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Combating aggressive tax planning: ECJ upholds the validity of various provisions of the EU Directive

The EU Council Directive for mandatory automatic exchange of tax information in cross-border arrangements provides that all intermediaries and, in their absence, the taxpayer involved in potentially aggressive cross-border tax arrangements (that may lead to tax avoidance and evasion) must report them to the competent tax authorities. In a Belgian case the European Court of Justice took the chance to comment on various general aspects of the Directive.

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In its judgment, the Court holds, first, that the fact that the directive does not limit the reporting obligation solely to the area of corporate taxes does not affect the validity of that directive in the light of the principles of equal treatment and non-discrimination, and of Articles 20 and 21 of the Charter of Fundamental Rights.

Next, it holds that the degree of precision and clarity of the terminology used in the provisions of the directive submitted for its consideration does not call into question the validity of that directive in the light of the principles of legal certainty and legality in criminal matters, and it similarly holds that the interference with the private life of the intermediary and the relevant taxpayer entailed by the reporting obligation is defined in a sufficiently precise manner in view of the information which that reporting must contain.

Moreover, in its judgment of 8 December 2022*Orde van Vlaamse Balies and Others (see our **blog post of 9 December 2022**)*, the ECJ had held that the obligation imposed on a lawyer, who is exempt from the reporting obligation because of legal professional privilege, to notify other intermediaries involved in the tax arrangement of their own reporting obligations was a breach of that legal professional privilege. The confidentiality of the relationship between a lawyer and his or her client enjoys very specific protection, which relates to the special position occupied by a lawyer in the judicial organization of the Member States and to the fundamental task entrusted to him or her and which is recognized by all the Member States.

Finally, the Court holds that the reporting obligation imposed (a) on intermediaries who are not entitled to a waiver from that obligation because of the legal professional privilege by which they are bound and (b) - in default - on the relevant taxpayer constitutes a proportionate and justified interference in the right to respect for private life, understood as the right of everyone to organize his or her private life.

Source:

ECJ, **Press release No. 119/24** of 29 July 2024 in the case**C-623/22** *Belgian Association of Tax Lawyers and Others*.

Schlagwörter

automatic exchange of information, cross border transactions