

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

2017/0138(CNS) - 01/03/2018 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 541 votes to 33, with 61 abstentions, following the consultation procedure, a resolution on the proposal for a Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements.

Parliament approved the Commission proposal subject to the following amendments:

Objectives of the Directive: Parliament considered that it is key not to compromise the principle of tax equality in a context where the gap between corporate tax rates in the Member States and between Member States is widening. It stated that the Directive shall aim to significantly limit the catastrophic consequences of tax evasion and tax avoidance on the public accounts and to improve the functioning of the internal market through discouraging the use of cross-border aggressive tax planning arrangements.

Members also stressed the urgency of a better exchange of information on tax avoidance arrangements, given the various easy options that the use of intellectual property rights give for the artificial transfer of profits.

Automatic and mandatory exchange of information on cross-border arrangements: the proposal obliges each Member State to take the necessary measures to ensure that intermediaries provide information to the relevant tax authorities on reported cross-border arrangements.

Members have suggested that while conducting statutory audits of statements of their clients, auditors shall be subject to identification and disclosure obligations regarding potential breaches of the audited entity or its intermediaries of the identification and disclosure obligations which the auditor has become aware. Each Member State shall take the necessary measures to require auditors to file information with the competent authorities on such breaches within 10 working days, beginning on the day after the publication of their audits reports.

Each Member State may, where appropriate, take the necessary measures to give intermediaries the right to a waiver from filing information on a reportable cross-border arrangement or series of such arrangements where they are entitled to a legal professional privilege under the national law of that Member State. In such circumstances, the obligation to file information on such an arrangement or series of arrangements shall be the responsibility of the taxpayer and intermediaries shall inform in writing taxpayers of this responsibility due to the privilege, keeping an acknowledgment of receipt signed by the taxpayer. The taxpayer shall report the information on the reportable cross-border arrangement or series of arrangements to the competent authorities within 10 working days.

Each Member State shall take the necessary measures to require intermediaries, auditors and taxpayers to file information on reportable cross-border arrangements that are active on the date of entry into force of this Directive and those that will enter into force thereafter.

Reporting formats shall be succinct and easy to use so as not to hinder concrete action against reported practices.

Commission access to information: the Commission shall be able to access relevant information so that it can monitor the proper functioning of this Directive and carry out its responsibilities under competition policies.

In order to enhance legal certainty for intermediaries and taxpayers, the Commission shall publish a list of the reported cross-border arrangements that could potentially be used for tax avoidance purposes, without making any reference to the intermediary or taxpayer.

Each year, Member States shall submit to the Commission a list of the cross-border arrangements that are regarded by the relevant tax authority as being compliant with this Directive.

Penalties: appropriate penalties should be imposed to prevent and suppress potentially aggressive cross-border tax planning arrangements. The exchange of information between tax authorities regarding the imposition of penalties and situations where the Member State has refrained from imposing penalties should also be automatic.

Member States shall submit to the Commission and make publicly available a list of intermediaries and taxpayers on whom penalties have been imposed under this Directive, including names, nationalities and residences.

Inclusion of a new measure: every two years, the Commission shall publish a draft update of the list of hallmarks that define aggressive tax planning to include any new or modified tax evasion and tax avoidance arrangements that will have been identified since the previous update was published and should be brought into force within four months of the publication of the draft update.