

Taxation: mandatory automatic exchange of information in relation to reportable cross-border arrangements

2017/0138(CNS) - 25/05/2018 - Final act

PURPOSE: to improve the functioning of the internal market by discouraging the use of aggressive cross-border tax planning arrangements.

LEGISLATIVE ACT: Council Directive (EU) 2018/822 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements.

CONTENT: this Directive amends [Directive 2011/16/EU](#) on administrative cooperation in the field of taxation in order to provide for the **mandatory disclosure of potentially aggressive tax planning arrangements** and to extend the scope of the automatic exchange of information between tax authorities to include such arrangements.

Some financial intermediaries and other tax advisory service providers appear to have actively assisted their clients in concealing capital abroad. Reporting on potentially aggressive cross-border tax planning arrangements will help to **detect the risks of tax evasion at an earlier stage** and to take measures to remedy deficiencies to avoid revenue losses.

Communication and automatic exchange of information: the revised Directive obliges **intermediaries** (e.g. tax advisors, accountants, banks, lawyers) who design or promote tax planning arrangements that have a cross-border element to provide information to tax authorities.

Each Member State shall take the necessary measures to require intermediaries to file information that is within their knowledge, possession or control on reportable cross-border arrangements with the competent authorities within 30 days beginning: (i) on the day after the reportable cross-border arrangement is made available for implementation; or (ii) on the day after the reportable cross-border arrangement is ready for implementation; or (iii) when the first step in the implementation of the reportable cross-border arrangement has been made, whichever occurs first.

To facilitate the work of Member States' administrations, the subsequent automatic exchange of information on such arrangements could take place **every quarter**.

The information received shall be exchanged automatically through a **secure central directory** to which all Member States shall have access. The Commission shall also have restricted access to the information exchanged.

Reporting obligation: to ensure the proper functioning of the internal market and to prevent loopholes in the proposed framework of rules, the reporting obligation shall be placed upon all actors that are usually involved in designing, marketing, organising or managing the implementation of a reportable cross-border transaction or a series of such transactions, as well as those who provide assistance or advice. It shall not be ignored either that, in certain cases, the reporting obligation would not be enforceable upon an intermediary due to a legal professional privilege or where there is no intermediary because, for instance, the taxpayer designs and implements a scheme in-house.

List of ‘hallmarks’: aggressive tax planning schemes have evolved over the years to become increasingly complex and are subject to constant modification and adjustment. Rather than defining the concept of aggressive tax planning, the Directive sets out in Annex IV a list of features (called ‘hallmarks’) of transactions that present a strong indication of tax avoidance or abuse.

Penalties: the Directive leaves it to the Member States to determine the penalties applicable in the event of infringement of national rules transposing the Directive into national law. These penalties must be **effective, proportionate and dissuasive**.

Member States shall communicate to the Commission a yearly assessment of the effectiveness of the automatic exchange of information as well as the practical results achieved.

ENTRY INTO FORCE: 25.6.2018.

TRANSPOSITION: no later than 31.12.2019.

APPLICATION: from 1.7.2020.