European Commission

Administrative cooperation in the field of direct taxation

Albania and North Macedonia

Explanatory Meeting of the acquis Chapter 16 – Taxation

4 June 2019

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These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union.

Summary

- **What is the role of the European Commission in administrative cooperation matters?**
- **Council Directive 2011/16/EU on administrative cooperation in the field of direct taxation ("DAC")**
- *Overview and general provisions*
- *Exchange of information*
- *Other forms of administrative cooperation*
- *Conditions governing administrative cooperation*
- *Relations with the Commission and other provisions*
- **Commission implementing regulation 2015/2378/EU laying down detailed rules for implementing certain provisions of the DAC**

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What role for the European Commission?

- **To encourage and facilitate cooperation**
- **To guarantee the proper functioning of the internal market**
- **To protect the financial interests of the Union**

DIRECTORATE-GENERAL TAXATION AND CUSTOMS UNION (TAXUD)

- **Coordination of administrative cooperation**
- **Not a competent authority**

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DAC: Overview and general provisions

Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of direct taxation ("DAC")

- Member States' tax revenues
- proper functioning of the internal market
- fairness of the tax system

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1. Objectives of the DAC

1. **to fight cross-border tax fraud, evasion, and avoidance**
2. to increase spontaneous **tax compliance**

2. Subject matter (Art.1)

Cooperation between Member States **with a view to exchanging information** that is **foreseeably relevant** to the administration and enforcement of their domestic tax laws

Additional tools and mechanisms, without prejudice to wider administrative cooperation

3. Scope (Art. 2)

It shall apply to **all taxes of any kind levied by a MS or its territorial or administrative subdivisions**, **except for** VAT, excise duties, customs duties, compulsory social security contributions payable to the MS or its subdivisions or to social security institutions established under public law, and fees or dues of a contractual nature

4. Organisation (Art. 4)

Single central liaison office

Liaison departments

Competent officials

5. Rules and procedures: an overview

Exchange of information

AEOI
Mandatory
Automatic exchange of information

EOIR
Exchange of information on request

SEOI
Spontaneous exchange of information

Other forms of administrative cooperation

Simultaneous controls/audits

Request for notification

Feedback to the competent authorities which provided information

Sharing of best practices and experience

6. The evolution of the DAC

The DAC has been amended five times through the following amending Directives

2014/107/EU (hereinafter "**DAC2**")
https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1556265017439&uri=CELEX:32014L0107

2015/2376/EU (hereinafter "**DAC3**")
https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1556265060509&uri=CELEX:32015L2376

2016/881/EU (hereinafter "**DAC4**")
https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1556265099207&uri=CELEX:32016L0881

2016/2258/EU (hereinafter "**DAC5**")
https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1556265139890&uri=CELEX:32016L2258

2018/822/EU (hereinafter "**DAC6**")
https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1556264486872&uri=CELEX:32018L0822

Directive on Administrative Cooperation – DAC

DAC1 2011/16/EU NON AEOI	DAC1 2011/16/EU AEOI ITEMS	DAC2 2014/107/EU AEOI ITEMS	DAC3 2015/2376/EU AEOI ITEMS	DAC4 2016/881/EU: AEOI ITEMS	DAC5 2016/2258/EU NON AEOI	DAC6 2018/822/EU AEOI ITEMS
Applies:1/2013 All exchanges of info except Art. 8 ***Exchanges on request** ***Spontaneous exchanges** ***Presence in adm. offices** ***Simultaneous controls** ***Request for notification** ***Sharing best practices** ***Use of standard forms**	Applies:1/2015 1st exchanges on 2014 by: 30.6.2015 Art. 8 ***Automatic exchange of information** on **5 non-financial categories:** **Income from employment* **Directors fees* **Pensions* **Life insurance products* **Immovable property (income and ownership)*	Applies:1/2016 1st exchanges on 2016 by: 30.9.2017 Art. 8, para 3a Automatic exchange on **financial account information:** **Interests, dividends or other income generated by financial account* **Gross proceeds from sale or redemption* **account balances*	Applies:1/2017 1st exchanges by 30.9.2017 Art. 8a Automatic exchange of information (using a central directory as from 1.2018) of: ***Advance cross-border rulings** ***Advance pricing arrangements**	Applies:6/2017 1st exchanges on 2016 by: 30.6.2018 Art. 8aa **Automatic exchange of information** on **country-by-country reports** on certain financial information: **Revenues* **Profits* **Taxes paid and accrued* **Accumulated earnings* **Number of employees* **Certain assets*	Applies:1/2018 Art. 22, para 1a **Access by tax authorities to beneficial ownership information** as collected under AML rules	Applies:7/2020 1st exchanges by: 31.8.2020 Art. 8aaa and hallmarks in Annex 4 ***Mandatory disclosure rules** for **intermediaries** and ***Automatic exchange of information** on tax planning **cross-border arrangements**

