

Exchange of Tax Information

International Standards and Requirements & the Lebanon Case

Carine Chartouni
Executive Director-Head of Compliance
Banque du Liban

Background and recent news

- Lebanon identified by the Global Forum in 2012 as relevant to its work with first assessment in 2012 and supplementary one in 2016
- Lebanon was able to avoid being placed on the G20 blacklist for the time being
 - Exchange of information on request: Supplementary review (September 2016)
 - Few challenges remain to be rated as a cooperative jurisdiction
- Lebanon became a member of the GF in April 2016 following its commitment to automatically exchange financial information
- In parallel, Parliament issued the necessary laws pursuant to the recommendation of the Global Forum
 - Abolishing bearer shares
 - Exchange of information Law
 - Amending the Tax Procedure Law (definition of residency)
 - Reporting on Foreign Trusts

What is the Global Forum?

- GF created in the early 2000 in the context of the OECD's work to address the risks posed by non-cooperative jurisdictions to tax compliance
- Multilateral framework where work in the area of tax transparency and exchange of information is carried out by more than 120 countries
- Charged with in-depth monitoring and peer review of the implementation of international standards of transparency and exchange of information for tax purposes
- OECD active in facilitating automatic exchange of information: creating the legal framework, developing the technical standards, providing guidance and training (GF entrusted with several aspects of this role)

Effect on Lebanon: The 3 pillars for Lebanon to be deemed a cooperative jurisdiction

- I. To be assessed as Compliant by the GF for the exchange of tax information on request (pass the evaluation under Phases I and II)
passed to Phase II on September 30th, 2016
in the process of a fast track evaluation for Phase II
- II. Commit to the automatic exchange of financial information
MoF committed in April 2016
- III. Sign the Multilateral Convention and Agreement (MAC & CAA)
in the process of being signed
(delegation given by law to Council of Ministers and thereafter to MOF)

Exchange of tax information on request

- Phase I (assessment of the Legal Framework)
 - a. Availability of information

Best Practice

- ✓ Availability of reliable information for a reasonable time
 - to identify owners and other stakeholders
 - on transactions carried out

Lebanon case

- ✓ In 2012 rating “not in place”
- ✓ In 2016 “in place but for certain aspects”
 - Upgrade since
 - Tax authority amended tax forms to identify beneficiaries of shares, including bearer shares
 - BDL decision prohibiting bearer shares
- ✓ Recent legislation
 - Abolished bearer shares
 - Require professional and non-professional trustees to register with MOF and declare revenues from managing foreign trusts

Exchange of tax information on request

- Phase I (assessment of the Legal Framework)

- b. Access to information

- Best Practice**

- ✓ MOF to obtain and provide information regarding a person in its jurisdiction following a request by a foreign tax authority under a tax exchange arrangement

- Lebanon case**

- ✓ In 2012 rating “not in place” **N.B. Banking Secrecy/SIC**
 - ✓ In 2016 “in place but for certain aspects”
 - Upgrade since
 - MOF can access information without a domestic need (old EOI law)
 - BDL decision mandating banks to provide information to the SIC following a request by the MOF in response to a foreign request
 - Legal basis: not only EOI Law of Nov 2015 (old law) but also AML/CFT Law which does not require a foreign judgment
 - ✓ Recent legislation
 - No judgment is needed or conclusive evidence of tax evasion or fraud
 - Banking secrecy lifted in some cases and under certain mechanisms provided by directives to be issued soon and with due process

Exchange of tax information on request

- Phase I (assessment of the Legal Framework)

- c. Exchange of information

- Best Practice***

- ✓ Adequate legal basis to exchange information with a network of agreements to do so
 - ✓ MAC

- Lebanon case***

- ✓ In 2012 rating “not in place”
 - ✓ In 2016 “in place but for certain aspects”
 - Upgrade since component “b” was upgraded
 - ✓ Recent legislation
 - Gave Council of ministers power to sign MAC and MCAA, which was delegated to MOF

