At a glance

Plenary – February II 2018

European Parliament

Tax transparency for intermediaries

Disclosure of tax information by tax intermediaries or taxpayers is seen as a tool to fight tax avoidance and aggressive tax planning, by providing tax authorities with a full picture and enabling them to address the part of a tax situation which falls within their jurisdictions. Parliament is due to vote in plenary in February on a Commission proposal to ensure automatic exchange of such information.

Background: Early information on cross-border arrangements to tax authorities

Challenges in addressing tax avoidance and tax planning stem from tax authorities having jurisdiction only over one territory (a country or part of one) whereas some taxpayers – multinational enterprises (MNEs) or high net worth individuals – operate globally. The role played by intermediaries (tax advice providers) in facilitating tax avoidance and aggressive tax planning was recently highlighted by the 'Panama papers' and 'Paradise papers'. The related investigations, in particular the EP's Money laundering, tax avoidance and tax evasion investigation (PANA) committee, shed light on the role some have played in helping tax avoidance, often through complex cross-border schemes involving routing assets to, or through, offshore entities.

When tax authorities are unaware of tax-planning arrangements, there is little likelihood of administrative or judicial review (which ultimately determines whether the avoidance strategy is legal or not and, consequently, whether there are taxes to pay). Increased transparency on tax intermediaries to report such cross-border tax-planning arrangements (mandatory disclosure regimes, MDR) before their implementation shifts the balance. Early information on cross-border arrangements, and automatic exchange of information between tax authorities, provide the relevant authorities with sufficient information to assess the part of an activity with multinational reach which falls within their jurisdiction. This is the objective of the OECD/G20 Base Erosion and Profit Shifting (BEPS) action 12, which provides a series of recommendations on the design of MDRs.

European Commission proposal

In June 2017, the Commission adopted a proposal to amend Directive 2011/16/EU as regards administrative cooperation in the field of taxation. It aims at ensuring early information on reportable cross-border arrangements, which meet identified criteria based on hallmarks, matching commonly found features in aggressive tax-planning schemes, indicating the types of schemes that would have to be reported (because they merit scrutiny, although not necessarily that they are harmful). The proposal sets an obligation to report cross-border arrangements designed by tax intermediaries or taxpayers, and for the information collected to be included in the automatic exchange of information between tax authorities within the EU (by submitting the arrangements disclosed to a central directory to which all Member States would have access).

European Parliament position

Parliament's Committee on Economic and Monetary Affairs Committee (ECON) adopted its report on 24 January 2018, under the consultation procedure. The report in particular supplements the proposal with several elements, amongst which are measures to strengthen it while clarifying the way in which a waiver may be granted to intermediaries. It also provides for access to the information by the Commission, and for it to report each year and regularly revise the list of hallmarks. The technical examination of the proposal in the Council took place in the second half of 2017, with a view to achieving an early agreement on this file during the first half of 2018.

Consultation procedure: 2017/0138(CNS); Committee responsible: ECON; Rapporteur: Emmanuel Maurel (S&D, France). See also our 'EU Legislation in progress' briefing.

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