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DAC: Exchange of information

1. Definitions

EOIR: on **request** in a specific case

AEOI: **mandatory, systematic, predefined information**, **without prior request**

SEOI: non-systematic, **at any moment, without prior request**

2. EOIR and administrative enquiries (Art. 5-6)

Any information foreseeably relevant

- **in possession**
- **resulting from administrative enquiries** to be carried out if necessary

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Time limits (Art. 7)

Deadline for the answer = **as quickly as possible**, **no later than 6 months following the date of receipt of the request (2 months if information is already available)**

Agreement to extend this period

OTHER DEADLINES after receipt of the request

Acknowledgement of receipt = immediately, within 7 working days

Additional request for background information = within 1 month

Impossibility to meet the deadline = immediately, within 3 months

Impossibility or refusal to answer = immediately, within 1 month

3. AEOI on 5 categories of income and capital (Art. 8, par. 1)

Information **concerning residents in other MS that is available on**

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

The scope depends on national legislation of the MS which communicates the information

Where MSs agree on the AEOI for additional categories of income and capital in bilateral or multilateral agreements which they conclude with other MSs, they shall communicate to the Commission which shall make those agreements available to all the other MSs.

Periodicity and deadline (Art. 8, par. 6a)

At least once a year, within 6 months following the end of the tax year of the MS during which the information became available

4. Automatic exchange of financial account information (Art. 8, par. 3a, introduced by DAC2)

➡ OECD/G20, Common Reporting Standard (**CRS**)

- **Reporting and due diligence rules** included in Annexes I and II to be imposed on **Reporting Financial Institutions**
- **Communication of financial account information referred to in par. 3a by MS**

Information to be communicated by MS includes…

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** (special rule in case of an Entity)

b) **the account number**

c) **the name and identifying number of the Reporting Financial Institution**

d) **the account balance or value…**

Etc.

Periodicity and deadline (Art. 8, par. 6b)

Annually, within nine months following the end of the calendar year or other appropriate reporting period.

5. AEOI on advance cross-border rulings and advance pricing arrangements (APAs): Art. 8a introduced by DAC3

Issued, amended or renewed after 31 December 2016

Communication to the competent authorities of all other MSs as well as to the EC

→ It transposes the **minimum standard** of the OECD/G20 **BEPS Action 5** on the exchange of advance cross-border tax rulings (ATRs) and APAs into the EU.

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Information on advance cross-border rulings and APAs to be communicated by MS includes…

- *the **identification of the person**, other than a natural person, and where appropriate the group to which it belongs*
- *a **summary of the content***
- *the **dates** of issuance, amendment or renewal*
- *the **period of validity***
- *the **type** of the advance cross-border ruling or APA*
- *the **amount** of the transaction or series of transactions if it is referred to in the advance cross-border ruling or APA*
- *in the case of APA, the description of the **set of criteria** used for the determination of the TP or the **transfer price itself**, the identification of the **method used** for determination*
- *the **identification of the other MSs**, if any, **likely to be concerned** by the advance cross-border ruling or APA*
- *the identification of **any person** in the other MSs, if any, **likely to be affected***

EC GETS ACCESS TO A LIMITED SET OF INFORMATION

(Art. 8a, par. 8, Dir. 2011/16/EU)

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Request for additional information (Art. 8a, par. 10)

MSs may request additional information, including **the full text** of an advance cross-border ruling or an APA.

Deadline (Art. 8a, par. 5a)

Within 3 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**.

