Taxation: mandatory automatic exchange of information

2015/0068(CNS) - 08/12/2015 - Final act

PURPOSE: to ensure the mandatory automatic exchange of information between tax administrations regarding advance cross-border rulings and advance pricing arrangements, in order to prevent corporate tax evasion.

LEGISLATIVE ACT: Council Directive (EU) 2015/2376 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.

CONTENT: this Directive amends Directive 2011/16/EU on administrative cooperation, so as to ensure **the mandatory automatic exchange of information between Member States regarding advance cross-border rulings and advance pricing arrangements**.

The challenge posed by cross-border tax avoidance, aggressive tax planning and harmful tax competition has increased considerably and has become a major focus of concern within the Union and at global level. **Rulings concerning tax-driven structures** have, in certain cases, led to a low level of taxation of artificially high amounts of income in the country issuing, amending or renewing the advance ruling and left artificially low amounts of income to be taxed in any other countries involved.

The Directive **will improve transparency** regarding advance cross-border rulings made by Member States concerning the manner in which taxation will be dealt with.

Scope: the Amending directive provides that the competent authorities of a Member States communicate to the competent authorities of all Member States, by automatic exchange, a defined set of basic information on tax rulings issued or amended.

A new Article is inserted into the existing Directive, setting out the scope and conditions for the mandatory automatic exchange of information, which is sufficiently broad to cover a wide range of situations, these being:

- unilateral advance pricing arrangements and/or decisions;
- bilateral or multilateral advance pricing arrangements and decisions;
- arrangements or decisions determining existence or absence of a permanent establishment, and of facts with a potential impact on the tax base of a permanent establishment;
- arrangements or decisions determining tax status of a hybrid entity in one Member State which relates to a resident of another jurisdiction;
- arrangements or decisions on assessment basis for depreciation of an asset in one Member State that is acquired from a group company in another jurisdiction.

Under a set of very strict conditions, **the Directive excludes** from the mandatory automatic exchange bilateral or multilateral advance pricing arrangements **with third countries** following the framework of existing international treaties with those countries, where the provisions of those treaties do not permit disclosure of the information received under that treaty to a third party country.

Conditions and arrangements for the exchange of information: the Directive establishes **regular intervals** for the communication of the information. It also provide for the mandatory automatic exchange of advance cross-border rulings and advance pricing arrangements that were issued, amended or renewed within a period **beginning five years before 1 January 2017** and which are still valid on 1 January 2014.

However, particular persons or groups of persons with a group wide annual net turnover of **less than EUR 40 000 000** could be excluded, under certain conditions, from such mandatory automatic exchange.

Standard form: in order that the mandatory automatic exchange of information should in each case include the communication of a defined set of basic information that would be accessible to all Member States, the Commission is empowered to adopt practical arrangements necessary to standardise the communication by establishing a standard form to be used for the exchange of information.

In developing such a standard form for the mandatory automatic exchange of information, it should take account of **work performed at the OECD's Forum on Harmful Tax Practices**, where a standard form for information exchange is being developed, in the context of the Action Plan on Base Erosion and Profit Shifting.

Statistics on automatic exchanges: before 1 January 2018, Member States must provide the Commission on an annual basis with statistics on the volume of automatic exchanges and, to the extent possible, with information on the administrative and other relevant costs and benefits relating to exchanges that have taken place and any potential changes, for both tax administrations and third parties.

Secure central directory: in order to facilitate the exchange of information, specific provision is made for the establishment of a central directory, accessible to all Member States and the Commission, to which Member States would upload and store information, instead of exchanging that information by secured email.

Confidentiality: information communicated to the Commission will l be kept confidential by the Commission and may not be used for any purposes other than those required to determine whether and to what extent Member States comply with this Directive. The provision of information should not lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or disclosure of information which would be contrary to public policy.

ENTRY INTO FORCE: 18.12.2015.

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APPLICATION: from 01.01.2017.