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**Christophe Jolk**

Avocat à la Cour (Paris, Luxembourg)

Attorney at Law (New York)

**Outer Temple Chambers**

## **France and the Common Reporting Standard**

## US Influences

Tax New Testament 1:1:

“In the Beginning there was the Word and the Word was  
FATCA”

Tax Dodgers Lexicon:

“FATCA: acronym for Fear and Terror Caused by America”

## FATCA Agreement with France

US-France FATCA Agreement of 14 November 2013  
(Model 1A Agreement), within the scope of Article 27 –  
Exchange of Information – of the US-France Tax Treaty

FATCA Agreement ratified by Act of 29 September 2014  
(nbr. 2014-1098)

Automatic Exchange of Information implemented for FATCA purposes:

- Article 1649 AC of the French Tax Code, introduced by Act of 26 July 2013 (nbr. 2013-672, Article 7) and amended by Act of 8 August 2014 (nbr. 2014-891, Article 22)
- Electronic data processing and transfer (Order of 11 August 2015)

Decision of 17 September 2015 of the French Data Protection Agency (**CNIL**) to allow the French Tax Authorities to transfer the gathered information to the IRS pursuant to the FATCA Agreement

Standard for Automatic Exchange of Financial Account Information in Tax Matters (July 2014) – Framing the Common Reporting Standard (**CRS**)

Global Forum on Transparency and Exchange of Information for Tax Purposes (Berlin Agreement, October 2014: ratified by Act of 28 December 2015 nbr. 2015-1778 of) – Commitment by France to implement the Automatic Exchange of Information (**AEIOI**) by 2017

Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation as amended by Directive 2014/107/EU of 9 December 2014, to implement the OECD CRS, and by Directive 2015/2376/EU of 8 December 2015 (the latter will be effective in 2017)

Article 1649 AC of the French Tax Code refers to Article 8 §3bis of Directive 2011/16/EU



## General Requirements of the French Exchange of Information Provision

### Article 1649 AC of the French Tax Code (current version):

- Account holders, insurance companies and other financial institutions are required to file specific returns as to the information required by EU law (directive 2011/16/EU) and international agreements (FATCA, Berlin Agreement)
- The information can encompass any type of investment income, the current status of the accounts and the value of the investments

## General Requirements of the French Exchange of Information Provision (cont.)

- Financial institutions gather information as to the tax residence and the tax identification numbers (**TIN**) from all their account holders and their controlling persons
- Financial institutions comply with their exchange of information obligations by automatic data processing (as long as compliant with French data protection laws)
- CRS applicable as of FY2016 with the first exchange of information to occur between tax authorities before 30 September 2017

## Specific FATCA Requirements of the French Exchange of Information Provision



Not codified in the French Tax Code

French treasury regulations relating to FATCA have been published (BOI-INT-AEA-10), as well as technical explanations for the preparation of FATCA returns ([http://www.impots.gouv.fr/portal/deploiement/p1/fichedescriptive\\_7015/fichedescriptive\\_7015.pdf](http://www.impots.gouv.fr/portal/deploiement/p1/fichedescriptive_7015/fichedescriptive_7015.pdf))

Specific FATCA returns to be filed to the French tax authorities before 31 July of each year with information relating to the preceding year

## Specific FATCA Requirements of the French Exchange of Information Provision (cont.)

### Additional information required for FATCA returns:

- Filing in 2016: Gross investment income generated on the assets held in the accounts
- Filing in 2017: Gains realized on the assets

## Specific CRS Requirements of the French Exchange of Information Provision



French treasury regulations as to the CRS are yet to be published (technical information is available on the OECD homepage)

In General, the Berlin Agreement requires the disclosure of the ID and address of the account holder, its TIN, the balance on the accounts, investment income and capital gains

## Specific CRS Requirements of the French Exchange of Information Provision (cont.)

France has opted for a reciprocity reserve for the application of the CRS

The CNIL is in charge of controlling the confidentiality standards

Issues: several appendices of the Berlin Agreement, at the time the French Act ratified it, were not complete, such as the list of countries where there is no reciprocity requirement, the methods of data transfers or confidentiality requirements

## Specific CRS Requirements of the French Exchange of Information Provision (cont.)

The completion of the appendices to the Berlin Agreement have to be notified by each Member States to the OCDE

In practice, the CRS will only be applicable between France and a Member State to the Berlin Agreement when the appendices will be completed (the status of completion is not public for now)

Notwithstanding this, the CRS is applicable through Article 1649 AC of the French Tax Code and financial institutions should gather the information in accordance with the CRS as of 1 January 2016 for a potential exchange of information before 30 September 2017

## Specific EU Requirements of the French Exchange of Information Provision

The exchange of information requirements regarding foreign accounts have been implemented through the reference to Article 8 §3bis of directive 2011/16/EU by Article 1649 AC of the French Tax Code as of 1 January 2016

The preliminary statements to directive 2014/107/EU (amending directive 2011/16/EU) indicate that: “Member States should require their Financial Institutions to implement reporting and due diligence rules which are fully consistent with those set out in the Common Reporting Standard developed by the OECD”



Specific EU Requirements  
of the French Exchange of Information  
Provision (cont.)

Article 8 §3bis of directive 2011/16/EU has the same reporting requirements as the CRS, in general the ID and address of the account holder, its TIN, the balance on the accounts, investment income and capital gains

As for the reporting requirements of directive 2011/16/EU, no French treasury regulations have been published yet

## French Tax Penalties for Breach of Compliance

Fixed penalty of €200 per account, for one or more missing or wrong piece of information (Article 1736, I-5 of the French Tax Code)

Fixed penalty of €150 per missing tax return (Article 1729 B of the French Tax Code)

FFI can be deemed FATCA non compliant

- Unless it can be shown that the client / proxy holder did not cooperate and that the French tax administration was duly notified of that fact

## The Effects of the CRS in France

### Voluntary disclosure program open to individuals

- The trend started with FATCA and its repercussions (i.e., end of bank secrecy in several countries)
- Extremely profitable for the French government: €2.6bn of additional tax revenues for FY2015 and it is expected to be even more for FY2016

## The Effects of the CRS in France (cont.)

The French voluntary disclosure program has recently increased its penalties:

Origin of the funds	Penalty on due tax	Penalty on the amounts held
“Passive fraud”	25%	Bank accounts: 1.5%
		Life-insurance: 1.5%
		Trust: 3.75%
“Active fraud”	35%	Bank accounts: 3%
		Life-insurance: 3%
		Trust: 7.5%

**Thank you for listening**

[christophe.jolk@outertemple.com](mailto:christophe.jolk@outertemple.com)

[www.outertemple.com](http://www.outertemple.com)