

Luxembourg Tax News - Issue 2015-27 – November 2015

## DAC 2 - New Developments



On 9 December 2014, the Council adopted the Directive amending Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation ("**DAC 2**").

### **Lists of Excluded Accounts and Non-Reporting Financial Institutions published**

The list of accounts that are to be treated as "Excluded Accounts" for the purposes of subparagraph C.17(g) of Section VIII of Annex I of DAC 2 as well as the list of entities that are to be treated as "Non-Reporting Financial Institutions" for the purposes of subparagraph B.1(c) of Section VIII of Annex I of DAC 2 have been published in the Official Journal of the European Commission ([No 362](#)) on 31 October 2015 (see [page 7](#) for Excluded Accounts and [page 13](#) for Non-Reporting Financial Institutions).

Without any surprise, the following three categories of accounts are considered as Excluded Accounts as far as Luxembourg is concerned:

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- Personal pension contracts ("*Comptes ouverts en vertu d'un contrat prévoyance-vieillesse visé par l'article 111bis de la loi modifiée du 4 décembre 1967 concernant l'impôt sur le revenu*")
- Housing savings contracts ("*Comptes ouverts en vertu d'un contrat d'épargne-logement visé par l'article 111 alinéa 1er de la loi modifiée du 4 décembre 1967 concernant l'impôt sur le revenu.*")
- Occupational pension schemes ("*Comptes ouverts en vertu d'un régime complémentaire de pension visé par l'article 110 de la loi modifiée du 4 décembre 1967 concernant l'impôt sur le revenu.*")

For Luxembourg, no entity is included in the list of Non-Reporting Financial Institutions.

The next steps in the process of entry into force of the DAC 2 and Common Reporting Standard in Luxembourg should be as follows:

- Voting of the Bill of law transposing the DAC 2 into Luxembourg domestic law, and
- Publication of the Luxembourg lists of Participating Jurisdictions and Reportable Jurisdictions.

Both steps are expected to take place still in 2015.

#### **Bill of law N° 6858 transposing the DAC 2 amended by the Government**

On 5 November 2015, the Government submitted to the Parliament amendments to the Bill of law N° 6858 transposing the DAC 2:

- The reference to the approbation of the Multilateral Competent Authority Agreement ("MCAA") is not mentioned anymore in the title of the Bill of law. As mentioned in the commentaries, the MCAA is not a treaty and therefore must not be approved by the Parliament based on article 37 of the Constitution.
- Rather, to give legal value to the political commitment represented by the signature of the MCAA by the Minister, a specific provision has been introduced in the Bill of law authorizing and forcing the tax authorities (*Administration des contributions directes*) to exchange information with the competent authority of another jurisdiction in line with the standard described in Annex I and II of the Bill of law.
- For simplification purposes, the amended Bill of law foresees that all provisions regarding automatic exchange of information will be put together in a new legal instrument (rather than being integrated in the law of 29 March 2013 having transposed the DAC 1).
- In Section III, point B 6) b) i), dealing with due diligence procedures applicable to preexisting individual accounts, a factual mistake in the French version of the DAC 2 compared to the other versions of the

DAC 2 has been corrected (a self-certification from the Account Holder “or” Documentary Evidence is sufficient to cure the presence in the file reviewed of an effective power of attorney or signatory authority granted to a person with an address in the Reportable Jurisdiction).

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