

Exchange of tax information

The need to improve the exchange of tax information is now widely accepted. The overall aim is to strengthen and update exchange of information provisions in order to make tax authorities better equipped to address tax avoidance, evasion and fraud in the European Union (EU). Lack of information-sharing between tax authorities prevents them from correctly assessing the actual tax situation when several countries are involved.

Tax exchange of information provisions in the European Union

Addressing tax avoidance, evasion and fraud

Tax [avoidance, evasion and fraud](#) involve individual as well as corporate taxpayers. Corporate tax avoidance aims to substantially reduce corporate tax bills to a minimum level unrelated to actual economic activity. The use of loopholes between different countries' tax systems, and companies shifting profits and losses through tax jurisdictions via [aggressive tax planning](#) can result in an erosion of a company's tax base, reducing the tax bill. Information-sharing between tax authorities is necessary to capture and address the cross-border nature of tax bases. The nature of the problem calls for a cross-border answer, [matching](#) the scale of the situation at stake to the amount of information needed to assess and address it. In other words, there is a need to ensure that a portion of a natural or legal person's revenue is not hidden due to the absence of exchange of information between Member State tax authorities.

Tax rulings provide taxpayers with legal certainty on how their situation will be dealt with by the tax authorities. Tax rulings and advance pricing arrangements (APA, a [specific type](#) of advance tax ruling, based on the internationally agreed principles underlying transfer pricing) can be used to confirm agreements setting transfer prices, which themselves influence the distribution of taxable profit between the subsidiaries of a company. They can also be used for tax-avoidance purposes.

Provisions on exchange of information

Administrative cooperation in the field of taxation in the EU aims to enable exchange of information relevant to the administration and enforcement of domestic laws of Member States. Directive [2011/16/EU](#) on administrative cooperation in the field of taxation (DAC) provides the basis for exchange of information (on request, administrative enquiries, mandatory exchange of information and spontaneous exchange of information), and other forms of administrative cooperation. At EU level it will implement the automatic exchange of financial account information; the 'Global standard' (Automatic Exchange of Information, [AEOI](#)) of the Organisation for Economic Co-operation and Development (OECD), added into the DAC by Directive [2014/107/EU](#), or DAC2.

This [global standard](#) (namely a 'Common reporting standard' and a 'Model competent authority agreement') prepared by the [OECD](#) and the [Global Forum](#) (including OECD and non-OECD members) was endorsed by both the G8 and G20. Countries began signature of the 'multilateral competent authority agreement to automatically exchange information under the standard' in autumn 2014.

Provisions under revision

The European Commission [transparency package](#) was presented in March 2015, following public exposure of controversial corporate tax practices; a debate on which took place at the [March plenary](#) session. The package includes six elements, two pertaining to the amendment of the DAC to insert compulsory exchange of tax rulings and streamline legislation on automatic exchange of information, by repealing the Savings Tax Directive. Another tax information exchange measure is the conclusion with [non-EU countries](#) (Andorra, Liechtenstein, Monaco, San Marino and Switzerland) of amending protocols to the 2004 agreements. The protocol amending the existing savings agreement with Switzerland was the first signed.

Compulsory exchange of tax rulings

The March 2015 [proposal](#) for a directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (DAC3) was presented to the Council for adoption and the European Parliament for consultation. [Currently](#) tax rulings are not defined as such in the DAC. They are covered by the spontaneous exchange of information provision, when any other Member State is deemed concerned by the competent tax authority, and grounds of commercial secrecy or public policy do not apply. The proposal [provides](#) definitions of cross-border tax rulings and APAs relating to legal persons (excluding tax rulings for individuals) and adds them into the scope of mandatory exchange of information, on a three-month basis. It renders the limitations based on commercial secrecy and public policy grounds non-applicable, and provides for its application to valid tax rulings and APAs granted over the preceding ten years. The proposal also includes specific reporting and monitoring provisions.

On 6 October 2015, the [Council](#) reached a [political agreement](#) on the text (which will be adopted once the EP and advisory Committees' opinions are received by the Council), meaning it could be applicable as from 1 January 2017. The main amendments compared to the Commission proposal relate to the retroactivity period: back five years from implementation (that is back to 1 January 2012) for cross-border, still valid, tax rulings, and back three years (back to 1 January 2014) for those no longer valid. As regards the scope, amendments relate to the possibility of exempting SMEs. Member States may exempt rulings issued, amended or renewed before 1 April 2016 which relate to companies with annual turnover below €40 million and mainly non-financial and non-investment activities. The [Commission](#) will receive a limited set of information for monitoring and assessing the proper application of the exchange of information, but this cannot be used for any other purpose. The exchange will be run over a six-month period.

From the reactions of [stakeholders](#), it appears that this political agreement is not so much a revolution as a simple evolution; [NGOs](#) stress that it is limited to providing more information to European tax authorities, the tax environment remaining unchanged (i.e. tax competition). Some [professional](#) organisations have raised concerns regarding the possibility to exempt some rulings, while others insist on the need to protect commercially sensitive information.

The EP report on the proposal was prepared by the Committee on Economic and Monetary Affairs (ECON) (rapporteur: Markus Ferber, EPP, Germany). It suggests including all tax rulings in the automatic exchange of information (instead of only cross-border rulings). In terms of retroactivity, it suggests covering all remaining valid tax rulings, including those issued before the five-year time limit. Finally, the Committee considers that the Commission should have access to the tax rulings in the same way as Member States.

Repealing Savings Tax Directive

The [second legislative proposal](#) in the March 2015 tax transparency package would repeal the existing Savings Tax Directive. The [objective](#) is to minimise compliance costs for users by making the EU legal framework simpler, with a single system for exchange of information in line with the AEOI. This system was integrated in the DAC2 revision in December 2014. Indeed, this one has broader scope, encompassing and taking precedence over the provisions of the Savings Tax Directive.

The EP has been consulted on the proposal, with its report prepared by the ECON Committee (rapporteur: Molly Scott Cato, Greens/EFA, United Kingdom). The Council has not yet come to a decision.

Tax agreement with Switzerland

This agreement is one of five signed with neighbouring countries in 2004. It aims to update the 2004 Swiss agreement with the provisions of the AEOI global standard (the 2004 agreement was equivalent to the provisions of the 2003 [Savings Tax Directive](#)). The global standard, implemented by the December 2014 DAC revision, was signed by Member States and neighbouring countries, including Switzerland. The EU-Switzerland agreement on the automatic exchange of financial account information was signed on 27 May 2015.

The agreement has been [transmitted](#) to the [EP](#) for consultation, with the ECON Committee report prepared by Jeppe Kofod (S&D, Denmark). The agreement will also require that the approval process is completed in [Switzerland](#).