Administrative cooperation in the field of taxation

2020/0148(CNS) - 10/03/2021 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 568 votes to 63, with 64 abstentions, under a special legislative procedure (Parliament's consultation), a resolution on the proposal for a Council directive amending Council Directive 2011/16/EU on administrative cooperation in the field of taxation.

As a reminder, the proposed revision of the Administrative Cooperation Directive provides that Member States will automatically exchange information on the income generated by sellers on digital platforms. It also suggests a series of adjustments to the Directive, including provisions on joint audits between tax authorities, an explicit reference to the possibility for a Member State to make group requests to another Member State or clarification of the concept of foreseeable relevance.

Parliament approved the Commission proposal subject to amendments.

Procedure governing the exchange of information on request

A tax authority that receives a request for information should provide it within a maximum of three months, rather than six, from the date of receipt of the request.

Before 1 January 2023, the Commission should present a report giving an overview and assessment of the statistics and information received on a country-to-country basis, on issues such as the administrative and other costs and benefits of exchange of information on request (including the number of requests accepted and refused), as well as the time taken to process them.

Scope of the automatic and compulsory exchange of information

The competent authority of each Member State should, by automatic exchange, communicate to the competent authority of any other Member State all information that is available or could reasonably be made available concerning residents in that other Member State, on the following specific categories of income and capital as they are to be understood under the national legislation of the Member State which communicates the information.

The competent authority should not negotiate and agree new bilateral or multilateral advance pricing arrangements with third countries that do not permit their disclosure to competent authorities of other Member States as from 1 January 2022.

Members proposed including an obligation for the Commission to publish annually anonymised and aggregated statistical data from country-by-country reporting to all Member States.

Registration

Foreign platforms should be required to register and report in one single Member State for the purpose of operating in the internal market, taking into account the location of their global or regional headquarters, their effective place of management as well as the existence of substantial economic activity in that chosen Member State, in the absence of identification for VAT purposes.

Disclosure of information and documents

Members proposed that information and documents received by a competent authority of a Member State under the Directive may be used for purposes other than tax purposes only insofar as it is allowed under the laws of the Member State of the competent authority receiving the information.

Assessment

Member States should communicate the results of their evaluation to the European Parliament and the Commission on an annual basis. A summary of those results should be made public, taking into account taxpayers' rights and confidentiality. The evaluation and analysis shared by Member States to the European Commission should be published insofar those evaluations do not disclose any information that can be attributable to a specific taxpayer.

The Commission would be required to publish annually anonymised summaries of the statistical data provided by Member States.

Excluded operators and activities

Members proposed including a definition of excluded relevant activities and excluded reporting platform operators in order to reduce the administrative burden on small platforms and to ensure that non-monetary and non-remunerated activities fall outside the scope.

This would exclude reporting operators whose turnover in the EU in the previous calendar year did not exceed EUR 100 000.

Penalties

Members considered it useful to provide for certain types of sanctions that Member States can use against platforms that do not fulfil their obligations and to proceed with the harmonisation of sanctions in the Member States to encourage uniform and effective implementation by platforms.

Member States are especially encouraged to consider as penalties options for restrictions of regulated means of payment, the charging of additional consequential fees per transaction, the exclusion of public contracts and, in extreme and repeated cases, the revoking of the business licence of the platform operator.

Review

No later than two years after the date of entry into force of this amending Directive, the Commission should present a report on the implementation and efficiency of the provisions introduced by the Council Directive and make specific proposals, including legislative proposals, for the improvement of that Directive.

When examining a proposal presented by the Commission, the Council should assess further strengthening of the obligation to report by the Reporting Platform Operators.