

**Revenue Arrangements for
Implementing EU and OECD Exchange
of Information Requirements In
Respect of Tax Rulings**

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1. Introduction

The purpose of this manual is to set out Revenue's arrangements for implementing:

- Council Directive (EU) 2015/2376 of 8 December 2015 which amends Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation; and
- the OECD framework for the compulsory spontaneous exchange of information in respect of rulings that was adopted as part of Action 5 of the OECD/G20 Base Erosion and Profit Shifting (BEPS) project.

In general, Revenue already engages in the exchange of information with other tax administrations as provided for in various legal instruments such as: Council Directive 2011/16/EU on administrative cooperation in the field of taxation (referred to above); Ireland's Double Taxation Agreements and Tax Information Exchange Agreements; and the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters¹. The extent of the exchange provided for and the taxes covered depends on the provisions in the relevant instrument.

In relation to tax rulings specifically, within the framework of the EU Council Code of Conduct on Business Taxation, EU Member States have agreed that the spontaneous exchange of information requirement provided for in Article 9 of Council Directive 2011/16/EU applies to cross-border rulings issued by a Member State where such rulings may affect the tax base of another Member State. Revenue's arrangements for implementing these requirements are set out in tax & duty manual [Part 37-00-35 - Revenue arrangements for implementing spontaneous exchange of information in respect of opinions/confirmations under Council Directive 2011/16/EU](#).

Council Directive (EU) 2015/2376 and the OECD framework agreed as part of Action 5 of the OECD/G20 BEPS project also provide for specific information exchange requirements in respect of tax rulings. While the Council Directive and the OECD framework share many common features there are a number of differences, including the timing of exchange, and so the details of each are set out separately in this manual.

The Council Directive provides for the mandatory automatic exchange of information on advance cross-border rulings and advance pricing arrangements (APAs) provided to companies and other entities in respect of all taxes except VAT, Customs Duties, Excise Duties and compulsory social security contributions. This information is to be exchanged with all other EU Member States and a more limited set of information is also to be shared with the European Commission. The subset of information that is to be shared with the Commission should not allow the identification of the underlying

¹ [Manual 35.01.01A](#) sets out the role of Exchange of Information Branch in International Tax Division in relation to the exchange of information under various legal instruments and provides guidance on the exchange of information on request and spontaneously.

taxpayer. The Directive is due to be transposed into Irish law by 31 December 2016 and the new measures will apply from 1 January 2017.

The OECD framework provides for the compulsory spontaneous exchange of information on six categories of taxpayer-specific rulings. In broad terms, the framework provides that relevant rulings are to be spontaneously exchanged with:

- the country of residence of all related parties with which the taxpayer enters into a transaction for which a ruling is granted or, the country of residence of related parties that have made payments giving rise to income benefitting from a preferential regime; and
- the country of residence of the ultimate parent company and the immediate parent company.

The OECD framework applies from 1 April 2016.

This document outlines the scope of each of these initiatives and the procedures for their effective implementation. [Section 2](#) provides an overview of the Council Directive, [Section 3](#) provides an overview of the OECD framework, [Section 4](#) sets out how the exchange of information provisions will be implemented by Revenue

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

2. Overview of Council Directive (EU) 2015/2376

2.1. Scope

Council Directive (EU) 2015/2376 amends Council Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.

Council Directive (EU) 2015/2376 requires Member States to exchange information on advance cross-border rulings and APAs that are provided to companies and other entities² in respect of all taxes except VAT, Customs Duties, Excise Duties and compulsory social security contributions³. Advance cross-border rulings that exclusively concern the tax affairs of an individual are specifically excluded.

It should be noted that the Directive applies to any advance cross-border ruling or APA provided by a Member State and is not just confined to intra-EU situations. For example, if a US tax resident company decides to carry out business activities in

² For the purpose of this manual, references to “companies and other entities” refers to persons as defined in Article 3, paragraph 11(b), (c) and (d) of [Council Directive 2011/16/EU](#).

³As per Article 2 of [Council Directive 2011/16/EU](#).

