

European Commission presents 'Tax Transparency Package'

March 25, 2015

In brief

The European Commission (EC) presented a 'Tax Transparency' package on March 18, 2015. The central feature is a transparency requirement for tax rulings. This means that tax authorities would be obliged to share a pre-defined set of information on all of their advance cross-border tax rulings with all other Member States. Recipient Member States would then be allowed to request more detailed information on a particular tax ruling if they believe that it is relevant to their own taxation rules.

With the Tax Transparency package the EC aims to re-establish the link between taxation and real economic activity and tackle corporate tax avoidance.

In detail

The EC has made the fight against tax evasion and corporate tax avoidance a political priority, with a goal of creating a socially and economically more efficient Single Market. The measures included in their Tax Transparency package should help inject greater openness into Member States' corporate tax regimes and make companies more accountable for their tax practices.

New transparency provisions for tax rulings

Based on the proposal in the Tax Transparency package, Member States would be obliged to automatically exchange information on their tax rulings. This would occur on a quarterly basis and would follow a standard format. Member

States would not be allowed to refuse or reduce information on the grounds of commercial secrecy or public policy.

With the automatic exchange of information, each Member State would know what cross-border tax rulings apply across the European Union (EU).

Furthermore each Member State could then assess for itself whether another Member State's tax ruling would have a negative impact on the position of a taxpayer that is a resident of that first Member State. This would better equip Member States to take the necessary measures to protect their tax base and to react to aggressive tax planning.

What is a tax ruling?

It is not yet clear what will qualify as a cross-border ruling. However, in order to avoid

divergent interpretations of what constitutes a tax ruling (which could enable some Member States to circumvent the new information exchange obligations) the EC has included a clear and very wide definition of a tax ruling in the Tax Transparency package. It is defined as "any communication or other instrument or action of similar effect, given by or on behalf of a Member State, regarding the interpretation or application of its tax laws."

In addition to automatically exchanging information on any future tax rulings, Member States would also be obliged to do so on any cross-border tax ruling issued since 2005. This provision should ensure transparency on nearly all currently valid rulings.

Purely domestic tax rulings would be exempt, as they do not have consequences for the Internal Market or other Member States. Tax rulings issued to natural persons would also be exempt, in order to avoid unnecessary administrative burdens and data protection and privacy issues.

What information on tax rulings would Member States be obliged to exchange automatically?

The Tax Transparency package outlines the standard information that Member States would have to include in the quarterly reports on their tax rulings. This covers:

- name of taxpayer and group (where this applies)
- a description of the issues addressed in the tax ruling
- a description of the criteria used to determine an advance pricing arrangement
- identification of the Member State(s) most likely to be affected
- identification of any other taxpayer likely to be affected (apart from natural persons).

The aim is to minimize the administrative burden, while ensuring that Member States have enough information to assess whether a tax ruling may be relevant. If it is, they can then request more detailed information from the Member State that issued the tax ruling.

Once the Tax Transparency package is adopted, the EC will work with Member States (on the basis of a delegated act) to standardize the way in which this information is presented (e.g., a form with pre-defined boxes to make it as easy as possible for Member States to compile and to read the information).

Other tax transparency measures

While the transparency provisions on tax rulings are the central feature of the Tax Transparency package, the EC has also set out a number of other initiatives which contribute to advance tax transparency in the EU. These include:

- repealing the Savings Tax Directive in order to ensure a streamlined and coherent framework for the automatic exchange of information
- assessing the impact of possible requirements for multinationals in

all sectors to publicly disclose certain corporate tax information

- reviewing how the Code of Conduct on Business Taxation can be improved so that it is more effective in ensuring fair and transparent tax competition within the EU
- exploring how to better quantify the level of tax evasion and avoidance in the EU, in order to better target measures against these problems.

The takeaway

The Tax Transparency package will first be sent to the European Council and will be processed in line with the general EU procedure.

As a next step, the EC intends to draft an action plan regarding corporate income tax. This will amongst others consist of launching the discussion regarding the Common Consolidated Corporate Tax Base (CCCTB) and ideas related to the integration of new OECD/G20 BEPS action plans at the EU level. The commission calls Member States to agree on the proposal by the end of 2015 so that it can enter into force on January 1, 2016.

Let's talk

For a deeper discussion of how this may affect your business, please contact:

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