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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**on the application of Council Directive (EU) 2011/16/EU on administrative cooperation
in the field of direct taxation.**

{SWD(2017) 462 final}

1. INTRODUCTION

A deeper and fairer Internal Market is one of Europe's top priorities. To achieve this objective, the Union needs a framework for effective and efficient cooperation between the tax administrations of the Member States. The European Union and its Member States are committed to strengthen the fight against cross-border tax fraud, evasion or avoidance and is determined to ensure that profits are taxed where they are made. But for policy actions to be successful effective implementation on the ground is essential.

Administrative cooperation is crucial. Having 28 separate tax administrations working in isolation cannot be an option. While taxation remains still to a great extent a national issue, the economic environment has become more globalised, mobile and digital. Businesses are able to shift profits across borders, taxpayers can earn income from abroad without being taxed, and tax decisions of one Member State can have effects on other Member States' tax bases. To ensure all citizens and businesses contribute their fair share in the correct state Europe needs a high degree of cooperation between Member States.

Much has been done since the adoption of Council Directive on administrative cooperation in the field of taxation 2011/16/EU (the Directive or DAC). This Directive represents the key development in the EU framework of cooperation. It replaced the Directive on Mutual Assistance 77/799/EEC (MAD).

The improvements brought by the Directive were especially related to: (i) the enlargement of the scope to include all foreseeably relevant information related not only to direct taxes but also to all indirect taxes other than VAT and Excise duties, (ii) the alignment of EU standards with Article 26, par. 4 and 5, of the OECD Model Tax Convention ensuring *inter alia* the exchange also in the absence of domestic interest (iii), the reinforcement of automatic exchange of information, (iv) the provision of time limits, new standard forms and a secure channel for the exchange of information and (v) the obligation for the Member States engaged in a wider cooperation with a third country to provide the same level of cooperation to all other Member State wishing to enter into such a mutual wider cooperation.

Since then, with a view to address specific challenges Member States tax administrations were facing, the Directive has been amended four times through amending Directives, with the aim of strengthening the administrative cooperation among Member States. Directive 2014/107/EU (DAC2) introduced automatic exchange of financial accounts information; Directive 2015/2376/EU (DAC3), on automatic exchange of tax rulings and advance pricing agreements; Directive 2016/881/EU (DAC4), on automatic exchange of country by country reports; Directive 2016/2258/EU (DAC5) which, differently than previous amending directives, does not broaden the scope of automatic exchange of information but rather ensures tax authorities have access to beneficial ownership information collected pursuant to the anti-money laundering legislation. Figure 1 shows the development over time.

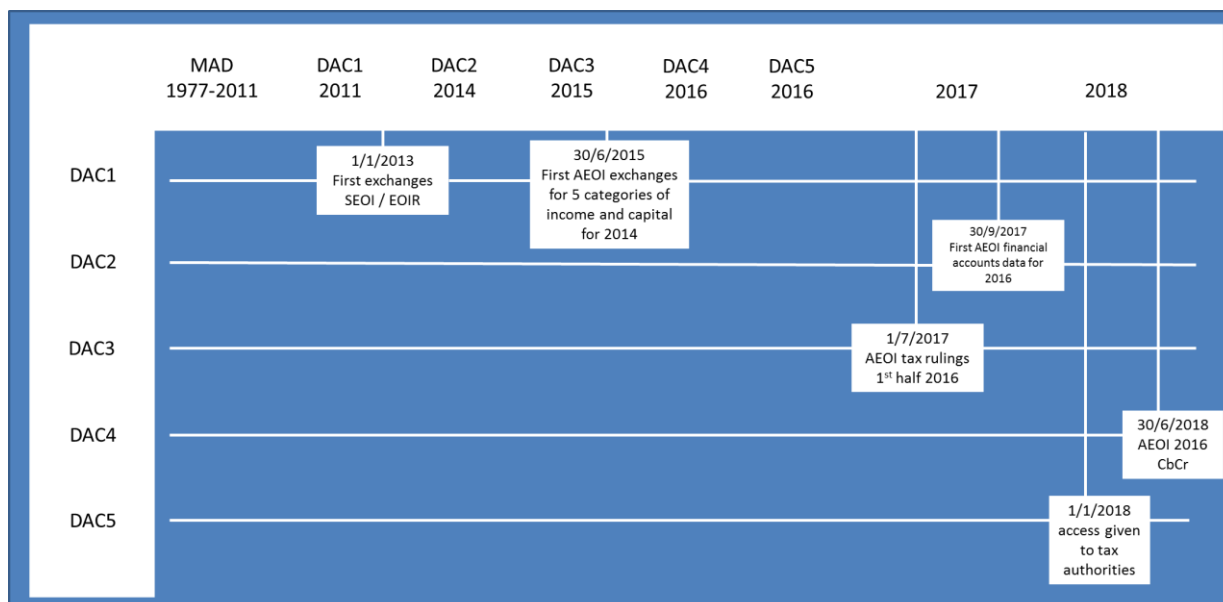


Figure 1: Adoption and application of key provisions for administrative cooperation in direct taxation

2. THE REPORT

Article 27 of the Directive requires a Report on its application every five years from 1 January 2013. It should be read together with the supporting Staff Working Document (SWD) prepared on the basis of information provided by Member States through questionnaires and statistical data since 2013. The SWD describes the key findings of the report and outlines the main traits of a renewed European approach to administrative cooperation for fair taxation in the EU.

