

Luxembourg – new Bill on the automatic exchange of information with respect to tax rulings and advance pricing agreements

31 March 2016

In brief

On 22 March 2016, Bill no. 6972 was submitted for approval by the Luxembourg Parliament. The Bill, which has now been published, aims to amend and supplement the Law of 29 March 2013 on the exchange of tax information.

The Law of 29 March 2013 transposed Directive 2011/16/EU on administrative cooperation in the field of taxation (“DAC”) into Luxembourg law. The Directive includes measures on the exchange of information on demand, the spontaneous exchange of information and the automatic exchange of information. This new Bill, when enacted, will transpose a third set of DAC-related measures set out in Amending Directive (EU) 2015/2376 (“DAC3”), which was adopted by the European Council on 8 December 2015. These measures deal specifically with the automatic communication of advance cross-border rulings (“Rulings”) and advance pricing arrangements (APAs) to the tax authorities of the EU Member States and to the European Commission.

In detail

DAC3 concerns measures requiring the mandatory automatic exchange of information: these have been widened to explicitly include advanced cross-border rulings and APAs.

The Bill implementing DAC3 therefore means that Rulings and APAs from the Luxembourg tax authorities will fall under the new legislation. The Luxembourg tax authorities must automatically exchange a detailed set of information (specified in the Bill – see further below) with other EU Member States’ tax authorities and the European Commission (to a more limited extent) for all cross-border Rulings or APAs issued, amended or renewed after 31 December 2016. Such exchanges must occur within three months of the end of the half of the calendar year during which the Ruling or APA was issued, amended or renewed.

Information, in the same form, on existing cross-border Rulings and APAs must also be communicated before 1 January 2018 to other Member States' tax authorities and to the European Commission (to a more limited extent) if they were issued, amended or renewed in the period commencing five years before 1 January 2017, as detailed below:

1. Where a Ruling or APA was issued, amended or renewed between 1 January 2012 and 31 December 2013, the information must only be communicated if the Ruling or APA was still applicable on 1 January 2014.
2. Where a Ruling or APA is issued, amended or renewed between 1 January 2014 and 31 December 2016, the information must be communicated regardless of whether the Ruling or APA is still applicable.

The Bill includes an exception from the above communication procedure in cases where a Ruling or APA was issued, amended or renewed before 1 April 2016 for a specific person or group of persons with a group-wide annual net turnover (as laid down in Article 48 of the Law of 19 December 2002 on the drawing up of annual accounts of Luxembourg entities) of less than EUR 40 million (or an equivalent amount in any other currency) in the preceding fiscal year. However, this exception does not apply to persons or groups of persons conducting primarily financial or investment activities.

The detailed set of information to be exchanged includes the following (non-exhaustive list):

- the person(s) and group to which it/they belong(s);
- a summary of the content of the Ruling or APA, including a description of the relevant business activities or transactions or series of transactions – to be provided in abstract terms so as to respect business secrecy or public-policy concerns;
- the date(s) on which the Ruling or APA was issued, amended or renewed;
- the start and end date of the period of validity of the Ruling or APA, if specified;
- the specific type of Ruling or APA;
- the amount of the transaction if referred to in the Ruling or APA;
- a description of the criteria used for determining the transfer pricing (or the transfer price in the case of an APA);
- other Member States, if any, likely to be concerned by the Ruling or APA; and
- any person (other than a natural person) in the other Member State(s) who is likely to be affected by the Ruling or APA.

All this information is now summarised in Form 777, which the Luxembourg tax authorities have already made available.

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