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Audit preview

Information on an upcoming audit

Exchange of tax information in the EU

October 2019

Since 2011, the EU has had a system for exchanging tax and financial accounts information between Member States. Tax authorities in the EU have also agreed to cooperate more closely to tax their taxpayers correctly and combat tax fraud and tax evasion.

The audit will assess the effectiveness of the system for exchanging tax information in the EU. It will examine the relevant legislation, the monitoring of its implementation and the system's performance. It will also assess how Member States have exchanged tax information and whether they make the best use of the information they receive.

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Introduction

Ensuring fair and effective taxation within the EU is a political priority for the European Commission[1]. It aims to increase certainty for taxpayers and enhance investment and competition throughout the EU by mean s of a fair and coordinated tax policy. Overall, taxation can help to address inequalities by financing public spending (e.g. on education) and reducing income inequalities, and help to create a stable environment that fosters innovation and creates jobs.

This makes it important for companies operating in the EU's single market to pay their fair share of tax where they offer their goods and services and generate profits. However, many multinational companies try to pay as little tax as possible by using aggressive tax planning practices to take advantage of mismatches between different EU Member States' tax rules.

In recent years, a number of countries have agreed to lift banking secrecy for tax purposes, share tax information with other governments and remove secrecy surrounding asset owners and financial transactions. The starting point was the OECD's standard for the Exchange of Information on Request (EOIR), allowing tax authorities in one country to obtain information from another country's tax authorities upon request.

Technological advances also mean that the widespread automatic exchange of information (AEOI) have become increasingly viable as a tool to complement and reinforce EOIR. In 2014, the OECD developed a common reporting standard, which also provided for the automatic exchange of tax information (see ***Box 1***).

Box 1: OECD standards on the automatic exchange of information (AEOI)

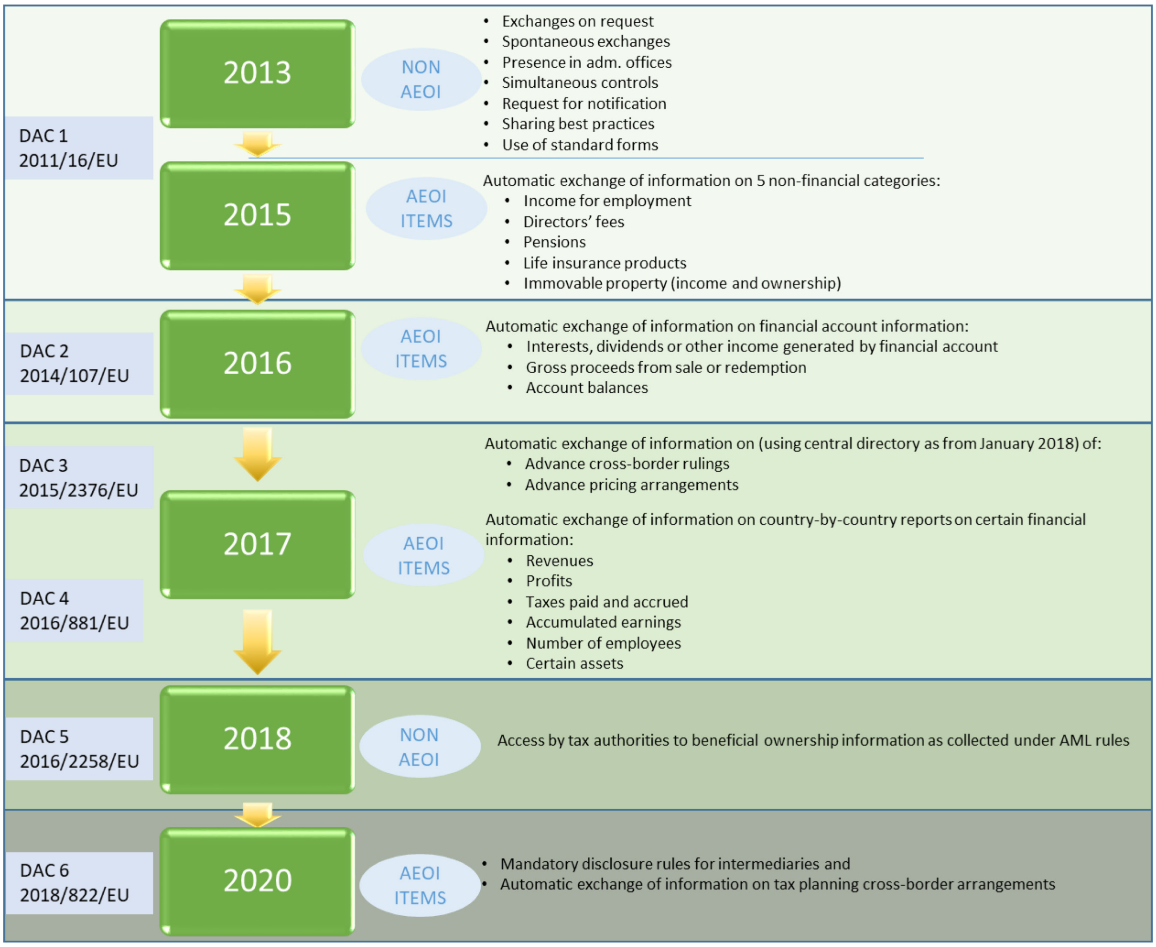
The OECD's AEOI Common Reporting Standard (CRS) is a framework approved by the OECD Council on 15 July 2014[2]. It calls on jurisdictions to obtain information from their financial institutions and automatically exchange that information with other jurisdictions on an annual basis.

