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# Global Tax Alert

## Luxembourg enacts law amending CRS and FATCA laws and submits draft law extending 2019 reporting deadlines

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### Executive summary

Luxembourg has enacted the Law of 18 June 2020 (the Law) again amending the amended Common Reporting Standard (CRS) Law of 18 December 2015 and the amended *Foreign Account Tax Compliance Act* (FATCA) Law of 24 July 2015. The Draft Law submitted to Parliament by the Luxembourg Government on 20 February 2020 (see EY Global Tax Alert, [Luxembourg issues Draft law amending CRS and FATCA laws](#), dated 12 March 2020) has been adopted, essentially unchanged.

The Law introduces new obligations for Luxembourg Reporting Financial Institutions (RFIs) with respect to CRS and FATCA policies, controls, procedures and IT systems, registers of the actions undertaken and of evidence relied upon and also with respect to the submission of CRS nil reports.

The Law also clarifies other obligations, adapts the rules concerning the application of fines (including a €10,000 fine for failure to submit an annual report, whether nil or not, on time), and clarifies aspects of the Luxembourg Tax Authorities' (LTA) powers of investigation.

These changes will apply from 1 January 2021.

Following publication of European Union (EU) Directive 2020/876 of 24 June 2020, a further Draft Law was submitted to Parliament by the Luxembourg Government on 6 July 2020 which, when enacted, will extend the deadline for RFI's to provide their annual CRS and FATCA reports to the LTA with respect to 2019, from 30 June 2020 to 30 September 2020.

## Detailed discussion

### New CRS and FATCA obligations for Luxembourg RFI's

The Law requires every Luxembourg RFI to:

- ▶ Set up policies, controls, procedures and IT systems, proportionate to the RFI's nature, specificities and size, to ensure the fulfilment of the RFI's CRS and FATCA reporting and due diligence obligations.
- ▶ Maintain registers of the actions undertaken and of evidence relied upon to ensure the execution of reporting and due diligence procedures, for 10 years after the end of the year during which the RFI was required to report information under CRS and/or FATCA.
- ▶ Submit a nil CRS report to the LTA with respect to any calendar year during which the RFI maintained no CRS reportable account, in the form required by the LTA and by 30 June of the following year. (The existing obligation to file a nil FATCA report where applicable continues to apply too and will now be included in the FATCA Law).

The comments to the Draft Law indicate that the above does not preclude RFI's from using service providers to enable them to meet their obligations. However, RFI's remain responsible for the fulfilment of such obligations and should ensure that service providers relied upon have policies, controls, procedures and IT systems sufficient to meet the RFI's' compliance responsibilities.

RFI's are explicitly prohibited from adopting practices whose intent is the circumvention of CRS or FATCA reporting.

### Clarification of the LTA's CRS and FATCA powers of investigation

The LTA's duty and powers of investigation are more explicitly extended to cover the RFI's compliance with all of the RFI's obligations under the CRS Law and the FATCA Law, except for the RFI's private data protection duties.

The LTA will have access, upon request, to the above policies, controls, procedures and IT systems, set up to ensure the RFI's CRS and FATCA compliance, and to the above registers of actions undertaken and of evidence relied upon.

The LTA's powers of investigation will remain for 10 years after the end of the year during which the RFI was required to report information under CRS and/or FATCA.

### CRS and FATCA penalties

The Law introduces changes to the fines set by the CRS Law and the FATCA Law:

- ▶ A fine of €10,000 may be applied to any RFI that files no CRS report (neither a nil report nor a report reporting accounts) by the reporting deadline.
- ▶ An RFI may be subject to a fine of up to €250,000 if an inspection or inquiry reveals a breach of any of its obligations under the CRS Law other than its personal data protection obligations.
- ▶ Also, if there are reportable accounts which the RFI has not reported or for which the RFI has reported lower amounts than the amounts to be reported, the fine may be increased by an amount of up to 0.5% of the unreported amounts.

Fines of the same amounts may apply to any RFI for corresponding breaches of the FATCA Law.

### Entry into force

The changes introduced by the Law will apply from 1 January 2021, except for the prohibition on adopting practices whose intent is the circumvention of CRS or FATCA reporting, which applies from inception of the CRS Law and FATCA Law.

The extension of reporting deadlines with respect to 2019 introduced by the Draft Law submitted 6 July, once enacted, will be effective from 30 June 2020.



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