

Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC

CHAPTER II

EXCHANGE OF INFORMATION

SECTION I

Exchange of information on request

Article 5

Procedure for the exchange of information on request

At the request of the requesting authority, the requested authority shall communicate to the requesting authority any information referred to in Article 1(1) that it has in its possession or that it obtains as a result of administrative enquiries.

Article 6

Administrative enquiries

1 The requested authority shall arrange for the carrying out of any administrative enquiries necessary to obtain the information referred to in Article 5.

2 The request referred to in Article 5 may contain a reasoned request for a specific administrative enquiry. If the requested authority takes the view that no administrative enquiry is necessary, it shall immediately inform the requesting authority of the reasons thereof.

3 In order to obtain the requested information or to conduct the administrative enquiry requested, the requested authority shall follow the same procedures as it would when acting on its own initiative or at the request of another authority in its own Member State.

4 When specifically requested by the requesting authority, the requested authority shall communicate original documents provided that this is not contrary to the provisions in force in the Member State of the requested authority.

Article 7

Time limits

1 The requested authority shall provide the information referred to in Article 5 as quickly as possible, and no later than six months from the date of receipt of the request.

However, where the requested authority is already in possession of that information, the information shall be transmitted within two months of that date.

2 In certain special cases, time limits other than those provided for in paragraph 1 may be agreed upon between the requested and the requesting authorities.

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3 The requested authority shall confirm immediately and in any event no later than seven working days from receipt, if possible by electronic means, receipt of a request to the requesting authority.

4 Within one month of receipt of the request, the requested authority shall notify the requesting authority of any deficiencies in the request and of the need for any additional background information. In such a case, the time limits provided for in paragraph 1 shall start the day after the requested authority has received the additional information needed.

5 Where the requested authority is unable to respond to the request by the relevant time limit, it shall inform the requesting authority immediately and in any event within three months of the receipt of the request, of the reasons for its failure to do so, and the date by which it considers it might be able to respond.

6 Where the requested authority is not in possession of the requested information and is unable to respond to the request for information or refuses to do so on the grounds provided for in Article 17, it shall inform the requesting authority of the reasons thereof immediately and in any event within one month of receipt of the request.

SECTION II

Mandatory automatic exchange of information

Article 8

Scope and conditions of mandatory automatic exchange of information

1 The competent authority of each Member State shall, by automatic exchange, communicate to the competent authority of any other Member State, information regarding taxable periods as from 1 January 2014 that is available concerning residents in that other Member State, on the following specific categories of income and capital as they are to be understood under the national legislation of the Member State which communicates the information:

- a income from employment;
- b director's fees;
- c life insurance products not covered by other Union legal instruments on exchange of information and other similar measures;
- d pensions;
- e ownership of and income from immovable property.

2 Before 1 January 2014, Member States shall inform the Commission of the categories listed in paragraph 1 in respect of which they have information available. They shall inform the Commission of any subsequent changes thereto.

[^{F13} The competent authority of a Member State may indicate to the competent authority of any other Member State that it does not wish to receive information on one or several of the categories of income and capital referred to in paragraph 1. It shall also inform the Commission thereof.

A Member State may be considered as not wishing to receive information in accordance with paragraph 1, if it does not inform the Commission of any single category in respect of which it has information available.]

[F²³a Each Member State shall take the necessary measures to require its Reporting Financial Institutions to perform the reporting and due diligence rules included in Annexes I and II and to ensure effective implementation of, and compliance with, such rules in accordance with Section IX of Annex I.

Pursuant to the applicable reporting and due diligence rules contained in Annexes I and II, the competent authority of each Member State shall, by automatic exchange, communicate within the deadline laid down in point (b) of paragraph 6 to the competent authority of any other Member State, the following information regarding taxable periods as from 1 January 2016 concerning a Reportable Account:

- a the name, address, TIN(s) and date and place of birth (in the case of an individual) of each Reportable Person that is an Account Holder of the account and, in the case of any Entity that is an Account Holder and that, after application of due diligence rules consistent with the Annexes, is identified as having one or more Controlling Persons that is a Reportable Person, the name, address, and TIN(s) of the Entity and the name, address, TIN(s) and date and place of birth of each Reportable Person;
- b the account number (or functional equivalent in the absence of an account number);
- c the name and identifying number (if any) of the Reporting Financial Institution;
- d the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account;
- e in the case of any Custodial Account:
 - (i) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and
 - (ii) the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;
- f in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and
- g in the case of any account not described in point (e) or point (f), the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

For the purposes of the exchange of information under this paragraph, unless otherwise foreseen in this paragraph or in the Annexes, the amount and characterisation of payments made with respect to a Reportable Account shall be determined in accordance with national legislation of the Member State which communicates the information.