The legal and policy framework

Since 2011, the European Parliament and the Council have agreed a series of legislative initiatives, enabling Member States to share tax information in different ways. This legislation establishes the framework for EOIR, AEOI, spontaneous exchanges of information and feedback, the presence of tax officials from one country in another tax authority's administrative offices and their participation in administrative enquiries, and other means of administrative cooperation.

Council Directive 2011/16/EU, known as the Directive on Administrative Cooperation (DAC), is the fundamental piece of EU legislation on administrative cooperation in direct taxation. The DAC was amended in 2014, 2015, 2016 and 2018, gradually extending its scope (see ***Figure 1***).

Figure 1 – Directive on Administrative Cooperation (DAC) in direct taxation



Source: European Commission – https://ec.europa.eu/taxation_customs/business/tax-cooperation-control/administrative-cooperation/enhanced-administrative-cooperation-field-direct-taxation_en#main.

As early as 2011, the same year it was adopted, the DAC was amended to include the application of automatic exchange of information to five specific categories of income: employment income, pension income, directors' fees, income and ownership of immovable property and life insurance products.

The scope of the automatic exchange was extended in 2014 to include financial account information and in 2015 to include advanced cross-border tax rulings and advance pricing arrangements. These amendments take account of the common global standards agreed by tax administrations at international level, notably through the OECD.

The country-by-country reporting process, introduced in 2016, requires large multinational companies to publish key information on where they make their profits and where they pay their tax in the EU on a country-by-country basis. Companies also have to disclose how much tax they pay on the business they conduct outside the EU.

Roles and responsibilities

European Commission

The Commission's role is to encourage and facilitate tax cooperation, to guarantee the proper functioning of the internal market by ensuring a level playing field and fair taxation for all traders, and to protect the financial interests of the Union.

Together with the EU Member States, the European Commission is working to make national tax systems more transparent, more accountable and more effective across the board[3] (see ***Box 2***).

Box 2: European Commission's taxation strategy

"Transparency is a crucial element in securing fairer taxation, both in the EU and internationally. It is important for tackling tax abuse and ensuring that taxation reflects where economic activity takes place. The Commission has given high priority to improving tax transparency in the Single Market, and has already put forward a number of important initiatives to this end […]."[4]

The mission of the Commission's Directorate General for Taxation and Customs Union is to develop and monitor the implementation of tax policy across the EU for the benefit of citizens, businesses and the Member States[5]. In particular, it is responsible for the following tasks:

- drafting legislative proposals to set up and improve the tax information exchange system between Member States;
- coordinating administrative cooperation in terms of mechanisms, systems and electronic interfaces for information exchange;
- developing a central directory for the exchange of information on advanced cross border tax rulings; and
- managing the FISCALIS programme for the exchange of best practices and knowledge between the Member States and with the Commission (see ***Box 3***).

Box 3: The Fiscalis programme

Fiscalis 2020 is an EU cooperation programme for the 2014-2020 period. Its overall objective is to improve the functioning of EU taxation systems by increasing cooperation between participating countries, their tax authorities and their officials, while also allowing the development and operation of major trans-European IT systems.

Specifically, the programme aims to support the implementation of EU tax law and the fight against tax fraud, evasion and avoidance by:

- ensuring exchange of information;
- supporting administrative cooperation;
- assisting participating countries, where necessary and appropriate, to cut bureaucracy for tax authorities and to reduce compliance costs for taxpayers.

Member States

The Member States, together with the European Commission, are responsible for ensuring fair tax competition in the internal market. They exchange tax and financial accounts information with other national tax administrations.

The tax authorities in the Member States:

- operate the taxation systems;
- collect and report the required tax related information; and
- collect taxes.

Focus of the audit

When preparing our audits, we carry out an issue analysis of the policy area or programmes that we intend to examine. Since these issues are identified before the audit work commences, they should not be regarded as audit observations, conclusions or recommendations.

In the course of our audit on the system for exchanging tax information, we will look at a number of areas related to these issues. In particular, we will examine whether:

— the Commission has established a sound framework for the exchange of tax information in the EU and is monitoring the implementation and the performance of the system;

— Member States have implemented the system for the exchange of tax information in the EU and if the system is effective.

ABOUT ECA SPECIAL REPORTS AND AUDIT PREVIEWS

The ECA's special reports set out the results of its audits of EU policies and programmes or management topics related to specific budgetary areas.

Audit previews provide information in relation to an ongoing audit task. They are based on preparatory work undertaken before the start of the audit and are intended as a source of information for those interested in the policy and/or programme being audited.

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[1] Commission general objective 4. See DG TAXUD's management plan for 2017.
Ref. Ares (2016)7138414 – 22/12/2016.

[2] OECD, Global Forum on Transparency and Exchange of Information for Tax Purposes, Automatic Exchange of Financial Account Information – Common Reporting Standard, 13 February 2014.

[3] European Commission, A fair share: Taxation in the EU for the 21st Century, 2018.

[4] Communication from the Commission to the European Parliament and the Council, "A Fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action", 17 June 2015, COM(2015) 302 final.

[5] DG TAXUD's mission statement and strategic goals. See:
https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/common/about/welcome/mission_statement_en.pdf