Exchange of tax information on request

- Phase II
(assessment of the practical implementation of the Legal Framework)
 - Fast track application submitted
 - Part of assessment done and rest underway
 - Should be completed by June 2017 to avoid non-cooperative status and thus risk of being placed on a G 20 blacklist

The automatic exchange of financial information (EOIR/CRS/GATCA)

4 building blocks

- **Domestic legislation (transmitting the reporting and DD req. into domestic law)**
 - New law issued by parliament authorizing the Government to sign the MAC and MCAA (allows the tax administration to automatically exchange information)
 - BDL and the SIC to request FI to provide information required under the MCAA to the MOF or a designee in order to be able to automatically exchange such information with foreign counterparties (obligation on FIs to collect and report)
 - MOF and BDL will designate the reporting entities pursuant to the standards
 - GF standpoint, more specifically...
 - Primary legislation
 - High level due diligence and reporting obligation
 - Penalties
 - Regulatory powers
 - Secondary legislation
 - Details of the DD obligations
 - Timing of reporting
 - Format
 - Options specification (e.g. account balance, calendar yr reporting, filing nil returns, 3rd parties service providers, DD procedure same for pre-existing accounts as new accounts, exclusions for pre-existing entities with <250k, residence test, expanded definition of pre-existing account)
 - Exclusions (reporting entities/ non-reportable accounts)

The automatic exchange of financial information (cont.)

- **International agreement (legal basis to exchange information)**
 - MAC (Multilateral Convention on Mutual Administrative Assistance in Tax matters)
 - MCAA (Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information)
- **Administrative and IT capacity (put in place Admin and IT infrastructure to collect and exchange information)**
 - Common format at the level of Gov to Gov of exchange of information (common transmission system with GF involved in its operation)
 - No common solution for reporting FIs
- **Confidentiality and data safeguards (protect data-legal and operational)**
 - Allow Lebanon's potential exchange partners to decide whether to exchange with it or not
 - Possible non-reciprocal agreement
 - It systems, background check for personnel...

The automatic exchange of financial information (cont.)

- **General**

- Its purpose is to tackle offshore tax evasion
- Builds on FATCA
- Leveraging on FATCA many jurisdictions started to automatically exchange information with other than the US
- Hence the need to a common reporting standards (the CRS) and the role of the OECD to facilitate such task, supported by the G20

- **What is required?**

- The CRS is based on the IGA model with no option to report directly to the relevant competent authorities, Government to Government

- **The standards (developed by the OECD in close cooperation with GF)**

- FFIs report to tax authorities where they are located
 - the details of **financial assets** held by the FFI

- **The scope of FFI is wide: “an entity in a participating jurisdiction that is an FI and not a non-reporting FI”**
 - Banks, custodial institutions, and investment entities, within certain criteria and certain insurance companies
 - Non reporting: government , pension fund, CB, and other low tax risk entities
- **Due diligence rules (can be build on FATCA)**
 - No threshold of 50K for pre-existing individual and 250K threshold for pre-existing entities
 - FIs are non-reportable persons
- **Exchange of information timeline**
 - DD for new clients as of January 1, 2017 (reporting starts September 2018)
 - DD for pre-existing high value individual completed by December 31, 2017 (reporting starts September 2018)

- **Information reported**

- are identity of account holder (name, address, residence and TIN)
- account number
- name and identifying number of FI
- account balance/value
- % paid (depository account), %, dividends, other income and gross proceeds paid (custodial accounts), gross amounts paid (other accounts)

difference with FATCA

- ***DOB needed only if no TIN and place of birth are available (possibility of multiple jurisdictions with CRS)***
- ***no need for account balance if account is closed during that year***

Going forward....

- Sign the MAC and MCAA
- Pass the assessment of confidentiality
- Issue the necessary regulations (MOF, BDL, SIC, CMA, Mo E&T)
- Start implementation

.....to avoid any non-compliance report to G20

Thank you