legal person and (iii) to other legal arrangements which are subject to one of the taxes covered by the Administrative Cooperation Directive.

It is recalled that the automatic exchange of information introduced by the revised Administrative Cooperation Directive targets the information relating to tax periods as from 1 January 2016. The information will be communicated annually within nine months following the end of the calendar year or another appropriate reporting period to which the information relates.

## **3. Amendments provided for by the draft "anti-money laundering" directive**

Without pre-empting the transposition of the "anti-money laundering" directive into Luxembourg law, the CSSF would like to already inform the supervised entities concerned

that the scope of predicate money-laundering offences will be extended to certain criminal offences in tax matters. Thus, the CSSF refers to the current text of the draft "anti-money laundering" directive according which predicated offences include among others: "(...) *all offences, including tax crimes related to direct taxes and indirect taxes, which are punishable by deprivation of liberty or a detention order for a maximum of more than one year or, as regards those States which have a minimum threshold for offences in their legal system, all offences punishable by deprivation of liberty or a detention order for a minimum of more than six months;*".

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The CSSF calls upon the supervised entities concerned acting in Luxembourg to comply, in a proactive way and without delay, with the developments described above and to fully cooperate with the competent authorities and, in general, to act in accordance with the principles of integrity, transparency and professionalism.

Yours faithfully,

COMMISSION de SURVEILLANCE du SECTEUR FINANCIER

Claude SIMON  
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