

Revenue Arrangements for Implementing EU and OECD Exchange of Information Requirements in Respect of Tax Rulings

Part 35-00-01

This document was last updated October 2024

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Introduction

The purpose of this manual is to set out Revenue's arrangements for implementing:

- [Council Directive \(EU\) 2015/2376](#) of 8 December 2015 which amends [Council Directive 2011/16/EU](#) as regards mandatory automatic exchange of information in the field of taxation; and
- the OECD framework for the compulsory spontaneous exchange of information in respect of rulings that was adopted as part of Action 5 of the OECD/G20 Base Erosion and Profit Shifting (BEPS) project.

Revenue also engages in the exchange of information with other tax administrations as provided for in various legal instruments such as:

- Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC ("[Council Directive 2011/16/EU](#)"). The relevant national implementing provision is [European Union \(Administrative Cooperation in the field of Taxation\) Regulations 2012](#) (S.I. No. 549 of 2012).
- The Exchange of Information Article (usually Article 26) in Ireland's Double Taxation Agreements ("[DTAs](#)"). Ireland's DTAs are given force of law under Section 826(1) of the Taxes Consolidation Act 1997, as amended. All of Ireland's DTAs contain an Exchange of Information Article.
- Ireland's Tax Information Exchange Agreements ("[TIEAs](#)"). Ireland's TIEAs are given force of law under Section 826(1B) of the Taxes Consolidation Act, 1997, as amended.
- OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters ("the [Convention](#)"). The relevant national implementing provision is [Mutual Assistance in Tax Matters Order \(S.I. No. 34 of 2013\)](#).

The extent of the exchange provided for and the taxes covered depends on the provisions in the relevant instrument.

In relation to tax rulings specifically, within the framework of the EU Council Code of Conduct on Business Taxation, EU Member States have also agreed that the spontaneous exchange of information requirement provided for in Article 9 of Council Directive 2011/16/EU applies to cross-border rulings issued by a Member State where such rulings may affect the tax base of another Member State.

Council Directive (EU) 2015/2376 (“DAC3”) and the OECD framework agreed as part of Action 5 of the OECD/G20 BEPS project also provide for specific information exchange requirements in respect of tax rulings. While DAC3 and the OECD framework share many common features there are a number of differences, including the timing of exchange, and so the details of each are set out separately in this manual.

This document outlines the scope of each of these initiatives and the procedures for their effective implementation. [Section 1](#) provides an overview of DAC3, [Section 2](#) provides an overview of the OECD framework, [Section 3](#) sets out how the exchange of information provisions will be implemented by Revenue, [Section 4](#) addresses spontaneous exchange of information in respect of rulings under Council Directive 2011/16/EU while [Section 5](#) contains contact details.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

1. Overview of Council Directive (EU) 2015/2376

1.1. Scope

[Council Directive \(EU\) 2015/2376](#) (“DAC3”) amends Council Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.

DAC3 requires Member States to exchange information on advance cross-border rulings and advance pricing arrangements (APAs) that are provided to companies and other entities¹ in respect of **all taxes except** VAT, Customs Duties, Excise Duties and compulsory social security contributions.² This information is to be exchanged with all other EU Member States and a more limited set of information is also to be shared with the European Commission. The subset of information that is to be shared with the Commission should not allow the identification of the underlying taxpayer.

The Directive was transposed into Irish law by way of [European Union \(Administrative Cooperation in the Field of Taxation\) Regulations 2012 \(S.I. No. 549 of 2012\)](#), as amended, and by introducing section 891GA into the Taxes Consolidation Act 1997 in Finance Act 2016. The measures have applied since 1 January 2017.

The exchange of information on advance cross-border rulings that exclusively concern the tax affairs of an individual are currently specifically excluded from DAC3. However, changes introduced in Council Directive (EU) 2023/2226 (“DAC8”), will bring rulings relating to individuals into scope of DAC3 in certain circumstances.

Under DAC8, where an advance cross-border ruling exclusively concerns and involves the tax affairs of one or more natural persons, it will be subject to the automatic exchange of information where it is issued, amended, or renewed after 1 January 2026 and

- (a) the amount of the transaction, or series of transactions, of the cross-border ruling exceeds €1,500,000 (or equivalent amount in any currency), if the amount is referred to in the ruling; or
-

¹ For the purpose of this manual, references to “**companies and other entities**” refers to persons as defined in Article 3, paragraph 11(b), (c) and (d) of [Council Directive 2011/16/EU](#).

²As per Article 2 of [Council Directive 2011/16/EU](#).

- (b) the ruling relates to whether an individual is tax resident in the issuing Member State.

Rulings on taxation at source relating to non-residents' income from employment, director's fees or pensions are not subject to exchange.

DAC8 entered into force on 13 November 2023 and it is intended to legislate domestically to provide for these amendments by 1 January 2026.

It should be noted that DAC3 applies to any advance cross-border ruling or APA provided by a Member State and is not just confined to intra-EU situations. For example, if a US tax resident company decides to carry out business activities in Ireland and seeks an opinion from Revenue on whether these activities constitute a Permanent Establishment (PE) for tax purposes, this opinion will come within scope of the exchange of information requirements provided for in the Directive.

DAC3 requires a basic set of information in respect of each ruling to be exchanged with all other Member States. A sub-set of this information is also to be communicated to the European Commission.

1.1.1. Definition of an Advance Cross-border Ruling

An **advance cross-border ruling** is any agreement, communication or any other instrument or action with similar effects, including one issued, amended or renewed in the context of a tax audit, which:

- is issued, amended or renewed by a tax authority to a particular person or a group of persons, whether it is used or not;
- on which that person or group of persons is entitled to rely;
- concerns the interpretation or application of a legal or administrative provision concerning the administration or enforcement of national tax laws;
- relates to **1) a cross-border transaction or 2) the question of whether activities carried on by a person creates a PE; and**
- is provided in advance of the transactions or of the activities potentially creating a PE or the filing of the relevant return.