Ireland and seeks an opinion from Revenue on whether these activities constitute a Permanent Establishment (PE) for tax purposes, this opinion will come within scope of the exchange of information requirements provided for in the Directive.

The Directive requires a basic set of information in respect of each ruling to be exchanged with all other Member States. A sub-set of this information is also to be communicated to the European Commission.

The exchange of information requirements apply to advance cross-border rulings and APAs issued, amended or renewed on or after 1 January 2017. However the Directive also has a retrospective element whereby Member States are required to exchange information on certain past rulings. This retrospective element applies to:

- advance cross-border rulings and APAs issued, amended or renewed in the tax years 2012 or 2013 where these rulings are still valid on 1 January 2014; and
- any advance cross-border rulings and APAs issued, amended or renewed in the tax years 2014, 2015 or 2016 regardless of their period of validity.

Member States can refrain from exchanging information on certain rulings issued, amended or renewed prior to 1 April 2016 where the recipient of the ruling has a group-wide annual net turnover⁴ of less than €40million in the fiscal year preceding the year in which the ruling was provided. This is an optional exception and does not apply to persons conducting mainly financial or investment activities. This optional exception may only be applied to the look-back element of the Directive.

Definition of an Advance Cross-border Ruling

An *advance cross-border ruling* is any agreement, communication or any other instrument or action with similar effects, including one issued, amended or renewed in the context of a tax audit which:

- is issued, amended or renewed by a tax authority to a particular person or a group of persons, whether it is used or not;
- on which that person or group of persons is entitled to rely;
- concerns the interpretation or application of a legal or administrative provision concerning the administration or enforcement of national tax laws;
- relates to **1) a cross-border transaction or 2) the question of whether activities carried on by a person creates a PE; and**
- is provided in advance of the transactions or of the activities potentially creating a PE or the filing of the relevant return.

For the purpose of the definition of an advance cross-border ruling, a *cross-border transaction* is a transaction or series of transactions where:

⁴ As referred to in the Directive, net turnover for this purpose is as defined in point 5 of Article 2 of [Directive 2013/34/EU](#) known as the Accounting Directive i.e. the amount derived from the sale of products and the provisions of services after deducting sales rebates, VAT and other taxes directly linked to turnover.

- not all of the parties to the transaction or series of transactions are resident for tax purposes in the State;
- any of the parties is simultaneously resident for tax purposes in more than one country;
- one of the parties carries on business in another country through a PE and the transaction or series of transactions in question relates to that PE; **or**
- the transactions or series of transactions in question have a cross-border impact.

Definition of an APA

An *APA* is any agreement, communication or any other instrument or action with similar effects, including one issued amended or renewed in the context of a tax audit, which:

- is issued, amended or renewed by a tax authority to a particular person or a group of persons, whether it is used or not;
- on which that person or group of persons is entitled to rely; **and**
- that **1)** determines in advance of cross-border transactions between associated persons an appropriate set of criteria for the determination of the transfer pricing for those transactions, or **2)** that determines the attribution of profits to a PE.

For the purpose of the definition of an *APA*, a *cross-border transaction* is a transaction or series of transactions involving associated enterprises which are not all resident for tax purposes in the same country or a transaction or series of transactions that have a cross-border impact.

The recitals to the Directive clarify that the automatic exchange provisions apply to both binding and non-binding rulings.

Extracts from Council Directive (EU) 2015/2376 and Council Directive 2011/16/EU detailing the relevant definitions are provided at [Annex 1](#) and [Annex 2](#) respectively.

2.2. Information to be Exchanged

The Directive provides that a basic set of information on each ruling is to be exchanged with all other Member States and that a subset of this information is also to be communicated to the European Commission. If necessary, Member States can then request additional information on the ruling under the current provisions of the Directive on Administrative Cooperation (i.e. under Article 5 of Directive 2011/16/EU).

As regards Bilateral and Multilateral APAs, where the *APA* involves a non-EU country and the international agreement under which the *APA* was negotiated does

not permit disclosure of the APA to third parties, the information to be exchanged is to be taken from the request for the APA⁵.