DAC3 and BEPS Action 5 Exchange of ATRs and APAs

- **BEPS5**: one of 4 BEPS **minimum standards**
- **Similar obligations** to DAC3 but with **some differences**:
  - Different institutional framework:

    DAC3: uploading info to **Central Directory**, **availability to all MS**; BEPS5: **exchange with 'relevant' jurisdictions** (i.e. those that may be affected);
  - BEPS5 does not include the **exclusions** that feature under DAC3;
  - DAC3 is about **automatic exchanges** whilst BEPS5 is about **compulsory spontaneous exchanges**;
  - **Timing for exchanges**

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6. AEOI on the country-by-country report (art. 8aa introduced by DAC4)

→ OECD/G20 **BEPS Action 13 -** Country-by-Country Reporting (**CbCR**)

- obligation of MS to require Ultimate Parent entity of an MNE Group to file annually a CbCR within 12 months (**minimum standard includes mandatory local filing ≠ BEPS Action 13**)

- communication of the CbCR by MS

The CbCR shall contain…

a) aggregate information with regard to each jurisdiction in which the MNE Group operates;

b) identification of each Constituent Entity of the MNE Group, its jurisdiction(s) **and the nature of its main business activity or activities**.

Annex III to the DAC: filing rules, including a **template** and general and specific **instructions**.

Deadline (Art. 8aa, par. 4)

Within 15 months of the last day of the Fiscal Year of the MNE Group to which the CbCR relates.

DAC4 and BEPS Action 13 CbCR

- **BEPS Action 13 on CbCR: one of 4 BEPS minimum standards**
- **DAC4**: **very closely aligned** with the Model Rules of BEPS13
- DAC4 uses **standard template** of Action 13 Report of the OECD
- Key point of distinction: '**Local reporting**'
- **Public CbCR not included** – separate legislative proposal for amending the Accounting Directive – ongoing ordinary legislative procedure

7. AEOI in relation to Reportable Cross-Border Arrangements (Art. 8ab provided for by DAC6)

➡ OECD/G20 **BEPS Action 12** – Mandatory Disclosure Rules (**MDR**)

Implementation by 31 December 2019

Application from 1 July 2020

- **obligation of MS to require intermediaries** (or under some conditions, relevant taxpayers) **to file information on reportable cross-border arrangements (RCBA) within 30 days** (*dies a quo* depending on the subject obliged)
- **communication of information** to the competent authorities of all other MSs

Definitions

- **Reportable cross-border arrangement:** it concerns either more than one Member State or a Member State and a third country and contains at least one of the hallmarks set out in **Annex IV**
- **Hallmark** means a characteristic or feature that presents an indication of a **potential risk of tax avoidance**
- **Intermediary** means

- a person that **designs, markets, organises or makes available for implementation or manages the implementation, or**
- **any person that knows or could be reasonably expected to know** to have provided aid, assistance or advice with respect to services above

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Information on Reportable Cross-Border Arrangements (RCBA) to be communicated by MS includes

a) **the identification of intermediaries and relevant taxpayers**

b)details of the **hallmarks**

c) a **summary** of its content

d) the date of implementation of its first step

e) details of the **national provisions** which constitute its basis

f) **its value**

g) **the identification of the MS** of the relevant taxpayer(s) and any other MS which are **likely to be concerned** by it

h) **the identification of any other person in a Member State likely to be affected by it**, indicating to which Member States such person is linked

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(art. 8ab, par. 17, provided for Dir. 2018/822/EU)

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Deadline (Art. 8ab, par. 18)

Within one month of the end of the quarter in which the information was filed.

DAC6 and BEPS Action 12

EU and OECD obligations are **very closely aligned**

but

- different institutional framework

  DAC6: uploading info to **Central Directory**, **availability to all MS**; BEPS12: **exchange with 'relevant' jurisdictions** (i.e. those that may be affected)

- DAC6 is about **automatic exchanges** whilst BEPS12 is about **compulsory spontaneous exchanges**

8. SEOI (Art. 9)

The competent authority of each MS

- **shall communicate if one of the circumstances described by art. 9, par. 1** (ex. grounds for supposing a loss of tax in the other MS) **is met**
- **may communicate any useful information** of which they are aware

Time limits (Art. 10)

- **Transmission of available information as quickly as possible**, and **no later than one month** after it became available.

- Acknowledgement of receipt = immediately and in any event within 7 working days after receipt of the information

9. Feedback (Art. 14)

In case of EOIR and SEOI (par. 1)

Upon request, **as soon as possible and no later than 3 months** (without prejudice to tax secrecy and data protection).

In case of AEOI (par. 2)

Once a year, according to practical arrangements agreed on bilaterally.

