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European Commission seeks to expand automatic information exchange between EU Member States

In brief

European Union (EU) Tax Commissioner Algirdas Šemeta on June 13, 2013 presented a Proposal for a Council Directive intended to combat tax evasion by expanding the scope of the automatic exchange of information ("AEOI") between EU Member States on "dividends, capital gains, all other financial income and account balances" and is planned to take effect from January 2015 related to the taxable period from 1 January 2014. Such an enhanced exchange of information would result in the EU having the most comprehensive tax information exchange system in the world and is intended to set the global standard for other nations to adopt in the future.

In detail

Commitment to greater information exchange

According to European Commission estimates, EU countries lose approximately one trillion Euros per year to tax fraud and tax evasion. "Particularly in these difficult economic times, honest taxpayers should not suffer additional tax increases to compensate for revenue losses incurred due to tax fraudsters and evaders," the European Commission stated in its draft proposal.

In 2010, the United States ("U.S.") enacted the Foreign Account Tax Compliance Act ("FATCA") setting a new bar in the fight against tax evasion under which the U.S. authorities will receive account information related to U.S. taxpayers with accounts with, or interests in, foreign financial institutions. The provisions of FATCA will be phased in through 2017 with the exchange of information beginning in 2015, meaning that the EU AEOI proposal, if agreed to in its current form, would take effect concurrently with FATCA. Several countries, including Denmark, Germany, Ireland, Japan, Mexico, Norway, Spain, Switzerland and the United Kingdom have signed intergovernmental agreements ("IGAs") with the U.S. to facilitate partner country implementation of FATCA by enacting local legislation intended to meet the objectives of the U.S. regulation or facilitating financial institutions in their jurisdictions to meet the requirements of FATCA. On April 9, 2013, France, Germany, Italy, Spain, and the United Kingdom announced plans to extend the scope of the AEOI using FATCA as a model, and invited other Member States to join this "pilot program." Since then, 12 additional countries, including Belgium, the Czech Republic, Denmark, Finland, Ireland, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, and Sweden have announced their intention to join this initiative.

FATCA, and, in particular, the IGAs have been a main catalyst for this drive toward greater tax transparency. Given the fact that EU Member States operate under a "most favoured nation clause" under Article 19 of the EU Administrative Cooperation Directive (2011/16/EU, "EUACD"), and the further fact that certain Member States will be sharing tax information with the U.S. would result in those States being required to share the same information within the EU. Therefore, in an effort to create a more efficient system and avoid a myriad of bilateral, and multilateral, agreements within the EU, the proposal presented by Mr. Šemeta would extend Article 8 of the EUACD to encompass the sharing of information included in FATCA and the related IGAs. Mr. Šemeta further stated that the information required to be shared under the proposed amendments would be more extensive than that which is required under FATCA in order to further avoid triggering the most favoured nation clause in the future.

Implementing the AEOI

For several years, the EU has been actively working on adopting specific legal tools to implement the AEOI within the EU. The EU Savings Directive ("EUSD"), in place since July 1, 2005, requires Member States to collect data on the savings accounts of non-resident individuals and automatically provide this data to the tax authorities of the individual's country of residence. A proposal to enhance the EUSD has been made and adoption of these revisions to the directive is planned for the end of this year.

With the upcoming G8 summit in Ireland next week, where tax compliance (transparency, fraud and evasion) is one of the key topics on the agenda , this proposal shows the EU's intention to lead by example and push for stronger tax governance internationally. Clearly, with national coffers seeking replenishment in these difficult global economic times, support in the application of fair and broad national tax rules is paramount.

The objective of the present draft provision is to bring dividends, capital gains, other financial income, and account balances within the scope of the AEOI. A review of the effectiveness and efficiency of the enhancements to the AEOI, particularly with regard to relevant costs and benefits to the Member States, would be included in a report to be submitted to the Commission prior to 1 July 2017.

Awaiting a final decision

The 27 EU Member States have not yet made a final decision, but the European Commission wishes to ensure that an appropriate decision is made soon. The draft proposal states: "A swift decision and its implementation are crucial in order to benefit from the advantages of such an agreement as quickly as possible." A decision on these enhancements is expected in the coming months, and no later than the end of this year. In the coming weeks we should expect feedback from the G8 regarding this proposal and potential international expansion of this effort for greater transparency.

The draft directive requires a mutual exchange of information between all 27 EU Member States. So far, 25 EU countries share information with each other. Currently this information is limited to the requirements of the EUSD and includes only interest income, with Luxembourg and Austria not participating in this exchange of information and instead applying a withholding tax on the relevant income to affected accounts. However, recently Luxembourg has expressed its intention to execute an IGA with the U.S. and, accordingly, begin to share this information within the EU. Austria also appears to be preparing to follow suit. Finally, the Commission has also been requested to negotiate more stringent agreements with non-EU nations within Europe, namely Switzerland, San Marino, Andorra, Monaco and Lichtenstein in order to ensure consistent information exchange within the region.

According to the statements of some Member States, the proposal does not go far enough on the subject of tax havens, referencing, for instance, the United Kingdom and their extraterritorial tax havens such as the Cayman Islands. Although these are not legally part of the EU, according to parliament members, they should, however, be fully involved in the exchange of information. The contrary would likely compromise negotiations with countries like Switzerland and other nations mentioned above.

The takeaway

Clearly the fight against tax fraud and tax evasion as well as increased transparency has become, and remains, high on the agenda in many nations. The European Commission has taken a significant step with the proposed amendments to the current AEIO which has multiple effects, including: (1) increasing tax transparency within the EU; (2) creating a universal standard within the EU for the exchange of information; (3) the avoidance of bilateral or multilateral agreements which may be sought due to the impact of the most favoured nation clause as it relates to current and future IGAs with the U.S.; and, (4) setting a global standard for the exchange of information which may act as a template for the rest of the world to leverage.

The proposal, if agreed to in its current form, would result in the exchange of information to commence in 2015 and include information related to the 2014 tax year, parallel to FATCA. This is a challenging timeline and developments should be monitored very closely.

Additional References

For more information related to FATCA, please visit our website at:
http://www.pwc.com/us/fatca

Useful links related to the European Commission's proposal and its fight against tax fraud and tax evasion can be found below:

Proposal for a Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation

European Commission website on the fight against tax fraud and tax evasion

Automatic Exchange of Information: Frequently asked questions

Homepage of Commissioner Algirdas Šemeta, EU Taxation and Customs Union, Audit and Anti-fraud Commissioner

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