Council Directive (EU) 2016/2258 of 6 December 2016 amending Directive 2011/16/EU as regards access to anti-money-laundering information by tax authorities

COUNCIL DIRECTIVE (EU) 2016/2258

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amending Directive 2011/16/EU as regards access to anti-money-laundering information by tax authorities

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 and 115 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament[(1)],

Having regard to the opinion of the European Economic and Social Committee[(2)],

Acting in accordance with a special legislative procedure,

Whereas:

(1) Council Directive 2014/107/EU[(3)], amending Directive 2011/16/EU[(4)], applies as of 1 January 2016 to 27 Member States and as of 1 January 2017 to Austria. That Directive implements the global Standard for Automatic Exchange of Financial Account Information in Tax Matters within the Union thereby ensuring that information on Account Holders of Financial Accounts is reported to the Member State where the Account Holder is resident.

(2) Directive 2011/16/EU stipulates that, where the Account Holder is an intermediary structure, Financial Institutions are to look through that structure, and identify and report on its beneficial owners. That important element in the application of that Directive relies on anti-money-laundering ('AML') information obtained pursuant to Directive (EU) 2015/849 of the European Parliament and of the Council[(5)] for the identification of the beneficial owners.

(3) To ensure effective monitoring of the application by Financial Institutions of the due diligence procedures set out in Directive 2011/16/EU, the tax authorities need access to AML information. In the absence of such access, those authorities would not be able to monitor, confirm and audit that the Financial Institutions are applying Directive 2011/16/EU properly by correctly identifying and reporting on the beneficial owners of intermediary structures.

(4) Directive 2011/16/EU encompasses other exchanges of information and forms of administrative cooperation between Member States. Access to AML information held by entities pursuant to Directive (EU) 2015/849 within the framework of administrative

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cooperation in the field of taxation would ensure that tax authorities are better equipped to fulfil their obligations under Directive 2011/16/EU and to combat tax evasion and fraud more effectively.

(5) It is therefore necessary to ensure that tax authorities are able to access the AML information, procedures, documents and mechanisms for the performance of their duties in monitoring the proper application of Directive 2011/16/EU and for the functioning of all forms of administrative cooperation provided for in that Directive.

(6) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. Where this Directive requires that access to personal data by tax authorities be provided by law, this does not necessarily require an act of parliament, without prejudice to the constitutional order of the Member State concerned. However, such a law should be clear and precise, and its application should be clear and foreseeable to persons subject to it, in accordance with the case-law of the Court of Justice of the European Union and the European Court of Human Rights.

(7) Since the objective of this Directive, namely efficient administrative cooperation between Member States and the effective monitoring thereof under conditions compatible with the proper functioning of the internal market, cannot be sufficiently achieved by the Member States but can rather, by reason of the uniformity and effectiveness required, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(8) The customer due-diligence procedures carried out by Financial Institutions under Directive 2011/16/EU have already started, and the first exchanges of information are to be finalised by September 2017. Therefore, in order to ensure that the effective monitoring of the application of that Directive is not delayed, this amending Directive should enter into force and be transposed as soon as possible and no later than 1 January 2018.

(9) Directive 2011/16/EU should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

In Article 22 of Directive 2011/16/EU, the following paragraph is inserted:

(1a) For the purpose of the implementation and enforcement of the laws of the Member States giving effect to this Directive and to ensure the functioning of the administrative cooperation it establishes, Member States shall provide by law for access by tax authorities to the mechanisms, procedures, documents and information referred to in Articles 13, 30, 31 and 40 of Directive (EU) 2015/849 of the European Parliament and of the Council[(6)]..