The end of the EU Savings Directive as from 1 January 2016. Are there any residual effects?

Operational Tax News

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EU Savings Directive – A programmed death in view of the much broader Common Reporting Standard based reporting

The finance Ministers of the European Union have adopted during the ECOFIN of 10 November 2015 a Directive repealing the EU Savings Directive on taxation on savings income in the form of interest payments as from 1 January 2016.

It had already been announced by the European Commission that the Savings Directive would be repealed in phase with the implementation of Directive 2014/107/EU on mandatory automatic exchange of information, imposing Common Reporting Standard ("CRS") based reporting as from 1 January 2016 throughout the EU.

The latter Directive indeed contains a much broader scope of reporting than the Savings Directive, which implies the Savings Directive becomes obsolete as from 1 January 2016.

However, as Austria was allowed to apply Directive 2014/107 one year later than all other Member States, certain transitional provisions will apply in Austria regarding the phasing out of the Savings Directive (Austria being the last EU Member State still applying savings withholding tax under the Savings Directive).

Notwithstanding the abolition of the Savings Directive as from 1 January 2016, exchange of information under the Savings Directive relating to the calendar year 2015 will of course still need to be executed in 2016, according to the local deadlines applicable in the various Member States (before 20 March 2016 in Luxembourg).

Further to the abolition of the Savings Directive, the amended Savings Directive 2014/48/EU on which agreement was only reached in 2014 after almost a decade of negotiations, and which should have become applicable on 1 January 2017, will no longer need to be implemented by the Member States.

Savings taxation agreements with the Third Countries and Dependent and Associated Territories – Switching to CRS, but when exactly?

At the time of negotiation of the Savings Directive, in order to preserve the level playing field with non-EU financial places, the EU also concluded savings taxation agreements providing similar or equivalent measures to those laid down in the Savings Directive with:

- five “Third Countries”: Switzerland, Andorra, Liechtenstein, Monaco, and San Marino
- ten “Dependent and Associated Territories”, such as BVI, Cayman Islands, the Channel Islands, Anguilla, etc.

All of these countries and territories already committed to apply CRS based reporting as from 2016 or 2017.

In respect of the Third Countries, amending protocols to the savings taxation agreements, in order to convert these agreements into reciprocal agreements imposing CRS based reporting, were already formally signed between the EU and Switzerland, respectively Liechtenstein, that should become applicable as from 1 January 2017. The EU also initialled similar protocols with Andorra and San Marino, which are expected to be formally signed early 2016. A similar protocol with Monaco can be expected soon.

In respect of the Dependent and Associated Territories, all of these 10 territories have committed to apply CRS based reporting, most of them as from 2016; others as from 2017. It is thus expected that their bilateral savings taxation agreements (concluded between each of these territories and each of the EU Member Sates) will also be replaced soon with CRS based (multilateral or bilateral) agreements. However one should monitor whether any of these bilateral savings taxation agreements (some of which contain reciprocity clauses) may still apply beyond 2015, in the hypothesis that these existing agreements would not be discontinued as from 1 January 2016 and replaced with CRS based agreements. Although the EU Savings Directive is abolished as from 2016, it is thus not entirely excluded that exchange of information based on the savings taxation principles may still have to be applied by e.g. a Luxembourg financial institution or certain Luxembourg funds relating to (an undoubtedly limited number of) clients or investors that are resident in (or certain types of entities resident in) a Dependent and Associated Territory that has a reciprocity clause in its bilateral savings taxation agreement.

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