Administrative cooperation in the field of taxation

2020/0148(CNS) - 15/07/2020 - Legislative proposal

PURPOSE: to improve the functioning of the existing provisions of Directive 2011/16/EU on administrative cooperation in the field of taxation.

PROPOSED ACT: Council Decision.

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

BACKGROUND: as a result of the COVID-19 pandemic, Member States need sufficient tax revenue to finance their considerable efforts, while ensuring that the most vulnerable groups do not bear the burden of increasing such revenue. To achieve this, fair taxation, based on rules that ensure that everyone pays their fair share, while allowing taxpayers, be they businesses or citizens, to comply easily with the rules, is essential.

In the past years, the EU has focused its efforts on tackling tax fraud, tax evasion and tax avoidance and boosting transparency. While major improvements have been made in particular in the field of exchange of information, the evaluation of the application of Council Directive 2011/16/EU on administrative cooperation in the field of taxation6 showed that there is still a need to improve existing provisions that relate to all forms of exchanges of information and administrative cooperation.

The characteristics of the digital platform economy make the traceability and detection of taxable events by tax authorities very difficult. In addition to reinforcing existing rules, the expansion of administrative cooperation to new areas is required in the EU, in order to address the challenges posed by the digitalisation of the economy and help tax administrations better and more efficiently collect taxes and keep pace with new developments.

The present legislative proposal is part of a package for fair and simple taxation supporting the recovery of the EU, which includes a Communication for an Action Plan presenting a number of upcoming initiatives for fair and simple taxation supporting the recovery strategy, and a Commission Communication on Tax good governance in the EU and beyond.

IMPACT ASSESSMENT: as regards digital platform operators, the impact assessment indicates that the regulatory option at EU level is the most appropriate to implement the policy defined.

EU regulatory action shall put all tax authorities on an equal footing when it comes to the access to information collected for an identified tax purpose. This also allows for the automatic exchange of information at the EU level on the basis of common standards and specifications.

CONTENT: the Commission proposes to amend the existing provisions on exchange of information and administrative cooperation and to extend the scope to automatic exchange of information in respect of information declared by operators of digital platforms.

Extension of EU tax transparency rules to digital platforms

Member States shall automatically exchange information on income earned through digital platforms. This shall not only allow national authorities to identify the situations in which the tax has to be paid, but shall also reduce the administrative burden on the platforms, which have to deal with several different national reporting obligations.

The proposal lays down the scope and conditions for the mandatory automatic exchange of information which will be reported by platform operators to competent authority. Detailed rules are laid down in Annex V.

The new rules shall impose on reporting platform operators the obligation: (i) to collect and verify information in accordance with due diligence procedures; (ii) to report information on sellers who use their platform to conduct their business and to sell their goods or provide their services.

The information reported by platform operators has to be communicated by the competent authorities of the Member States where the reporting took place to the Member States where the Reportable Seller is a resident and/or the immovable property is located.

Exchange of information on request

The proposal includes a definition of the standard of foreseeable relevance that would apply in the event of a request for information. The definition sets out the elements of the standard and the procedural requirements with which the requesting authority must comply. It also provides for the possibility for tax administrations to make group requests for information which may concern a group of taxpayers that cannot be identified by name or on an individual basis but can be designated solely on the basis of a common set of characteristics.

Administrative cooperation

The proposal improves the existing rules by: (i) introducing an obligation on the requested competent authority to respond to a request for the presence of an official of another Member State during an enquiry; (ii) providing for a 30-day time limit within which the requested authorities must respond to a proposal for a simultaneous control and (iii) establishing an explicit and clear legal framework for carrying out joint audits between two or more Member States.

Budgetary implications

The impact on expenditure, including administrative expenditure, is estimated at EUR 1 306 million over 5 years.