

Response to EC proposal on new obligations for intermediaries to report cross-border tax planning arrangements

Our reference:	ECO-TAX-17-066	Date:	7 December 2017
Referring to:	Proposal for a Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements		
Contact person:	Alexandru Ciungu, Policy Advisor, Macroeconomics & Taxation	E-mail:	Ciungu@insurancееurope.eu
Pages:	2	Transparency Register ID no.:	33213703459-54

Summary

Insurance Europe strongly supports the European Commission in its efforts to fight tax evasion in the EU, thereby protecting national tax bases from erosion and fostering a level playing field for companies which are active in the European Single Market. The [Commission proposal](#) that introduces new obligations for intermediaries to report cross-border tax planning arrangements is the latest effort to increase tax transparency by extending the Administrative Cooperation Directive (DAC6).

Article 8aaa(2) of the Commission's proposal reads: *"Each Member State shall take the necessary measures to give intermediaries the right to a waiver from filing information on a reportable cross-border arrangement or series of such arrangements where they are entitled to a legal professional privilege under the national law of that Member State. In such circumstances, the obligation to file information on such an arrangement or series of arrangements shall be the responsibility of the taxpayer and intermediaries shall inform taxpayers of this responsibility due to the privilege."*

Intermediaries may only be entitled to a waiver under the first subparagraph to the extent that they operate within the limits of the relevant national laws that define their professions.

Each Member State shall take the necessary measures to ensure that, where there is no intermediary within the meaning of point 21 of Article 3, the obligation to file information on a reportable cross-border arrangement or series of such arrangements shall be the responsibility of the taxpayer. The taxpayer shall file information within five working days, beginning on the day after the reportable cross-border arrangement or series of arrangements or the first step in a series of such arrangements has been implemented."

Insurance Europe has the following concerns:

- This provision could lead to a situation where **it will fall primarily to taxpayers and therefore companies to report cross-border arrangements**, particularly in jurisdictions which recognise a legal professional privilege to intermediaries. Monitoring this new reporting obligation and filing these reports will consequently result in an additional administrative burden which should not be underestimated. In addition, a new obligation to report tax planning arrangements would go beyond the usual taxpayer's obligation, which is to be tax compliant.
- In Insurance Europe's view, **only potentially harmful cross-border arrangements should be reported**. The Commission's proposal tries to identify such arrangements first by defining cross-border arrangements and then by offering "[hallmarks](#)" that may indicate that an arrangement is reportable. However, both criteria are too vague to focus on those arrangements which should actually be reported as potentially harmful; the scope of the requirement is therefore excessively expanded.
- **A clearer definition of the "hallmarks" would make the reporting obligation more manageable**, when it falls on taxpayers. In addition, Insurance Europe would argue that the "hallmarks" should be integrated in the text of the directive (instead of an annex) and should therefore be an integral part of the legislative act. This seems logical given that the "hallmarks" are necessary for the determination of a reportable cross-border arrangement. Due to the open nature of the reporting obligation and in order to provide legal certainty for taxpayers and intermediaries, a delegation of legislative power to the Commission according to Article 290 TFEU should be avoided.
- **A reporting period of five working days would not be appropriate** considering the information taxpayers and intermediaries have to report. In Insurance Europe's view, it would be sufficient if taxpayers reported their arrangements when filing their tax declaration. After all, as Insurance Europe understands, it is not the intention of the legislator to allow for immediate action from tax authorities when an arrangement is reported, but rather to flag an arrangement for potential future consideration when a taxpayer files their annual tax return. In this case, a very tight reporting deadline seems even more unreasonable.
- Finally, Insurance Europe notes that there is no provision in the Commission's proposal to oblige tax authorities to state whether a reported arrangement is considered harmful. To strengthen transparency and to provide intermediaries and taxpayers with certainty concerning their projects, Insurance Europe believes **that tax authorities should inform them of whether they consider a reported arrangement harmful**.

Insurance Europe is the European insurance and reinsurance federation. Through its 35 member bodies — the national insurance associations — Insurance Europe represents all types of insurance and reinsurance undertakings, eg pan-European companies, monoliners, mutuals and SMEs. Insurance Europe, which is based in Brussels, represents undertakings that account for around 95% of total European premium income. Insurance makes a major contribution to Europe's economic growth and development. European insurers generate premium income of €1 200bn, directly employ over 985 000 people and invest nearly €9 900bn in the economy.