European Commission - Fact Sheet

Questions and Answers on new tax transparency rules for intermediaries

Brussels, 21 June 2017

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Why has the Commission proposed new transparency requirements for intermediaries?

Today's proposal forms part of the Juncker Commission's ambitious agenda to tackle tax abuse and ensure fairer taxation in the EU. Unprecedented strides have already been taken by the EU to boost tax transparency and close loopholes leading to large scale tax avoidance. Thanks to binding measures and greater transparency, it is now much harder for large companies to get away with not paying their fair share of tax. The Commission has also put in place a strategy to deal with non-EU countries that refuse to play fair when it comes to tax and a common EU blacklist of tax havens will be published this year.

Now the Commission is also tackling the central role played by intermediaries in international tax avoidance and evasion, as exposed by the Panama Papers. Most services provided by intermediaries, such as tax advisors, accountants, financial institutions, law firms, are legitimate. However, certain intermediaries actively design, promote and sell schemes with the specific aim of helping their clients to escape taxation.

The Commission already underlined the urgent need to create more transparency and accountability in this area in July 2016 and confirmed that it would propose EU-wide rules. The Council and European Parliament have also called for EU measures against those that enable or promote aggressive tax planning. Some Member States (UK, Ireland and Portugal) already have mandatory reporting requirements for intermediaries and these rules have proven very effective in clamping down on domestic tax abuse. In addition, the OECD BEPS project recommended that countries introduce mandatory disclosure requirements for aggressive tax planning schemes (see annex). The measures proposed today will ensure that all Member States have the same oversight of tax planners' activities, and that they cooperate in preventing aggressive tax planning schemes.

What has the Commission been doing to fight tax evasion and avoidance in the EU?

The Commission is pursuing an ambitious agenda to strengthen EU defences against tax evasion and avoidance, which has already resulted in a number of landmark achievements.

This agenda is based on three main pillars:

Tax Transparency:

Major progress has been made in increasing openness and cooperation between Member States on tax issues. Member States have agreed to automatically exchange information on **tax rulings** (from July 2017) and on multinationals' **country-by-country reports** (from June 2018). They also agreed on new rules which will give tax authorities **access to anti-money laundering information**, an idea proposed in the wake of the Panama Papers. The Commission also proposed **public country-by-country reporting** for multinationals in April 2016, to provide citizens with greater oversight of companies' tax practices. This proposal is currently being negotiated by the Council and Parliament.

Fair and Effective Taxation:

A primary goal in the EU corporate tax agenda is to ensure that all companies pay tax where they make their profits. This called for strong, coordinated measures to block cross-border tax avoidance. In January 2016, the Commission proposed an **Anti-Tax Avoidance Directive** (ATAD), setting out legally-binding anti-abuse measures for the entire EU. Member States adopted this ambitious new legislation within 6 months, and it will enter into force in 2019. The Commission complemented the Directive with **measures to tackle tax loopholes ('hybrid mismatches')** in relation to third countries (ATAD 2), which Member States adopted at the end of May. **A review of preferential regimes** (patent boxes) and **transfer pricing rules** was also launched, to prevent them from being abused for tax avoidance reasons. In July 2016, the Commission proposed strengthening the EU's **anti-money laundering legislation**, which is now being negotiated by Council and Parliament.

Global Tax Good Governance:

An **External Strategy for Effective Taxation** was presented by the Commission in January 2016, to

establish a more coherent and effective approach to promoting tax good governance internationally. A key component of this Strategy is a **new EU listing process**, to deal with non-cooperative tax jurisdictions. The first EU list should be ready by the end of 2017, and the process to compile it is underway. A proposed **revision of the EU Financial Regulation** will prevent EU funds from being routed through tax havens, and work is also underway to **strengthen the tax good governance clauses** in EU agreements with third countries. Finally, through a number of **state aid cases,** the Commission has challenged selective tax advantages granted to multinational companies.

How will the reporting requirements for intermediaries help to reduce tax avoidance?

The immediate effect of the new rules will be to give Member States more information on the tax planning schemes that intermediaries design and market, so that they can then assess whether those schemes facilitate tax evasion and avoidance. The proposed measures will enable authorities to react much more quickly to risks of tax abuse, as intermediaries will have to report the relevant arrangements before they are used. As such, Member States can better target their audits or even change their legislation to close any loopholes that are being abused.

