

Euro Tax Flash

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Euro Tax Flash from KPMG's EU Tax Centre



EU proposals for compulsory exchange of information on cross-border tax rulings

[European Commission – Tax transparency – Automatic exchange of information – Tax rulings](#)

Today, the European Commission released draft legislation 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. If approved by Member States the new automatic exchange would apply from 2016. Other measures proposed in the package include a repeal of the EU Savings Directive and a possible extension of country-by-country reporting by companies in all sectors.

Background

The proposals on tax rulings take the form of an amendment to the current EU Directive on Administrative Co-operation (DAC) in the field of direct taxation (2011/16/EU). Until 2015 the DAC only required spontaneous exchange of information and, although in practice this could include tax rulings, it was not considered an effective mechanism mainly because of its limited and uncertain scope. In practice very little information on tax rulings has been

shared. As from 2015 (and again from 2016) the DAC has been extended to include automatic exchange of information on certain types of income (see [ETF 242](#)), but tax rulings are not specifically covered. This omission was addressed in the Commission's [Work Programme 2015](#) and has now resulted in the current proposals.

Scope of new rules

The proposals would require Member States to exchange information on cross-border tax rulings, including APA's automatically with each other as well as with the Commission. This would apply for all rulings granted over the past 10 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 the identification of the taxpayer and the group to which it belongs, the content of the ruling/APA, the criteria used for the transfer price in the case of an APA, and identification of Member States and other taxpayers possibly affected by the ruling/APA. Member States can in principle 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 to be covered.

Under the current proposals it will not be possible for a Member State to refuse to exchange information on tax rulings on grounds of commercial secrets. However, the Commission considers such interests would 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 in BEPS action 5, which advocates "compulsory spontaneous exchange" of tax rulings. However, not only are the latter non-legally binding but they are also more restricted in scope.

The proposed exchange of information on tax rulings should be distinguished from the recent investigations by the Commission into tax rulings of certain multinationals in the context of state aid (see, e.g. [ETF 244](#)). Although the information on rulings will also be exchanged with the Commission, that does not mean that a Member State no longer has to notify the Commission in advance of state aid.

The reason for the proposed repeal of the Savings Directive is that its provisions have effectively been incorporated into the 2016 amendments to the DAC. It should also be noted that the country-by-country reporting being considered under the new proposals would involve public disclosure, in line with the EU rules for banks and the extractive industry, rather than that envisaged under the OECD's BEPS action 13.

Next steps

If approved by all Member States the proposals must be implemented into their domestic legislation by the end of 2015, and be applied from January 1, 2016. The Commission is expected to publish an action plan on corporate taxation before the Summer 2015, that will address the Common Consolidated Corporate Tax Base (CCCTB) initiative and ideas for integrating OECD/BEPS proposals into EU law.

EU Tax Centre Comment

This package of proposals forms part of the various international initiatives aimed at aggressive tax planning and transparency and should also be seen in light of the public debate on tax morality. Although the Commission has indicated that the information exchanged would be adequately protected, companies should bear in mind that they are also looking into the question of public disclosure. The timetable is ambitious and it may be questioned whether the infrastructure will be in place on time to effectuate the proposals in all Member States.

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