Commission Implementing Regulation (EU) 2018/99 of 22 January 2018 amending Implementing Regulation (EU) 2015/2378 as regards the form and conditions of communication for the yearly assessment of the effectiveness of the automatic exchange of information and the list of statistical data to be provided by Member States for the purposes of evaluating of Council Directive 2011/16/EU

COMMISSION IMPLEMENTING REGULATION (EU) 2018/99

of 22 January 2018

amending Implementing Regulation (EU) 2015/2378 as regards the form and conditions of communication for the yearly assessment of the effectiveness of the automatic exchange of information and the list of statistical data to be provided by Member States for the purposes of evaluating of Council Directive 2011/16/EU

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC[(1)], and in particular Article 23(3) and (4) thereof,

Whereas:

(1) Article 23(3) of Directive 2011/16/EU provides for a yearly assessment of the effectiveness of the automatic exchange of information to be communicated by the Member States to the Commission.

(2) Article 23(4) of Directive 2011/16/EU provides for a list of statistical data to be provided by the Member States for the purposes of evaluating that Directive.

(3) The list does not include statistical data as regards the mandatory exchange of information pursuant to Article 8a of Directive 2011/16/EU as such data will be gathered by the Commission from the central directory established pursuant to Article 21(5) of Directive 2011/16/EU.

(4) Commission Implementing Regulation (EU) 2015/2378[(2)] should therefore be amended accordingly.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Administrative Cooperation for Taxation,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Implementing Regulation (EU) 2015/2378

Implementing Regulation (EU) 2015/2378 is amended as follows:

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2018/99. (See end of Document for details)*

(1) the following Articles 2c and 2d are inserted:

Article 2c

Form and conditions for the communication of the yearly assessment

1 The form for the communication of the yearly assessment of the effectiveness of the automatic exchange of information and the practical results achieved pursuant to Article 23(3) of Directive 2011/16/EU is set out in Annex VIII to this Regulation.

2 Before 1 April each year, Member States shall communicate to the Commission by electronic means the yearly assessment using the form referred to in paragraph 1. The assessment shall cover the period of the previous calendar year.

Article 2d

List of statistical data

1 The list of statistical data required for all forms of administrative cooperation, other than the mandatory automatic exchange of information, pursuant to Article 23(4) of Directive 2011/16/EU is set out in Annex IX to this Regulation.

The list of statistical data required for the mandatory automatic exchange of information pursuant to Article 8(1) of Directive 2011/16/EU is set out in Annex X to this Regulation.

The list of statistical data required for the mandatory automatic exchange of information pursuant to Article 8(3a) of Directive 2011/16/EU is set out in Annex XI to this Regulation.

The list of statistical data required for the mandatory automatic exchange of information pursuant to Article 8aa of Directive 2011/16/EU is set out in Annex XII to this Regulation.

2 Before 1 April each year, Member States shall communicate by electronic means, to the Commission the statistical data on all forms of administrative cooperation, other than the mandatory automatic exchange of information, in accordance with the list set out in Annex IX, in respect of the previous calendar year.

3 Before 1 November each year Member States shall communicate by electronic means to the Commission the statistical data on mandatory automatic exchange of information in accordance with the list set out in Annex X, Annex XI and Annex XII.

(2) Annexes VIII, IX, X, XI and XII are added as set out in the Annex to this Regulation.

Article 2

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 22 January 2018.

For the Commission

The President

Jean-Claude JUNCKER

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2018/99. (See end of Document for details)*

ANNEX

The following Annexes are added to Implementing Regulation (EU) 2015/2378:

ANNEX VIII

Form referred to in Article 2c

The form for the communication pursuant to Article 23(3) of Directive 2011/16/EU covers the following information:

— Identification of the Member State replying to the questionnaire
— Availability of information in the Member State
— Monitoring whether bilateral annual feedbacks as per Article 14(2) were sent
— Effectiveness of the automatic exchange of information:
  — Processing of information received and main overall technical (IT) issues encountered
  — Quality of information received, containing identification of recipients/ parties; issues with the content of information received and related suggestions
  — Compliance use and effectiveness, containing usefulness of information in principle; actual and future use of information; use of information by tax area; administrative cooperation encouraged by the use of the information received
  — Practical results achieved, containing total outcome (including special projects); specific outcome from special projects; administrative and other relevant costs for automatic exchange of information (AEOI) development and implementation; administrative costs for recurring AEOI operations; other relevant costs for tax compliance operations; positive and negative experiences; main aspects generating litigation and court proceedings
  — Rate of success as regards the obligation to communicate the country-by-country reports to the Member States concerned (Number of country-by-country reports received from tax authorities of other Member States/ Number of country-by-country reports due to be received from tax authorities of other Member States)
  — Rate of compliance of Reporting Entities as regards the obligation to provide the country-by-country reports (Number of country-by-country reports received/Number of country-by-country reports due to be reported)
  — List of any jurisdictions where Ultimate Parent Entities of Union-based Reporting Entities are resident, but full country-by-country reports have not been filed or exchanged.

ANNEX IX

List referred to in Article 2d

The statistical data required for the forms of administrative cooperation other than the mandatory automatic exchange of information referred to in Article 23(4) of Directive 2011/16/EU covers the following information:

— Identification of the Member State