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EU agreements with non-EU jurisdictions 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 EU in concluding agreements in the direct tax field?**
- **What are the duties of the individual MS under these agreements**
- **The five updated EU agreements with Andorra, Liechtenstein, Monaco, San Marino and Switzerland**
- *Automatic exchange of financial account information*
- *Exchange of information on request*
- *Other provisions included only in the Swiss agreement*
- **The agreement between the EU and France concerning the application to the extra-EU collectivity of Saint-Barthelemy of the EU rules on administrative cooperation in direct tax**
- **RECOMMENDATIONS FOR CANDIDATE COUNTRIES**

What role for the EU?

- *International agreements can be negotiated by the EU with non-EU countries on tax matters for which the EU has legislated or is going to legislate, on the basis of Article 218 or Article 292 TFEU in conjunction with the legal basis under the TFEU for the EU legislation concerned.*
- *Negotiations in tax matters can only be held on the basis of negotiating directives unanimously adopted by the Council acting upon a detailed Recommendation from the Commission on suitable subjects.*

What are the duties of the MS under these agreements?

- *Once signed and adopted on behalf of the EU, in accordance with the procedures set by Article 218 TFEU, the EU agreements in tax matters become part of the EU acquis and have to be complied with by each Member State accordingly, without need for ratification at national level.*
- *Each of the 6 EU international agreements in force in direct tax matters provide for the same level of reciprocal obligations for each Member State with each of the 6 non-EU jurisdictions.*

The EU agreements with Andorra, Liechtenstein, Monaco, San Marino and Switzerland: introduction

- *Five Protocols signed between 27 May 2015 (the one with Switzerland) and 12 July 2016 (the one with Monaco) have entirely replaced the text of previous 2004 EU agreements which only covered Savings Taxation.*
- *The two updated EU agreements with Liechtenstein and San Marino entered into force on 1 January 2016, the three others on 1 January 2017.*

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The five updated EU agreements with Andorra, Liechtenstein, Monaco, San Marino and Switzerland: Automatic Exchange

- *The new texts provide, in line with the 2014 OECD Global Standard on Automatic Exchange of Financial Account Information and its implementation within the EU under DAC2:*
  - *For obligations of due diligence of the customers to be performed by Financial Institutions in order to identify the Reportable Accounts;*
  - *For obligations of annual automatic info exchange on these Accounts between the tax authorities of the country of the Financial Institutions and the country of residence of account holders <u>and/or</u> beneficial owners*.

The Agreements with AND, LIE, MON, RSM and CH: Exchange on Request

- ***In addition,*** *the new text provides for* ***exchange on request****, in accordance with the most updated OECD standard, for information that relates to taxes of any kind and fiscal years following date of entry into force.*
- *For previous fiscal years, EOIR possible under the stricter conditions of the original 2004 Savings Agreements ("on conduct constituting tax fraud under the laws of the requested State, or the like for income covered by this Agreement"); or under applicable bilateral DTA or TIEA.*

Specific provisions on business taxation included only in the EU agreement with CH, Article 9

- *Benefits similar to those provided by the EU Directive on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, in its original 1990 version (*Council Directive 90/435/EEC of 23 July 1990).
- *Benefits similar to those provided by the EU Directive on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (Council Directive 2003/49/EC)*

The recent exit from the EU of Saint-Barthélémy

- *By virtue a Decision taken by the European Council on 29 October 2010, the European Union acknowledged the changing institutional position of Saint-Barthélémy in its relationships with France and amended the status of this island also with regard to the European Union.*
- *As of 1 January 2012, the island ceased to be an outermost region within the territory of the European Union and is now a dependent/associated territory of France, outside the territory of the European Union.*

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All DAC provisions remain applicable to and towards Saint-Barthélémy

- *An agreement signed on 17 February 2014 between the European Union and France acting on behalf of Saint-Barthélémy ensures the continuing application by the island and in its favour of the EU current and future acquis in the field of administrative cooperation between tax authorities in direct tax matters (DAC1 to DAC6)*
- *The related messages from MS are channelled through France but distinguished under the specific country code of Saint-Barthélémy (BL)*

Recommendations for EU candidates

- *Including the 6 non-EU jurisdictions concerned in your list of Reportable Jurisdictions at the latest by the date of Accession.*

- *Ensuring your compliance not only with the EU General Data Protection Regulation (JO L119 of 4 May 2016),* ***but also with the Confidentiality and Data Safeguards Requirements set by the Global Forum on Transparency and EOI***

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Sources

- *Agreement with **Andorra:***

  https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22016A1001(02)&from=EN

- *Agreement with **Liechtenstein:***
  https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22015A1224(01)&from=EN
- *Agreement with **Monaco:***
  https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22016A0819(01)&from=EN
- *Agreement with **San Marino:***
  https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22015A1231(01)&from=EN
- *Agreement with **Switzerland:***
  https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22015A1219(02)&from=EN
- *Agreement concerning **Saint-Barthélémy:*** https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.330.01.0012.01.ENG&toc=OJ:L:2014:330:TOC

- ***Council website confirming entry into force:***

  https://www.consilium.europa.eu/en/documents-publications/treaties-agreements/

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Thanks for Your attention !