The first and second subparagraphs of this paragraph shall prevail over point (c) of paragraph 1 or any other Union legal instrument, including Council Directive 2003/48/EC⁽¹⁾, to the extent that the exchange of information at issue would fall within the scope of point (c) of paragraph 1 or of any other Union legal instrument, including Directive 2003/48/EC.]

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F35

[F16 The communication of information shall take place as follows:

- a for the categories laid down in paragraph 1: at least once a year, within six months following the end of the tax year of the Member State during which the information became available;
- b for the information laid down in paragraph 3a: annually, within nine months following the end of the calendar year or other appropriate reporting period to which the information relates.]

7 The Commission shall adopt the practical arrangements for the automatic exchange of information, in accordance with the procedure referred to in Article 26(2), before the dates referred to in Article 29(1).

[F27a For the purposes of subparagraphs B.1(c) and C.17(g) of Section VIII of Annex I, each Member State shall, by 31 July 2015, provide to the Commission the list of entities and accounts that are to be treated, respectively, as Non-Reporting Financial Institutions and Excluded Accounts. Each Member State shall also inform the Commission if any changes in this respect occur. The Commission shall publish in the *Official Journal of the European Union* a compiled list of the information received and shall update the list as necessary.

Member States shall ensure that those types of Non-Reporting Financial Institutions and Excluded Accounts satisfy all the requirements listed in subparagraphs B.1(c) and C.17(g) of Section VIII of Annex I, and in particular that the status of a Financial Institution as a Non-Reporting Financial Institution or the status of an account as an Excluded Account does not frustrate the purposes of this Directive.]

8 Where Member States agree on the automatic exchange of information for additional categories of income and capital in bilateral or multilateral agreements which they conclude with other Member States, they shall communicate those agreements to the Commission which shall make those agreements available to all the other Member States

Textual Amendments

- F1 Substituted by [Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.](#)
- F2 Inserted by [Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.](#)
- F3 Deleted by [Council Directive \(EU\) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.](#)

[F4 Article 8a

Scope and conditions of mandatory automatic exchange of information on advance cross-border rulings and advance pricing arrangements

1 The competent authority of a Member State, where an advance cross-border ruling or an advance pricing arrangement was issued, amended or renewed after 31 December 2016 shall, by automatic exchange, communicate information thereon to the competent authorities of all other Member States as well as to the European Commission, with the limitation of cases set out in paragraph 8 of this Article, in accordance with applicable practical arrangements adopted pursuant to Article 21.

2 The competent authority of a Member State shall, in accordance with applicable practical arrangements adopted pursuant to Article 21, also communicate information to the competent authorities of all other Member States as well as to the European Commission, with the limitation of cases set out in paragraph 8 of this Article, on advance cross-border rulings and advance pricing arrangements issued, amended or renewed within a period beginning five years before 1 January 2017.

If advance cross-border rulings and advance pricing arrangements are issued, amended or renewed between 1 January 2012 and 31 December 2013, such communication shall take place under the condition that they were still valid on 1 January 2014.

If advance cross-border rulings and advance pricing arrangements 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.

Member States may exclude from the communication referred to in this paragraph, information on advance cross-border rulings and advance pricing arrangements issued, amended or renewed before 1 April 2016 to a particular person or a group of persons, excluding those conducting mainly financial or investment activities, with a group-wide annual net turnover, as defined in point (5) of Article 2 of Directive 2013/34/EU of the European Parliament and of the Council⁽²⁾, of less than EUR 40 000 000 (or the equivalent amount in any other currency) in the fiscal year preceding the date of issuance, amendment or renewal of those cross-border rulings and advance pricing arrangements.