2.3. Timeframe for Exchange

The information exchange must take place within three months of the half calendar year during which the ruling was issued, amended or renewed. This means that, for rulings provided in the first half of the calendar year, information has to be exchanged at the latest by the end of September of that year and, for rulings provided in the latter half of the calendar year, information has to be exchanged at the latest by the end of March of the following year.

As regards the look-back provision, Revenue will be required to exchange this information before 1 January 2018.

2.4. Full Text of Council Directive

Full text of Directive is available [here](#).

3. Overview of OECD Framework

3.1. Scope

The framework that has been agreed at OECD level as part of Action 5 of the OECD/G20 BEPS project provides for the compulsory spontaneous exchange of information on certain categories of taxpayer specific rulings and applies to rulings given both pre- and post-transaction. Taxpayer-specific rulings are defined as “*rulings that apply to a specific taxpayer and on which that taxpayer is entitled to rely*”⁶.

While the OECD framework refers to six categories of taxpayer-specific rulings, the sixth category is a general one which provides the Forum on Harmful Tax Practices⁷ (FHTP) with the option to broaden the obligation to spontaneously exchange information in the future to include other types of rulings that, in the absence of spontaneous exchange, could give rise to BEPS concerns. So, in practice, there are currently five categories of rulings that are subject to compulsory spontaneous exchange of information under the OECD framework. These are as follows:

⁵ As per Article 8a, paragraph 3 of Council Directive 2011/16/EU as amended by Council Directive (EU) 2015/2376.

⁶ Paragraph 97, chapter 5, section II A of OECD/G20 BEPS Action 5: Final Report.

⁷ In 1998, the OECD Committee on Fiscal Affairs (CFA) published the report “*Harmful Tax Competition: An Emerging Global Issue*”, which established a forum (the Forum on Harmful Tax Practices (FHTP)) to promote certain desirable features in tax systems. Since then, the FHTP has published a number of different reports on harmful tax practices and was mandated to address Action 5 of the BEPS Action Plan by the G20/OECD.

- Cross-border rulings related to preferential regimes. Currently, from Ireland's and Revenue's perspective, this refers to any cross-border opinions provided in respect of the Tonnage Tax or Knowledge Development Box regimes.
- Cross-border unilateral APAs or other cross-border unilateral tax rulings covering transfer pricing or the application of transfer pricing principles.
- Cross-border rulings that provide for a unilateral downward adjustment to a taxpayer's taxable profits that is not directly reflected in the taxpayer's financial or commercial accounts⁸. It has also been agreed to exchange information under this category on unilateral downward adjustments made by taxpayers under informal capital contribution or excess profit regimes even where no ruling has been issued by the tax authority.
- PE rulings. These are rulings that concern the existence or absence of a PE or the attribution of profits to a PE.
- Related Party Conduit Rulings. This refers to rulings which are given in respect of cross-border flows of funds or income through an entity in the country giving the ruling, involving a flow of funds or income to another country either directly or indirectly.

The framework applies to rulings issued on or after 1 April 2016. However, there is also a retrospective element whereby relevant countries are required to exchange information on rulings issued on or after 1 January 2010 and still in effect as from 1 January 2014. In practice, this retrospective element applies to:

- rulings issued or modified in the tax years 2010, 2011, 2012 or 2013 where they are still in effect on 1 January 2014; and
- all rulings issued or modified between 1 January 2014 and 31 March 2016, regardless of whether they are still in effect or not.

In broad terms, the framework provides that relevant rulings are to be spontaneously exchanged with:

- the country of residence of all related parties with which the taxpayer enters into a transaction for which a ruling is granted or, the country of residence of related parties that have made payments giving rise to income benefitting from a preferential regime; and
- the country of residence of the ultimate parent company and the immediate parent company.

Two parties are considered related if the one party holds, either directly or indirectly, at least 25% of the voting rights of the other or at least 25% of the value of any equity interest in the other. Two parties are also considered related where a third person holds, either directly or indirectly, at least 25% of the voting rights in both or at least 25% of the value of any equity interest in both.

