

## **Soon Standard: Global Automatic Exchange Of Information In Tax Matters**

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The global fight against tax evasion became in the wake of the financial and debt crisis an important and widely pursued concern of the world community. There is a growing demand for more intergovernmental exchange of information in tax matters and more tax transparency as an important tool to combat tax fraud and tax evasion.

Recent significant developments in the field of global exchange of information will make it harder for tax evaders to hide their monies “offshore”.

On the one hand the European Union Economic and Financial Affairs Council (ECOFIN) published a revised Directive on administrative cooperation in the field of taxation between EU Member States after the EU-Savings Directive has been already tightened and amended in March 2014 to obligate the EU-Members – including Austria and Luxemburg – to exchange automatically information regarding interest income.

On the other hand, ( not only on the EU-arena ) almost 100 countries have committed themselves to implement the new standard on Automatic Exchange Of Information (AEOI or Common Reporting Standard, CRS) at the meeting of the Global Forum on Transparency and Exchange of Information for Tax Purposes in Berlin on October 29, 2014. Over 50 countries have already signed the Multilateral Competent Authority Agreement (MCAA).

EU-States intensify the exchange of information

On October 16, 2014 the ECOFIN published the amended Mutual Assistance Directive (Council Directive 2011/16/EU) on the administrative cooperation in the field of taxation between EU Member States. The amendment of the directive is intended to extend the scope for mandatory automatic exchange of information between tax administrations, enabling them to better combat against cross-border tax fraud and tax evasion. The amended Directive basically implements the Automatic Exchange of Information standard issued by the OECD. In the previous version of the Mutual Assistance Directive in Art. 8, the information to be exchanged was limited to certain categories of income including income from employment, director’s fees, life insurance products, pensions and ownership of and income from immovable property. The revised Directive extends the scope of mandatory automatic exchange of information regarding the account balance or value, the gross amount of interest, dividends and other income generated by the assets held in the account and the total gross proceeds from sale or redemption of financial assets.

By the end of 2015, EU Member States will adopt and publish the domestic laws, regulations and administrative provisions to comply with the amended Directive on administrative cooperation which will then apply from January 1, 2016 on. First

exchange of information will take place September 30, 2017, with an exception for Austria, which will start to exchange information by September 30, 2018.

With the amended Directive the 28 EU-Member States have concluded a comprehensive automatic exchange of information in line with the US-FATCA (Foreign Account Compliance Act) regime. Secrets between financial institutions and foreign tax authorities within the EU belong therefore to the past.

The OECD-States push for enhanced cooperation

Another significant event is the above mentioned commitment in Berlin, October 2014, by almost 100 States to implement the global standard for automatic exchange of information (Common Reporting Standard, CRS) developed by the OECD. This new global standard stipulates that certain financial institutions will collect and obtain information about their clients with foreign tax residence. This data will be transmitted annually to the national tax authorities, which will forward the information to the relevant foreign tax authorities. The information to be exchanged with respect to a reportable account include investment income such as interest, dividends, income from certain insurance contracts, account balances and proceeds from the sale of financial assets. Affected by the reporting requirement are financial institutions such as banks, custodians, brokers and certain insurance companies, trust companies and foundations. The common reporting standard is very similar and broadly consistent with the rules for FATCA, introduced in the USA in March 2010. The CRS like FATCA provides for extensive due diligence procedures to be followed by the financial institutions with respect to the identification and release of the accounts and the subsequent notification and transmission to the national tax authorities. In contrast to FATCA the CRS does not refer to nationality to determine tax residence for individuals.

Already 2017 – first exchange of data

A group of jurisdictions, collectively known as the “Early Adopters Group” (including Germany) committed themselves to early adoption of the new standard and have provided specific timelines for implementation with the first exchange of information to take place by the end of September 2017. The Israeli Ministry of Finance confirmed in October 2014 that also Israel will adopt the procedures under the CRS by the end of 2018. Meanwhile, according to a circular by the Bank of Israel, Israeli banks already require that all foreign account holders sign a declaration confirming that they pay all relevant taxes due with respect to the account in their home jurisdiction. In addition, foreign account holders must sign a waiver of confidentiality to allow the Israeli banks to pass information to and receive information from tax authorities abroad. For those who do not cooperate, the Israeli banks have the possibility to freeze the accounts or to restrict banking services, like refusing to authorize withdrawals. Also Switzerland committed itself to implement the CRS developed by the OECD with the exchange of information starting 2018. Meanwhile, Switzerland has signed already a joint declaration with Australia in March 2015 on the introduction of the automatic exchange of information in tax matters based on the Multilateral Competent Authority Agreement (MCAA).

The implementation of the CRS in the various jurisdictions are subject to the completion of necessary legislative procedures. In Germany there is a law in preparation for the application of the common reporting standard with a statutory authorization to regulate the details for the implementation. Also in Israel the implementation depends on an act of parliament to amend the Income Tax Ordinance.

Automatic exchange of information inside and outside of the EU on the basis of the common reporting standard is not far away anymore. Information will be more accessible and the identification and discovery of offshore accounts and assets will become easier for the respective tax authorities.

Voluntary disclosure – a window of opportunity

Various countries, including Israel and Germany offer the possibility for a voluntary disclosure procedure. The Israeli Tax Authority has launched a revised voluntary disclosure program in September 2014 under which a taxpayer can come forward and disclose undeclared income and gains with immunity from prosecution. This Israeli Voluntary Disclosure Program also provides for an anonymous procedure and a special fast route for small accounts. These two procedures are contained in Temporary Rules, which are effective until September 6, 2015. (See # 5 Newsletter/December 2014 – AHK Israel (English version)). Also Germany has a voluntary self-disclosure program in place with the possibility for exemption from criminal prosecution for tax evasion. Even though that the rules for voluntary self-disclosure have been considerably tightened since January 1, 2015 (see # 1 Newsletter/February 2015 – AHK Israel (English version)), the return to tax compliance is still possible and open. These various voluntary disclosure programs should be welcomed by the taxpayers as an opportunity to come clean and disclose undeclared offshore assets before the involuntary discovery by the tax authorities and the resulting undesirable tax and serious criminal consequences. Especially in view of the upcoming global exchange of information in tax matters the action to “Voluntary Disclosure” seems to be more urgent – if not inevitable.