Taxation: mandatory automatic exchange of information in relation to reportable cross-border arrangements

2017/0138(CNS) - 21/06/2017 - Legislative proposal

PURPOSE: to strengthen the Union's fiscal transparency framework by introducing new rules for intermediaries in tax planning.

PROPOSED ACT: Council Directive.

ROLE OF THE EUROPEAN PARLIAMENT: the Council shall adopt the act after consultation of the European Parliament but without being obliged to follow the opinion of the European Parliament.

BACKGROUND: improving transparency, particularly through the exchange of information between tax administrations, is one of the main pillars of the Commission's strategy to combat tax avoidance and evasion.

Tax planning structures have become ever-more sophisticated. They consist of arrangements which develop across various jurisdictions and shift taxable profits towards beneficial tax regimes or have the effect of reducing the taxpayer´s overall tax bill.

Recent revelations, such as the Panama Papers, have highlighted how certain intermediaries actively assist clients to evade tax, usually through complex cross-border arrangements often involving often involving a company located in a jurisdiction which is low tax or non-transparent.

Council Directive 2014/107/EU, amending Directive 2011/16/EU on administrative cooperation between tax authorities within the Union introduced a common reporting standard (CRS) for financial account information within the Union.

The standard that was developed within the OECD Global Forum prescribes for the automatic exchange of information on financial accounts held by non-tax residents and establishes a framework for this exchange worldwide.

The Commission considers it crucial that information which may escape from the scope of this Directive be captured through placing an obligation on intermediaries to report on potentially aggressive tax planning arrangements.

The aim is to increase transparency and access to the right information at an early stage, as this should allow the authorities to improve the speed and accuracy of their risk assessment and make timely and informed decisions on how to protect their tax revenues.

IMPACT ASSESSMENT: the preferred option is the use of an EU Directive (binding instrument) requiring Member States to introduce a mandatory disclosure regime on potentially aggressive tax planning regime combined with exchange of information.

CONTENT: the proposal amends Directive 2011/16/EU on administrative cooperation in the field of taxation in order to provide for the mandatory disclosure of potentially aggressive tax planning arrangements and to extend the scope of the automatic exchange of information between tax authorities to include such arrangements.

Communication and automatic exchange of information: the proposal obliges intermediaries (e.g. tax advisors, accountants, banks, lawyers) who design or promote tax planning arrangements that have a cross-border element to provide information to tax authorities.

The disclosed information shall be exchanged automatically amongst national tax authorities. In practice, the rules propose that the exchange is carried out through submitting the disclosed arrangements to a central directory which all Member States have access to. The Commission will also have limited access to the exchanged information.

Regarding the operational aspects of the mandatory automatic exchange of information, the proposed Directive refers to the mechanism introduced by Council Directive (EU) 2015/2376, i.e. common communication network (CCN). This will serve as a common framework for the exchanges and for this purpose its scope will be enlarged.

Burden of disclosure: the obligation of disclosure concerns those persons (i.e. natural or legal persons or entities without legal personality) who are identified as intermediaries.

The obligation to report a cross-border scheme shall be borne by the taxpayer (company or individuals) using the scheme: (i) when the intermediary providing the cross-border scheme is not based in the EU, or where the intermediary is bound by professional privilege or secrecy rules; (ii) when it is developed by in-house tax consultants or lawyers.

List of hallmarks: the proposal includes a compilation of the features and elements of transactions that present a strong indication of tax avoidance or abuse. These features and elements are referred to as 'hallmarks' and it suffices that an arrangement fall within the scope of one of those to be treated as reportable to the tax authorities. Intermediaries must make this report to their tax authorities within five days of giving such an arrangement to their client.

The subsequent automatic exchange of information on these arrangements shall happen every quarter of a year.

Penalties: Member States shall lay down penalties against the violation of national rules that implement this Directive and ensure that these penalties actually apply in practice, that they are proportionate and have a dissuasive effect.

BUDGETARY IMPACT: the impact on expenditure is estimated at EUR 0.686 million over five years.

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the EU.