10. Access by tax authorities to information on beneficial ownership (Art. 22, par. 1a introduced by DAC5)

Articles 13, 30, 31 and 40 of **Dir. 2015/849/EU on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing**

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DAC: Other forms of administrative cooperation

Art. 11,12,13 and 15 of the DAC

Art. 11 Presence in administrative offices and participation in administrative enquiries (PAOE)

- **by agreement** between competent authorities
- Passive presence
- Active presence if admitted by the legislation of the MS visited

Art. 12 Simultaneous controls of one or more persons of common or complementary interest

Art. 13 Request for notification

Art. 15 Sharing of best practices and experience with a view to improving cooperation and drawing up rules and guidelines if appropriate

DAC: Conditions governing administrative cooperation

Disclosure of information and documents (Art. 16)

- **Official secrecy**
- **For administration and enforcement** of the domestic laws regarding the **taxes in the scope of the DAC or the directive 2010/24/EC** or for assessment and enforcement of compulsory social security contributions or **in connection with judicial proceedings in relation to infringements of tax laws**
- **For other purposes under strict conditions**
- **Forwarding to a third MS under strict conditions**

Information exchanged pursuant to Art. 8aa of the DAC (Art. 16, par. 6)

- **for assessing high-level transfer-pricing risks and other risks related to BEPS** and
- where appropriate for **economic and statistical analysis**

No TP adjustments

Limits and obligations (Art. 17-18)

- **protection of a commercial, industrial or professional secret**, or of a commercial process, **public policy reasons**, etc.
- major elements based on Article 26(4)and 26(5) of the OECD model tax convention on income and capital
- **exclusion of domestic interest**
- **repeal of bank secrecy**

Wider cooperation (Art. 19)

Like a "*MFN clause*"

It applies where a Member State provides a wider cooperation to a third country than that provided for under this Directive.

No refusal to provide such wider cooperation to any other Member State wishing it

Standard forms and computerised formats (Art. 20)

Comitology procedure

➡ **Commission implementing regulation 2015/2378/EU laying down detailed rules for implementing certain provisions of Council Directive 2011/16/EU**

art. 1 Standard forms	- **exchanges on request** (Annex I) - **spontaneous exchange** (Annex II) - **notifications** (Annex III) - **feedback** (Annex IV)
art. 2 Computerised formats	- **AEOI** *ex* art. 8(1) (Annex V) - **AEOI** *ex* art. 8(3a) (Annex VI)
art. 2a Standard forms, including linguistic arrangements	- **AEOI** *ex* art. 8a (Annex VII)
art. 2b Linguistic arrangements	- **AEOI** *ex* art. 8aa (**CbCR**) **Compulsory standard form in Annex III to the DAC**

https://eur-lex.europa.eu/legal content/EN/TXT/?qid=1556264593136&uri=CELEX:02015R2378-20180212

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Practical arrangements (Art. 21): the CNN Network and the Central Directory

- Information provided by electronic means using the **CCN Network**

- **DAC3 and DAC6** imply the setting of **a secure Member State central directory on administrative cooperation in the field of taxation**
- **Competent authorities of all MSs: full access**
- **Commission: limited access (Articles 8a and 8ab)**

DAC6 standard form and Central Directory

Commission Implementing Regulation 2019/532/EU of 29 March 2019, amending n. 2015/2378/EU, introduced

art. 2e Standard forms, including linguistic arrangements	- **AEOI** *ex* art. 8ab (Annex XIII)

Applicable from 1 July 2020.

The **DAC6 Central Directory** will be ready **by 31 December 2019**. Practical arrangements via comitology procedure.

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DAC: Relations with the Commission and other provisions

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Evaluation (Art. 23)

- List of statistical data set out in Reg. 2015/2378/EU
- Annual evaluation of the automatic exchange

Penalties (Art. 25a)

- Infringements of national provisions transposing **art. 8aa and 8ab**
- The penalties shall be **effective, proportionate and dissuasive**

Committee (Art. 26)

- The Commission is assisted by the "**Committee on Administrative Cooperation for Taxation**" (regulatory committee)
- Competent for implementing technical aspects of the directive

Key practical advice

Plan and manage carefully the IT projects necessary to ensure DAC implementation

Plan how to use data and make sure to be in a position to send quality information

Engage with stakeholders (intermediaries, financial institutions, businesses)

Protection of taxpayers' data: essential!

About costs of DAC implementation

- **Report** on the application of Council Directive (EU) 2011/16/EU on administrative cooperation in the field of direct taxation: **SWD(2017) 462 final, 18.12.2017**
- **Report** on overview and assessment of the statistics and information on the automatic exchanges in the field of direct taxation: **COM(2018)844 final, 17.12.2018**
- **Staff Working Document on Evaluation of DAC**

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Contacts

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Thanks for Your attention !