European Banking Federation

Chief Executive

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G20 Finance Ministers
c/o Senator the Hon Mathias Cormann
Minister for Finance, Department of Finance
John Gorton Building, King Edward Terrace
Parkes Act 2600, Australia
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Subject: Early adoption of the Common Reporting Standard

Dear Minister,

In my capacity as Chief Executive of the European Banking Federation (EBF), which is the voice of European banks, I would like to reiterate the EBF's full support to the G20 Governments' aim of combating international tax evasion for which the OECD has developed a "Common Reporting Standard" (hereafter the "CRS") in order to promote a global "Automatic Exchange of Information" (AEOI).

It is crucial that Governments in all interested jurisdictions are made aware of the need for a clear, realistic and achievable CRS implementation timetable: for the Early Adopters, the necessary legislation must be in place by 2015 year-end and more importantly detailed guidance must be available at least in draft form as soon as September 2015 in order for financial institutions and tax administrations to adapt and develop their systems. If Governments fail to adopt the implementing legislation and related guidance in the coming weeks, reporting of data in respect of 2016 cannot happen.

Clear and detailed guidance is indeed one of the most important prerequisites so that financial institutions may carry out their implementation projects to comply with the due diligence and reporting requirements and hence to be able to report the required information on time and in an effective manner. In many cases no detailed budgeting process to secure the funds which are necessary to make these adaptations and developments can be approved internally or finalised until there is a final legal framework and obligation to implement under local law in each country concerned.

More precisely, the EBF considers that any participating jurisdictions must have undertaken the following steps in order to be considered as having the necessary legislation and guidance in place:

- **Entry into the Multilateral Competent Authority Agreement (MCAA) or adoption of similar/equivalent measures** (e.g. revised EU Directive on Administrative Cooperation).

- **Due ratification of the OECD Convention on Mutual Administrative Assistance in Tax Matters and, where required, the Multilateral Competent Authority Agreement**, so as to make the latter binding upon financial institutions (in addition, within the EU: transposition of the aforementioned revised EU Directive on Administrative Cooperation).

- **Enacting implementing legislation**. The Early Adopters' should have enacted implementing legislation by 31 December 2015, and this for a date of entry into force of 1 January 2016. Past experience suggests that there is a real risk that many jurisdictions will go right to the wire with the

release of such implementing legislation. Failure in timely implementation of the legislation will trigger data protection issues and lead to legal uncertainty.

- **Providing a domestic list of Non-Reporting Financial Institutions and Excluded Accounts** well ahead of January 2016 as this affects the perimeter of implementation project.

- **Adopting possible enforcement measures**.

- **Publishing comprehensive guidance** at national level which should further elaborate on the terms of the Commentary and related FAQs prepared by the OECD in order to address specific issues arising in the domestic context of each Participating Jurisdiction. This is needed now, at least in draft form, well ahead of the start date as implementation projects require detailed specifications. Additional details would be expected notably around the following topics:
  - Definitions of key concepts (pre-existing account, new account, financial account, investment entity) and guidance on in-scope entities, clarifying in particular, in the national context, the dividing line between financial institutions and (passive) non-financial entities. A particular attention should be paid to the status of financial institutions that were able to avail themselves of the benefit of a sponsored status under FATCA and are not able to do so for the purpose of the CRS.
  - Details of the financial institutions' registration mechanism (if any) and of the reporting mechanism must also be provided.
  - Detailed guidance indicating what data financial institutions will need to capture and ultimately report to the relevant authorities, providing details about reporting of zero balances, cut-off dates and changes of circumstances, and mandatory *de minimis* of reporting accounts.
  - Where options are left in the CRS at the appreciation of Participating Jurisdictions, each Participating Jurisdiction should seek a consistent application of the said options regardless of the legal instrument applicable, be it the MCAA or, in the context of the EU, the revised Directive on Administrative Cooperation.

- **Providing detailed technical specifications for reporting formats and communications (by end of 2015).** Detailed guidance indicating what data financial institutions will need to capture and ultimately report to the relevant authorities, providing details about reporting of zero balances and mandatory *de minimis* of reporting accounts.

- **Testing reporting mechanisms** with the respective domestic authorities and reporting financial institutions. In order to allow for effective final transfer of data from financial institutions to local tax administrations in early to mid-2017, the testing of reporting mechanisms must take place at the latest during Q2 2016. Large financial institutions have substantial IT projects to plan, budget for, build/source and roll out – all of this in a very short space of time. Ultimately, if the reporting is rushed, the quality of data that governments will be exchanging will be lacking.

The EBF anticipates that many jurisdictions will be unable to have passed these steps within the timeframes envisaged above. Yet these steps constitute to our view essential prerequisites before financial institutions can realistically commence work on implementing the CRS.

FATCA showed that financial institutions require ideally a lead time of at least 18 months in advance of the effective date, starting from the time the final guidance has been released. In respect of the entry into force of the CRS in Early Adopters' jurisdictions, and thus for completion of the new accounts due diligence requirements (i.e. 1 January 2016), that 18-month deadline has already passed. In addition, the larger financial institutions will typically be looking to software vendors for reporting solutions.

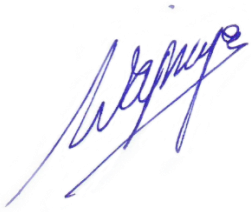
Those vendors will not be able to finalise their products before regulations and the necessary schema are final.

If a substantial number of Early Adopters have not completed the above steps by end of the year (implementing legislation) or by end of September (as for the draft Guidance and national lists of excluded accounts and non-reporting financial institutions), the EBF would consider that the conditions to properly apply AEOI as of January 2016 would not be met.

Serious consideration would then have to be given to a phased approach to implementation. Reporting could be pushed back by 1 year, with the first reporting to be made in 2018 and to include data in respect of both 2016 and 2017. This flexibility would give some breathing air to both tax authorities and financial institutions, at least for the reporting projects. This does not seem unreasonable, as a similar approach has been taken by some countries in their FATCA IGA negotiations with the United States.

Additionally, it should be noted that it will take 2 to 3 years for financial institutions to fully address system issues. Therefore, we call for a "soft landing" period of 2 years for financial institutions located in the Early Adopters during which tax administrations and financial institutions would dialogue and mutually seek to reach a fully operational system. At the end of this period, the full compliance regime would be implemented.

Yours sincerely,



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