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Tax Alert

Commission presents proposal for mandatory automatic exchange of information on cross-border tax rulings within the EU

PwC Tax

PwC has unrivalled expertise and knowledge of Gibraltar tax laws and practice.

Our tax experts provide support to individuals and businesses on all current tax issues and on resolving the complex issues involved in tax planning.

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On 18 March 2015, the European Commission presented a new “Tax Transparency Package”, which consists of three elements.

First, and most important, a legislative proposal for the mandatory automatic exchange of information on cross-border tax rulings within the EU, through amendments to the directive on administrative cooperation. That directive already obliges member states to ‘spontaneously’ exchange tax rulings which are foreseeably relevant to tax administrations and collection in any relevant other member state. With this proposal transparency is taken to the next level. Tax authorities would now have to share a pre-defined set of information on all of their advance cross-border tax rulings automatically with all other 27 tax authorities and the commission, on a quarterly basis, following a standard format:

- Name of taxpayer and group;
- A description of the issues addressed in the tax ruling;
- A description of the criteria used to determine an advance pricing arrangement;
- Identification of the member state(s) most likely to be affected;
- Identification of any other taxpayer likely to be affected (not: natural persons).

To avoid divergent interpretations of what constitutes a tax ruling, the commission proposes a definition of a tax ruling: "any communication or other instrument or action of similar effect, given by or on behalf of a member state, regarding the interpretation or application of its tax laws".

The commission says its proposal covers all advance cross-border tax rulings and all advance pricing arrangements which member states issue to companies and entities. In addition to automatically exchanging information on any future tax rulings, member states would also be obliged to do so on any cross-border tax ruling issued since 2005 that are still valid at the date of entry of the directive. Domestic tax rulings are exempt.

If adopted, the directive would no longer allow the current degree of discretion to member states for spontaneous exchange of cross-border tax rulings. The commission calls on member states to agree on the proposal by the end of 2015, so that it can enter into force on 1 January 2016, yet the Member States will need to reach unanimity in council.

The commission’s on-going EU State aid legal investigations into tax rulings are not affected by this proposal, which is part of the Commission’s policy agenda to tackle corporate tax avoidance and harmful tax competition in the EU.

Secondly, the commission issued a communication outlining other legislative and non-legislative elements of the tax transparency package to be rolled out over the next few months:

- Assessing possible new transparency requirements for multinationals;
- Reviewing the code of conduct on business taxation;
- Quantifying the scale of tax evasion and avoidance;
- An action plan on corporate taxation before the summer to focus on measures ‘to make corporate taxation fairer and more efficient within the Single Market’, including a re-launch of the CCCTB and ideas for integrating BEPS at EU level.

A third element of the tax transparency package is a proposal to repeal the EU savings directive, since the recently revised directive on administrative cooperation covers the same types of income. This duplication causes uncertainty and is to be terminated as soon as possible.

PwC is very well positioned to continue providing legal certainty to clients in this enhanced transparency environment.