For the purpose of the definition of an advance cross-border ruling, a **cross-border transaction** is a transaction or series of transactions where:

- not all of the parties to the transaction or series of transactions are resident for tax purposes in the State;

- any of the parties is simultaneously resident for tax purposes in more than one country;
- one of the parties carries on business in another country through a PE and the transaction or series of transactions in question relates to that PE; **or**
- the transactions or series of transactions in question have a cross-border impact.

1.1.2. Definition of an Advanced Pricing Arrangement (“APA”)

An **APA** is any agreement, communication or any other instrument or action with similar effects, including one issued, amended or renewed in the context of a tax audit, which:

- is issued, amended or renewed by a tax authority to a particular person or a group of persons, whether it is used or not;
- on which that person or group of persons is entitled to rely; **and**
- **1)** determines, in advance of cross-border transactions between associated persons, an appropriate set of criteria for the determination of the transfer pricing for those transactions, or **2)** determines the attribution of profits to a PE.

For the purpose of the definition of an APA, a **cross-border transaction** is a transaction or series of transactions involving associated enterprises which are not all resident for tax purposes in the same country or a transaction or series of transactions that have a **cross-border impact**.

The recitals to DAC3 clarify that the automatic exchange provisions apply to both binding and non-bindings rulings.

Extracts from Council Directive (EU) 2015/2376 and Council Directive 2011/16/EU detailing the relevant definitions are provided at [Annex 1](#) and [Annex 2](#) respectively.

1.2. Information to be Exchanged

The Directive provides that a basic set of information on each ruling is to be exchanged with all other Member States and that a subset of this information is also to be communicated to the European Commission. If necessary, Member States can then request additional information on the ruling under the current provisions of the Directive on Administrative Cooperation (i.e. under Article 5 of Directive 2011/16/EU).

As regards bilateral and multilateral APAs, where the APA involves a **non-EU country** and the international agreement under which the APA was negotiated does not permit disclosure of the APA to third parties, the information to be exchanged is to be taken from the **request** for the APA.³

1.3. Timeframe for Exchange

The information exchange must take place within three months of the half calendar year during which the ruling was issued, amended or renewed. This means that, for rulings provided in the first half of the calendar year, information must be exchanged at the latest by the end of September of that year and, for rulings provided in the second half of the calendar year, information must be exchanged at the latest by the end of March of the following year.

As regards the look-back element of the Directive, the deadline for the exchange of these rulings was 1 January 2018.

2. Overview of OECD Framework

2.1. Scope

The framework that has been agreed at OECD level as part of Action 5 of the OECD/G20 BEPS project provides for the compulsory spontaneous exchange of information on six categories of taxpayer-specific rulings and applies to rulings given both pre- and post-transaction. Taxpayer-specific rulings are defined as “rulings that apply to a specific taxpayer and on which that taxpayer is entitled to rely”.⁴ The full text of the OECD framework can be found in Chapter 5 of the [final report](#) on Action 5 of the OECD/G20 BEPS project.

In broad terms, the framework provides that relevant rulings are to be spontaneously exchanged with:

- the country of residence—
 - of all related parties with which the taxpayer enters into a transaction for which a ruling is given, **or**
-

³ As per Article 8a, paragraph 3 of Council Directive 2011/16/EU as amended by Council Directive (EU) 2015/2376.

⁴ Paragraph 97, chapter 5, section II A of OECD/G20 BEPS Action 5: Final Report.

- of related parties that have made payments giving rise to income benefitting from a preferential regime;

and

- the country of residence of the ultimate parent company and the immediate parent company.

The OECD framework has applied since 1 April 2016.

While the OECD framework refers to six categories of taxpayer-specific rulings, the sixth category is a general one which provides the Forum on Harmful Tax Practices⁵ (“FHTP”) with the option to broaden the obligation to spontaneously exchange information in the future to include other types of rulings that, in the absence of spontaneous exchange, could give rise to BEPS concerns. So, in practice, there are currently five categories of rulings that are subject to compulsory spontaneous exchange of information under the OECD framework. These are as follows:

- Cross-border rulings related to preferential regimes. Currently, from Ireland’s and Revenue’s perspective, this refers to any cross-border opinions provided in respect of the Tonnage Tax or Knowledge Development Box regimes.
- Cross-border unilateral APAs or other cross-border unilateral tax rulings covering transfer pricing or the application of transfer pricing principles.
- Cross-border rulings that provide for a unilateral downward adjustment to a taxpayer’s taxable profits that is not directly reflected in the taxpayer’s financial or commercial accounts⁶. It has also been agreed to exchange information under this category on unilateral downward adjustments made by taxpayers under informal capital contribution or excess profit regimes even where no ruling has been issued by the tax authority. Such adjustments should not arise under Irish tax law.

⁵ In 1998, the OECD Committee on Fiscal Affairs (CFA) published the report “**Harmful Tax Competition: An Emerging Global Issue**”, which established a forum (the Forum on Harmful Tax Practices (FHTP)) to promote certain desirable features in tax systems. Since then, the FHTP has published a number of different reports on harmful tax practices and was mandated to address Action 5 of the BEPS Action Plan by the G20/OECD.

⁶ This does not include correlative adjustments.

- PE rulings. These are rulings that concern the existence or absence of a PE or the attribution of profits to a PE.
- Related-Party Conduit Rulings. This refers to rulings which are given in respect of cross-border flows of funds or income through an entity in the country giving the ruling, involving a flow of funds or income to another country either directly or indirectly.

In broad terms, the framework provides that relevant rulings are to be spontaneously exchanged with:

- the country of residence of all related parties with which the taxpayer enters into a transaction for which a ruling is granted or, the country of residence of related parties that have made payments giving rise to income benefitting from a preferential regime; and
- the country of residence of the ultimate parent company and the immediate parent company.