3 Bilateral or multilateral advance pricing arrangements with third countries shall be excluded from the scope of automatic exchange of information under this Article where the international tax agreement under which the advance pricing arrangement was negotiated does not permit its disclosure to third parties. Such bilateral or multilateral advance pricing arrangements will be exchanged under Article 9, where the international tax agreement under which the advance pricing arrangement was negotiated permits its disclosure, and the competent authority of the third country gives permission for the information to be disclosed.

However, where the bilateral or multilateral advance pricing arrangements would be excluded from the automatic exchange of information under the first sentence of the first subparagraph of this paragraph, the information identified in paragraph 6 of this Article referred to in the request that lead to issuance of such a bilateral or multilateral advance pricing arrangement shall instead be exchanged under paragraphs 1 and 2 of this Article.

4 Paragraphs 1 and 2 shall not apply in a case where an advance cross-border ruling exclusively concerns and involves the tax affairs of one or more natural persons.

5 The exchange of information shall take place as follows:

- a in respect of the information exchanged pursuant to paragraph 1 — within three months following the end of the half of the calendar year during which the advance cross-border rulings or advance pricing arrangements have been issued, amended or renewed;
- b in respect of the information exchanged pursuant to paragraph 2 — before 1 January 2018.

6 The information to be communicated by a Member State pursuant to paragraphs 1 and 2 of this Article shall include the following:

- a the identification of the person, other than a natural person, and where appropriate the group of persons to which it belongs;
- b a summary of the content of the advance cross-border ruling or advance pricing arrangement, including a description of the relevant business activities or transactions

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- or series of transactions provided in abstract terms, without leading to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy;
- c the dates of issuance, amendment or renewal of the advance cross-border ruling or advance pricing arrangement;
 - d the start date of the period of validity of the advance cross-border ruling or advance pricing arrangement, if specified;
 - e the end date of the period of validity of the advance cross-border ruling or advance pricing arrangement, if specified;
 - f the type of the advance cross-border ruling or advance pricing arrangement;
 - g the amount of the transaction or series of transactions of the advance cross-border ruling or advance pricing arrangement if such amount is referred to in the advance cross-border ruling or advance pricing arrangement;
 - h the description of the set of criteria used for the determination of the transfer pricing or the transfer price itself in the case of an advance pricing arrangement;
 - i the identification of the method used for determination of the transfer pricing or the transfer price itself in the case of an advance pricing arrangement;
 - j the identification of the other Member States, if any, likely to be concerned by the advance cross-border ruling or advance pricing arrangement;
 - k the identification of any person, other than a natural person, in the other Member States, if any, likely to be affected by the advance cross-border ruling or advance pricing arrangement (indicating to which Member States the affected persons are linked); and
 - l the indication whether the information communicated is based upon the advance cross-border ruling or advance pricing arrangement itself or upon the request referred to in the second subparagraph of paragraph 3 of this Article.

7 To facilitate the exchange of information referred to in paragraph 6 of this Article, the Commission shall adopt the practical arrangements necessary for the implementation of this Article, including measures to standardise the communication of the information set out in paragraph 6 of this Article, as part of the procedure for establishing the standard form provided for in Article 20(5).

8 Information as defined under points (a), (b), (h) and (k) of paragraph 6 of this Article shall not be communicated to the European Commission.

9 The competent authority of the Member States concerned, identified under paragraph 6(j), shall confirm, if possible by electronic means, the receipt of the information to the competent authority which provided the information without delay and in any event no later than seven working days. This measure shall be applicable until the directory referred to in Article 21(5) becomes operational.

10 Member States may, in accordance with Article 5, and having regard to Article 21(4), request additional information, including the full text of an advance cross-border ruling or an advance pricing arrangement.

Textual Amendments

- F4** Inserted by [Council Directive \(EU\) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.](#)

F⁵ Article 8aa

Scope and conditions of mandatory automatic exchange of information on the country-by-country report

1 Each Member State shall take the necessary measures to require the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in its territory, or any other Reporting Entity in accordance with Section II of Annex III, to file a country-by-country report with respect to its Reporting Fiscal Year within 12 months of the last day of the Reporting Fiscal Year of the MNE Group in accordance with Section II of Annex III.

