

Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation

COUNCIL DIRECTIVE 2014/107/EU

of 9 December 2014

amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 115 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Economic and Social Committee⁽¹⁾,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) In recent years, the challenge posed by cross-border tax fraud and tax evasion has increased considerably and has become a major focus of concern within the Union and at global level. Unreported and untaxed income is considerably reducing national tax revenues. An increase in the efficiency and effectiveness of tax collection is therefore urgently needed. The automatic exchange of information constitutes an important tool in this regard and the Commission in its communication of 6 December 2012 containing an Action Plan to strengthen the fight against tax fraud and tax evasion highlighted the need to promote vigorously the automatic exchange of information as the future European and international standard for transparency and exchange of information in tax matters.
- (2) The importance of automatic exchange of information as a means to combat cross-border tax fraud and tax evasion has recently been recognised also at the international level (G20 and G8). Following the negotiations between the United States of America and several other countries, including all Member States, on bilateral automatic exchange agreements to implement the United States' Foreign Account Tax Compliance Act (commonly known as 'FATCA'), the Organisation for Economic Cooperation and Development (OECD) was mandated by the G20 to build on these agreements to develop a single global standard for automatic exchange of tax information.
- (3) The European Council on 22 May 2013 requested the extension of automatic information exchange at Union and global levels with a view to combating tax fraud, tax evasion and aggressive tax planning. The European Council also welcomed ongoing

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efforts made in the G20, G8, and OECD to develop a global standard for automatic exchange of financial account information in tax matters.

- (4) In February 2014, the OECD released the main elements of a global standard for automatic exchange of financial account information in tax matters, namely a Model Competent Authority Agreement and a Common Reporting Standard, which were subsequently endorsed by the G20 Finance Ministers and Central Bank Governors. In July 2014, the OECD Council released the full global standard, including its remaining elements, namely the Commentaries on the Model Competent Authority Agreement and Common Reporting Standard and the Information Technology Modalities for implementing the global standard. The entire global standard package was endorsed by G20 Finance Ministers and Central Bank Governors in September 2014.
- (5) Council Directive 2011/16/EU⁽²⁾ already provides for the mandatory automatic exchange of information between Member States on certain categories of income and capital, mainly of a non-financial nature, that taxpayers hold in Member States other than their State of residence. It also establishes a step-by-step approach to reinforcing automatic exchange of information by its progressive extension to new categories of income and capital and the removal of the condition that the information only has to be exchanged if available. Currently, given the increased opportunities to invest abroad in a wide range of financial products, the existing Union and international administrative cooperation instruments in the field of taxation have become less effective in combating cross-border tax fraud and evasion.
- (6) As highlighted by the request of the European Council, it is appropriate to bring forward the extension of automatic information exchange already envisaged in Article 8(5) of Directive 2011/16/EU with respect to residents in other Member States. A Union initiative will ensure a coherent, consistent and comprehensive Union-wide approach to the automatic exchange of information in the internal market which would lead to cost savings both for tax administrations and economic operators.
- (7) The fact that Member States have concluded or are close to concluding agreements with the United States of America relating to FATCA means that those Member States are providing or will provide for wider cooperation within the meaning of Article 19 of Directive 2011/16/EU, and are or will be under an obligation to provide such wider cooperation to other Member States as well.
- (8) The conclusion of parallel and uncoordinated agreements by Member States under Article 19 of Directive 2011/16/EU could lead to distortions that would be detrimental to the smooth functioning of the internal market. Expanded automatic information exchange on the basis of a Union-wide legislative instrument would obviate the need for Member States to invoke that Article, with a view to concluding bilateral or multilateral agreements that may be considered appropriate on the same subject in the absence of relevant Union legislation.
- (9) In order to minimise costs and administrative burdens both for tax administrations and for economic operators, it is also crucial to ensure that the expanded scope of automatic exchange of information within the Union is in line with international developments. To achieve this objective, Member States should require their Financial Institutions to

implement reporting and due diligence rules which are fully consistent with those set out in the Common Reporting Standard developed by the OECD. Moreover, the scope of Article 8 of Directive 2011/16/EU should be extended to include the same information covered by the OECD Model Competent Authority Agreement and Common Reporting Standard. It is expected that each Member State would have only one single list of domestically-defined Non-Reporting Financial Institutions and Excluded Accounts that it would use both when implementing this Directive and for the application of other agreements implementing the global standard.

- (10) The categories of Reporting Financial Institutions and Reportable Accounts covered by this Directive are designed to limit the opportunities for taxpayers to avoid being reported by shifting assets to Financial Institutions or investing in financial products that are outside the scope of this Directive. However, certain Financial Institutions and accounts that present a low risk of being used to evade tax should be excluded from the scope of this Directive. Thresholds should not be generally included in this Directive as they could be easily circumvented by splitting accounts into different Financial Institutions. The financial information which is required to be reported and exchanged should concern not only all relevant income (interests, dividends and similar types of income) but also account balances and sale proceeds from Financial Assets, in order to address situations where a taxpayer seeks to hide capital that in itself represents income or assets with regard to which tax has been evaded. Therefore, the processing of information under this Directive is necessary and proportionate for the purpose of enabling Member States' tax administrations to correctly and unequivocally identify the taxpayers concerned, to administer and enforce their tax laws in cross-border situations, to assess the likelihood of tax evasion being perpetrated, and to avoid unnecessary further investigations.
- (11) Reporting Financial Institutions could meet their information obligations towards individual Reportable Persons by following the detailed arrangements on communication, including its frequency, provided for by their internal procedures in accordance with their domestic law.
- (12) Reporting Financial Institutions, sending Member States and receiving Member States, in their capacity as data controllers, should retain information processed in accordance with this Directive for no longer than necessary to achieve the purposes thereof. Given the differences in Member States' legislation, the maximum retention period should be set by reference to the statute of limitations provided by each data controller's domestic tax legislation.
- (13) In implementing this Directive, Member States should use the Commentaries on the Model Competent Authority Agreement and Common Reporting Standard, developed by the OECD, as a source of illustration or interpretation and in order to ensure consistency in application across Member States. Union action in this area should continue to take particular account of future developments at OECD level.
- (14) The condition that automatic exchange may be subject to the availability of the information requested as provided for in Article 8(1) of Directive 2011/16/EU should not apply to the new items as introduced by this Directive into Directive 2011/16/EU.

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- (15) The reference to a threshold in Article 8(3) of Directive 2011/16/EU should be removed since such a threshold does not appear to be manageable in practice.
- (16) The review of the condition of availability to be undertaken in 2017 should be extended to all the five categories referred to in Article 8(1) of Directive 2011/16/EU, so that the case for exchange of information by all Member States on all those categories could be examined.
- (17) This Directive respects the fundamental rights and observes the principles which are recognised in particular by the Charter of Fundamental Rights of the European Union, including the right to the protection of personal data.
- (18) Since the objective of this Directive, namely the efficient administrative cooperation between Member States under conditions compatible with the proper functioning of the internal market, cannot be sufficiently achieved by the Member States but can rather, by reason of the uniformity and effectiveness required, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (19) In view of existing structural differences, Austria should be allowed to exchange information automatically under this Directive for the first time by 30 September 2018 instead of 30 September 2017.
- (20) Directive 2011/16/EU should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

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- (1) [OJ C 67, 6.3.2014, p. 68.](#)
- (2) Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC ([OJ L 64, 11.3.2011, p. 1.](#))