Taxation: administrative cooperation

2009/0004(CNS) - 15/02/2011 - Final act

PURPOSE: to lay down the rules and procedures for administrative cooperation between Member States with regard to taxation.

LEGISLATIVE ACT: Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC.

CONTENT: this Directive lays down the rules and procedures under which Member States shall cooperate with each other with a view to exchanging information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Member States concerning the taxes referred to in the text. It also lays down provisions for the exchange of information by electronic means, as well as rules and procedures under which Member States and the Commission are to cooperate on matters concerning coordination and evaluation. The Directive does not affect the application in Member States of the rules on mutual assistance in criminal matters. It is also without prejudice to the fulfilment of any obligations of the Member States in relation to wider administrative cooperation ensuing from other legal instruments, including bilateral or multilateral agreements.

The rules focus on three areas: ‘spontaneous’ exchange, exchange ‘on request’ and ‘automatic’ exchange of information between national administrations on the financial situation of non-residents, with a view to combating fraud and tax evasion.

Exchange of information on request: this means the exchange of information based on a request made by the requesting Member State to the requested Member State in a specific case.

Automatic exchange means the systematic communication of predefined information to another Member State, without prior request, at pre-established regular intervals.

Spontaneous exchange is defined as non-systematic communication, at any moment and without prior request, of information to another Member State;

Scope and conditions of mandatory automatic exchange of information: the text specifies that the competent authority of each Member State shall, by automatic exchange, communicate to the competent authority of any other Member State, information regarding taxable periods as from 1 January 2014 that is available concerning residents in that other Member State, on the following specific categories of income and capital as they are to be understood under the national legislation of the Member State which communicates the information: (a) income from employment; (b) director’s fees; (c) life insurance products not covered by other Union legal instruments on exchange of information and other similar measures; (d) pensions; (e) ownership of and income from immovable property.

Available information refers to information in the tax files of the Member State communicating the information, which is retrievable in accordance with the procedures for gathering and processing information in that Member State.

Report on automatic exchange: before 1 July 2017, the Commission shall submit a report that provides an overview and an assessment of the statistics and information received, on issues such as the administrative and other relevant costs and benefits of the automatic exchange of information, as well as practical aspects linked thereto. If appropriate, the Commission shall present a proposal to the Council regarding the categories of income and capital and/or the conditions laid down in, including the condition that information concerning residents in other Member States has to be available. When examining a proposal put forward by the Commission, the Council shall assess further strengthening of the efficiency and functioning of the automatic exchange of information and raising the standard thereof, with the aim of providing that: (a) the competent authority of each Member State shall, by automatic exchange, communicate to the competent authority of any other Member State, information regarding taxable periods as from 1 January 2017 concerning residents in that other Member State, on at least three of the specific categories of income and capital listed in the text, as they are to be understood under the national legislation of the Member State communicating the information; and (b) the list of categories be **extended to include dividends, capital gains and royalties**.

ENTRY INTO FORCE: 11 March 2011.

TRANSPOSITION: 1 January 2013.