Taxation: administrative cooperation

2009/0004(CNS) - 10/02/2010 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 561 votes to 97, with 15 abstentions, a legislative resolution amending, under the special legislative procedure (consultation), the proposal for a Council directive on administrative cooperation in the field of taxation.

The amendments adopted in plenary aim to strengthen certain aspects of the proposal in order to improve the efficiency of administrative cooperation on the following issues:

Scope: Parliament considered it necessary to insert a definition which is broad enough to cover not just natural and legal persons, any other legal instrument or arrangement, regardless of its nature or form and whether or not it has legal personality, that may own and manage assets, including income therefrom, that are subject to any of the taxes covered by this Directive.

Exchange of information on request: each Member State shall develop appropriate control systems for its single taxation liaison office, in the interests of transparency and cost-effectiveness, and shall draw up a publicly accessible report, in the context of an annual monitoring exercise, accordingly.

Automatic exchange of information: in order to ensure the effectiveness of such automatic exchange of information, it is necessary to determine the categories and define the fields to which its application is mandatory. Accordingly, the following specific categories of income and capital : (a) income from work; (b) directors' emoluments; (c) dividends; (d) capital gains; (e) royalties; (f) life insurance products not covered by other Community legal instruments on the exchange of information and other similar measures; (g) pensions; (h) ownership of property and income derived therefrom. In addition, there should be the possibility of establishing a double limit depending on the categories for which information is communicated and/or the amount that triggers the mechanism. The information shall be communicated at least annually, and no later than six months after the end of the financial year in the Member State in which the information has been obtained. The competent authority in one Member State may notify the competent authority of another Member State that it does not wish to receive information on the categories of income and capital referred to above or that it does not wish to receive information on such income and capital that is not above a certain threshold. In such a case, that competent authority shall also inform the Commission thereof.

Respect for privacy: in the framework of automatic exchange of information, Member States must ensure customer privacy. Such information should also be protected under Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data

Presence and participation in administrative enquiries: in order to ensure that the presence of officials of the tax administration of one Member State in the territory of another Member State is not counter-productive and does not detract from the usefulness of cooperation, the proposal suggesting that the powers of officials of the tax administration of one Member State be equal to those in the territory of another Member State is removed. The amended text states that where officials of the requesting authority are present during administrative enquiries, they may, in agreement with the requested authority and in accordance with the guidelines laid down by the latter, take part in that enquiry.

Procedures: in order to enhance the applicability and effectiveness of this Directive, the same level of obligation should apply both to the communication of information already available by the requested authority and to conducting the administrative enquiries necessary to obtain such information.

Limits of administrative cooperation: in relation to the lifting of banking secrecy, and in order to ensure that the effectiveness of this measure is not restricted by additional requirements, the reference to the residence in the requesting country of the person on whom the information is sought is removed. This is consistent with the standards followed within the OECD.

Evaluation: the Commission shall evaluate and report annually to the European Parliament and the Council on the functioning of the automatic exchange of information. On the basis of its evaluation, the Commission shall propose measures to improve the scope and quality of the automatic exchange requirement in order to enhance the smooth functioning of the internal market.

In order to improve the exchange of information between the different national authorities, MEPs propose to monitor cases where the Member States have refused to communicate information or conduct an administrative inquiry.

Delegated acts: the Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union in respect of technical improvements to the categories of income and capital that are subject to the automatic exchange of information and to the thresholds of income above which the information exchange must be carried out. In view of the specific nature of the administrative cooperation, the empowerment should be for an indeterminate period of time. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

The European Parliament or the Council may object to a delegated act within a period of four months from the date of notification. At the initiative of the European Parliament or the Council that period shall be extended by two months. If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the Official Journal of the European Union and shall enter into force at the date stated therein.