Two parties are considered related if the one party holds, either directly or indirectly, at least 25% of the voting rights of the other or at least 25% of the value of any equity interest in the other. Two parties are also considered related where a third person holds, either directly or indirectly, at least 25% of the voting rights in both or at least 25% of the value of any equity interest in both.

The general rule varies slightly for PE and related party conduit rulings. Table 1 below sets out how to identify the country with which information needs to be exchanged in respect of each category of ruling.

Table 1: Countries with which information should be exchanged under OECD Framework

Category of Ruling	Country with which information needs to be exchanged
Cross-border Ruling Related to a Preferential Regime i.e. Tonnage Tax, Knowledge Development Box	<ul style="list-style-type: none"> • The countries of residence of all related parties with which the taxpayer enters into a transaction for which a preferential treatment is granted or the country of residence of related parties that have made payments giving rise to income benefitting from preferential treatment (this rule also applies in a PE context); • The country of residence of the ultimate parent company of the taxpayer; and • The country of residence of the immediate parent company of the taxpayer.

Category of Ruling	Country with which information needs to be exchanged
Unilateral APA and any other cross-border unilateral transfer pricing ruling	<ul style="list-style-type: none"> • The countries of residence of all related parties with whom the taxpayer enters into transactions that are covered by the unilateral APA or cross-border unilateral tax ruling; • The country of residence of the ultimate parent company of the taxpayer; and • The country of residence of the immediate parent company of the taxpayer.
Downward Adjustment Ruling	<ul style="list-style-type: none"> • The countries of residence of all related parties with whom the taxpayer enters into transactions covered by the ruling; • The country of residence of the ultimate parent company of the taxpayer; and • The country of residence of the immediate parent company of the taxpayer.
PE Ruling	<ul style="list-style-type: none"> • The country of residence of the head office or the country of the PE, as the case may be; • The country of residence of the ultimate parent company of the taxpayer; and • The country of residence of the immediate parent company of the taxpayer.
Related Party Conduit Ruling	<ul style="list-style-type: none"> • The country of residence of any related party making payments to the conduit (directly or indirectly); • The country of residence of the ultimate beneficial owner (which in most cases will be the ultimate parent company) of payments made to the conduit; <p>and</p> <ul style="list-style-type: none"> • To the extent not already covered by the second point above, the country of residence of (a) the ultimate parent company and (b) the immediate parent company.

In summary, a ruling will be exchanged under this framework where:

- it was issued on or after 1 April 2016 (or came within the look-back provisions);
- it falls within one of the five ruling categories;
- at least one of the relevant parties (as outlined in the second column of Table 1) is resident in a country covered by the framework; and
- there is a legal basis⁷ in place with the country in question to exchange information on the ruling.

A list of the countries that are covered by the OECD framework and with which we have a legal basis in place to spontaneously exchange information is provided in [Annex 3](#).

2.2. Information to be Exchanged

The OECD framework requires a basic set of information to be exchanged with affected countries. If necessary, and as a second step, the relevant tax administration can then request a copy of the ruling itself.

2.3. Timeframe for Exchange

Rulings are to be exchanged as soon as possible after they are issued and no later than three months after the date on which they become available to the competent authority.⁸ This timeframe is different to that provided for by the EU Directive (see [Section 1.3](#) above).

As regards the look-back element of the OECD framework, the deadline for the exchange of these rulings was 31 December 2016.

⁷ Legal bases for exchange in this context are: Council Directive 2011/16/EU on administrative cooperation in the field of taxation; Double Taxation Agreements and Tax Information Exchange Agreements (where the Tax Information Exchange Agreement provides for spontaneous exchange of information); and the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters.

⁸ This refers to certain Revenue officers in Exchange of Information Branch, International Tax Division who are authorised to exchange information with other tax administrations.

3. Implementation by Revenue

3.1. Application of Exchange of Information Requirements

The exchange of information requirements outlined in [Section 2](#) and [Section 3](#) above apply to taxpayer-specific communications that Revenue provides to companies and other entities in respect of direct taxes⁹ that come within the definition of an advance cross-border ruling or an APA as provided for by DAC3 and/or that come within one of the five categories of rulings as provided for in the OECD framework. The requirements outlined in DAC3 and OECD framework are not mutually exclusive and a Revenue communication may be required to be exchanged under both regimes.

Taxpayer-specific communications in this context include the opinions that Revenue provide on the application of tax law to particular transactions, events or activities. Therefore, where such opinions come within scope of the exchange of information requirements provided for in DAC3 and/or the OECD framework, Revenue will be exchanging the necessary information with other tax administrations.

Revenue practice and procedures for providing opinions are set out in published guidelines that are available on the Revenue website as follows:

Guidelines that apply in relation to opinions sought by taxpayers whose affairs are dealt with by Revenue's Large Corporates Division are set out in Tax and Duty Manual (TDM) [Part 37-00-40](#) Large Corporates Division: Opinions/Confirmations on Tax/Duty Consequences of a Proposed Course of Action (formerly Tax Briefing 4 of 2014).

Guidelines that apply in relation to opinions sought by taxpayers whose affairs are dealt with in Personal Division, Business Division or Medium Enterprises Division are set out on our website [here](#).

Unless the context implies otherwise, references to opinions in this manual include:

- the pre-transaction opinions or interpretations that Revenue provides, also referred to as confirmations or advance opinions;

⁹ For the purpose of this manual, a reference to direct taxes is a reference to all taxes except VAT, Customs Duties, Excise Duties and compulsory social security contributions. This includes Corporation Tax, Capital Gains Tax, Income Tax, Stamp Duty, Capital Acquisitions Tax, Dividend Withholding Tax and other withholding taxes.

