



COMPULSORY EXCHANGE OF INFORMATION ON CROSS-BORDER TAX RULINGS

The European Commission has introduced new guidelines regarding automatic exchange of information on cross-border tax rulings as part of a package of measures to combat tax avoidance and harmful tax competition. Once applied by Member States, the new automatic information exchange will begin in 2016. Another important measure in the package includes the repeal of the EU Savings Directive and an extension of country-by-country reporting by companies in all sectors.

Background

The tax rulings take the form of an amendment to the current EU Directive on Administrative Co-operation (DAC) in the field of direct taxation. Until 2015, the DAC only required spontaneous exchange of information. Although this could include tax rulings, it did not prove an effective mechanism due to its limited scope. In practice, very little information on tax rulings was shared. As of 2016, DAC was extended to include automatic exchange of information on certain types of income. However, tax rulings were not specifically covered. This omission was addressed in the Commission's Work Programme 2015 and has now resulted in the current measure.

Scope of new rules

The measures require member states to automatically exchange information on cross-border tax rulings with each other as well as with the Commission. This would apply for all rulings granted over the past ten years, as long as they are still in force.



The information must be exchanged on a quarterly basis. The minimum requirements for information to be covered include:

- Identification of the taxpaying entity;
- Group to which it belongs;
- Content of the ruling;
- Criteria used for transfer price;
- Identification of Member States;
- Other taxpayers possibly affected by the ruling.

Member States can request further information including the full text of the ruling in question. The new rules are widely drafted to include all arrangements entered into on behalf of a Member State regarding the interpretation or application of its tax laws that are granted ahead of the transactions concerned.

Domestic tax rulings and rulings concerning individuals are not covered.

Under the current proposals it will not be possible for a Member State to refuse to exchange information on tax rulings on the grounds of commercial secrets. However, the Commission considers such interests should be adequately protected under EU law.

Interaction with other initiatives

The Commission's proposals on tax rulings should be seen in the context of the OECD's similar proposals, advocating "compulsory spontaneous exchange" of tax rulings. However, not only are the latter non-legally binding but they are also more restricted in scope.

It should also be noted that the country-by-country reporting under the new proposals would involve public disclosure in line with the EU rules for banks.



Repeal of the EU Savings Directive

The reason for the proposed repeal of the Savings Directive is that its provisions have effectively been incorporated into other 2016 amendments to the DAC, by integrating the rules of OECD's Common Reporting Standard.

However Austria will continue applying the Savings Directive for one more year, with some minor exceptions. Once approved by all Member States, the proposals were implemented into their respective domestic legislation by the end of 2015 and applied as of 01 January 2016. The repeal of the Savings Directive has been an anticipated step given that the *Common Reporting Standard* was integrated into the DAC at the end of 2015.

Conclusion

This package of measures forms part of the various international initiatives aimed at fighting aggressive tax planning as well as increasing transparency in corporate tax matters. The Commission's proposal that all Member States should automatically exchange information on their tax rulings must be seen as a positive step as it will ensure a level playing field among Member States. Furthermore, the Commission reaffirmed at this occasion that tax rulings are not intrinsically problematic. In fact, many tax authorities provide them in order to give businesses the legal certainty that they need to have before putting in place large or complex commercial structures.