⁸ This does not include correlative adjustments.

The general rule varies slightly for PE and related party conduit rulings. Table 1 below sets how to identify the country with which information needs to be exchanged in respect of each category of ruling.

Table 1: Countries with which information should be exchanged under OECD Framework

Category of Ruling	Country with which information needs to be exchanged
Cross-border Ruling Related to a Preferential Regime i.e. Tonnage Tax, Knowledge Development Box	<ul style="list-style-type: none"> The countries of residence of all related parties with which the taxpayer enters into a transaction for which a preferential treatment is granted or the country of residence of related parties that have made payments giving rise to income benefitting from preferential treatment (this rule also applies in a PE context); The country of residence of the ultimate parent company of the taxpayer; and The country of residence of the immediate parent company of the taxpayer.
Unilateral APA and any other cross-border unilateral transfer pricing ruling	<ul style="list-style-type: none"> The countries of residence of all related parties with whom the taxpayer enters into transactions that are covered by the unilateral APA or cross-border unilateral tax ruling; The country of residence of the ultimate parent company of the taxpayer; and The country of residence of the immediate parent company of the taxpayer.
Downward Adjustment Ruling	<ul style="list-style-type: none"> The countries of residence of all related parties with whom the taxpayer enters into transactions covered by the ruling; The country of residence of the ultimate parent company of the taxpayer; and The country of residence of the immediate parent company of the taxpayer.
PE Ruling	<ul style="list-style-type: none"> The country of residence of the head office or the country of the PE, as the case may be; The country of residence of the ultimate parent company of the taxpayer; and The country of residence of the immediate parent company of the taxpayer.
Related Party Conduit Ruling	<ul style="list-style-type: none"> The country of residence of any related party making payments to the conduit (directly or indirectly); The country of residence of the ultimate beneficial owner (which in most cases will be the ultimate parent company) of payments made to the conduit; and To the extent not already covered by the second point above, the country of residence of (a) the ultimate parent company and (b) the immediate parent company.

In summary, a ruling will be exchanged under this framework where:

- it is issued on or after 1 April 2016 (or comes within the look-back provisions);
- it falls within one of the five ruling categories;
- at least one of the relevant parties (as outlined in the second column of Table 1) is resident in a country covered by the framework; and

- there is a legal basis⁹ in place with the country in question to exchange information on the ruling.

A list of the countries that are covered by the OECD framework and with which we have a legal basis in place to spontaneously exchange information is provided in [Annex 3](#).

3.2. Information to be Exchanged

The OECD framework requires a basic set of information to be exchanged with affected countries. If necessary, and as a second step, the relevant tax administration can then request a copy of the ruling itself.

3.3. Timeframe for Exchange

Rulings are to be exchanged as soon as possible after they are issued and no later than three months after the date on which they become available to the competent authority.¹⁰ This timeframe is different to that provided for by the EU Directive (see section 2.3 above).

As regards the look-back provision, Revenue will be required to exchange information on past rulings by 31 December 2016.

3.4. Full Text of OECD Framework

The full text of the OECD framework can be found in Chapter 5 of the final report on Action 5 of the OECD/G20 BEPS project. This report is available [here](#).

4. Implementation by Revenue

4.1. Application of Exchange of Information Requirements

The exchange of information requirements outlined in sections 2 and 3 above apply to taxpayer-specific communications that Revenue provides to companies and other entities in respect of direct taxes¹¹ that come within the definition of an advance cross-border ruling or an APA as provided for by Council Directive (EU) 2015/2376 and/or that come within one of the five categories of rulings as provided for in the OECD

⁹ Legal bases for exchange in this context are: Council Directive 2011/16/EU on administrative cooperation in the field of taxation; Double Taxation Agreements and Tax Information Exchange Agreements (where the Tax Information Exchange Agreement provides for spontaneous exchange of information); and the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters.

¹⁰ This refers to certain Revenue officers in Exchange of Information Branch, International Tax Division who are authorised to exchange information with other tax administrations.

