EU Disclosure Rules

International Tax

01 September 2017

Drawing on our experience in the UK of our Disclosure of Tax Avoidance Schemes (DOTAS) rules, the CIOT has contributed to an Opinion Statement prepared by the Confédération Fiscale Européenne (CFE), the European association of tax advisers, on the European Commission's proposal to introduce Europe wide mandatory disclosure rules and effective disincentives for tax intermediaries (including advisers) that design or sell potentially harmful tax schemes.

On 21 June 2017 the European Commission published its proposal in relation to the introduction of Europe wide mandatory disclosure rules and effective disincentives for tax advisers that design or sell potentially harmful tax schemes. These proposals follow on from an EU consultation on *Disincentives for advisors and intermediaries for potentially aggressive tax planning schemes* which concluded in February 2017. The proposals are part of the Commission's agenda to enhance tax transparency in the EU with the stated aim to tackle tax abuse and ensure fairer taxation.

The proposals published in June are in the form of a Council Directive which would amend Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation COM/2016/025 final–2016/010 (CNS).

As a member of the CFE, the CIOT was able to draw on our experience in the UK of the Disclosure of Tax Avoidance Schemes (DOTAS) rules and contribute to the CFE's Opinion Statement which has been submitted to the Commission. The key points in the Opinion Statement are:

- the Commission's policy approach for increased transparency and efforts to strengthen the integrity of the tax systems is welcomed, and in particular the renewed efforts for increased tax certainty;
- however, the design of certain aspects of the proposal leaves scope for uncertainty and presents the challenge of divergent implementation in the member states;

- definitions need to be clear and concise, as rules that are too widely drawn are overly burdensome for taxpayers and unhelpful for tax authorities, which stand to receive massive numbers of disclosures but very little useful information;
- the proposals could benefit from including a requirement for member states' tax administrations to issue implementation guidance, providing clarity in relation to determining what is required to be disclosed;
- the Commission should adhere to the principles set out in the Final Report on G20/OECD BEPS Action 12 on Mandatory Disclosure Rules, in particular that the member states define country specific hallmarks together with a list of excluded tax regimes and outcomes that are not required to be disclosed. These hallmarks could then be assembled on EU level and become reportable except for the excluded arrangements;
- the hallmarks will define what constitutes a reportable cross-border arrangement and should, therefore, be well-defined, clear and concise;
- the main benefits test should be in the main text of the directive and should be applicable to all hallmarks in order to ensure that the reporting obligation is limited to relevant arrangements only.

The CIOT (and ICAEW) did not agree with other CFE member organisations on the point relating to the burden of disclosure. Many CFE member organisations believe that the obligation to disclose should be placed so far as possible on the taxpayer. In contrast, the CIOT (and ICAEW) strongly disagree with this position and believe that, as in the UK's DOTAS regime, the principal obligation to disclose should fall on the tax adviser except in those cases where the tax adviser is prevented from disclosing as a result of the legal professional privilege of the client. Paragraph 8 of the Opinion Statement reflects this difference of opinion.

The full Opinion Statement can be found at https://tinyurl.com/y7yuloue.