Taxation: mandatory automatic exchange of information

2013/0188(CNS) - 12/06/2013 - Legislative proposal

PURPOSE: to expand the scope of the automatic exchange of information in the field of taxation in order to better combat fiscal fraud.

PROPOSED ACT: Council Directive.

ROLE OF THE EUROPEAN PARLIAMENT: the Council adopts the act after consulting the European Parliament but without being obliged to follow its opinion.

BACKGROUND: in recent years, the challenge posed by tax fraud and tax evasion has increased considerably and has become a major focus of concern within the European Union and worldwide. An increase in the efficiency and effectiveness of tax collection is therefore urgently needed. The automatic exchange of information (AEOI) constitutes an important tool in this regard.

Council Directive 2011/16/EU on administrative cooperation in the field of taxation provides that, from 2015, Member States will exchange information automatically upon availability on five categories of income and capital: employment, directors' fees, life insurance products not covered by other Directives, pensions and ownership of and income from immovable property.

Member States have now expressed a clear wish to go beyond current levels of cooperation. The European Council of 2 March 2012 invited the Council and the Commission to develop rapidly concrete ways to improve the fight against tax fraud. On 6 December 2012, the Commission presented an Action plan to strengthen the fight against tax fraud and tax evasion. The European Council on 22 May 2013 went even further, requesting the extension of AEOI at EU and global levels with a view to fighting against tax fraud, tax evasion and aggressive tax planning.

The agreements that many governments have concluded or will conclude with the US as regards the US Foreign Account Tax Compliance Act (FATCA) have given further impetus to AEOI as a way of combating tax fraud and evasion. On 9 April 2013, France, Germany, the United Kingdom, Italy and Spain announced plans for a pilot action on AEOI using the FATCA model agreed with the US as a basis.

The European Parliament adopted a resolution on 21 May 2013 emphasising that the EU should take a leading role in discussions on the fight against tax fraud, tax avoidance and tax havens and, in particular, in relation to the promotion of automatic exchange of information.

IMPACT ASSESSMENT: most Member States wish to take speedy action to increase AEOI. It has, therefore, become exceptionally urgent to provide for a consistent and coherent EU legal framework; for this reason, no impact assessment has been prepared.

LEGAL BASIS: Article 115 of the Treaty on the functioning of the European Union (TFEU).

CONTENT: the proposal aims to amend Council Directive 2011/16/EU to expand the scope of AEOI in the EU beyond that provided for in existing EU automatic information exchange arrangements. It provides for:

- the removal of a threshold below which a Member State may not wish to receive information from other Member States;
- the introduction of automatic exchange of information for dividends, capital gains, any other income generated with respect to the assets held in a financial account, any amount with respect to which the financial institution is the obligor (i.e. is legally or contractually obliged to pay) or the debtor, including any redemption payments, and account balances. Information about those new items will certainly be available as financial intermediaries will be required to report it to tax administrations under the agreements that Member States have concluded or will conclude with the US as regards FATCA;
- the review of the condition of availability to be undertaken in 2017 should be extended to all the five categories referred to in Directive 2011/16/EU so that the case for exchange of information by all Member States on all those categories be examined.

The time limits proposed for transposition and application of the new rules are 31 December 2014 and 1 January 2015 respectively, in order to align them with the dates applicable in respect of the categories of income and capital included in the existing Directive.

BUDGETARY IMPLICATION: the proposal has no budgetary implications.