KPMG cutting through complexity

EURO TAX FLASH
KPMG'S EU TAX CENTRE

Euro Tax Flash
Issue 258 (update) – October 7, 2015

Euro Tax Flash from KPMG's EU Tax Centre

EU agreement on mandatory exchange of information on cross-border tax rulings

ECOFIN – Tax transparency – Automatic exchange of information – Tax rulings and APAs – Amending Directive 2011/16/EU

EU finance ministers yesterday agreed to introduce the automatic exchange of information on cross-border tax rulings. This is the latest outcome of the Commission's initiative to combat tax avoidance and harmful tax competition. The comments below on the new rules are based on the consolidated text of the political agreement reached in yesterday's ECOFIN meeting.

The agreed rules deviate from an earlier proposal (see ETF 247), in particular, in regard to the following:

- retrospective timeframe reduced to 5 years;
- certain small and medium-sized enterprises (SMEs) excluded from retrospective disclosure; and
- European Commission to have limited rights to the information exchanged.

Background

As part of its initiative to combat tax avoidance and harmful tax competition, the Commission issued a proposal in March this year to amend the current EU Directive on Administrative Co-operation (DAC) in the field of direct taxation (2011/16/EU) by requiring the mandatory automatic exchange of information for tax rulings and advance pricing arrangements (APAs). Now, seven months later, the Economic and Financial Affairs (ECOFIN) Council has adopted an amended version of this proposal.

Amendments to earlier proposal

The Commission's earlier proposal required Member States to also automatically exchange information on cross-border tax rulings and APAs that were issued over the last 10 years. This retrospective period has been reduced to 5 years. More specifically, advance cross-border rulings and APAs issued, amended or renewed after December 31, 2011 fall within the scope of the new rules. However, rulings issued, amended or renewed before January 1, 2014, are only covered if they were still valid on that date.

Unlike the earlier draft, rulings and APAs concerning SMEs (other than SMEs conducting mainly financial or investment activities) do not have to be exchanged if they are issued, amended or renewed before April 1, 2016. The threshold agreed upon is a group-wide annual net turnover of a maximum of EUR 40 million.

In addition to exchanging the rulings with the competent authorities of all other Member States, information will also have to be communicated to the European Commission. However, the information provided to the Commission will be limited to generic information on the ruling or APA. Detailed information, such as the identification of the taxpayer or the content of the ruling, will be excluded from the information that is to be sent to the Commission.

The amended directive also takes account of concerns regarding trade secrets. The information to be disclosed should include a summary of the ruling, including a description of the relevant business activities or transactions, but exclude the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy.

The amended directive stresses the requirement for close coordination with OECD initiatives and refers to the standard forms and means of communication developed by the OECD's Forum on Harmful Tax Practices with respect to the form of mandatory automatic exchange of information.

Next steps

The detailed provisions to be included in the Directive are expected to be finalized before the end of 2015.The Member States will then have to transpose the proposals into their domestic legislation by the end of

2016. The implementation of the amended Directive at the national level will likely be carried out largely at the same time as the implementation of the OECD BEPS Action Plan (although the planned timeframes are not identical), resulting in similar rules also being transposed into the national law of non-EU Member States.

EU Tax Centre Comment

Amending the EU Directive on Administrative Co-operation in the field of direct taxation by extending it to cross-border rulings is another key EU initiative aimed at aggressive tax planning and transparency. Legislative action still needs to be taken on the initiatives introduced by the Commission in its action plan on corporate taxation in June 2015 (see ETF 253).

EU tax authorities are likely to welcome the reduction in the period for retroactive exchange, given the administrative burden involved. At the same time, limiting the disclosure in respect of trade secrets is likely to be welcomed by taxpayers.

Robert van der Jagt
Chairman, KPMG's EU Tax Centre
Partner, Meijburg & Co
vanderjagt.robert@kpmg.com

Barry Larking
Director EU Tax Services, KPMG's EU Tax Centre
larking.barry@kpmg.com

Back to top

KPMG's EU Tax Centre, Laan van Langerhuize 9, 1186 DS Amstelveen, Netherlands

This newsletter is published by KPMG International Cooperative in collaboration with KPMG's EU Tax Centre.