EUROPEAN COMMISSION

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Automatic exchange of information: frequently asked questions

(see also : IP/13/530)

What is the automatic exchange of information, for tax purposes?

The automatic exchange of information is regarded as the best system for ensuring that national tax authorities can assess and collect the taxes they are due on income and capital that their residents have abroad.

Under this system, Member States collect data on income earned in their territory by non-resident individuals. They then automatically transmit this data to the authorities where the individual resides, so that it can be taxed in line with the Member State of residence's rules.

These exchanges take place through a secure IT network (the CCN system) which ensures that EU data protection rules are fully respected. The information is exchanged using standard computerised formats that the Commission has developed in close cooperation with the Member States.

What provisions are already in place for automatic exchange of information (AEI) within the EU?

The automatic exchange of information is provided for under 2 key pieces of EU legislation.

1. The EU Savings Tax Directive

(Automatic exchange of information on savings income)

The automatic exchange of information was first introduced in the EU in 2005, through the Savings Tax Directive. Under this Directive, Member States spontaneously exchange information with each other on the interest that non-residents receive from savings in their territory.

Austria and Luxembourg have been allowed, for a transitional period, to apply a withholding tax instead of engaging in the automatic exchange of information on savings. Currently, the rate of this withholding tax is 35%. However, Luxembourg recently announced that it would be moving to the automatic exchange of information from 2015.

In 2008, the Commission proposed **a revised Savings Tax Directive**. The aim of this proposal is to close loopholes in the legislation that are being exploited by tax evaders (IP/08/1697). For example, the scope of the Savings Directive would be extended to cover investment funds, pensions and innovative financial instruments, and payments made through trusts and foundations would also be captured.

At the European Council in May 2013, EU leaders committed to the adoption of the revised Savings Tax Directive before the end of the year.

2. The Administrative Cooperation Directive

(automatic exchange of information on other income types)

In January 2013, a new Administrative Cooperation Directive entered into force. This legislation foresees, amongst other things, the automatic exchange of available information on five categories of income from 1 January 2015. These are: income from employment, director's fees, life insurance products, pensions, and immovable property.

It is also foreseen that this Directive would be reviewed in 2017, with a view to extending it to cover more categories of income and capital. Today's proposal accelerates this process, by proposing that the scope of the Administrative Cooperation Directive be extended to ensure that dividends, capital gains, other financial income and account balances are also covered by automatic information exchange from 1 January 2015.

What is the content of the proposal?

Today's proposal expands the scope of automatic exchange of information under the Administrative Cooperation Directive, so that it covers dividends, capital gains, any other financial income and account balances.

While the 5 categories of income[1] already covered by the Administrative Cooperation Directive will only be subject to the automatic exchange if the information is "available", this exception will not apply to the new items listed in today's proposal. Automatic exchange will be mandatory for these new categories. This is because Member States will already be making that information available to the USA under their agreements with the US on the Foreign Accounts Tax Compliance Act (FATCA).

The Commission proposes that the condition of "availability" for the five existing categories of income and capital is re-assessed during a review of the Directive in 2017.

Why is the Commission proposing to extend the automatic exchange of information, and why now?

As part of the intense new drive amongst Member States to clamp down harder on tax evasion, the May 2013 European Council called for priority to be given to extending automatic exchange of information at both EU and global level. However, uncoordinated action on this matter could lead to damaging fragmentation of the Single Market, and would not be as effective as an EU-27 approach.

Therefore, in order to ensure a coherent EU approach, and responding to Member States' new appetite for more ambition in this field, the Commission feels it is timely to enlarge the scope of automatic exchange of information at an accelerated pace.

In addition, Member States either have, or are negotiating, a FATCA agreement with the USA. The scope of automatic information exchange under FATCA is broader than is currently provided for under EU law. Therefore, these FATCA agreements could trigger a series of "most favoured nation" claims between the Member States *(see question on FATCA below for full information on this point).* Today's proposal will ensure that the scope of automatic exchange of information between Member States is just as wide as the scope of FATCA, thereby avoiding the need for the most favoured nation clause to be invoked.

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[1] Employment, Director's fees, life insurance products, pensions, immovable property

Finally, extending automatic information exchange, under EU law, to cover the full range of income and capital also ensures a fair and neutral approach to all different assets i.e. they will all be subject to the same rules.

Why is this best done at EU level?

An EU framework of automatic exchange of information is needed both from an internal market perspective and for reasons of efficiency and effectiveness:

It will ensure a coherent, consistent and comprehensive approach to automatic exchange of information within the Single Market. As such, it will avoid loopholes and overlaps that could be created by a patchwork of national or bilateral approaches.

It will provide legal certainty for tax administrations and economic operators.

It will ensure equal treatment of all different types of assets under EU law, thereby avoiding undesirable reallocation of portfolios.

It will save costs and burdens for tax administrations and economic operators, as it is designed to make use of the IT systems already in place to facilitate information exchange under the Savings Directive and Administrative Cooperation Directive.

How does the Commission's proposal relate to the USA's FATCA?