The review covers all key provisions of DAC which are in effect. The more recent provisions on automatic exchange of information introduced via amending Directives to the original DAC (i.e. DAC2 – DAC3 – DAC4) are not covered because at the time of drafting the report the exchanges under DAC2 and DAC3 have only just started, and those under DAC4 have not yet taken place. The diagram below shows the dates of the first exchanges respectively.

A second report under Article 8b of the Directive is required before 1 January 2019, and this will provide an overview and an assessment of the statistics and information received under paragraph 1 of this Article. This covers statistics on the automatic exchanges under Articles 8 and 8a (i.e. DAC1, and DAC2 and DAC3 exchanges will be covered) on issues such as the administrative and other relevant costs and benefits of the automatic exchange of information, as well as practical aspects linked thereto.

The application of the Directive and the efforts in enhancing the administrative cooperation within the European Union represent the highest standards of cooperation among tax administrations worldwide. But, some issues remain. There is scope to further improve administrative cooperation to ensure that Member States and the European Union continue to lead the global movement towards a fairer and more transparent tax system.

3. MAIN FINDINGS

The SWD contains qualitative and quantitative information on the application of the Directive 2011/16/EU. It looks at the key provisions of the Directive, in particular exchange of information (EOI) in its various forms - on request (EOIR), spontaneous (SEOI) and

automatic (AEOI). It also covers - other forms of cooperation such as presence in administrative offices and participation in administrative enquiries, simultaneous controls and requests for notification and the general conditions governing administrative cooperation in direct taxation.

It is based on information and data gathered through questionnaires and statistics from Member States about their efforts in applying the Directive, as well as on the practical experiences when cooperating with other Member States.

From the analysis of the information gathered from the Member States, three key findings emerge in this report:

- DAC provisions have been implemented but not all of them effectively;
- the application of DAC exchange of information has resulted in a great increase in the amount of data tax administrations have to handle – but on average their capacity to do so has not increased at the same rate;
- the assessment of the benefits of DAC is carried out at a very early stage.

DAC provisions have been implemented but not all of them effectively

On the basis of the information provided by the Member States overall DAC has been applied as it should have been. Nevertheless, the following areas of improvements have been identified for the proper application of the Directive:

Despite efforts to comply with the time limits established by the Directive, the **exchange of information on request (EOIR)** is not as timely as it should be. The Directive sets time limits for replying to requests for information but recognises the existence of special cases where different time limits can be specially agreed upon. Nevertheless, timeliness of the replies is particularly important to ensure effective cooperation. DAC provisions are very clear in this respect: information has to be provided as quickly as possible, as a late reply may be less useful for the requesting Member State. As shown in section 5 of the SWD, currently not all requests for information are answered within the deadline defined in the Directive.¹

Through the **spontaneous exchange of information (SEOI)** Member States exchange information which may be relevant for another Member State's administration and enforcement of the domestic tax laws. The information provided spontaneously should be effective as it is selected by tax officials relying on their own practical experience and expertise in tax collection. However, as feedback is not given regularly it is not possible to assess the effectiveness of the information exchanged. As reported in section 7 of the SWD some information has been exchanged spontaneously over the years but SEOI has not been as effective as it could have been especially with regard to cross-border tax rulings and advance pricing arrangements. The LuxLeaks affair clearly showed that administrative cooperation in this area was not working and in 2015 the Commission proposed DAC3 obliging Member States to automatically exchange information on their tax rulings.

The first (DAC1) provisions on mandatory **automatic exchange of information (AEOI)** started to apply from 1 January 2015 for five categories of income and capital, namely: income from employment, directors' fees, certain life insurance products, pensions and ownership of and income from immovable property. However, based on the information received there is no clear evidence of the actual use of such information. Even if majority of the Member States have stated they open the bulk information files when they are received, it appears several Member States are struggling to make use of such information for various

¹ In average the total number of full replies provided within six months from the date of the receipt of the requests over the period 2013-2016 is nearly 62%

reasons including lack of resources or lack of automated taxpayer identification processes, as shown in section 6 of the SWD.