¹¹ For the purpose of this manual, a reference to direct taxes is a reference to all taxes except VAT, Customs Duties, Excise Duties and compulsory social security contributions. This includes Corporation Tax, Capital Gains Tax, Income Tax, Stamp Duty, Capital Acquisitions Tax, Dividend Withholding Tax and other withholding taxes.

framework. The requirements outlined in the EU Directive and OECD framework are not mutually exclusive and a Revenue communication may fall within both.

Taxpayer-specific communications in this context include the opinions that Revenue provide on the application of tax law to particular transactions, events or activities. Therefore, where such opinions come within scope of the exchange of information requirements provided for in the EU Directive and/or the OECD framework, Revenue will be exchanging the necessary information with other tax administrations.

Revenue practice and procedures for providing opinions are set out in published guidelines that are available on the Revenue website at www.revenue.ie as follows:

- Guidelines on [Revenue's Service to Practitioners and Business Taxpayers](#) that apply in relation to opinions sought by taxpayers whose affairs are dealt with in any one of Revenue's four Regions; and
- Tax Briefing 4 of 2014 – [Large Cases Division: Opinions/Confirmations on Tax/Duty Consequences of a Proposed Course of Action](#) that applies in relation to opinions sought by taxpayers whose affairs are dealt with by Revenue's Large Cases Division.

Unless the context implies otherwise, references to opinions in this manual include:

- the pre-transaction opinions or interpretations that Revenue provides, also referred to as confirmations or advance opinions;
- advance approvals or clearances that are required in certain circumstances under *legislation* for a particular tax relief or tax treatment to apply, also referred to as statutory clearances;
- advance approvals or clearances that are required in certain circumstances under Revenue *administrative practice* for a particular tax relief or tax treatment to apply;
- post-transaction opinions given in advance of the filing of the relevant return; and
- bilateral APAs¹².

In addition, the exchange of information requirements can also apply to opinions given in the context of a tax audit or other Revenue intervention and may also apply to responses provided by Revenue on foot of expressions of doubt. However, as these are by their nature backward looking, a cross-border opinion will only arise in this context where an explicit confirmation is provided to the taxpayer that can be relied upon for future tax periods or for periods for which returns have not yet been filed.

The new requirements do not apply to general communications published by Revenue such as tax briefings, instructions, statements of practice or guidance notes.

¹² Guidelines on the operation of Ireland's bilateral APA programme are set out in tax and duty manual [Part 35-02-07](#) Bilateral Advance Pricing Agreement Guidelines.

4.2. Opinions Issued from 1 April 2016 (re: OECD) and 1 January 2017 (re: EU)

From 1 April 2016 Revenue will be exchanging information on relevant opinions with affected countries in line with the OECD framework.

Similarly, from 1 January 2017 Revenue will be exchanging information on relevant opinions with all other EU Member States and a subset of this information will also be communicated to the European Commission.

4.3. Look-back Element

As each of these initiatives has a retrospective element Revenue will also exchange information on relevant past opinions that it has provided.

In line with Council Directive (EU) 2015/2376, Revenue will exchange, before 1 January 2018, information on relevant opinions provided:

- in the tax years 2012 and 2013 where they are “*still valid*” on 1 January 2014; and
- in the tax years 2014, 2015 and 2016 regardless of their period of validity.

Similarly, under the OECD framework, Revenue will exchange by 31 December 2016, information on relevant opinions provided in the tax years 2010, 2011, 2012 and 2013 where they are “*still in effect*” on 1 January 2014 and any relevant opinions issued after this date whether they are still in effect or not.

Revenue considers an opinion to be “*still valid*” or “*still in effect*” as long as it continues to be applied by the taxpayer for tax purposes. Therefore, an opinion is considered “*still valid*” or “*still in effect*” on 1 January 2014 where it has an impact on the taxpayer’s tax liability in respect of any accounting period ending on or after that date. As a consequence of this, opinions given in respect of once-off transactions (e.g. opinions on deferral of capital gains tax on a company reconstruction or amalgamation) that relate to accounting periods ending before 1 January 2014 will not be within scope of the look-back element of either of these initiatives.

