



Disclosure obligation of aggressive cross-border constructions for tax specialists

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From 1 July 2020, tax specialists will have to disclose aggressive cross-border constructions to the tax authority. This is part of the new fight against international tax evasion. The proposal mainly reflects Action Point 12 of the 2013 international plan of the OECD on Base Erosion and Profit Shifting (BEPS).

Transparent fiscal constructions

Today, fiscal constructions are still being set up so taxable profits can be flushed through tax havens or total tax burden is significantly reduced in other artificial ways. The constructions themselves aren't always illegal, but since the Panama Papers aggressive fiscal planning is no longer justifiable to society.

Central database

On Tuesday 13 March 2018, the European Ministers of Economic and Financial Affairs ('ECOFIN') met to discuss the implementation of a disclosure obligation for 'intermediaries'. This draft Directive is part of a series of measures that should help to avoid evasion of corporation tax.

Intermediaries – such as tax lawyers, tax advisers, accountants – will therefore have to disclose potentially harmful constructions to the national tax authority. European Union member states will be able to exchange this information via a central database. In addition, member states will be obliged to impose sanctions on intermediaries who do not comply with the transparency measures.

What does 'aggressive' mean?

Of course, the question is: what should be understood by 'aggressive' cross-border planning? A set of "*essential characteristics*" will help determine which types of constructions will have to

be reported to the tax authority. This doesn't necessarily mean that a construction is harmful. It suggests it may have to be investigated by tax authorities. A lot of constructions are entirely legitimate so it is a matter of determining which ones aren't.

Implementation

Member states have until 31 December 2019 to incorporate the Directive into their national legislation. The new disclosure obligations will apply from 1 July 2020. From that date, the disclosure obligation should also come into effect in Belgium.

Member states are obliged to exchange information every 3 months, more precisely within one month after the end of the quarter in which the information was presented. This means the first automatic information exchange has to take place on 31 October 2020 at the latest.

The final Directive will be adopted by the Council acting on unanimity after consulting the European Parliament.



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