

37.00.35 Revenue arrangements for implementing spontaneous exchange of information in respect of opinions/confirmations under Council Directive 2011/16/EU

1. The purpose of this tax manual is to set out Revenue's arrangements for implementing Council Directive 2011/16/EU insofar as it requires the communication to other Member States of information in respect of Revenue opinions/confirmations (referred to in this tax manual as opinions) which are foreseeably relevant to tax administration and collection in those other Member States.

EU requirements in relation to spontaneous exchange of information in respect of cross-border rulings

2. Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation ('the Directive'), which provides for the exchange of information between the tax authorities of EU Member States, was transposed into Irish law by the European Union (Administrative Cooperation in the Field of Taxation) Regulations 2012¹ ('the Regulations'). Under Regulation 4 of the Regulations, the Revenue Commissioners are the competent authority for Ireland for the purposes of the Directive. The Directive imposes specific requirements on competent authorities. One of these requirements is to spontaneously exchange with the competent authority of another Member State information that is foreseeably relevant to the administration and enforcement of the domestic taxation laws of that Member State. The requirement to spontaneously exchange information with another Member State means a requirement to communicate information to the other Member State *without having been requested to do so by that other Member State*. The Directive applies to all taxes other than value-added tax, EU excise duties and customs duties.

3. Article 9.1 of the Directive (see **Annex 1**) sets out the circumstances in which the requirement to spontaneously exchange information applies, which are as follows:

- the competent authority of one Member State has grounds for supposing that there may be a loss of tax in the other Member State;
- a person liable to tax obtains a reduction in, or an exemption from, tax in one Member State which would give rise to an increase in tax or to liability to tax in the other Member State;
- business dealings between a person liable to tax in one Member State and a person liable to tax in the other Member State are conducted through one or more countries in such a way that a saving in tax may result in one or the other Member State or in both;

¹ S.I. No. 549 of 2012

- the competent authority of a Member State has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises;
- information forwarded to one Member State by the competent authority of the other Member State has enabled information to be obtained which may be relevant in assessing liability to tax in the latter Member State.

4. Within the framework of the EU Council Code of Conduct on Business Taxation², EU Member States have agreed that the spontaneous exchange of information requirement provided for under Article 9 of the Directive applies to cross-border rulings issued by a Member State's tax authority where such rulings may affect the tax base of another Member State. A cross-border ruling is an interpretation or application of tax law provided by the tax authorities of a Member State in respect of a cross-border transaction or situation of a company that involves or affects an entity in another Member State. Where, in the specific circumstances set out in paragraph 1 of Article 9 of the Directive, a cross-border ruling is foreseeably relevant for the tax authorities of the other Member State, the tax authorities that issued the ruling are required to spontaneously exchange the relevant information regarding the ruling with the tax authorities of the other Member State.

5. Opinions providing Revenue's interpretation of the correct application of tax law to specific transactions, activities or events are subject to the spontaneous exchange of information requirement in the circumstances set out in paragraph 1 of Article 9 of the Directive, where the opinion is of foreseeable relevance to the tax authorities of another Member State. Revenue practice and procedures for providing opinions are set out in published guidelines, available on the Revenue website at www.revenue.ie, as follows:

- *Guidelines on Revenue's Service to Practitioners and Business Taxpayers* (<http://www.revenue.ie/en/practitioner/rts-guidelines.pdf>), which apply in relation to opinions sought by taxpayers whose affairs are dealt with in any one of Revenue's four Regional Divisions, and
- *Large Cases Division: Opinions/Confirmations on Tax/Duty Consequences of a Proposed Course of Action* (<http://www.revenue.ie/en/practitioner/tax-briefing/2014/no-042014.html>) which applies in relation to opinions sought by larger taxpayers whose affairs are dealt with in Revenue's Large Cases Division.

² The Code of Conduct on Business Taxation was established in accordance with Conclusions of the ECOFIN Council on 1 December 1997 concerning taxation policy (ref: :98/C2/01 OJC26.1.1998, p. 1). The Code contains two central features - a commitment from Member States to (i) amend their laws and practices as necessary with a view to eliminating any harmful tax measures (rollback) and (ii) refrain from introducing any new tax measures which are harmful within the meaning of the Code (standstill).

Examples of cross-border rulings to be spontaneously exchanged

6. Examples of cross-border rulings that are of foreseeable relevance to the tax authorities of another Member State and are subject to spontaneous exchange of information under Article 9 of the Directive are as follows:

- Member State (MS) 1 gives clearance on the absence of a permanent establishment (PE)³ in MS 1 to a company resident in MS 2.
- MS 1 gives clearance on specific items related to the tax base of a PE in MS 1 to a company resident in MS 2.
- MS 1 gives clearance on the tax status of a hybrid entity⁴ resident in MS 1 which is controlled by residents of MS 2.
- MS 1 gives clearance to a company resident in MS 1 regarding the tax value for depreciation of an asset (i.e. for capital allowances purposes) that is acquired from a group company in MS 2.

