

Mandatory Exchange of Information on Cross-Border Tax Rulings – Directive Adopted

December 2015

On 8 December 2015, the European Council adopted a **directive** aimed at improving transparency in cross-border tax rulings and advance pricing arrangements (APA) given by member states to companies. The precise rules on **automatic exchange of information** are based on the proposed legislative text discussed and approved at the ECOFIN meeting on 6 October 2015.

A **tax ruling** is an assurance which the Hungarian Ministry for National Economy (former Ministry of Finance) gives to a taxpayer about how certain aspects of taxation will be dealt with in any specific case. An **APA** is a type of tax ruling, issued by the tax authority to determine the method used and other relevant details of pricing to be applied to a transfer of goods or services between companies.

The directive will ensure that where one member state issues an advance tax ruling or transfer pricing arrangement, any other member state affected will be in a position to monitor the situation and the possible impact on its tax revenue.

As anticipated the legislation will take form as amendment to the current EU Directive on Administrative Co-operation (DAC) in the field of direct taxation (2011/16/EU), which sets out practical arrangements for exchanging information. The new rules have to be implemented by the member states by December 31 2016.

The agreed rules remain as they were in the earlier proposal with regards to the following

In addition to exchanging the rulings and APAs 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 only 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 Commission will be able to develop a secure central directory, where the information exchanged would be stored. The directory will be accessible to all member states and, to the extent that it is required for monitoring the correct implementation of the directive, 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/ APA, 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 the disclosure of which would be contrary to public policy.

Amendments to earlier proposal

ECOFIN's proposal would have required Member States to exchange information on cross-border tax rulings and APAs that were issued over the last 5 years automatically. Part of the rules for the **retrospective period** will, however, deviate from the earlier proposal. Originally, advance cross-border rulings and APAs issued, amended or renewed after December 31, 2011 should have fallen within the scope of the new rules, provided that they are still valid on January 1, 2017.

As the new rules will be applied **from 1 January 2017**, rulings issued after this date will naturally fall within the scope of the Directive.

Concerning rulings issued **before 1 January 2017**, unlike in the earlier draft the following rules will apply:

- If advance cross-border rulings and advance pricing arrangements are issued, amended or renewed between 1 January 2012 and 31 December 2013, such communication shall take place under the condition that they are **still valid on 1 January 2014**.
- If advance cross-border rulings and advance pricing arrangements are issued, amended or renewed between 1 January 2014 and 31 December 2016, such communication shall take place irrespectively of whether they are **still valid or not**.
- Member states will have the possibility (**not an obligation** as agreed in October) to exclude from information exchange advance tax rulings and pricing arrangements issued to companies with an annual net turnover of less than €40 million at a group level, if such advance cross-border rulings and advance pricing arrangements were issued, amended or renewed before 1 April 2016. However, this exemption will **not** apply to companies conducting mainly financial or investment activities.

KPMG's recommendation

As the tax rulings, based on the current Hungarian rules, are valid for 5 years starting from the issuance (until the end of 2020 in the case of rulings issued before 2015) we would like to draw your attention to the fact that even a higher number of tax rulings/APAs could potentially fall within the above described broadened scope of the relevant rules.

Accordingly, should you have a tax ruling/APA issued, amended or renewed after 31 December 2011 there is a strong likelihood that specific information on the rulings in question, such as the name of the taxpayer, description of the transaction and all other information mentioned in the Directive will form part of the exchange of information.

For this reason, in case you might be affected by the new rules, we think it would be reasonable for you to contact our consultants who have the appropriate expertise in this field and would be able to provide you with guidance and assistance in this respect.

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