

European Union:

Tax transparency package includes exchange of information on tax rulings

The European Commission published a tax transparency package on 18 March 2015 that contains proposals to combat tax avoidance by multinationals that threatens EU member states' tax revenues. A key component of the package is a proposal to introduce the automatic exchange of information between the tax authorities of EU member states on their tax rulings.

While tax rulings are granted to taxpayers primarily to provide legal certainty, rulings can result in tax base erosion where they are granted to offer selective tax advantages or to artificially shift profits to low or no-tax jurisdictions. The European Commission has already launched state aid investigations into specific tax rulings granted by several member states and has asked the targeted states to provide information on the rulings so the Commission can determine whether selective tax advantages are creating competitive distortions (for previous coverage, see *World Tax Advisor*, 9 January 2015).

URL: http://newsletters.usdbriefs.com/2015/Tax/WTAT/150109_ib.html

Under the tax transparency package, the EU directive on administrative cooperation in the field of taxation, as amended by the European Council in 2014, would be amended to require full transparency regarding cross-border tax rulings granted by the EU member states' tax authorities. (The directive currently requires member states to automatically exchange a broad range of financial information with each other, in line with the new OECD/G20 global standard for automatic exchange of information between jurisdictions.)

The proposed tax transparency ruling measures would require the tax authorities of EU member states to automatically exchange information about the cross-border tax rulings they grant with the tax authorities of other EU member states on a quarterly basis. If another EU member state has any questions about a ruling, it would have the opportunity to request additional information from the member state that granted the ruling, and it then would be able to act against abusive situations as appropriate.

Other features of the tax transparency package, which are specifically aimed at information exchange, include the following:

- The code of conduct on business taxation would be revised. The code of conduct contains criteria to determine whether a domestic regime in an EU member state is "harmful," in that it may result in tax benefits for certain companies. However, since the current conditions for establishing when harmful tax competition arises fail to take account of the more intricate tax structures that may lead to tax avoidance, the European Commission is contemplating changes to the code of conduct that would make the provisions more effective in "ensuring fair and transparent tax competition" within the EU.
- The EU savings tax directive would be repealed. The savings tax directive contains less extensive provisions on the exchange of information than those in the EU directive on administrative cooperation.
- Certain proposals would be directed at increasing the transparency of multinationals, including the public disclosure of their tax information. However, the Commission

recognizes that this proposal requires careful consideration and a decision on this issue has, therefore, been postponed.

- The European Commission would cooperate with Eurostat and the member states to quantify the precise scale of tax fraud and evasion, to develop measures that are better targeted against these issues.

Comments

The tax transparency package represents another ambitious initiative in the EU's efforts to combat tax avoidance and evasion and to ensure greater transparency and cooperation between EU tax authorities. In addition to the 1997 code of conduct on business taxation, the 2012 action plan to combat fraud and the revision of the administrative cooperation directive, the European Commission has been negotiating with Switzerland about the automatic exchange of information. As from 2018, Switzerland will automatically exchange data with the tax authorities of EU member states about holders of Swiss bank accounts. The Commission aims to conclude similar agreements with Andorra, Monaco and San Marino; the EU and these countries currently have agreements in place that are substantially similar to the savings tax directive.

The proposals will now be submitted to the European Parliament for consultation and then to the Council for approval, with the goal of obtaining agreement on the measures before the end of 2015, so the new regulations would become effective on 1 January 2016. However, it is unclear whether all EU member states will agree to the measures.

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