- advance approvals or clearances that are required in certain circumstances under **legislation** for a particular tax relief or tax treatment to apply, also referred to as statutory clearances;
- advance approvals or clearances that are required in certain circumstances under Revenue **administrative practice** for a particular tax relief or tax treatment to apply;
- post-transaction opinions given in advance of the filing of the relevant return; and
- bilateral APAs.¹⁰

In addition, the exchange of information requirements can also apply to opinions given in the context of a Revenue compliance intervention and may also apply to responses provided by Revenue on foot of expressions of doubt. However, as these are generally by their nature backward looking, a cross-border opinion will only arise in this context where an explicit confirmation is provided to the taxpayer that can be relied upon for future tax periods or for periods for which returns have not yet been filed.

Where there is an opinion issued by Revenue that would be exchangeable under Article 9 of Council Directive 2011/16/EU but is not exchangeable under Council Directive (EU) 2015/2376 and/or the OECD framework for the compulsory spontaneous exchange of information in respect of rulings, Revenue will spontaneously exchange these rulings. Further information on the spontaneous exchange of information can be found in [Section 4](#).

The exchange requirements do not apply to general communications published by Revenue such as tax briefings, instructions, statements of practice or guidance notes.

3.2. Opinions Issued from 1 April 2016 (OECD) and 1 January 2017 (EU)

Since 1 April 2016 Revenue has been exchanging information on relevant opinions with affected countries in line with the OECD framework

Similarly, since 1 January 2017 Revenue has been exchanging information on relevant opinions with all other EU Member States and a subset of this information is communicated to the European Commission.

¹⁰ Guidelines on the operation of Ireland's bilateral APA programme are set out in Tax and Duty Manual [Part 35-02-07](#)

3.3. Look-back Element

As mentioned in [Section 1.3](#) and [Section 2.3](#) above, each of these initiatives contained a retrospective element that required Revenue to exchange information on certain past opinions that it has provided.

Revenue has already exchanged information on opinions under the lookback element of both the EU Directive and the OECD framework.

3.4. Information to be Exchanged

Under both DAC3 and the OECD framework Revenue exchanges basic information on the opinion, including:

- The identity of the taxpayer to whom the opinion was issued (name, address, tax reference number etc.).
- The name of the group to which the taxpayer belongs, where appropriate.
- The opinion reference number, if any.
- The date the opinion was issued, amended or renewed.
- The start date and end date of the period of validity of the opinion, if specified.
- An indication of the type of opinion being exchanged.
- The amount of the transaction or transactions to which the ruling relates, if specified.
- A summary of the content of the opinion. This summary will not include information which would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process or of information the disclosure of which would be contrary to public policy¹¹.
- Details of the taxpayer's main business activities, its annual turnover and its net profit or loss will also be provided where it is available to Revenue. As regards the turnover and profit or loss figures, these will represent the most recent figures that are available to Revenue, which will not necessarily be the figures for the accounting period in which the ruling was issued.

¹¹ In relation to the disclosure of information which would be contrary to public policy, per the commentary to Article 26 of the Model Tax Convention on Income and Capital - "this limitation should only become relevant in extreme cases. For instance, such a case could arise if a tax investigation in the requesting State were motivated by political, racial or religious persecution. The limitation may also be invoked where the information constitutes a State secret, for instance sensitive information held by secret services the disclosure of which would be contrary to the vital interests of the requested State".

Where the ruling is being exchanged under DAC3, Revenue will also provide:

- The identity of any other Member State likely to be concerned with the opinion.
- Details of entities in each of these Member States, if any, likely to be affected by the opinion.
- Where it is an APA:
 - a description of the set of criteria used for the determination of the transfer pricing or the transfer price itself;
 - the identification of the method used for determining the transfer pricing or the transfer price itself (where more than one method is used an additional explanation will be provided);
 - an indication of whether information communicated is based upon the APA itself or the request.

When exchanging under the OECD framework, Revenue will be required to identify the countries with which information needs to be exchanged. This will be determined in line with Table 1 in [Section 2.1](#) above. Revenue will also be required to provide details of the relevant entities in each of these countries.

3.5. Additional Information to be Provided When Requesting An Opinion

The type of information to be provided when requesting an opinion is set out in paragraph 11 of TDM [Part 37-00-40](#) in respect of taxpayers whose affairs are dealt with by Revenue's Large Corporates Division and in [Appendix C](#) of the Guidelines on Revenue's Service to Practitioners and Business Taxpayers in respect of taxpayers whose affairs are dealt with in Personal Division, Business Division or Medium Enterprises Division.

When requesting an opinion from Revenue that comes within scope of the exchange of information requirements outlined in [Section 1](#) and [Section 2](#) above, taxpayers or tax practitioners acting on their behalf, should provide the following **additional information**:

- Where the taxpayer is not resident in the State, their country of tax residence.
- Name of group to which taxpayer belongs, if applicable.
- Name and country of residence of any other party or parties involved in the transaction or situation.
- Details of any information included in the request that should **not** be disclosed due to the fact that it would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process.
- Where the opinion comes within scope of DAC3, the following information will need to be provided:
 - an indication of whether there are any tax implications that may be of relevance for the tax authorities of another Member State. Where it is considered that the opinion is not of relevance to the tax authority of any other Member State please indicate why this is the case. Revenue may seek additional information in this regard; and
 - the identity of the affected entities in each of the EU Member States mentioned above, including full legal name, address (should include city and country) and tax reference number, where known.

Note: Where the entity is a PE this should be specified.

- Where the opinion comes within scope of the OECD framework, the following information will need to be provided:
 - where the company is part of a multi-national group, the country of residence of the immediate and ultimate parent companies and the identity of each of these companies, including full legal name, address (should include city and country) and, where known, any relevant reference number; and
 - the country of residence of all other related parties (as specified in Table 1 in [Section 2.1](#) above), the reason why they are considered related (i.e. percentage holding) and the identity of each of these parties including full legal name, address (should include city and country) and, where known, any relevant reference number.

