

Taxation: mandatory automatic exchange of information

2015/0068(CNS) - 27/10/2015 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 572 votes to 90, with 30 abstentions, in the framework of a special legislative procedure (Parliament's consultation), a legislative resolution on the proposal for a Council directive amending [Directive 2011/16/EU](#) as regards mandatory automatic exchange of information in the field of taxation.

Following the LuxLeaks scandal, the European Parliament expressed its strong determination not to tolerate tax fraud and tax avoidance as well as to advocate for a fair distribution of the tax burden between citizens and companies.

Parliament approved the Commission proposal subject to the following amendments:

Limited scope of the exchange of information: Members **rejected the proposal from the Commission to limit the scope of mandatory exchange of information to cross-border tax rulings and transfer pricing arrangements**. Members considered that the Directive should apply to **all tax rulings** and not just cross border rulings and advance pricing arrangements, given that **purely national transactions can also have cross-border effects**. That is particularly true of cascade transactions, where the advance tax ruling or price arrangement concerns the first national transactions, without taking into consideration the next (cross-border) transactions.

Moreover, **the definitions** of advance rulings and advance pricing arrangements should cover tax arrangements regardless of the formal or informal manner in which they were issued, and irrespective of their binding or non-binding nature.

Quicker exchanges: Members proposed that information should be **exchanged immediately**, and **at the latest one month after** the advance rulings or advance pricing arrangements have been issued or amended.

No retroactive effect: the Commission proposed that the mandatory exchange mechanism should apply to tax rulings issued in the ten years before it enters into force. Parliament called for mechanism to apply to all rulings that are still valid on the day the directive enters into force.

Member States shall:

- notify the Commission and other Member States at an early stage about any relevant change in their tax ruling practice (application formalities, decision process, etc.).
- **notify the Commission and other Member States about any relevant changes to their domestic laws on corporate taxation** (introduction of a new allowance, relief, exception, incentive or similar measure etc.) that could have an impact on their effective tax rates or on any other Member State's tax revenue.

Secure central directory and transparency: on **31 December 2016** at the latest, the Commission shall develop a **secure central directory** where information to be communicated in the framework of this Directive must be recorded in order to satisfy the automatic exchange of information. Member States shall ensure that all information communicated during the transitional period where the secure central directory is not yet developed is **uploaded into the secure central directory by 1 April 2017**. The Commission and the Member States shall have access to the information recorded in this directory.

In order to enhance **transparency** for citizens, **the Commission should publish, before 1 October 2017, and on an annual basis thereafter, a summary of the main tax rulings** agreed in the previous year, based on information contained in the secure central directory and in compliance with the **confidentiality** provisions.

That report should include at least: (i) a description of the issues addressed in the tax ruling, (ii) a description of the criteria used to determine an advance pricing arrangement and, (ii) the identification of the Member State(s) most likely to be affected.

The **personal data** should be processed for specific, explicit and legitimate purposes and only if adequate, relevant and not excessive in relation to the purposes.

Parliament also suggested that by 26 June 2017, a **Union-wide register for beneficial ownership** should be operational, which will aid in tracking down possible tax avoidance and profit shifting.

Penalties: the Commission shall examine all penalties to be established in the event of refusal or omission of information exchange.

OECD developments: this Directive shall be compatible with OECD developments and shall take into consideration the OECD comprehensive set of rules contained in the Standard for Automatic Exchange of Financial Account.

Further action of Member States: this Directive shall not preclude Member States from taking further action to develop domestic or agreement-based provisions for the prevention of tax avoidance.

The resolution recalled that the fundamental principle of the **Member States' sovereignty in tax matters** should be upheld where direct taxes are concerned and that the current proposal does not jeopardise the subsidiarity principle.

Reporting: every three years after entry into force, the Commission shall submit a report on the application of this Directive.