2 The competent authority of a Member State where the country-by-country report was received pursuant to paragraph 1 shall, by means of automatic exchange and within the deadline laid down in paragraph 4, communicate the country-by-country report to any other Member State in which, on the basis of the information in the country-by-country report, one or more Constituent Entities of the MNE Group of the Reporting Entity are either resident for tax purposes or subject to tax with respect to the business carried out through a permanent establishment.

3 The country-by-country report shall contain the following information with respect to the MNE Group:

- a aggregate information relating to the amount of revenue, profit (loss) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees, and tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the MNE Group operates;
- b an identification of each Constituent Entity of the MNE Group setting out the jurisdiction of tax residence of that Constituent Entity and, where different from that jurisdiction of tax residence, the jurisdiction under the laws of which that Constituent Entity is organised, and the nature of the main business activity or activities of that Constituent Entity.

4 The communication shall take place within 15 months of the last day of the Fiscal Year of the MNE Group to which the country-by-country report relates. The first country-by-country report shall be communicated for the Fiscal Year of the MNE Group commencing on or after 1 January 2016, which shall take place within 18 months of the last day of that Fiscal Year.]

Textual Amendments

- F4** Inserted by [Council Directive \(EU\) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.](#)
- F5** Inserted by [Council Directive \(EU\) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.](#)

Article 8b

Statistics on automatic exchanges

1 Before 1 January 2018, Member States shall provide the Commission on an annual basis with statistics on the volume of automatic exchanges under Articles 8 and 8a and, to the extent possible, with information on the administrative and other relevant costs and benefits relating to exchanges that have taken place and any potential changes, for both tax administrations and third parties.

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2 Before 1 January 2019, the Commission shall submit a report that provides an overview and an assessment of the statistics and information received under paragraph 1 of this Article, 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. If appropriate, the Commission shall present a proposal to the Council regarding the categories and the conditions laid down in Article 8(1), including the condition that information concerning residents in other Member States has to be available, or the items referred to in Article 8(3a), or both.

When examining a proposal presented by the Commission, the Council shall assess further strengthening of the efficiency and functioning of the automatic exchange of information and raising the standard thereof, with the aim of providing that:

- a the competent authority of each Member State shall, by automatic exchange, communicate to the competent authority of any other Member State, information regarding taxable periods as from 1 January 2019 concerning residents in that other Member State, on all categories of income and capital listed in Article 8(1), as they are to be understood under the national legislation of the Member State communicating the information; and
- b the lists of categories and items laid down in Articles 8(1) and 8(3a) be extended to include other categories and items, including royalties.]

Textual Amendments

- F4** Inserted by [Council Directive \(EU\) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.](#)

SECTION III

Spontaneous exchange of information

Article 9

Scope and conditions of spontaneous exchange of information

1 The competent authority of each Member State shall communicate the information referred to in Article 1(1) to the competent authority of any other Member State concerned, in any of the following circumstances:

- a the competent authority of one Member State has grounds for supposing that there may be a loss of tax in the other Member State;
- b a person liable to tax obtains a reduction in, or an exemption from, tax in one Member State which would give rise to an increase in tax or to liability to tax in the other Member State;
- c business dealings between a person liable to tax in one Member State and a person liable to tax in the other Member State are conducted through one or more countries in such a way that a saving in tax may result in one or the other Member State or in both;
- d the competent authority of a Member State has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises;
- e information forwarded to one Member State by the competent authority of the other Member State has enabled information to be obtained which may be relevant in assessing liability to tax in the latter Member State.

2 The competent authorities of each Member State may communicate, by spontaneous exchange, to the competent authorities of the other Member States any information of which they are aware and which may be useful to the competent authorities of the other Member States.

Article 10

Time limits

1 The competent authority to which information referred to in Article 9(1) becomes available, shall forward that information to the competent authority of any other Member State concerned as quickly as possible, and no later than one month after it becomes available.

2 The competent authority to which information is communicated pursuant to Article 9 shall confirm, if possible by electronic means, the receipt of the information to the competent authority which provided the information immediately and in any event no later than seven working days.

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- (1) [^{F2}Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments (OJ L 157, 26.6.2003, p. 38).]
- (2) [^{F4}Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).]

Textual Amendments

- F2** Inserted by Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.
- F4** Inserted by Council Directive (EU) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.