



Mr Roberto Gualtieri
Chair
Committee on Economic and
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European Parliament
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Dear Mr Gualtieri,

Re: FEE comments on amending Directive 2011/16/EU as regards mandatory automatic exchange of advance cross-border tax rulings and advance pricing arrangements

FEE (the Federation of European Accountants¹, www.fee.be) is pleased to provide you below with our comments on the proposals published in 2015/0068 pertaining to the proposal to amend Directive 2011/16/EU (hereafter referred to the Directive for Administrative Cooperation) in respect of the mandatory, automatic exchange of advance cross-border tax rulings and advance pricing arrangements (“advance rulings”).

FEE supports transparency and measures designed to promote fair competition and a level playing field between enterprises. We are also fully cognisant of the concerns of the European public in respect of the issues raised by recent disclosures of advance rulings. Recognising the public interest, we are committed to playing a positive role in developing measures that help address these public concerns.

FEE fully supports the proposed measures to provide transparency between National Tax Authorities on their advance rulings. The proposed automatic exchange of information between Member States may help other national authorities to identify the minority of advance rulings that could facilitate tax avoidance in their own jurisdiction. Tax rulings are important to the economies of Member States and it is vital that access to them is not curtailed in the future.

¹ FEE is the Fédération des Experts-comptables Européens (Federation of European Accountants). It represents 47 professional institutes of accountants and auditors from 36 European countries, including all of the 28 EU Member States. In representing the European accountancy profession, FEE recognises the public interest. It has a combined membership of more than 800.000 professional accountants, working in different capacities in public practice, small and big firms, government and education, who all contribute to a more efficient, transparent and sustainable European economy. FEE is registered in the EU Transparency Register (no. 4713568401-18) and a member in the European Commission’s Platform for Tax Good Governance.

Exchange of advance rulings within the EU is a useful first step. It must not be forgotten that business is now truly global so, in order that the EU is not disadvantaged economically, it is important that 3rd countries also exchange such information; such as is proposed by the OECD in the BEPS action on addressing harmful tax competition.

In our experience, advance rulings play an important role in reducing uncertainty for taxpayers where increasingly complex laws, or their particular implications, are unclear. They help to avoid future disputes between the taxpayer and the tax authority and also are useful as a source of information for other taxpayers (where made public) facing similar tax issues. They are not meant to facilitate tax avoidance or provide a preferential treatment for certain tax payers.

In the section below, we will address some specific practical concerns that we have identified with the current proposals that may require further consideration.

For Member States to properly implement the transmission of advance rulings and to analyse the information that they receive without negatively impacting on the willingness of their tax authorities to issue such rulings, it may be necessary for Member States to provide additional budgetary resources to their tax authorities.

This could be a particular issue where tax authorities have previously been subject to budgetary cuts and also where Member States operate a federal system and such advance rulings would also need to be disseminated from the federal tax authority to regional authorities. Consequently, we believe that it is important that the Commission expedites the introduction of its proposed central directory of advance rulings, accessible to all Member States, as this would facilitate and enhance the exchange of information.

The current proposals follow the existing provisions for confidentiality within the Directive for Administrative Cooperation. Consequently, the information being transferred will follow the tax secrecy laws in force in the recipient Member State rather than that from which it is sent. The proposals also state that the information transferred shall only be available to the Competent Authorities of Member States and to the European Commission. However, it needs to be considered that the Member State receiving the information may have different rules relating to tax transparency than the Member State sending the information.

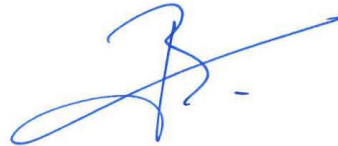
We understand that the proposal will include the exchange of advance rulings from up to ten years before the implementation date of the Directive, where the advance rulings are still in force. This could result in an as yet unquantified number of cases having to be screened in Member States. Ideally, this process should ensure that there is no reduction to legal certainty, harm to legitimate expectation or damage to the trust and cooperation already established between tax authorities and taxpayers.

For further information on this letter, please contact Paul Gisby, Manager, from the FEE Team on +32 2 893 33 70 or via e-mail at paul.gisby@fee.be.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Petr Kriz', written in a cursive style.

Petr Kriz
President

A handwritten signature in blue ink, appearing to read 'Olivier Boutellis-Taft', written in a cursive style.

Olivier Boutellis-Taft
Chief Executive