The Directive defines **ways to cooperate other than exchange of information**. It foresees the possibility for tax administrations to agree bilaterally on the presence of their officials in the territory of another Member State; carrying out simultaneous tax controls by two or more Member States on taxpayers of common interest; and tax administrations are able to call upon the cooperation of other Member States' tax authorities to make sure taxpayers, no matter where they are located, are notified of decisions and instruments concerning their tax liability. Yet, when compared with the extent of cross-border activity in Europe, or the total number of audits performed by tax administrations,² administrative cooperation under these provisions is limited, as shown in sections 8 and 9 of the SWD, and could be broader. More cooperation would also result in more tax certainty for cross-border taxpayers, if it made more consistent and predictable the way different tax administrations audit them.

DAC exchange of information has resulted in a great increase in the amount of data tax administrations have to handle – but their capacity to do so has not increased at the same rate

The amount of information exchanged under DAC has been significant – and following the actual implementation of additional provisions on automatic exchange of information will be even more so. But the resources dedicated to manage this flow have remained limited.

According to information given by Member States tax administrations, the **number of tax staff dedicated to EU administrative cooperation** in Central Liaison Office (CLO) ranges from 1 to 5 officials in most Member States, as shown in section 4 of the SWD. This does not represent all the staff working with administrative cooperation, but no significant increase of CLO staff has been reported over time, while the administrative cooperation has expanded its scope and evolved a lot in a very short period of time. Compared with the overall staffing levels of tax administrations in the Member States, these figures indicate a minimal investment in EU administrative cooperation by several Member States.

The **information technology resources** (IT) put at use at Member States have been mainly engaged with building up the secure environment for the automatic exchanges. The IT work to enable using the received information in an automated manner is only just starting. According to the Member States as reported in the SWD section 6, the tax administrations still find it difficult to solve how to automatically match income data obtained via automatic exchange of information against their own tax database.

The assessment of the benefits of DAC is still carried out at a very early stage

The aim of DAC is that through improved data availability and cooperation there should be less cross-border tax evasion, tax fraud and tax avoidance. However, almost five years since its entry into force, little is known about the actual effects of DAC implementation in this respect.

Annually the Commission requests data on the value of accrued tax benefits of the administrative cooperation, regardless of its form, but few tax administrations are able to provide, or estimate, such information. There is general agreement that such information, both in monetary as well as behavioural terms would be useful if quantified in a reliable manner.

² OECD (2015), Tax Administration 2015: Comparative Information on OECD and Other Advanced and Emerging Economies, OECD Publishing, Paris, pp. 221 and 222.
http://dx.doi.org/10.1787/tax_admin-2015-en

However Member States have difficulty in linking such data to administrative cooperation, rather than for example other national compliance initiatives. Furthermore, the deterrent effect of increased cooperation is also difficult to quantify.

4. WAY FORWARD

On the basis of the information gathered and the analysis performed, the Commission believes that an improved, more transparent approach is needed in the EU to ensure that administrative cooperation contributes, and is seen to contribute, to the overall objective of a fair taxation for all. Measures to improve the approach will be based on three pillars:

Comprehensive and transparent DAC implementation by Member States

In order to meet its objectives, DAC implementation needs to be comprehensive and effective. EU decision makers and stakeholders have to be kept duly informed. Article 27 of DAC, as it stands today, foresees one report by the Commission to the Council and the European Parliament every five years. In addition Article 8b of the Directive contains an ad hoc provision for a one off report on automatic exchange of information "that provides an overview and an assessment of the statistics and information received, on issues such as the administrative and other relevant costs and benefits of the automatic exchange of information, as well as practical aspects linked thereto" to be submitted by 1 January 2019.

Some actions are needed in view of a more transparent and regular reporting:

- While there is no need to change the Article 27 requirement the Commission will examine the possibility of publishing annually some basic statistics, as has been done on Mutual Agreement Procedures and Advance Pricing Agreements for many years in the context of the Joint Transfer Pricing Forum.
- The European Parliament staff should be encouraged to accept the invitations to attend the Expert Group meetings held with Member States on DAC implementation.

Furthermore, in order to make the administrative cooperation more efficient and effective some further actions are needed:

- In relation to EOIR, Member States are encouraged to improve the timeliness of replies. The Commission will consider how to automate the acknowledgements of receipt, the monitoring of the exchange workflow and the production of comprehensive statistical data thereby freeing up some Member State staff resources.
- In relation to SEOI, awareness should be raised on the importance of identifying information that is useful for another Member State, together with introducing a tailored approach in order to further ensure the usefulness of SEOI for the receiving Member State. Member States should also continue exchanging spontaneous information through the use of standard forms and raise awareness at internal level.³
- Member States should increase the use of tools for administrative cooperation other than the exchange of information, such as presence in administrative offices and participation in administrative enquiries, simultaneous controls and provide structured feedback on the information exchanged and on its usefulness.⁴ The Commission will also consider the opportunity to expand the

³ See section 7 of the Staff Working Document

⁴ See sections 8-9- 10- 11-14 of the Staff Working Document

e-Forms to cover the administrative notification as requested by the Member States.