EU Member States, like other countries across the world, are negotiating bilateral agreements with the US related to its Foreign Account Tax Compliance Act (FATCA). The agreements provide a framework for automatic information exchange between US and foreign tax administrations on the income of US citizens abroad. Under the model agreement negotiated by certain EU Member States and the Commission with the USA (so-called Model 1), there should be reciprocity in this information exchange.

FATCA had a particular significance for the EU in terms of the level of information that Member States should automatically exchange with each other.

The abovementioned Administrative Cooperation Directive contains a "most favoured nation" clause (Art. 19). Under this clause, Member States are bound to provide any EU partner that requests it with the same level of information as they provide third countries, if this is more than provided for under EU law.

With today's proposal, EU legislation (Savings Directive + Administrative Cooperation Directive) will provide for the same scope of automatic exchange of information between Member States as is required under the US FATCA. As such, there would be no need for the most favoured nation clause to be triggered, and the EU will remain a global leader in the area of automatic information exchange.

How does this proposal relate to the "pilot project" on information exchange, launched by five Member States earlier this year?

On 9 April 2013 five EU Member States (DE, FR, ES, IT, UK) announced their intention to cooperate on a "pilot multilateral exchange facility". Through this, they would exchange the same type of information amongst themselves as they will exchange with the USA under FATCA. The logic of this initiative was to avoid the need to trigger the Most-Favoured Nation (MFN) clause in the Administrative Cooperation Directive (see FATCA question above). Since then, 12 other Member States (BE, CZ, DK, FI, IE, NL, PL, PT, RO, SE, SI, SK) have indicated their wish to join the pilot initiative.

Today's proposal offers Member States a means of carrying out this extended automatic exchange of information within a Community framework, with a legal structure that would apply throughout the EU. There are clear benefits to an EU approach rather than a bilateral/multilateral one in this area. It will avoid a patchwork of different bilateral agreements, which could leave loopholes and create additional costs for both administrators and businesses. It will also ensure that all 27 Member States benefit from this expanded information exchange on an equal basis, and create greater legal certainty for operators. Finally, it will mean that a single, strong automatic information exchange system is applied within the EU, putting the Union in a stronger position to push for similar standards internationally.

What are the international developments in relation to automatic information exchange, and what is the EU's role in this?

The EU has been the long-time pioneer of automatic exchange of information internationally. Since the Savings Tax Directive entered into force in 2005, it has been the only region in the world to apply this higher standard of information exchange for tax purposes. It has used this position as global fore-runner to also push for higher standards of tax good governance internationally.

When developing the FATCA, the USA took automatic exchange of information as its basis. As a result, every country or financial institution[2] in the world will have to automatically transmit specific information to the US authorities on their US account holders.

With the world's two largest economic blocks now pushing the automatic exchange of information, there has been a new shift in this direction in the global arena.

In February 2013, G20 Finance Ministers committed to working towards making the automatic exchange of information the global standard. This idea will be taken forward at the the upcoming G8 Summit (June 2013) and G20 Summit (September 2013). The Commission will work with Member States to ensure that there is a strong, unified EU position, pushing to secure higher international standards of tax good governance worldwide. This reflects the call of the May 2013 European Council to give priority to extending the automatic exchange of information at international level, as well as at EU level.

In addition to these global developments, the Commission has also recently received a mandate to negotiate stronger savings tax agreements with Switzerland, San Marino, Andorra, Monaco and Lichtenstein. (see speech/13/…). The aim of these negotiations will be to ensure these countries engage in equivalent levels of transparency and information exchange with the EU, as is carried out within the EU itself. The Commission will take into account international trends and developments in the negotiations, including the international shift towards greater automatic exchange of information.

[2] Depending on the Model agreed with the USA – most EU Member states have chosen to follow Model 1, which is a government-to-government approach to exchanging information.

Scope of EU legislation on Automatic Exchange of Information

Current Savings Directive	**Revised Savings Directive**[1]	**Current Administrative Cooperation Directive**	**Revised Admin Cooperation Directive (i.e. today's proposal)**
Since **1/7/2005**, automatic exchange on: • **Interest income** • **Sales proceeds on debt claims** • **Distributions of UCITS that invest in debt claims**	Expands automatic exchange to cover the following items, in addition to the current scope: • **Distributions of ALL investment funds that invest in debt claims** • **Income from innovative financial instruments that are substantially similar to debt claims** • **Income from life insurance products that are substantially similar to debt claims**	From **1/1/2015**, automatic exchange on five categories of income and capital, *if the information is available*: • Income from Employment • Director's fees • Pensions • **Life insurance products not covered by other EU laws on exchange of information** • Ownership of and income from immovable property Review foreseen in 2017	From **1/1/2015**, automatic exchange on even more items, provided they are paid, secured or held by a financial institution: (*with no condition of "availability" for these items*): • **Dividends** • **Capital Gains** • **Any other income generated with respect to the assets held in a financial account** • **Any amount with respect to which the financial institution is the obligor or debtor, including redemption payments** • **Account Balances** Review foreseen in 2017

NOTE: The items that are highlighted in **bold** correspond to items that are also covered by the USA's FATCA.

Savings Directive (Directive 2003/48/EC)
Directive on Administrative Cooperation (Directive 2011/16/EU)

[1] Due to be agreed by Member States before the end of 2013, in line with the May European Council conclusions