4.4. Information to be exchanged

Under both the EU Directive and the OECD framework Revenue will be exchanging basic information on the opinion, including:

- The identity of the taxpayer to whom the opinion was issued (name, address, tax reference number etc.).
- The name of the group to which the taxpayer belongs, where appropriate.
- The opinion reference number, if any.
- The date the opinion was issued, amended or renewed.

- The start date and end date of the period of validity of the opinion, if specified.
- An indication of the type of opinion being exchanged.
- The amount of the transaction or transactions to which the ruling relates, if specified.
- A summary of the content of the opinion. This summary will not include information which would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process or of information the disclosure of which would be contrary to public policy¹³.
- Details of the taxpayer's main business activities, its annual turnover and its net profit or loss will also be provided where it is available to Revenue. As regards the turnover and profit or loss figures, these will represent the most recent figures that are available to Revenue, which will not necessarily be the figures for the accounting period in which the ruling was issued.

Where the ruling is being exchanged under the EU Directive, Revenue will also be providing:

- The identity of any other Member State likely to be concerned with the opinion.
- Details of entities in each of these Member States, if any, likely to be affected by the opinion.
- Where it is an APA:
 - a description of the set of criteria used for the determination of the transfer pricing or the transfer price itself;
 - the identification of the method used for determining the transfer pricing or the transfer price itself (where more than one method is used an additional explanation will be provided);
 - an indication of whether information communicated is based upon the APA itself or the request.

When exchanging under the OECD framework, Revenue will be required to identify the countries with which information needs to be exchanged. This will be determined in line with Table 1 in section 3.1 above. Revenue will also be required to provide details of the relevant entities in each of these countries.

4.5. Additional Information To Be Provided When Requesting An Opinion

The type of information to be provided when requesting an opinion is set out in paragraph 11 of Tax Briefing 4 of 2014 in respect of taxpayers whose affairs are dealt with by Revenue's Large Cases Division and in Appendix C of the Guidelines on

¹³ In relation to the disclosure of information which would be contrary to public policy, per the commentary to Article 26 of the Model Tax Convention on Income and Capital - "*this limitation should only become relevant in extreme cases. For instance, such a case could arise if a tax investigation in the requesting State were motivated by political, racial or religious persecution. The limitation may also be invoked where the information constitutes a State secret, for instance sensitive information held by secret services the disclosure of which would be contrary to the vital interests of the requested State*".

Revenue's Service to Practitioners and Business Taxpayers in respect of taxpayers whose affairs are dealt with in one of the four Revenue Regions.

When requesting an opinion from Revenue that comes within scope of the exchange of information requirements outlined in section 2 and 3 above, taxpayers or tax practitioners acting on their behalf, should provide the following additional information:

- Where the taxpayer is not resident in the State, their country of tax residence.
- Name of group to which taxpayer belongs, if applicable.
- Name and country of residence of any other party or parties involved in the transaction or situation.
- Details of any information included in the request that should **not** be disclosed due to the fact that it would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process.
- Where the opinion comes within scope of the EU Directive, the following information will need to be provided:
 - an indication of whether there are any tax implications that may be of relevance for the tax authorities of another Member State. Where it is considered that the opinion is not of relevance to the tax authority of any other Member State please indicate why this is the case. Revenue may seek additional information in this regard; and
 - the identity of the affected entities in each of the EU Member States mentioned above, including full legal name, address (should include city and country) and tax reference number, where known. **Note:** Where the entity is a PE this should be specified.
- Where the opinion comes within scope of the OECD framework, the following information will need to be provided:
 - where the company is part of a multi-national group, the country of residence of the immediate and ultimate parent companies and the identity of each of these companies, including full legal name, address (should include city and country) and, where known, any relevant reference number; and
 - the country of residence of all other related parties (as specified in Table 1 in section 3.1), the reason why they are considered related (i.e. % holding) and the identity of each of these parties including full legal name, address (should include city and country) and, where known, any relevant reference number. **Note:** Where the entity is a PE this should be specified.

