Administrative cooperation in the field of taxation. Codification

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PURPOSE: to establish effective administrative cooperation between Member States in the field of taxation under conditions compatible with the proper functioning of the internal market (codification of Council Directive 2011/16/EU).

PROPOSED ACT: Council Directive.

ROLE OF THE EUROPEAN PARLIAMENT: the Council adopts the act after consulting the European Parliament but without being obliged to follow its opinion.

BACKGROUND: in the interests of clarity and transparency of the law, the purpose of this proposal is to undertake a codification of Council Directive 2011/16/EU of 15 February 2011, as amended several times and substantially. The new Directive will supersede the various acts incorporated in it; it fully preserves the content of the acts being codified and hence does no more than bring them together with only such formal amendments as are required by the codification exercise itself.

CONTENT: with a view to overcoming the negative effects on the internal market of ever-increasing globalisation, the proposed Directive provides for clear and precise rules governing administrative cooperation between Member States when exchanging information on tax matters.

Scope of application

The Directive shall apply to all types of taxes levied by a Member State or by its territorial or administrative entities, including local authorities, with the exception of:

- value added tax (VAT) and customs duties;

- excise duties covered by other Union legislation on administrative cooperation between Member States;

- compulsory social contributions payable to the Member State or to a subdivision of the Member State or to social security institutions established under public law.

The competent authority of each Member State shall designate a single central liaison office. There shall be direct contacts between local offices or national offices of the Member States responsible for administrative cooperation, the rule being communication between central liaison offices.

Exchanges of information on request

At the request of the applicant authority, the requested authority shall communicate to the applicant authority the information in its possession or obtained as a result of administrative enquiries. The requested authority shall acknowledge receipt of the request immediately, if possible by electronic means, and at the latest 7 working days after receipt. The information shall be provided as soon as possible and no later than 6 months from the date of receipt of the request.

Automatic and mandatory exchange of information

The Directive also provides for the automatic and compulsory exchange of information between Member States for certain categories of income and capital that taxpayers possess in Member States other than their State of residence. It defines the scope and conditions for the automatic and compulsory exchange of information in respect of:

- advance tax rulings in cross-border cases and advance pricing agreements;

- the country-by-country declaration, which should contain certain information with regard to the MNE group;

- cross-border arrangements to be reported: the Directive provides for the obligation for intermediaries (e. g. tax advisers, accountants, banks, lawyers) to inform the tax authorities of certain cross-border arrangements which may be used for aggressive tax planning purposes, thus allowing the detection of tax avoidance risks at an earlier stage.

Spontaneous exchange of information

National authorities shall spontaneously provide information to their counterparts in the EU as soon as possible and no later than 1 month after such information becomes available, in particular in the following situations:

- if there are grounds to suppose that there may be a loss of tax in another Member State;

- a taxpayer obtains a tax reduction or exemption in one Member State which is expected to result in an increase in tax in another Member State;

- the competent authority of a Member State has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises.

National authorities in two or more EU countries may agree to carry out simultaneous controls of taxpayers of common interest to them.

Member States shall provide the Commission annually with an evaluation of the effectiveness of the automatic exchange of information and the practical results achieved.