

PROFESSIONAL NEWS

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CONTACT PERSONS

New proposal to strengthen EU tax cooperation

On March 18, the EU Commission presented a proposal to amend an existing directive, aiming at combating corporate tax avoidance. The proposed amendment requires EU Member States to report all cross-border tax rulings and issued advance pricing arrangements to the Commission every three months. If adopted, the proposal would apply to all future rulings and pricing arrangements as well as all rulings and pricing arrangements issued within the last ten years that are still in force.

In order to challenge aggressive tax planning and abusive tax practices, the overall aim of the proposed amendment is to strengthen tax cooperation and transparency between EU Member States.

The proposal was announced by the European Commission on 18 March 2015. The proposal requires EU Member States to automatically exchange basic information about cross-border tax rulings and advance pricing arrangements with all other EU Member States.

EU Member States may, subject to certain conditions, request further and more detailed information and may even request the full text of the cross-border tax ruling or the advance pricing arrangement to be issued, if the EU Member State deems it relevant for the application of its own tax rules.

The proposal will amend the Directive on administrative cooperation between Member States (Directive 2011/16/EU).

The amendment thus introduces a mandatory and automatic exchange of information on tax rulings and advance pricing arrangements. If adopted the amendment will not only be relevant for tax rulings and advance pricing arrangements issued after the amendment becomes effective; it will include relevant tax rulings and advance pricing arrangements issued within the last ten years, if they are still effective. Information about such existing agreements must be exchanged between EU Member states before 31 December 2016.

Advance cross-border rulings and advance pricing arrangements issued after the amendment becomes effective must be exchanged with all EU Member states within one month following the end of the quarter



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during which the advance cross-border rulings or advance pricing arrangements have been issued or amended.

The proposal sets out a minimum requirement to the level of information that must be exchanged between all EU Member States as well as the European Commission.

The information to be supplied by a EU Member State must as minimum include (i) identification of the taxpayer and where appropriate the group of companies to which it belongs, (ii) the actual advance cross-border ruling or advance pricing arrangement, including a description of the relevant business activities or transactions or series of transactions to which it applies (iii) the identification of the other Member States likely to be directly or indirectly affected by the advance cross-border ruling or advance pricing arrangement, (iv) the identification of any legal entity (not individuals) in the other EU Member States likely to be directly or indirectly affected by the advance cross-border ruling or advance pricing arrangement.

For the purpose of information exchange, the EU Commission will set up a database in which information will be compiled. The database will be available to EU Member States and the European Commission only.

If approved by the Council, the proposed amendment will enter into force on 1 January 2016.

Concluding remarks

The purpose of the proposal is to ensure comprehensive and effective cooperation between tax administrations and to avoid abusive tax planning. We expect exchange of information at this level to prove an effective tool in the hands of tax authorities throughout the EU. Currently, several jurisdictions have little experience with issuing advance pricing agreements. Through the exchange of information between EU member states, it may be possible for the tax authorities to benefit from experiences throughout the EU.

Furthermore, the shared knowledge and know-how concerning the issue of cross-border tax rulings and advance pricing arrangements will presumably encourage the tax authorities to develop similar practices, thus reducing the challenges one often faces when applying for advance pricing arrangements and cross-border tax rulings.

However, the Danish Tax Authorities are already very active in this area, as Denmark currently holds tax information exchange agreements with close to 100 countries, including all EU countries as well as countries such as The Bahamas, the Cayman Islands and the British Virgin Islands.

Taxes and duties

EU law

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