The proposed reporting requirements will also act as a deterrent for those that promote aggressive tax planning schemes. Intermediaries are less likely to design arrangements that will be blocked before they can be implemented. Companies also risk doing serious damage to their reputation if they are found to be marketing or using aggressive tax planning schemes.

Finally, Member States must automatically exchange the information they receive from intermediaries. This is particularly important for cross-border schemes: all Member States should be aware of any tax planning arrangements that may have an impact on their tax base, regardless of where the scheme is designed and marketed.

How would the proposed measures work in practice?

Intermediaries will have to report any cross-border tax planning arrangement that they design or promote if it bears any of the features or "hallmarks" defined in the Directive (see below). They must make this report to their tax authorities within five days of giving such an arrangement to their client. Member States must ensure proper penalties are in place for intermediaries that fail to meet these reporting requirements.

The Member State to whom the arrangements are reported must automatically share this information with all other Member States on a quarterly basis through a centralised database. There will be a standard format for the exchange of this information, which will include details on the intermediary, the tax payer(s) involved and features of the tax scheme, amongst other information.

The Commission will have access to certain aspects of the information exchanged between Member States, so that it can monitor the implementation of the rules.

Which intermediaries are covered by the proposal?

The proposal has a very wide scope, covering all intermediaries and all types of direct taxes (income, corporate, capital gains, inheritance, etc.).

Any company or professional that designs or promotes a tax planning arrangement which has a cross-border element and contains any of the hallmarks set out in the proposed Directive will be covered. This includes lawyers, accountants, tax and financial advisors, banks and consultants.

What happens if the intermediary is based in a non-EU country?

EU legislation cannot be extended to cover intermediaries that are not based in the EU. It would be impossible to enforce compliance with the rules or to sanction non-compliance of intermediaries without sufficient presence in the EU. Therefore, if the intermediary is not located in the EU or is bound by professional privilege or secrecy rules (see below), the obligation to report the tax arrangement passes to the EU-based taxpayer instead.

What tax planning arrangements will have to be reported?

Intermediaries will have to report any cross-border arrangement that contains one or more of the 'hallmarks' listed in the proposal. These hallmarks are features or characteristics in a transaction that could potentially enable tax avoidance or abuse. Examples of these hallmarks include arrangements which:

- involve a cross-border payment to a recipient resident in a no-tax country;
- involve a jurisdiction with inadequate or weakly enforced anti-money laundering legislation;
- are set up to avoid reporting income as required under EU transparency rules;
- circumvent EU information exchange requirements for tax rulings;

- have a direct correlation between the fee charged by the intermediary and what the taxpayer will save in tax avoidance;
- ensure that the same asset benefits from depreciation rules in more than one country;
- enable the same income to benefit from tax relief in more than one jurisdiction;
- do not respect EU or international transfer pricing guidelines.

The full list of hallmarks is annexed to the proposal. Once it is agreed, intermediaries will need to be familiar with the full set of hallmarks in the legislation to ensure that they meet their reporting obligations fully.

How did the Commission choose the hallmarks which trigger the reporting requirement?

The hallmarks reflect features that are commonly found in aggressive tax planning arrangements. They are as wide-ranging as possible to avoid any loopholes or omissions that could be exploited by aggressive tax planners. In selecting the hallmarks, the Commission took inspiration from the OECD mandatory disclosure provisions (BEPS Action 12), Member States' mandatory disclosure legislation and other studies and reports on aggressive tax planning schemes.

What sanctions will apply to intermediaries that do not report the arrangements?

Member States must ensure effective, proportionate and dissuasive penalties for intermediaries that do not respect the reporting requirements. The decision on the exact nature of these penalties is being left as a national competence and each Member State must decide its own national sanctions to apply. These could include, for example, fines or administrative sanctions. Beyond national sanctions, there would also be a reputational risk for intermediaries that fail to comply with the reporting obligations. The proposed reporting requirements will also create a disincentive against designing and marketing aggressive tax planning schemes, as they could be quickly blocked by the authorities.

Will the new reporting and information exchange requirements create new burdens for the industry?

