Taxation: scope of the mandatory automatic exchange of information in the EU

2016/0010(CNS) - 28/01/2016 - Legislative proposal

PURPOSE: to further extend the scope of the mandatory exchange of information in the field of taxation in the 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: as Multi National Enterprise (MNE) Groups are active in different countries, they have the possibility of engaging in aggressive tax planning practices that are not available for domestic companies. When MNEs do so, purely domestic companies, normally small and medium-sized enterprises (SMEs) may be particularly affected as their tax burden is higher than that of MNE Groups. On the other hand, all Member States may suffer revenue losses and there is the risk of competition to attract MNE Groups by offering them further tax benefits. There is therefore a problem for the proper functioning of the Internal Market.

In recent years, the challenge posed by tax fraud and tax evasion has increased considerably and has become a major focus of concern within the Union and at global level. The automatic exchange of information constitutes an important tool in this regard and the Commission in its Communication of 6 December 2012 containing an Action plan to strengthen the fight against tax fraud and tax evasion highlighted the need to promote vigorously the automatic exchange of information as the future European and international standard for transparency and exchange of information in tax matters.

The European Council Conclusions of 18 December 2014 cite "an urgent need to advance efforts in the fight against tax avoidance and aggressive tax planning, both at the global and EU levels". Since December 2014, the Commission has quickly launched the first steps towards an EU approach. In the meanwhile the Organisation for Economic Cooperation and Development (OECD) has finalized its work in defining the global rules and standards to these ends.

This Directive amending Council Directive 2011/16/EU as part of the Commission's Anti- Tax Avoidance Package, addresses the political priority of fighting against tax avoidance and aggressive tax planning. It also responds to the demands from the European Parliament outlined in its resolution of 21 May 2013.

IMPACT ASSESSMENT: no impact assessment was carried out for this proposal given that the proposal is in line with international developments at the level of the OECD and its work on Base Erosion and Profit Shifting (BEPS) where most EU Member States participate.

To provide up-to-date analysis and evidence, a separate Staff Working Document accompanying the proposal provides an extensive overview of existing academic work and economic evidence in the field of base erosion and profit shifting.

CONTENT: in order to tackle tax fraud and evasion and aggressive tax planning, the proposal seeks to amend Directive 2011/16/EU on administrative cooperation in the field of taxation, as amended by Directive 2014/107/EU and by Council Directive EU 2015/2376 by introducing a specific requirement for the AEOI on country-by-country report.

The main amendments introduced by the proposal are as follows:

Mandatory automatic exchange of information on country-by-country report:

- the Directive requires MNE Groups to provide annually and for each tax jurisdiction in which they do business certain information including the amount of revenue, the profit before income tax, the income tax paid and accrued, the number of employees, the stated capital, the retained earnings and the tangible assets. This information will enable the tax authorities to react to harmful tax practices through changes in the legislation or adequate risk assessments and tax audits. Increased transparency should also incentivize MNE Groups to pay their fair share of tax in the country where profits are made
- in order to ensure an appropriate balancing of reporting burden and benefit to tax administrations, only MNE Groups with total consolidated group revenue equal or higher than EUR 750 000 000, will be obliged to file the country-by-country report;
- the Directive requires Member States, once they have received the country-by-country report, to share the information with the Member States in which, on the basis of the information in the report, companies of the MNE Group are either resident for tax purposes, or are subject to tax with respect to the business carried out through a permanent establishment.
- Standard form and practical arrangements:
- the automatic exchange of information on country-by-country report shall be carried out using the standard form provided in the Annex to the Directive. The Commission shall, by means of implementing acts, adopt the linguistic arrangements for that exchange by 31 December 2016;
- information communicated shall be provided by electronic means using the common communication network (CCN) developed by the Union. The Commission shall, by means of implementing acts, adopt the necessary practical arrangements for the upgrading of the CCN network.

Penalties: Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented.

BUDGETARY IMPLICATIONS: the impact on expenditure (including human resources) is estimated at EUR 3.79 billion of the proposal on the EU Budget is presented in the financial statement accompanying the proposal, and will be met within available resources.

The costs of the additional IT tools to facilitate the communication of information between Member States would be funded out of the FISCALIS 2020 programme.