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Bundesrat reacts positively to exchange of information for tax-saving schemes

At its sitting on 22 September 2017 the Bundesrat (Federal Council/upper house) expressly welcomed the proposal for an amendment of Council Directive 2011/16/EU on administrative cooperation in the field of taxation to impose a reporting obligation on cross-border schemes. It has long been a demand of the Bundesrat that rules on reporting obligations be introduced.

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The planned adjustments propose that Directive 2011/16/EU should in future generally oblige national tax authorities to automatically exchange information with other EU tax authorities. Primarily among the matters to be reported are all unjustified reductions in tax revenues in a Member State or any tax savings arising from artificial profit shifting amongst group companies. Also being considered is extending the obligation to disclose information to auditing bodies (e.g. during the audit of the annual financial statements). These bodies have sight of enormous amounts of data and could come across examples of aggressive tax planning practices. Furthermore the Member States should ensure that their tax authorities are expressly required to disclose potential tax planning schemes of an aggressive nature and to make certain that such information is automatically exchanged between the tax authorities of the Member States. This should occur within the framework of a mechanism still to be agreed. One concept is an exchange through a common communication network (CCN). The amended directive would include both detailed mechanisms and sanctions, which the Member States would be obliged to implement into national law.

In its sitting on 22 September 2017, the Bundesrat expressly welcomed the European Commission's approach and noted that not only was there was a need to address cross-border tax avoidance schemes but also similar domestic avoidance practices. It therefore recommended the introduction of a reporting obligation for domestic institutions. The Bundesrat's only criticisms related to the application of the Directive.

In this connection the Bundesrat suggested the following improvements:

- The reporting obligation should also apply where "a significant purpose" of a scheme is to gain a tax advantage and not only where this is the "main purpose" of the scheme;
- The reporting deadline of five days is too short and should be extended;
- Intermediaries should be given the opportunity to explain the reported schemes and its motives, including its background and possibly its plausibility. The extended reporting deadline would also make sense here.
- Certain minimum and maximum standards should be introduced as a reaction to tax planning schemes which are proven to be aggressive. This would ensure a unified European approach.

Reference: Comments of the Bundesrat on 22 September 2017, BR-Drs.524/17.

Keywords

BEPS, Corporation tax, Income Tax Act, Private Wealth, Tax-saving schemes, automatic exchange of information, tax avoidance