7. The above list is not exhaustive. Other types of rulings with cross-border relevance are also likely to come within the scope of Article 9 of the Directive and to be subject to spontaneous exchange of information.

Information to be exchanged

8. Where Revenue issues an opinion which is a cross-border ruling that (i) falls within the categories referred to in paragraph 6 or (ii) is otherwise within the scope of paragraph 1 of Article 9, it will provide the following information to the competent authority of the Member State to whom the opinion is foreseeably relevant:

- Name, address and tax registration number of the company for which the opinion is provided;
- Details of the issue(s) in relation to which the company, or tax practitioner acting on behalf of the company, has sought an opinion;
- A brief summary of the opinion provided by Revenue; and
- A statement to the effect that opinions issued by Revenue are not legally binding and may be reviewed and revised prospectively by Revenue at any time, but that Revenue will generally abide by an opinion once it can be shown that all relevant information was disclosed at the time the opinion was issued and that the circumstances as then disclosed do not diverge from the actual facts.

³ A Permanent Establishment (PE) is a fixed place of business through which the business of an enterprise is wholly or partly carried on.

⁴ A hybrid entity is an entity that is treated for tax purposes as being transparent by one Member State and as not being transparent by another Member State.

9. In line with Article 17(4) of the Directive, Revenue will not provide to other Member States information that would lead to the disclosure of commercial, industrial or professional secrets or of a commercial process, or of information the disclosure of which would be contrary to public policy.

Information to be provided when requesting a cross-border opinion/confirmation

10. When requesting an opinion on the tax consequences under Irish law of a cross-border transaction or situation, a company or tax practitioner acting on its behalf should, in addition to providing the information required in regard to the opinion sought as set out in Revenue tax briefing⁵, provide the following information:

- Name and country of residence of any other party (or parties) involved in the transaction or situation;
- An indication of whether there are any tax implications that may be of relevance for the tax authorities of another Member State. If the company or tax practitioner considers that the opinion is not of such relevance, it should indicate why this is the case. Revenue may seek additional information in this regard.

Companies and tax practitioners should also state whether the request for an opinion contains any information of the type referred to in Article 17(4) of the Directive. If so, they should specify the information concerned and set out their reasons for considering it falls within Article 17(4).

Confidentiality of taxpayer information

11. Information communicated between Member States pursuant to the Directive is covered by the obligation of taxpayer confidentiality and enjoys the protection extended to similar information under the national law of the Member State which receives it⁶.

Information on cross-border rulings received from other Member States

12. The Exchange of Information (EOI) Branch in Revenue's International Tax Division is the designated office within Revenue for dealing with spontaneous exchanges of information under the Directive. Where the EOI Branch receives information on a cross-border ruling from the competent authority of another Member State, it will forward the information to those Districts within Revenue for which the information may be of relevance.

⁵ The type of information to be provided when requesting an opinion is set out in paragraph 11 of Tax Briefing 4 of May 2014 and in Appendix C, paragraph 1, of the *Guidelines on Revenue's Service to Practitioners and Business Taxpayers*.

⁶ This is provided for in Article 16 of the Directive.

Implementation of these arrangements

13. The arrangements set out in this tax manual apply with immediate effect. Any queries should be addressed to EU Branch, International Tax Division, New Stamping Building, Dublin Castle, Dublin 2, email EUBranch@revenue.ie, telephone 01 - 647 5000 (extensions – 50866 or 50849).

Annex 1**Council Directive 2011/16/EU Spontaneous Exchange of Information**

Article 9.1 of the Directive provides that the competent authority of a Member State shall communicate to the competent authority of another Member State information that is foreseeably relevant to the administration and enforcement of domestic taxation laws in that Member State, in any of the following circumstances:

- the competent authority of one Member State has grounds for supposing that there may be a loss of tax in the other Member State;
- a person liable to tax obtains a reduction in, or an exemption from, tax in one Member State which would give rise to an increase in tax or to liability to tax in the other Member State;
- business dealings between a person liable to tax in one Member State and a person liable to tax in the other Member State are conducted through one or more countries in such a way that a saving in tax may result in one or the other Member State or in both;
- the competent authority of a Member State has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises;
- information forwarded to one Member State by the competent authority of the other Member State has enabled information to be obtained which may be relevant in assessing liability to tax in the latter Member State.

Article 9.2 of the Directive enables the competent authorities of each Member State to communicate, by spontaneous exchange, to the competent authorities of the other Member States any information of which they are aware and which may be useful to the competent authorities of the other Member States.

Article 10.1 of the Directive states that the information covered by Article 9.1 is required to be forwarded to the competent authority of any other Member State concerned as quickly as possible, and no later than one month after it becomes available to the competent authority.

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