

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:

- (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.

⁽¹⁾ OJ L 64, 11.3.2011, p. 1.

⁽²⁾ 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 (OJ L 332, 18.12.2015, p. 19).

*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

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
- Year
- Part A: Statistics per Member State on exchange of information
 - on exchange of information on request (Article 5, 6 7 of Directive 2011/16/EU)
 - Number of requests sent
 - Number of replies received
 - Number of full replies received within six months
 - Number of replies for which (part of or the whole) information was received within two months

- Number of requests received
- Number of replies sent
- Number of refusals on the ground of Article 17 of Directive 2011/16/EU
- on spontaneous exchange of information (Article 9 and 10 of Directive 2011/16/EU)
 - Number of spontaneous exchanges sent
 - Number of spontaneous exchanges received
 - Number of cross-border rulings sent
 - Number of cross-border rulings received
 - Number of unilateral advance pricing arrangements sent
 - Number of unilateral advance pricing arrangements received
- Part B: Statistics on other forms of administrative cooperation
 - on presence in administrative offices and participation in administrative enquiries (Article 11 of Directive 2011/16/EU)
 - Number of incoming presences in administrative offices and participation in administrative enquiries
 - on simultaneous controls (Article 12 of Directive 2011/16/EU)
 - Number of simultaneous controls which the Member State has initiated
 - Number of simultaneous controls in which the Member State has participated
 - on requests for notification (Article 13 of Directive 2011/16/EU)
 - Number of requests for notification sent
 - Number of requests for notification received
 - on feedback (Article 14 of Directive 2011/16/EU)
 - Number of requests for feedback sent
 - Number of feedback received
 - Number of requests for feedback received
 - Number of feedback sent
- Part C: Statistics on estimated additional revenue or increase in assessed tax due to administrative cooperation. The information under this part is optional
 - From exchange of information on request
 - From spontaneous exchange of information
 - As a result of simultaneous control
 - Overall figure and number of cases.

ANNEX X

List referred to in Article 2d

The statistical data required for the mandatory automatic exchange of information pursuant to Article 23(4) of Directive 2011/16/EU on the categories of income and capital referred to in Article 8(1) of that Directive covers the following information:

- For all categories of income and capital referred to in Article 8(1) of Directive 2011/16/EU: statistics on message and taxpayer
- In the case of income from employment and director's fees: statistics on message and recipient, message and payer, recipient and relationship, payer and relationship, recipient and income

- In the case of pensions: statistics on message and recipient, message and payer, recipient, payer, scheme, income
- In the case of life insurance products: statistics on message and policy, policy overall, event
- In the case of ownership of and income from immovable property: statistics on message and party, party overall, property quantity and value, transaction quantity and value, loan event quantity and value, right income quantity and value
- In the case of status messages: statistics on status message, status message error
- In the case of zero data messages: statistics on zero data message.

ANNEX XI

List referred to in Article 2d

The statistical data required for the mandatory automatic exchange of information in accordance with Article 8(3a) of Directive 2011/16/EU, pursuant to Article 23(4) of that Directive covers the following information:

- Per message, statistics on originating country and destination country, total number of records, total payment amounts
- Per originating country, statistics on total number of reporting financial institutions, total payment amounts
- Per unique account, statistics on account holder quantity, payment category, amount per payment category
- Per account, statistics on account holder type, account holder taxpayer identification number or functional equivalent, account holder residence country, natural person as account holder, closed account, dormant account
- Per account holder, statistics on controlling person type, controlling person taxpayer identification number or functional equivalent, controlling person residence country, natural person as controlling person.

ANNEX XII

List referred to in Article 2d

The statistical data required for the mandatory automatic exchange of information in accordance with Article 8aa of Directive 2011/16/EU, pursuant to Article 23(4) of that Directive covers the following information:

- Number of country-by-country reports received from Reporting Entities
 - Number of country-by-country reports due to be reported by Reporting Entities but not received or only partial report provided, breakdown per jurisdictions of the Ultimate Parent Entities
 - Number of country-by-country reports received from each other Member State.
 - Number of country-by-country reports due but not received from each other Member State.
 - Number of country-by-country reports sent to each other Member State.'
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