Failure to provide this information may result in a delay in the opinion being issued as Revenue will have to seek this information before providing the opinion.

4.6. Notification to Taxpayers

From 1 April 2016 where a taxpayer, or a tax practitioner acting on their behalf, seeks an opinion from Revenue and it comes within scope of the exchange of information requirements in respect of cross-border tax rulings, Revenue will notify the taxpayer or tax practitioner accordingly and will provide the taxpayer or tax practitioner with a copy of the summary of the opinion that is to be exchanged. Revenue will also advise the taxpayer or tax practitioner of whether the opinion is being exchanged under the EU Directive or OECD framework. Where the opinion is subject to exchange under the OECD framework, Revenue will advise the taxpayer or tax practitioner of the countries with which information will be exchanged. The same procedure will also apply for past opinions coming within the lookback element of each of these initiatives.

As regards relevant opinions issued between 1 April 2016 and the date of issuance of this manual, taxpayers or, tax practitioners acting on their behalf, will be provided with this information as soon as practicable after the manual has issued.

The summary of the opinion will be provided to the taxpayer or tax practitioner for informational purposes only. It in no way replaces or alters the full text of the opinion provided to the taxpayer. Revenue will prepare the summary of the opinion based on the facts and circumstances presented. Revenue will not, in the normal course, enter into any correspondence with a taxpayer or practitioner in relation to the summary. In this regard, taxpayers or practitioners acting on their behalf should avail of the opportunity at the time the opinion is being requested to identify any information that should not be disclosed due to the fact that it would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process.

4.7. Confidentiality of Taxpayer Information

Information communicated between Member States pursuant to Council Directive (EU) 2015/2376 is covered by the obligation of taxpayer confidentiality and enjoys the protection extended to similar information under the national law of the Member State that receives it¹⁴. Confidentiality requirements also apply to information exchanged under the relevant legal instrument¹⁵ in line with the OECD framework.

4.8. Contact Details

Any queries in respect of this manual should be addressed to EU Branch, International Tax Division, New Stamping Building, Dublin Castle, Dublin 2, email EUBranch@revenue.ie or telephone (01) 8589866 or (01) 8589885.

¹⁴ This is provided for in Article 16 of Council Directive 2011/16/EU.

¹⁵ The relevant legal instrument in this context refers to: Council Directive 2011/16/EU on administrative cooperation in the field of taxation; Double Taxation Agreements and Tax Information Exchange Agreements (where the Tax Information Exchange Agreement provides for spontaneous exchange of information); and the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

A more recent version of this manual is available.

Annex 1: Extract from Article 1 of Council Directive (EU) 2015/2376

“14. “advance cross-border ruling” means any agreement, communication, or any other instrument or action with similar effects, including one issued, amended or renewed in the context of a tax audit, and which meets the following conditions:

- (a) is issued, amended or renewed by, or on behalf of, the government or the tax authority of a Member State, or the Member State's territorial or administrative subdivisions, including local authorities, irrespective of whether it is effectively used;*
- (b) is issued, amended or renewed, to a particular person or a group of persons, and upon which that person or a group of persons is entitled to rely;*
- (c) concerns the interpretation or application of a legal or administrative provision concerning the administration or enforcement of national laws relating to taxes of the Member State, or the Member State's territorial or administrative subdivisions, including local authorities;*
- (d) relates to a cross-border transaction or to the question of whether or not activities carried on by a person in another country create a permanent establishment; and*
- (e) is made in advance of the transactions or of the activities in another country potentially creating a permanent establishment or in advance of the filing of a tax return covering the period in which the transaction or series of transactions or activities took place.*

The cross-border transaction may involve, but is not restricted to, the making of investments, the provision of goods, services, finance or the use of tangible or intangible assets and does not have to directly involve the person receiving the advance cross-border ruling;

15. “advance pricing arrangement” means any agreement, communication or any other instrument or action with similar effects, including one issued, amended or renewed in the context of a tax audit, and which meets the following conditions:

- a) is issued, amended or renewed by, or on behalf of, the government or the tax authority of one or more Member States, including any territorial or administrative subdivision thereof, including local authorities, irrespective of whether it is effectively used;*
- b) is issued, amended or renewed, to a particular person or a group of persons and upon which that person or a group of persons is entitled to rely; and*
- c) determines in advance of cross-border transactions between associated enterprises, an appropriate set of criteria for the determination of the transfer pricing for those transactions or determines the attribution of profits to a permanent establishment.*

Enterprises are associated enterprises where one enterprise participates directly or indirectly in the management, control or capital of another enterprise or the same persons participate directly or indirectly in the management, control or capital of the enterprises.