Note: Where the entity is a PE this should be specified.

Failure to provide this information may result in a delay in the opinion being issued as Revenue will have to seek this information before providing the opinion.

3.6. Notification to Taxpayers

Since 1 April 2016 where a taxpayer, or a tax practitioner acting on their behalf, seeks an opinion from Revenue and it comes within scope of the exchange of information requirements in respect of cross-border tax rulings, Revenue will notify the taxpayer or tax practitioner accordingly and will provide the taxpayer or tax practitioner with a copy of the summary of the opinion that is to be exchanged. Revenue will also advise the taxpayer or tax practitioner of whether the opinion is being exchanged under DAC3 or the OECD framework. Where the opinion is subject to exchange under the OECD framework, Revenue will advise the taxpayer or tax practitioner of the particular countries with which information will be exchanged as respects that opinion.

The summary of the opinion will be provided to the taxpayer or tax practitioner for informational purposes only. It in no way replaces or alters the full text of the opinion provided to the taxpayer. Revenue will prepare the summary of the opinion based on the facts and circumstances presented. Revenue will not, in the normal course, enter into any correspondence with a taxpayer or practitioner in relation to the summary. In this regard, taxpayers or practitioners acting on their behalf should avail of the opportunity at the time the opinion is being requested to identify any information that should **not** be disclosed due to the fact that it would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process.

3.7. Confidentiality of Taxpayer Information

Information communicated between Member States in any form pursuant to Council Directive (EU) 2015/2376 is covered by the obligation of official secrecy and enjoys the protection extended to similar information under the national law of the Member State which received it.

Confidentiality requirements also apply to information exchanged under the relevant legal instrument¹² in line with the OECD framework.

¹² The relevant legal instrument in this context refers to: Council Directive 2011/16/EU on administrative cooperation in the field of taxation; Double Taxation Agreements and Tax Information Exchange Agreements (where the Tax Information Exchange Agreement provides for spontaneous exchange of information); and the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters.

The OECD framework outlines that both the country exchanging information and its taxpayers have a legal right to expect that information exchanged pursuant to the framework remains confidential. The receiving country must therefore have the legal framework necessary to protect information exchanged. All treaties and exchange of information instruments contain provisions regarding tax confidentiality and the obligation to keep information exchanged confidential. Under those provisions, information may only be used for certain specified purposes and disclosed to certain specified persons. Information exchange partners may suspend or limit the scope of the exchange of information if appropriate safeguards are not in place or if there has been a breach in confidentiality and they are not satisfied that the situation has been appropriately resolved. Domestic laws must be in place in the receiving country to protect confidentiality of tax information, including information exchanged. Effective penalties must apply for unauthorised disclosures of confidential information exchanged.

3.8. Use of Information Exchanged

As is provided for in Article 16 of Council Directive 2011/16/EU, information received from other Member States under the provisions of Council Directive 2011/16/EU, can be used for the assessment, administration and enforcement of taxes and duties of any kind, anti-money laundering and for countering the financing of terrorism. The taxes and duties referred to may be levied by, or on behalf of, a Member State or the Member State's territorial or administrative subdivisions, including local authorities. Information received may also be used for the assessment and enforcement of compulsory social security contributions.

In practice, this means that information exchanged under DAC3 can now be used for all taxes levied by a Member State.

Information exchanged pursuant to the OECD framework may be used only for tax purposes or other purposes permitted by the relevant information exchange instrument. If domestic law allows for a broader use of the information than the applicable instrument, it is expected that international provisions and instruments will prevail over provisions of domestic law.

4. Spontaneous exchange of information in respect of rulings under Council Directive 2011/16/EU

4.1. Overview

Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation, which provides for the exchange of information between the tax authorities of EU Member States, was transposed into Irish law by the [European Union \(Administrative Cooperation in the Field of Taxation\) Regulations 2012 \(S.I. No. 549 of 2012\)](#) (“the Regulations”).

Under Regulation 4 of the Regulations, the Revenue Commissioners are the competent authority for Ireland for the purposes of the Council Directive 2011/16/EU. Council Directive 2011/16/EU imposes specific requirements on competent authorities. One of these requirements is to spontaneously exchange with the competent authority of another Member State information that is foreseeably relevant to the administration and enforcement of the domestic taxation laws of that Member State. The requirement to spontaneously exchange information with another Member State means a requirement to communicate information to the other Member State without having been requested to do so by that other Member State in respect of all taxes other than value-added tax, EU excise duties and customs duties, and social security contributions.

Article 9(1) of Council Directive 2011/16/EU sets out the circumstances in which the requirement to spontaneously exchange information applies, which are as follows:

- the competent authority of one Member State has grounds for supposing that there may be a loss of tax in the other Member State;
- a person liable to tax obtains a reduction in, or an exemption from, tax in one Member State which would give rise to an increase in tax or to liability to tax in the other Member State;
- business dealings between a person liable to tax in one Member State and a person liable to tax in the other Member State are conducted through one or more countries in such a way that a saving in tax may result in one or the other Member State or in both;
- the competent authority of a Member State has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises;
- information forwarded to one Member State by the competent authority of the other Member State has enabled information to be obtained which may be relevant in assessing liability to tax in the latter Member State.

Within the framework of the EU Council Code of Conduct on Business Taxation,¹³ EU Member States have agreed that the spontaneous exchange of information

requirement provided for under Article 9 of Council Directive 2011/16/EU applies to cross-border rulings issued by a Member State's tax authority where such rulings may affect the tax base of another Member State. A cross-border ruling is an interpretation or application of tax law provided by the tax authorities of a Member State in respect of a cross-border transaction or situation of a company that involves or affects an entity in another Member State. Where, in the specific circumstances set out in paragraph 1 of Article 9 of Council Directive 2011/16/EU, a cross-border ruling is foreseeably relevant for the tax authorities of the other Member State, the tax authorities that issued the ruling are required to spontaneously exchange the relevant information regarding the ruling with the tax authorities of the other Member State.

