

# Cross-border tax rulings: Council approves transparency rules

On 6 October 2015, the Council reached a political agreement on a directive aimed at improving transparency in the assurances given by member states to companies about how their taxes are calculated.

The directive is one of a number of initiatives aimed at preventing **corporate tax avoidance**.

It will require member states to exchange information automatically on advance cross-border **tax rulings**, as well as advance **pricing arrangements**. Member states receiving the information will be able to request further information where appropriate. And 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.

A tax ruling is an assurance that tax authorities give to taxpayers on how certain aspects of taxation will be dealt with in specific cases. An advance pricing arrangement is a type of a tax ruling, issued by tax authorities to determine the method and other relevant details of pricing to be applied to transfer of goods or services between companies.

"This is a decisive step towards greater transparency in tax matters," said Pierre Gramegna, minister of finance of Luxembourg and president of the Council. "The presidency managed to obtain this agreement in record time. Europe is sending a strong signal for greater equity in taxation of businesses worldwide."

## Tax planning

Tax planning by companies has become more elaborate in recent years, developing across jurisdictions. It involves, for example, the **shifting of taxable profits** towards states with more advantageous tax regimes, or **eroding the tax base**.

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

## International fora

The agreement on the directive is in line with developments within the OECD and its work on tax base erosion and profit shifting. G20 finance ministers are expected to approve the outcome of that work at a meeting in Lima on 8 October, which will then be submitted to G20 leaders at a summit in Antalya on 15 and 16 November 2015.

## Application

The directive will be adopted at a forthcoming Council meeting, once the European Parliament has given its opinion and it has been finalised in all official languages.

The new rules will have to be applied from **1 January 2017**. In the meantime, existing obligations to exchange information between member states will stay in place.

Concerning rulings issued before 1 January 2017, 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) 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.

### **Package of measures**

The Commission proposed the directive as part of a package of measures in March 2015. The text amends directive 2011/16/EU on administrative cooperation in the field of taxation, which sets out practical arrangements for exchanging information.

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