

# ***Automatic exchange of information on advance cross-border tax rulings between Tax Authorities in the European Union and the European Commission***

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## ***In brief***

On 8 December 2015 the Council of the European Union adopted a Directive to amend the existing Directive 2011/16/EU on administrative cooperation in the field of taxation (the DAC). The Directive will require European Union Member States (EU MSs) to automatically exchange within the European Union a basic set of information on cross-border advance tax rulings (ATRs) and cross-border advance pricing arrangements (APAs). The European Commission will develop a central directory where the information exchanged will be stored, which will be accessible to all EU MSs and, solely to the extent required for monitoring the correct implementation of the Directive, to the European Commission.

Information will start to be exchanged as from 2017 and will relate to cross-border ATRs and APAs issued from 1 January 2012, with certain possible exceptions applying to those issued in the period 1 January 2012 – 31 March 2016.

Cross-border ATRs and APAs are broadly defined and relate to cross-border transactions which take place within the EU and with third countries (e.g. Russia). They do not, however, include cross-border ATRs or APAs which relate exclusively to the tax affairs of natural persons.

All EU MSs, including Cyprus, need to adopt the Directive by 31 December 2016.

## ***In detail***

This amendment to the DAC will require EU MSs to automatically exchange a basic set of information on cross-border ATRs and APAs. Cross-border ATRs and APAs are broadly defined and relate to cross-border transactions which take place within the EU and with third countries (e.g. Russia). They do not, however, include cross-border ATRs or

APAs which relate exclusively to the tax affairs of natural persons.

The Directive will ensure that where one EU MS issues a cross-border ATR or APA, any other EU MS affected is in a position to monitor the situation and the possible impact on its tax revenue. EU MSs receiving the basic set of information will be able to request further information,

including the full text of the cross-border ATR or APA.

From 1 January 2017, the information to be communicated by EU MSs will include:

- identification of the person (other than a natural person) and the group to which it belongs;

- summary of content of the cross-border ATR or APA, including a description of the relevant business activities or transactions or series of transactions provided in abstract terms so as to respect business secrecy or public policy;
- dates of issuance, amendment or renewal of the cross-border ATR or APA;
- start date of the period of validity of the cross-border ATR or APA, if specified;
- end date of the period of validity of the cross-border ATR or APA, if specified;
- type of cross-border ATR or APA;
- amount of the transaction or series of transactions of the cross-border ATR or APA if referred to in the cross-border ATR or APA;
- description of the criteria used for the determination of the transfer pricing or transfer price itself in the case of a cross-border APA;
- identification of the method used for determination of transfer pricing or transfer price itself in the case of a cross-border APA;
- identification of the other EU MSs, if any, likely to be

concerned by the cross-border ATR or APA;

- identification of any person (other than a natural person), in the other EU MSs, if any, likely to be affected by the cross-border ATR or APA; and
- the indication whether the information communicated is based upon the cross-border ATR or APA itself or upon the request that leads to the issuance of a bilateral/multilateral APA with a third country(ies).

For cross-border ATRs and APAs issued before 1 January 2017, a five-year look-back will apply:

- If cross-border ATRs and APAs were issued, amended or renewed between 1 January 2012 and 31 December 2013, such communication shall take place under the condition that they are still valid on 1 January 2014.
- If cross-border ATRs and APAs are issued, amended or renewed between 1 January 2014 and 31 December 2016, such communication shall take place irrespective of whether they are still valid or not.

EU MSs will have the possibility to exclude cross-border ATRs and APAs issued to companies with an annual net turnover of less than €40 million at a group level, if such were issued, amended or renewed before 1 April 2016. However, this exemption will not apply to companies conducting mainly financial or investment activities.

Where provisions of international treaties, in the framework of which bilateral/multilateral APAs with third countries were concluded, do not permit the disclosure of such APAs, basic information relating only to the requests that lead to the APAs' issuance will be automatically exchanged. More information on bilateral/multilateral APAs with third countries can be spontaneously exchanged, provided certain conditions are met.

### ***The takeaway***

Companies obtaining cross-border ATRs and APAs within the EU, including Cyprus, need to be aware that this Directive will require greater transparency of their tax affairs.

**Let's talk**

For an in-depth discussion of how these proposals might affect you or your business, please contact:

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