Opinions providing Revenue's interpretation of the correct application of tax law to specific transactions, activities or events are subject to the spontaneous exchange of information requirement in the circumstances set out in paragraph 1 of Article 9 of Council Directive 2011/16/EU, where the opinion is of foreseeable relevance to the tax authorities of another Member State.

It is envisaged that most opinions issued by Revenue, which are exchangeable under Article 9 of Council Directive 2011/16/EU will also be exchangeable under Council Directive (EU) 2015/2376 (DAC3) and/or the OECD framework for the compulsory spontaneous exchange of information in respect of rulings (see [Section 2](#) and [Section 3](#) of this Tax and Duty Manual). As such, there is no requirement to separately exchange them under Council Directive 2011/16/EU.

However, where there is an opinion issued by Revenue that would be exchangeable under Article 9 of Council Directive 2011/16/EU but is not exchangeable under DAC3 and/or the OECD framework for the compulsory spontaneous exchange of information in respect of rulings, Revenue will spontaneously exchange these rulings. The nature of the rulings that would be required to be exchanged spontaneously and not covered by DAC3 would generally be retrospective as DAC3 covers advanced rulings and APAs..

4.2. Information to be exchanged

Where Revenue issues an opinion which is a cross-border ruling that (i) falls within the categories referred to in Section 1.1.1 above or (ii) is otherwise within the scope of paragraph 1 of Article 9(1) of Council Directive 2011/16/EU, it will provide the

¹³ The Code of Conduct on Business Taxation was established in accordance with Conclusions of the ECOFIN Council on 1 December 1997 concerning taxation policy (ref: 98/C2/01 OJC26.1.1998, p. 1). The Code contains two central features - a commitment from Member States to (i) amend their laws and practices as necessary with a view to eliminating any harmful tax measures (rollback) and (ii) refrain from introducing any new tax measures which are harmful within the meaning of the Code (standstill).

following information to the competent authority of the Member State to whom the opinion is foreseeably relevant:

- Name, address and tax registration number of the company for which the opinion is provided;
- Details of the issue(s) in relation to which the company, or tax practitioner acting on behalf of the company, has sought an opinion;
- A brief summary of the opinion provided by Revenue; and
- A statement to the effect that opinions issued by Revenue are not legally binding and may be reviewed and revised prospectively by Revenue at any time, but that Revenue will generally abide by an opinion once it can be shown that all relevant information was disclosed at the time the opinion was issued and that the circumstances as then disclosed do not diverge from the actual facts.

In line with Article 17(4) of Council Directive 2011/16/EU, Revenue will not provide to other Member States information that would lead to the disclosure of commercial, industrial or professional secrets or of a commercial process, or of information the disclosure of which would be contrary to public policy.

4.3. Confidentiality of taxpayer information

Information communicated between Member States pursuant to DAC3 is covered by the obligation of taxpayer confidentiality and enjoys the protection extended to similar information under the national law of the Member State which receives it.

4.4. Information on cross-border rulings received from other Member States

The Exchange of Information (EOI) Branch in Revenue's International Tax Division is the designated office within Revenue for dealing with spontaneous exchanges of information under Council Directive 2011/16/EU. Where the EOI Branch receives information on a cross-border ruling from the competent authority of another Member State, it will forward the information to those Districts within Revenue for which the information may be of relevance.

5. Contact Details

Any queries in respect of this manual should be addressed to Exchange of Information Branch, International Tax Division, Treasury Building, Dublin Castle, Dublin 2, email aeoi@revenue.ie.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

Annex 1: Extract from Article 1 of Council Directive 2011/16/EU as amended by Council Directive (EU) 2015/2376 (DAC3)

“14. “advance cross-border ruling” means any agreement, communication, or any other instrument or action with similar effects, including one issued, amended or renewed in the context of a tax audit, and which meets the following conditions:

- (a) is issued, amended or renewed by, or on behalf of, the government or the tax authority of a Member State, or the Member State's territorial or administrative subdivisions, including local authorities, irrespective of whether it is effectively used;
- (b) is issued, amended or renewed, to a particular person or a group of persons, and upon which that person or a group of persons is entitled to rely;
- (c) concerns the interpretation or application of a legal or administrative provision concerning the administration or enforcement of national laws relating to taxes of the Member State, or the Member State's territorial or administrative subdivisions, including local authorities;

- (d) relates to a cross-border transaction or to the question of whether or not activities carried on by a person in another country create a permanent establishment; and
- (e) is made in advance of the transactions or of the activities in another country potentially creating a permanent establishment or in advance of the filing of a tax return covering the period in which the transaction or series of transactions or activities took place.

The cross-border transaction may involve, but is not restricted to, the making of investments, the provision of goods, services, finance or the use of tangible or intangible assets and does not have to directly involve the person receiving the advance cross-border ruling;

15. “advance pricing arrangement” means any agreement, communication or any other instrument or action with similar effects, including one issued, amended or renewed in the context of a tax audit, and which meets the following conditions:

- a) is issued, amended or renewed by, or on behalf of, the government or the tax authority of one or more Member States, including any territorial or administrative subdivision thereof, including local authorities, irrespective of whether it is effectively used;
- b) is issued, amended or renewed, to a particular person or a group of persons and upon which that person or a group of persons is entitled to rely; and
- c) determines in advance of cross-border transactions between associated enterprises, an appropriate set of criteria for the determination of the transfer pricing for those transactions or determines the attribution of profits to a permanent establishment.

Enterprises are associated enterprises where one enterprise participates directly or indirectly in the management, control or capital of another enterprise or the same persons participate directly or indirectly in the management, control or capital of the enterprises.

Transfer prices are the prices at which an enterprise transfers physical goods and intangible property or provides services to associated enterprises, and “transfer pricing” is to be construed accordingly.