Transfer prices are the prices at which an enterprise transfers physical goods and intangible property or provides services to associated enterprises, and “transfer pricing” is to be construed accordingly.

16. For the purpose of point 14 “cross-border transaction” means a transaction or series of transactions where:

- a) not all of the parties to the transaction or series of transactions are resident for tax purposes in the Member State issuing, amending or renewing the advance cross-border ruling;*
- b) any of the parties to the transaction or series of transactions is simultaneously resident for tax purposes in more than one country;*
- c) one of the parties to the transaction or series of transactions carries on business in another country through a permanent establishment and the transaction or series of transactions forms*

part or the whole of the business of the permanent establishment. A cross-border transaction or series of transactions shall also include arrangements made by a person in respect of business activities in another country which that person carries on through a permanent establishment; or

d) such transactions or series of transactions have a cross-border impact.

For the purpose of point 15, “cross-border transaction” means a transaction or series of transactions involving associated enterprises which are not all resident for tax purposes in the territory of a single country or a transaction or series of transactions which have a cross-border impact.

17. For the purpose of point 15 and 16, “enterprise” means any form of conducting business.”

The full text of the Directive is available [here](#).

Annex 2: Relevant Extracts from Council Directive 2011/16/EU

Article 2 - Scope

“1. This Directive shall apply to all taxes of any kind levied by, or on behalf of, a Member State or the Member State’s territorial or administrative subdivisions, including the local authorities.

2. Notwithstanding paragraph 1, this Directive shall not apply to value added tax and customs duties, or to excise duties covered by other Union legislation on administrative cooperation between Member States. This Directive shall also not apply to compulsory social security contributions payable to the Member State or a subdivision of the Member State or to social security institutions established under public law.

3. In no case shall the taxes referred to in paragraph 1 be construed as including:

- (a) fees, such as for certificates and other documents issued by public authorities; or*
- (b) dues of a contractual nature, such as consideration for public utilities.*

4. This Directive shall apply to the taxes referred to in paragraph 1 levied within the territory to which the Treaties apply by virtue of Article 52 of the Treaty on the European Union.”

Article 3 - Definitions

“11. ‘person’ means:

.....

(b) a legal person;

(c) where the legislation in force so provides, an association of persons recognised as having the capacity to perform legal acts but lacking the status of a legal person; or

(d) any other legal arrangement of whatever nature and form, regardless of whether it has legal personality, owning or managing assets, which, including income derived therefrom, are subject to any of the taxes covered by this Directive;”

The full text of the Directive is available [here](#) and a consolidated version is available [here](#).

Annex 3 – List of countries covered by OECD Framework with which we have a legal basis to spontaneously exchange information

1	Argentina
2	Australia
3	Austria
4	Belgium
5	Brazil (as of 1 Oct 2016)
6	Canada
7	Chile
8	China
9	Czech Republic
10	Denmark
11	Estonia
12	Finland
13	France
14	Germany
15	Greece
16	Hungary
17	Iceland
18	India
19	Indonesia
20	Israel
21	Italy
22	Japan
23	Korea
24	Luxembourg
25	Mexico
26	Netherlands
27	New Zealand
28	Norway
29	Poland
30	Portugal
31	Russia
32	Saudi Arabia
33	Slovak Republic
34	Slovenia
35	South Africa
36	South Korea
37	Spain
38	Sweden
39	Switzerland
40	Turkey
41	United Kingdom
42	United States

A more recent version of this manual is available.