The reporting requirements are conceived to avoid creating undue burdens on the industry. For the reports to tax authorities, intermediaries can re-use summaries that they prepare for their clients on the tax planning arrangements. The proposal also respects national rules on professional privileges and secrets. In these cases, the intermediary is no longer obliged to report and intermediaries who are not based in the EU get a waiver from reporting. To prevent loopholes in these two cases, the obligation to report is shifted to the taxpayer.

Although the new rules do not set a minimum threshold for disclosure, the hallmarks for reporting usually point to high-risk situations that involve elaborate arrangements. Small companies and individuals (unless particularly wealthy) would not normally have the resources to seek out sophisticated tax advice. So, by effect, it can be assumed that the reporting obligation would mostly affect – where there is a shift in the liability – big corporate taxpayers or very wealthy individuals.

Member States which already operate mandatory disclosure rules have not noted a negative impact on the industry as a result of the transparency requirements. In fact, the UK is one of the few Member States to have such legislation for intermediaries, and yet it still has one of the highest number of intermediaries in the EU.

Will the information exchange requirements create new burdens for national tax authorities?

No. Member States already automatically exchange information on some forms of income (e.g. financial accounts and VAT) through well-developed EU systems. As of July 2017, authorities will begin to exchange information on their tax rulings and in 2018 they will exchange country-by-country reports for the first time. The new requirements for intermediaries would be built into this existing framework. Member States can use all the procedures and processes already in place, making it quicker and easier for them to apply the new rules.

If intermediaries declare all tax planning arrangements in advance, are the other EU transparency and anti-avoidance measures still necessary?

Each new EU measure to boost tax transparency and counteract tax abuse reinforces Member States' ability to prevent, detect and clamp down on aggressive tax planning. Collectively, they create a comprehensive EU system against tax evasion and avoidance, which addresses the main risk areas and ensures safety-nets against harmful schemes and regimes. Today's proposal builds on this system. It offers Member States a valuable early warning system, so that they can react quickly against abusive tax schemes. But the other EU transparency and anti-abuse measures, agreed over the past few years (see annex), are equally important. For example, they will capture arrangements that are not linked to intermediaries, they will ensure that tax rulings are transparent and fair, they will provide better

oversight of multinationals' tax practices, and they will remove some of the main loopholes and mismatches exploited by tax evaders and avoiders. The Commission continuously reviews the transparency and anti-avoidance measures at EU level, to ensure that no gaps remain, and is ready to react quickly to any new risks or challenges as they arise.

Is this proposal in line with international action to tackle base erosion and profit shifting (BEPS)?

The OECD BEPS project recommended that all countries should introduce a mandatory disclosure requirement for intermediaries (BEPS Action 12). However, it was not prescriptive in how countries should implement such measures, nor did it provide for the exchange of information between countries on the reported schemes.

Today's proposal is fully compatible with BEPS. It has the added advantage of being legally binding and ensuring that all Member States apply the same measures for intermediaries. Unlike the BEPS action, the EU provisions will also ensure that the reported information on cross-border arrangements is automatically exchanged between Member States.

What progress has been made with implementing the OECD BEPS recommendations in the EU?

The OECD Base Erosion and Profit Shifting (BEPS) project, agreed in October 2015, provides for 15 Actions to "equip governments with the domestic and international instruments needed to tackle" the erosion of their tax bases and profit shifting for tax avoidance purposes in their jurisdictions. Though not legally-binding - the OECD does not have legal authority - all G20 countries are politically committed to the BEPS project and endorsed its outputs, as have all 28 EU Member States.

While the OECD BEPS project has produced a good framework for international corporate tax reform, the EU needs to tailor these to fit the Single Market so as to allow all EU countries to protect their tax bases. The Commission's approach has been to enshrine key BEPS measures into binding EU law, so that they are swiftly and smoothly implemented across the EU, leaving no room for different interpretations of these standards. The EU has sought to lead by example, using the BEPS standards as the basis on which to create a solid, legal framework for Member States.

What is the scale of tax evasion and avoidance in the EU?

Tax evasion and avoidance are notoriously difficult to quantify, due to their nature and the lack of national data. A recent study[1] by the European Parliament estimated that tax avoidance costs public budgets between €50-70 billion a year, while another study[2] estimated that a total of €173 billion was evaded or avoided through the Panama Paper schemes alone.

MEMO/17/1677

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