Access to anti-money laundering information by tax authorities

To tackle tax avoidance and evasion problems brought into the spotlight by the media (such as the Panama Papers) and in order to improve tax transparency, the European Commission has proposed to enable tax authorities in the EU to have access to national anti-money-laundering information.

Context

As highlighted by media leaks, some taxpayers seek to avoid or evade paying taxes in their country of residence. To combat this, EU tax authorities have agreed to enhance their cooperation. The key legal tool is Council Directive 2011/16/EU which provides for practical instruments and establishes procedures for better cooperation (such as exchanges of information, controls and mutual notifications). This Directive has been amended three times, including by Directive 2014/107/EU which requires that (i) information on account-holders of financial accounts is reported to the Member State where the account-holder is resident, and (ii) where the account-holder is an intermediary structure, relevant financial institutions are to examine that structure with a view to identifying and reporting its beneficial owners (e.g. natural persons who exercise control over an entity). Practical application involves relying on information which can be obtained under provisions of the Anti-Money-Laundering (AML) Directive (EU) 2015/849.

Commission proposal

One area for improvement identified by the Commission in its recent efforts to boost tax transparency is ensuring that tax authorities have greater access to data provided under the EU's AML rules, particularly information on beneficial owners of intermediary entities and on customer due diligence (checking the identity of customers and monitoring account activity for suspicious transactions). Currently, Member States can choose whether to provide this information: it is mandatory only in the context of the fight against money laundering and terrorist financing, and similar. Without access to AML information, tax authorities are not able to ensure correct application of the rules. On 5 July 2016, the Commission adopted a proposal to amend Directive 2011/16/EU so that tax authorities are given consistent access to AML information, procedures, documents and mechanisms. It also proposed that the new rules will apply as from 1 January 2017.

Adoption of the proposal

Tax matters are decided by the Council with the European Parliament (EP) only involved under the consultation procedure. The Committee on Economic and Monetary Affairs (ECON) adopted its report on 10 November 2016 (rapporteur: Emmanuel Maurel, S&D, France). It is due to be voted during the November plenary session. The Committee's amendments call for including AML information in mandatory automatic exchanges between national tax authorities, transmitting documents and information within six months of their collection to a Member State in which a beneficial owner is a taxpayer, and extending the date of entry into force and transposition to 1 January 2018. ECON also calls for extending the scope of AML information available to tax authorities, and the application of the new directive to virtual currency exchange services and custodial wallet providers. Access to AML information should further be guaranteed by the Member States through including it in a centralised public register. The Committee also underlines the importance of appropriate staff and ICT resources to process and share AML information.

The Economic and Financial Affairs Council reached agreement on the Commission's proposal on 8 November 2016 (indicating it would be applicable as of 1 January 2018), while the Economic and Social Committee adopted its opinion on 19 October 2016.

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