16. For the purpose of point 14 “cross-border transaction” means a transaction or series of transactions where:

- a) not all of the parties to the transaction or series of transactions are resident for tax purposes in the Member State issuing, amending or renewing the advance cross-border ruling;
- b) any of the parties to the transaction or series of transactions is simultaneously resident for tax purposes in more than one country;
- c) one of the parties to the transaction or series of transactions carries on business in another country through a permanent establishment and the transaction or series of transactions forms part or the whole of the business of the permanent establishment. A cross-border transaction or series of transactions shall also include arrangements made by a person in respect of business activities in another country which that person carries on through a permanent establishment; or
- d) such transactions or series of transactions have a cross-border impact.

For the purpose of point 15, “cross-border transaction” means a transaction or series of transactions involving associated enterprises which are not all resident for tax purposes in the territory of a single country or a transaction or series of transactions which have a cross-border impact.

17. For the purpose of point 15 and 16, “enterprise” means any form of conducting business.”

Annex 2: Relevant Extracts from Council Directive 2011/16/EU

Article 2 - Scope

- “1. This Directive shall apply to all taxes of any kind levied by, or on behalf of, a Member State or the Member State’s territorial or administrative subdivisions, including the local authorities.
2. Notwithstanding paragraph 1, this Directive shall not apply to value added tax and customs duties,
or to excise duties covered by other Union legislation on administrative cooperation between Member States. This Directive shall also not apply to compulsory social security contributions payable to the Member State or a subdivision of the Member State or to social security institutions established under public law.
3. In no case shall the taxes referred to in paragraph 1 be construed as including:
- (a) fees, such as for certificates and other documents issued by public authorities; or
 - (b) dues of a contractual nature, such as consideration for public utilities.

4. This Directive shall apply to the taxes referred to in paragraph 1 levied within the territory to which the Treaties apply by virtue of Article 52 of the Treaty on the European Union.”

Article 3 - Definitions

- “11. ‘person’ means:
- (b) a legal person;
 - (c) where the legislation in force so provides, an association of persons recognised as having the capacity to perform legal acts but lacking the status of a legal person; or
 - (d) any other legal arrangement of whatever nature and form, regardless of whether it has legal personality, owning or managing assets, which, including income derived therefrom, are subject to any of the taxes covered by this Directive”

[Access Full text of the Directive](#) and the [consolidated version](#)

Annex 3 – List of jurisdictions covered by OECD Framework with which Ireland has a legal basis to spontaneously exchange information^{14 15}

1	Albania	74	Jordan
2	Andorra	75	Kazakhstan
3	Angola	76	Kenya
4	Anguilla	77	Korea
5	Antigua and Barbuda	78	Kuwait
6	Argentina	79	Latvia
7	Armenia	80	Liberia
8	Aruba	81	Liechtenstein
9	Australia	82	Lithuania
10	Austria	83	Luxembourg
11	Azerbaijan	84	Macau, China
12	Bahamas	85	Malaysia
13	Bahrain	86	Maldives
14	Barbados	87	Malta
15	Belarus	88	Mauritania
16	Belgium	89	Mauritius
17	Belize	90	Mexico
18	Benin	91	Moldova
19	Bermuda	92	Monaco
20	Bosnia and Herzegovina	93	Mongolia
21	Botswana	94	Montenegro
22	Brazil	95	Montserrat
23	British Virgin Islands	96	Morocco
24	Brunei Darussalam	97	Namibia
25	Bulgaria	98	Netherlands
26	Burkina Faso	99	New Zealand

¹⁴ Based on [OECD list of members of the Inclusive Framework](#) in respect of BEPS as at August 2022

¹⁵ Jurisdictions which are Inclusive Framework members and do not have a corporate income tax system are outside the scope of the transparency framework. As such, no exchange will occur from or to these jurisdictions. These jurisdictions are: Anguilla, The Bahamas, Bahrain, Bermuda, British Virgin Islands, Cayman Islands, and Turks and Caicos Islands.

27	Cabo Verde	100	Nigeria
28	Cameroon	101	North Macedonia
29	Canada	102	Norway
30	Cayman Islands	103	Oman
31	Chile	104	Pakistan
32	China (People's Republic of)	105	Panama
33	Colombia	106	Papua New Guinea
34	Congo	107	Paraguay
35	Cook Islands	108	Peru
36	Costa Rica	109	Philippines
37	Côte d'Ivoire	110	Poland
38	Croatia	111	Portugal
39	Curaçao	112	Qatar
40	Czechia	113	Romania
41	Democratic Republic of the Congo	114	Russian Federation
42	Denmark	115	Saint Kitts and Nevis
43	Djibouti	116	Saint Lucia
44	Dominica	117	Saint Vincent and the Grenadines
45	Dominican Republic	118	Samoa
46	Egypt	119	San Marino
47	Estonia	120	Saudi Arabia
48	Eswatini	121	Senegal
49	Faroe Islands	122	Serbia
50	Fiji	123	Seychelles
51	Finland	124	Sierra Leone
52	France	125	Singapore
53	Gabon	126	Slovak Republic
54	Georgia	127	Slovenia
55	Germany	128	South Africa
56	Gibraltar	129	Spain
57	Greece	130	Sri Lanka
58	Greenland	131	Sweden
59	Grenada	132	Switzerland
60	Guernsey	133	Thailand
61	Haiti	134	Togo
62	Honduras	135	Trinidad and Tobago
63	Hong Kong, China	136	Tunisia
64	Hungary	137	Turkey
65	Iceland	138	Turks and Caicos Islands
66	India	139	Ukraine

67	Indonesia	140	United Arab Emirates
68	Isle of Man	141	United Kingdom
69	Israel	142	United States
70	Italy	143	Uruguay
71	Jamaica	144	Uzbekistan
72	Japan	145	Viet Nam
73	Jersey	146	Zambia

Annex 4: Information to be exchanged with other Member States and the EU Commission

Information to be exchanged with other Member States

In line with amendments to Council Directive 2011/16/EU by Council Directive 2015/2376 (DAC3), transposed by section 891GA of the TCA 1997, information that will be exchanged with other Member States with regard to tax rulings is set out below.

