



# Fiscal administrations collaborate across borders

*news*

*tax, profit, private individuals,*

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The increasing mobility of taxpayers, the growing number of cross-border transactions and the introduction of new financial instruments such as crypto currencies are increasing the risk of tax evasion and avoidance. In Europe, cooperation between various national tax authorities should ensure tax compliance.

Administrative cooperation and exchange of information between tax administrations of different EU member states is regulated by the European Assistance Directive No. 2011/16/EU, also called Directive on Administrative Cooperation or "DAC 1. This Assistance Directive has been amended several times since 2011. Recent amendments regarding cooperation and exchange of information have been made through DAC 7 (revenue from digital platforms) and DAC 8 (revenue from crypto assets). The Assistance Directive has been implemented in Belgian tax law.

## *Mandatory automatic data exchange*

There are six income and asset categories on which European member states can exchange information among themselves under the Assistance Directive. Notably:

- employment income;
- directors' fees and attendance fees;
- life insurance policies;
- pensions;
- real estate income; and
- royalties.

For tax periods beginning on or after Jan. 1, 2025, each Member State must engage in automatic exchange of information of at least four of the above categories. This means that competent tax administrations will provide, through electronic exchange, information to the competent authority of another Member State with respect to residents of the other Member State.

Tax authorities of EU member states will, as of revenue 2023, voluntarily share intelligence from reports originating from digital platform operators. The Assistance Directive has been expanded to include mandatory automatic exchange between tax authorities of intelligence supplied by crypto asset reporting providers.

Since 2017, national tax authorities automatically provide information to other member states regarding financial accounts of residents in another member state, prior cross-border rulings and prior transfer pricing agreements. In addition, there is also automatic data exchange regarding mandatory tax country reports submitted by multinational groups with operations in the EU. National authorities also further exchange data on reportable cross-border structures.

Based on the Anti-Money Laundering Directive, tax administrations have also had access to beneficial ownership information (UBO) since 2018.

It is clear that the tsunami of mandatory automatic tax information exchange within the European Union is unstoppable. But there is more.

## *Spontaneous exchange of information*

Tax administrations in the European Union must also provide spontaneous and unsolicited information to each other. This implies that they exchange as soon as possible and no later than one month after the information is available if:

- the tax authority suspects that a tax loss exists in the other state;
- someone gets a tax exemption or reduction in one country that should cause a higher tax in another;
- transactions potentially lead to tax savings in either or both countries;
- artificial profit shifting within a multinational group can lead to tax savings;
- they have obtained information from another tax administration that may be useful in determining the tax liability in the other country.

When a tax administration receives information from a non-EU country, it can exchange the useful information received with other EU countries. A prerequisite is that the administration informs the non-EU country of its intention to exchange this information with EU countries and that this country agrees.

## *Request for exchange of information*

Obviously, in the context of a tax administrative investigation, a request for the exchange of information may be directed to a foreign tax administration. Following a request, this foreign tax administration that provides information can ask for feedback from the tax administration that used the information. Deadlines are provided within which answers or feedback must be given.

When information is requested, it should be deemed to be of expected relevance. An

expectation of materiality exists if the tax authority requesting the information believes at the time that there is a reasonable possibility that the information is material to the tax affairs of one or more taxpayers, identified or unidentified, and exchange is justified for the purpose of the investigation.

In addition, the requesting tax administration must state in its exchange request the tax purpose for which the information is sought and specify the information needed to implement or enforce its domestic law.

Requests that concern a group of taxpayers who cannot be identified individually, so-called "group requests," must be clearly justified.

## ***Cooperation in tax audits***

In terms of cooperation in tax audits, there is the possibility of presence in the offices of the (foreign) tax administration and active participation in the administrative investigation outside the territory. Active participation in a tax investigation in another member state can be both physical, remote and via electronic communication channels. In addition, tax administrations can conduct simultaneous, each on its own territory, as well as joint tax audits of taxpayers in which member states have a joint or complementary interest.

A joint or complementary interest in an investigation may exist, for example, in cross-border transactions between entities belonging to the same multinational group or in the presence of a permanent establishment of a taxpayer in another Member State.

A joint audit by different tax administrations, from home and abroad, requires prior coordination with clear agreements on the objective, approach and working method, including the language regime. Herein lies the essential difference from active participation in an administrative investigation outside the territory or a simultaneous audit.

The participating tax authorities in such a "joint audit" seek to agree on the facts and circumstances and must also strive to agree on the tax position of the audited (legal) person. Thus, there is only a best-efforts obligation. The findings on which they agree are included in a final report that is also provided to the taxpayer(s).

Interrogations, document examinations, joint questionnaires - it is all possible. The tax administration of the country where the audit takes place ensures that the applicable procedural rules are communicated and respected. For taxpayers facing such joint audit, attention to procedural rules is a must.

## ***Conclusion***

To address the tax challenges associated with globalization, cooperation between the tax

administrations of different EU member states is essential. This is regulated through the European Assistance Directive No. 2011/16/EU, also known as DAC 1, which has been amended several times since 2011. Recent amendments, such as DAC 7 (for income via digital platforms) and DAC 8 (for income from crypto assets), emphasize the importance of cooperation and information exchange.

In addition to mandatory automatic data exchange, tax authorities should also spontaneously exchange information when they suspect tax evasion, tax benefits are being abused, or transactions may yield tax savings. Requests for information and active participation in a tax investigation outside the territory are also part of the tax arsenal. Simultaneous and joint tax audits are an additional tool for tax administrations in the national and international control arena.



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