Executive summary

Information on cross-border rulings and advance pricing agreements issued by European Union (EU) Member States will be automatically exchanged with other EU Member States from 1 January 2017. This is in accordance with the provisions of the EU Council Directive 2015/2376 of 8 December 2015 (the Directive) amending Directive 2011/16/EU as regards the mandatory and automatic exchange of information in the field of taxation. The Luxembourg Government has now adopted and transferred to Parliament for approval, a draft law transposing the Directive into Luxembourg domestic law.

Detailed discussion

The draft law introduces the mandatory and automatic exchange of information on advance cross-border tax rulings and advance pricing agreements.

The new rules will apply from 1 January 2017. However, a retroactive effect to 1 January 2012 is provided for certain rulings issued before 1 January 2017, as follows:

- Information will be exchanged on advance cross-border rulings and advance pricing agreements issued, amended or renewed between 1 January 2012 and 31 December 2013, provided they were still valid on 1 January 2014.
Information also will be exchanged on advance cross-border rulings and advance pricing agreements issued, amended or renewed between 1 January 2014 and 31 December 2016, irrespective of whether they are still valid or not.

In line with the option given by the Directive, Luxembourg has decided to exclude from information exchange those advance tax rulings and pricing arrangements that were issued to companies with an annual net turnover of less than €40 million at the group level, if such advance cross-border rulings and advance pricing agreements were issued, amended or renewed before 1 April 2016. This exemption will, however, not apply to companies conducting mainly financial or investment activities.

Luxembourg is an early adopter of the new information exchange rules and is committed to spontaneously exchange standardized information on cross-border rulings from 1 January 2016. For this purpose, the Luxembourg Tax Authorities (LTA) have released a standardized form (form 777E: Standard form for the international exchange of information on advance cross-border rulings and advance pricing agreements), setting out the information that will be exchanged with other jurisdictions. The form must be completed for each new request for a cross-border ruling. It will also be used to exchange information on cross-border rulings and advance pricing agreements issued in prior years and falling within the scope of the mandatory and automatic exchange of information. The information to be provided in form 777E relates to the content of the ruling (period covered by the ruling, type of ruling, summary of the issues covered by the ruling), the entities affected by the ruling (name and address of those entities) and the parent entities (ultimate nonresident beneficial owner, ultimate nonresident parent company and immediate nonresident parent company).

Form 777E is largely based on the template for information exchange released by the Organisation for Economic Co-operation and Development in the framework of its final report on Action 5 (Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance) of the Base Erosion and Profit Shifting (BEPS) project. Consequently, this form will also be used by the LTA to exchange information on Luxembourg tax rulings with non-EU countries. Under BEPS Action 5, information on certain specific types of rulings has to be exchanged if these rulings were issued on or after 1 January 2010 and were still in effect as from 1 January 2014, including rulings modified in this period. The specific types of rulings include rulings on preferential regimes, unilateral advance pricing or other transfer pricing issues, downward adjustments, permanent establishments and conduits. Form 777E includes two additional types of rulings, the “hybrid entity” rulings and “other” rulings which is a category for those rulings that cannot be allocated to any of the aforementioned categories of rulings.
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EYG no. 00798-161Gbl
1508-1600216 NY
ED None

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