



# Newsalert EU Direct Tax Group

## Automatic exchange of information of advance cross-border tax rulings between Tax Authorities and the EC within the EU from 1 January 2017

### EU Direct Tax Group

The EUDTG is one of PwC's Thought Leadership Initiatives and embedded in PwC's Global Tax Policy Network. The EUDTG is a pan-European network of EU tax law experts and provides assistance to organizations, companies and private persons to help them to fully benefit from their rights under EU law.

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On 6 October 2015, EU Finance Ministers reached political agreement in Council to amend the existing Directive 2011/16/EU on administrative cooperation in the field of taxation. The Directive will require Member States to automatically exchange a basic set of information on advance cross-border tax rulings (rulings) and advance pricing arrangements (APAs), which are broadly defined. The Directive will ensure that where one Member State issues such ruling or APA, any other Member State affected is in a position to monitor the situation and the possible impact on its tax revenue. Member States receiving the basic set of information will be able to request further information, including the full text of the ruling or APA. The Commission will develop a central directory, where the information exchanged will be stored, which will be accessible to all Member States and, solely to the extent required for monitoring the correct implementation of the Directive, to the Commission.

From 1 January 2017, the information to be communicated by Member States, within 3 months following the end of the half of the calendar year during which the advance cross-border rulings or APAs have been issued, amended or renewed, will include:

- identification of the person (other than a natural person) and the group to which it belongs;
- summary of content of the ruling or APA, including a description of the relevant business activities or transactions or series of transactions provided in abstract terms so as to respect business secrecy or public policy;
- dates of issuance, amendment or renewal of the ruling or APA;
- start date of the period of validity of the ruling or APA, if specified;
- end date of period of validity of the ruling or APA, if specified;
- type of ruling or APA;
- amount of the transaction or series of transactions of the ruling or APA if referred to in the ruling or APA;
- description of the criteria used for the determination of the transfer pricing or transfer price itself in the case of an APA;
- identification of the method used for determination of transfer pricing or transfer price itself in the case of an APA;
- identification of the other Member States, if any, likely to be concerned by the ruling or APA;
- identification of any person (other than a natural person), in the other Member States, if any, likely to be affected by the ruling or APA; and
- the indication whether the information communicated is based upon the ruling or APA itself or upon the request that lead to the issuance of a bilateral/multilateral APA with a third country.

For rulings and APAs issued before 1 January 2017, a five-year look-back will apply:

- If rulings and APAs were issued, amended or renewed between 1 January 2012 and 31 December 2013, such communication shall take place under the condition that they are still valid on 1 January 2014.
- If rulings and APAs are issued, amended or renewed between 1 January 2014 and 31 December 2016, such communication shall take place irrespective of whether they are still valid or not.

Member States will have the possibility to exclude rulings and APAs issued to companies with an annual net turnover of less than €40 million at a group level, if such rulings and APAs were issued, amended or renewed before 1 April 2016. However, this exemption will not apply to companies conducting mainly financial or investment activities.

Where provisions of international treaties, in the framework of which bilateral/multilateral APAs with third countries were concluded, do not permit the disclosure of such APAs, basic information relating only to the requests that lead to the APAs' issuance will be automatically exchanged. More information on bilateral/multilateral APAs with third countries can be spontaneously exchanged, provided certain conditions are met.

The Directive will be adopted at a forthcoming Council meeting (probably December 2015).

