

Transfer Pricing Alert

KPMG IN POLAND

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Member states reached an agreement on the automatic exchange of information regarding tax rulings

Agreement on automatic exchange of information on tax rulings

On 6 October 2015 – seven months after the European Commission (EC) issued its initial proposal – delegates to the Economic and Financial Affairs Council (ECOFIN) meeting reached an agreement on the introduction of mechanisms for automatic exchange of information on cross-border tax rulings and advance pricing arrangements (APAs).

Automatic exchange of information is a component part of the EC's initiative on tackling tax avoidance and harmful tax competition. The Commission's proposals in this matter were first presented in March 2015 as a draft directive amending the Council Directive 2011/16/UE of 15 February 2011 on administrative cooperation in the field of taxation.

Basic assumptions

The Directive requires that Member States automatically exchange information on advance cross-border tax rulings and APAs. Such information will then be shared with all Member States and (with limited scope) with the Commission.

Upon receiving the information, each Member State will be allowed to demand more details regarding the specific case.

The information under the exchange mechanism will be stored in a central directory developed by the Commission, with full access by all Member States and limited access by the Commission (to the extent that is required for monitoring the correct implementation of the Directive).

The information exchanged under the new mechanism will include:

1. The identification of the person (other than a natural person) and the group of persons it belongs to.
- 2.1. A summary of the content of the advance cross-border ruling or APA, including a description of the relevant business activities, transactions or series of transactions (provided in abstract terms, not leading to disclosure of commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy).
- 2.2. Dates of issuance, amendment or renewal of the ruling or APA.
- 2.3. Start date of the period of validity of the ruling or APA (if specified).
- 2.4. End date of the period of validity of the ruling or APA (if specified).
- 2.5. Type of the ruling or APA.
- 2.6. Amount of the transaction or series of transactions (if referred to in the ruling or APA).

3.1. The description of the set of criteria used for the determination of the transfer price in the case of an APA.

3.2. The identification of the method used for determination of the transfer price in the case of an APA.

4. The identification of other Member States likely to be concerned by the ruling or APA.

5. Identification of any persons (other than a natural person) in the other Member States likely to be affected by the ruling or APA (indicating to which Member States the affected persons are linked).

6. Identification of whether the information communicated is based on the ruling or APA itself or upon the request for a bilateral or multilateral APA.

Information from 1., 2.1., 3.1. & 5. above will not be communicated to the Commission.

Information on tax rulings or APAs issued, amended or renewed between 1 January 2012 and 31 December 2013 will be exchanged on the condition that they are still valid on 1 January 2014. Information on tax rulings and APAs issued, amended or renewed between 1 January 2014 and 31 December 2016 will be exchanged irrespective of whether they are still valid or not.

The amended Directive proposes a limitation to the above-described rule for small and medium enterprises, as Member States will have the possibility to not exchange information on tax rulings and APAs regarding such entities if they are issued, amended or renewed before 1 April 2016. Enterprises will be classified as small or medium provided that their annual net turnover at a group level (achieved in a tax year prior to the year when the ruling or APA was issued/amended/renewed) equaled less than EUR 40 million and provided that financial or investment activities do not constitute their core business activities. Additionally, the amended Directive addresses issues linked with protecting sensitive commercial information.

The amended Directive underscores the need for close coordination with initiatives taken up by the OECD and refers to standard forms and means of communication developed within the Forum on Harmful Tax Practices.

However, specific and detailed stipulations will be presented in the final draft Directive – until then, the definite and exact scope of the proposed regulation remains to be seen.

The work on final shape of the amended Directive is expected to be completed by the end of 2015. Member States will then be required to implement the modified rules into their legal systems by the end of 2016. Arguably, the transposition of the rules introduced by the amended Directive will happen concurrently with

the implementation of solutions developed by OECD within the BEPS project.

The proposed changes to the rules relevant to transfer pricing, transfer pricing documentation and the automatic exchange of information will be the subjects of a KPMG conference on 18 November. Please follow the link provided below to access the registration form:

<http://www.kpmg.com/PL/pl/Wydarzenia/Strony/Konferencja-KPMG-dotyczaca-nowej-dokumentacji-cen-transferowych.aspx>

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