Subsection 6 Article 8a

Article 8a, subsection 6 of Council Directive 2011/16/EU, as amended, states the following:

“6. The information to be communicated by a Member State pursuant to paragraphs 1 and 2 of this Article shall include the following:

- a) the identification of the person, other than a natural person, and where appropriate the group of persons to which it belongs;
- b) a summary of the content of the advance cross-border ruling or advance pricing arrangement, including a description of the relevant business activities or transactions or series of transactions provided in abstract terms, without leading to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy;
- c) the dates of issuance, amendment or renewal of the advance cross-border ruling or advance pricing arrangement;
- d) the start date of the period of validity of the advance cross-border ruling or advance pricing arrangement, if specified;
- e) the end date of the period of validity of the advance cross-border ruling or advance pricing arrangement, if specified;
- f) the type of the advance cross-border ruling or advance pricing arrangement;
- g) the amount of the transaction or series of transactions of the advance cross-border ruling or advance pricing arrangement if such amount is referred to in the advance cross-border ruling or advance pricing arrangement;
- h) the description of the set of criteria used for the determination of the transfer pricing or the transfer price itself in the case of an advance pricing arrangement;
- i) the identification of the method used for determination of the transfer pricing or the transfer price itself in the case of an advance pricing arrangement;
- j) the identification of the other Member States, if any, likely to be concerned by the advance cross-border ruling or advance pricing arrangement;

- k) the identification of any person, other than a natural person, in the other Member States, if any, likely to be affected by the advance cross-border ruling or advance pricing arrangement (indicating to which Member States the affected persons are linked); and
- l) the indication whether the information communicated is based upon the advance cross-border ruling or advance pricing arrangement itself or upon the request referred to in the second subparagraph of paragraph 3 of this Article.”

Section 891GA (3) Taxes Consolidation Act (TCA) 1997

Section 891GA (3) TCA states the following:

“(3) The competent authority may, when providing exchange information in respect of a relevant instrument, provide the following information connected with or supplementary to that exchange information:

- a) the reference, if any, assigned by the Revenue Commissioners to the relevant instrument;
- b) where the relevant instrument is related to or connected with any other relevant instrument, information for the purpose of identifying that other relevant instrument;
- c) in respect of a person to whom the relevant instrument relates, that person’s—
 - (i) main business activity,
 - (ii) annual turnover, and
 - (iii) annual profits or losses;
- d) whether an address provided in respect of a person is that person’s—
 - (i) business address,
 - (ii) legal address, or
 - (iii) other form of address;
- e) in respect of an advance pricing arrangement which uses more than one transfer pricing methodology, an explanation as to why more than one methodology was used; and
- f) such other information as may be specified in a standard form adopted by the European Commission for the purpose of complying with its obligations under Article 20(5) of the Directive.”

Information to be made available to the EU Commission

The information that will be available to the Commission is set out in paragraph 3(8) of Article 8a of Council Directive 2015/2376 and is cited below for ease of reference.

"8. Information as defined under points (a), (b), (h) and (k) of paragraph 6 of this Article shall not be communicated to the European Commission."

Therefore, the following information will be available to the Commission:

- c) the dates of issuance, amendment or renewal of the advance cross-border ruling or advance pricing arrangement;
- d) the start date of the period of validity of the advance cross-border ruling or advance pricing arrangement, if specified;
- e) the end date of the period of validity of the advance cross-border ruling or advance pricing arrangement, if specified;
- f) the type of the advance cross-border ruling or advance pricing arrangement;
- g) the amount of the transaction or series of transactions of the advance cross-border ruling or advance pricing arrangement if such amount is referred to in the advance cross-border ruling or advance pricing arrangement;
- i) the identification of the method used for determination of the transfer pricing or the transfer price itself in the case of an advance pricing arrangement;
- j) the identification of the other Member States, if any, likely to be concerned by the advance cross-border ruling or advance pricing arrangement;
- l) the indication whether the information communicated is based upon the advance cross-border ruling or advance pricing arrangement itself or upon the request referred to in the second subparagraph of paragraph 3 of this Article."

As well as:

- (a) the reference, if any, assigned by the Revenue Commissioners to the relevant instrument;
- (b) where the relevant instrument is related to or connected with any other relevant instrument, information for the purpose of identifying that other relevant instrument;
- (c) in respect of a person to whom the relevant instrument relates, that person's—
 - (ii) annual turnover, and
 - (iii) annual profits or losses;
- (f) such other information as may be specified in a standard form adopted by the European Commission for the purpose of complying with its obligations under Article 20(5) of the Directive."

And the following information will **not** be available to the Commission:

- a) the identification of the person, other than a natural person, and where appropriate the group of persons to which it belongs;
- b) a summary of the content of the advance cross-border ruling or advance pricing arrangement, including a description of the relevant business activities or transactions or series of transactions provided in abstract terms, without leading to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy;
- h) the description of the set of criteria used for the determination of the transfer pricing or the transfer price itself in the case of an advance pricing arrangement;
- k) the identification of any person, other than a natural person, in the other Member States, if any, likely to be affected by the advance cross-border ruling or advance pricing arrangement (indicating to which Member States the affected persons are linked);

As well as:

- c) in respect of a person to whom the relevant instrument relates, that person's—
 - (i) main business activity,
- d) whether an address provided in respect of a person is that person's—
 - (i) business address,
 - (ii) legal address, or
 - (iii) other form of address;
- e) in respect of an advance pricing arrangement which uses more than one transfer pricing methodology, an explanation as to why more than one methodology was used"