Commission Implementing Regulation (EU) 2015/2378 of 15 December 2015 laying down detailed rules for implementing certain provisions of Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Implementing Regulation (EU) No 1156/2012

COMMISSION IMPLEMENTING REGULATION (EU) 2015/2378

of 15 December 2015

laying down detailed rules for implementing certain provisions of Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Implementing Regulation (EU) No 1156/2012

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 20(1), (3) and (4) and Article 21(1) thereof,

Whereas:

(1) Directive 2011/16/EU replaced Council Directive 77/799/EEC[(2)]. A number of important adaptations of the rules concerning administrative cooperation in the field of taxation were made, in particular as regards the exchange of information between Member States with a view to enhancing the efficiency and the effectiveness of cross border exchange of information.

(2) Council Directive 2014/107/EU[(3)] amended Directive 2011/16/EU to introduce the mandatory automatic exchange of financial account information and the relating set of reporting and due diligence rules.

(3) In order to ensure the functioning of the new legal framework, Directive 2011/16/EU requires certain rules on the standard forms and computerised formats and the practical arrangements on the exchange of information between Member States to be adopted by means of implementing acts. Commission Implementing Regulation (EU) No 1156/2012[(4)] provides detailed rules as regards the standard forms and the computerised formats to be used in relation to Directive 2011/16/EU.

(4) Considering the changes to be made with a view of implementing Directive 2011/16/EU and in order to ease the readability of the implementing act, it is appropriate to repeal Implementing Regulation (EU) No 1156/2012 and to set out new consolidated rules.

(5) In order to facilitate the exchange of information, Directive 2011/16/EU requires that such exchange of information under that Directive should take place using standard forms except for mandatory automatic exchange of information.

(6) The standard forms to be used should contain a number of fields that are sufficiently diversified, so as to allow Member States to easily deal with all relevant cases, using the fields appropriate for each case.

(7) For the purposes of the mandatory automatic exchange of information, Directive 2011/16/EU requires the Commission to adopt both the practical arrangements and the computerised format. With a view to ensuring the appropriateness and usability of the information exchanged and the efficiency of the exchange itself, detailed rules should be laid down in this regard.

(8) The condition that the mandatory automatic exchange of information on the five categories of income and capital pursuant to Article 8(1) of Directive 2011/16/EU is subject to the availability of the information justifies that the corresponding computerised format is not specified beyond the level of the overall structure and classes of elements composing the computerised format, while the detailed elements exchanged under each of those classes remain subject to its availability in each Member State.

(9) Taking into account that the information exchanged under Article 8(3a) of Directive 2011/16/EU is to be collected by Reporting Financial Institutions pursuant to the applicable reporting and due diligence rules laid down in Annexes I and II to Directive 2011/16/EU and that the exchange is accordingly not subject to the condition of the availability of the information, the computerised format to be used should, in contrast, be expanded to encompass the lowest level of detail and include each element, together with its relevant attributes, if any.

(10) According to Directive 2011/16/EU, the information should, as far as possible, be provided by electronic means using the Common Communication Network ('CCN'). Where necessary, the practical arrangements for the communication should be specified. Detailed rules should apply to the communication of reports, statements and other documents not consisting in the information exchanged itself but supporting it and, in the case of communication outside the CCN network and without prejudice to other bilaterally agreed arrangements, to the communication and identification of the information exchanged.

(11) Laws, regulations and administrative provisions in the Member States necessary to comply with Article 8(3a) of Directive 2011/16/EU regarding the mandatory automatic exchange of financial account information are to apply from 1 January 2016. This Regulation should therefore apply from the same date.

(12) 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:

***Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2015/2378. (See end of Document for details)*

Article 1

Standard forms for exchanges on request, spontaneous exchanges, notifications and feedback

1 In regard to the forms to be used, 'field' means a location in a form where information to be exchanged pursuant to Directive 2011/16/EU may be recorded.

2 The form to be used for requests for information and for administrative enquiries pursuant to Article 5 of Directive 2011/16/EU and their replies, acknowledgments, requests for additional background information, inability or refusal pursuant to Article 7 of that Directive shall comply with Annex I to this Regulation.

3 The form to be used for spontaneous information and its acknowledgment pursuant to Articles 9 and 10 of Directive 2011/16/EU shall comply with Annex II to this Regulation.

4 The form to be used for requests for administrative notification pursuant to Article 13(1) and 13(2) of Directive 2011/16/EU and their responses pursuant to Article 13(3) of that Directive shall comply with Annex III to this Regulation.

5 The form to be used for feedback information pursuant to Article 14(1) of Directive 2011/16/EU shall comply with Annex IV to this Regulation.

Article 2

Computerised formats for the mandatory automatic exchange of information

1 The computerised format to be used for the mandatory automatic exchange of information pursuant to Article 8(1) of Directive 2011/16/EU shall comply with Annex V to this Regulation.

2 The computerised format to be used for the mandatory automatic exchange of information pursuant to Article 8(3a) of Directive 2011/16/EU shall comply with Annex VI to this Regulation.

[*F1* *Article 2a*

Standard forms, including linguistic arrangements, for the mandatory automatic exchange of advance cross-border rulings and advance pricing arrangements

1 In regard to the forms to be used, 'component' and 'field' mean a location in a form where information to be exchanged pursuant to Directive 2011/16/EU may be recorded.

2 The form to be used for the mandatory automatic exchange of advance cross-border rulings and advance pricing arrangements pursuant to Article 8a of Directive 2011/16/EU shall comply with Annex VII to this Regulation.

3 The key elements referred to in Article 20(5) of Directive 2011/16/EU are the components listed in points (b), (h) and (i) of Article 8a(6) of that Directive and those key elements shall also be sent in English.**]**

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2015/2378. (See end of Document for details)*

Textual Amendments

F1 Inserted by Commission Implementing Regulation (EU) 2016/1963 of 9 November 2016 amending Implementing Regulation (EU) 2015/2378 as regards standard forms and linguistic arrangements to be used in relation to Council Directives (EU) 2015/2376 and (EU) 2016/881.

[F1 Article 2b

Linguistic arrangements for the mandatory automatic exchange of information on the country-by-country report

The key elements referred to in Article 20(6) of Directive 2011/16/EU are the information or explanation included in Table 3 of Section III of Annex III to that Directive and those key elements shall also be sent in English, except if another official language of the Union has been agreed to be used between the sending Member State and all the other Member States to which information is sent pursuant to Article 8aa(2) of Directive 2011/16/EU.**]**

Textual Amendments

F1 Inserted by Commission Implementing Regulation (EU) 2016/1963 of 9 November 2016 amending Implementing Regulation (EU) 2015/2378 as regards standard forms and linguistic arrangements to be used in relation to Council Directives (EU) 2015/2376 and (EU) 2016/881.

[F2 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.

Textual Amendments

F2 Inserted by 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.

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.**]**

Textual Amendments

F2 Inserted by 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.

[F3 Article 2e

Standard forms, including linguistic arrangements, for the mandatory automatic exchange of information on reportable cross-border arrangements

1 In regard to the forms to be used, ‘component’ and ‘field’ mean a location in a form where information to be exchanged pursuant to Directive 2011/16/EU may be recorded.

2 The form to be used for the mandatory automatic exchange of information on reportable cross-border arrangements pursuant to Article 8ab of Directive 2011/16/EU shall comply with Annex XIII to this Regulation.

3 The key elements referred to in the third subparagraph of Article 20(5) of Directive 2011/16/EU shall be the components listed in points (b), (c) and (e) of Article 8ab(14) of that