- The Commission will consider proposing joint audits in the field of direct taxation (as currently planned for administrative cooperation in the field of VAT), together with a common methodology.

Improved capacity for Member States in EU administrative cooperation

Without adequate resources at Member States tax administrations, little can be done even with more data. If Member States do not have adequate staff to analyse and use data received from other Member States, automatic exchange of information cannot be considered fulfilling its purpose nor to be effective. DAC is not in itself an instrument for tax administration capacity building. However, the Commission has identified several other tools at its disposal which can improve DAC implementation:

- The Fiscalis 2020 Programme enables the Commission to support the administrative capacity of the tax administrations of Member States and candidate countries. Several workshops and other activities are organised under the Programme on various tax administration issues, including administrative cooperation. There is scope to boost the DAC dimension of the Programme, by designing a specific series of DAC related activities to support the actual DAC implementation. The Commission will examine the possibility to set up an EU team of experts on administrative cooperation.⁵
- Under the same Programme, the Commission is developing a competency framework for tax administrations in order to enhance skills and raise performance of the EU Member States tax officials. The Commission will ensure that such a framework contains training and indicators on EU administrative cooperation.
- There is evidence that some tax administrations are performing better than others, especially when it comes to using and reporting about the use of tax information. The improvement efforts should start with more automated identification of taxpayers, and matching of the information received via automatic exchange from abroad with information held nationally, and to be extended to the possible development of a common risk management tool. Together with this report, the Commission is publishing a comprehensive study about potential improvements in the identification of cross-border taxpayers, and will consider organising a series of DAC workshops to promote the sharing of best practices and experience.
- The capacity to deliver DAC is also dependent on how many tools the Commission gives Member States to implement the Directive as smoothly as possible. Delivering on its new eForms Central Application, the Commission will give Member States tools which will enable them to automate fully, or in part certain DAC procedures currently deemed burdensome as highlighted in the SWD, allowing Member States tax administrations staff to focus on higher added value activities. This will also lead to improved and reliable statistics.

Better and more transparent data on the implementation and benefits of DAC provisions

⁵ Expert teams are structured forms of cooperation between the Member States tax administrations by which Member States can pool tax knowledge and expertise. Expert teams can be supported by the Fiscalis 2020 EU tax cooperation programme.

Article 8b of DAC as it stands today asks Member States to provide statistics on the benefits of automatic exchange of information "to the extent possible" but it is silent when it comes to the benefits of other forms of exchange of information or administrative cooperation.

- The Commission, assisted by the Committee on Administrative Cooperation in Taxation (CACT)⁶, has proposed an implementing regulation on DAC statistics and on the yearly assessment of automatic exchange of information which includes monitoring of the tax compliance use and effectiveness of automatic exchanges.
- The Commission will work with Member States experts to identify common ways to estimate the benefits of administrative cooperation reliably and comprehensively.
- By 1 January 2019, the Commission will prepare a report on automatic exchanges (under Article 8b), covering also issues such as the administrative and other relevant costs and benefits of the automatic exchange of information, as well as its practical aspects.

5. CONCLUSIONS

The implementation and functioning of the Directive has implied a significant investment by Member States, on an ongoing basis, which nevertheless have made it one of the most effective tools for administrative cooperation. Assessing its full impact is still a difficult task. More than the amounts or number of exchanges, the Commission assumes that this Directive has had a significant deterrent effect, which is a key tool in the fight against tax evasion. In parallel, voluntary disclosure programs are, on a sporadic basis, put in place by different Member States. The impact of administrative cooperation in the amounts disclosed is difficult to quantify, while it is reasonable to expect that if it did not exist there would be no incentive for such disclosures.

However, as a tool to fight tax avoidance and evasion, this is an unending work. After the necessary IT structure and common tools have been built for the administrative cooperation, the next step should be an intensified use of all the tools, analysis and use of the data received and efforts in improving reciprocally the qualitative content of the data exchanged. In parallel, new forms of cooperation and improvements to the current framework will be needed to address the dynamic nature of tax avoidance and evasion. The EU Member States have proven their commitment to administrative cooperation and will undoubtedly follow-up on this field.

⁶ CACT is established to assist the Commission in accordance with Article 26 of the Directive. Agenda and summary reports are available here:
<http://ec.europa.eu/transparency/regcomitology/index.cfm?do=search.search>