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NOTE

From: Presidency

To: Working Party on Tax Questions - Direct Taxation

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Subject: Proposal for a Council Directive amending Directive 2011/16/EU as regards access to anti-money-laundering information by tax authorities

Delegations will find attached the Presidency compromise on the abovementioned Commission proposal. New text is marked **bold and underlined**, deletions are marked with strikethrough.

2016/0209 (CNS)

Proposal for a

COUNCIL DIRECTIVE

amending Directive 2011/16/EU as regards access to anti-money-laundering information by tax authorities

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 and 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 Parliament¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Council Directive 2011/16/EU³ as amended by Directive 2014/107/EU⁴ applies as of 1 January 2016 to 27 Member States and as of 1 January 2017 to Austria. That Directive implements the Global Standard for Automatic Exchange of Financial Account Information in Tax Matters (“Global Standard”) within the Union. As such, it ensures that information on Account Holders of Financial Accounts is reported to the Member State where the Account Holder is resident.

¹ OJ C , , p. .

² OJ C , , p. .

³ 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).

⁴ 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 (OJ L 359, 16.12.2014, p. 1).

- (2) In addition, Directive 2011/16/EU stipulates that, where the Account Holder is an intermediary structure, Financial Institutions are to look through that structure, and identify and report its beneficial owners. That important element in the application of the Directive relies on anti-money-laundering ('AML') information obtained pursuant to Directive 2015/849/EU of the European Parliament and of the Council⁵ for the identification of the beneficial owners.
- (3) To ensure effective monitoring of the application by Financial Institutions of the due diligence procedures set forth in Directive 2011/16/EU, the tax authorities need access to AML information. In the absence of such access, those authorities would not be able to monitor, confirm and audit that the Financial Institutions apply properly Directive 2011/16/EU by identifying correctly and reporting the beneficial owners of intermediary structures.
- (3a) Directive 2011/16/EU encompasses other exchanges of information and forms of administrative cooperation between Member States. Access to AML information held by obliged entities pursuant to Directive 2015/949/EU within the framework of the administrative cooperation in taxation will ensure tax authorities will be better equipped to fulfill their obligations under Directive 2011/16/EU.**
- (4) It is therefore necessary to ensure the access by the tax authorities to the AML information, procedures, documents and mechanisms for the performance of their duties in monitoring the proper application of Directive 2011/16/EU **and for the functioning of all forms of administrative cooperation established by that Directive.**
- (5) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. Where this Directive requires that access to personal data by tax authorities be provided by law, this does not necessarily require an act adopted by the parliament, without prejudice of the constitutional order of the Member State concerned. However, such a law should be clear and precise and its application should be clear and foreseeable to persons subject to it, in accordance with the case-law of the Court of Justice of the European Union and the European Court of Human Rights.
- (6) Since the objective of this Directive, namely the efficient administrative cooperation between Member States and its effective monitoring under conditions compatible with the proper functioning of the internal market, cannot be sufficiently achieved by the Member States and can therefore, 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 the 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.

⁵ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

- (7) The customer due diligence carried out by Financial Institutions under Directive 2011/16/EU has already started and the first exchanges are to be finalised by September 2017. Therefore, in order to ensure that the effective monitoring of the application is not delayed, this Amending Directive should enter into force and be transposed by **as soon as possible and no later than** [1 January 2018~~7~~].
- (8) Directive 2011/16/EU should therefore be amended accordingly.

HAS ADOPTED THIS DIRECTIVE:

Article 1

In Article 22 of Directive 2011/16/EU, the following paragraph 1a is inserted:

“(1a) For the purpose of the implementation and enforcement of the laws of the Member States giving effect to this directive and to ensure the functioning of the administrative cooperation it establishes, Member States shall provide by law for access by tax authorities to the mechanisms, procedures, documents and information referred to in articles 13, 30, 31, ~~32a~~ and 40 of Directive 2015/849/EU of the European Parliament and of the Council*.

* Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73)”.

Article 2

1. Member States shall adopt and publish, by [31 December **2017**] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions [from 1 January **2018**].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the date of its adoption.

Article 4

This Directive is addressed to the Member States.

Done at Strasbourg,

For the Council

The President
