

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

### Part 35-00-01

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## 1. 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 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 already 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 (referred to above);
- Ireland's Double Taxation Agreements and Tax Information Exchange Agreements; and the
- OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters<sup>1</sup>.

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 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 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 the Council Directive 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.

The Council Directive provides for the mandatory automatic exchange of information on advance cross-border rulings and advance pricing arrangements (APAs) provided to companies and other entities in respect of **all taxes except** VAT, Customs Duties, Excise Duties and compulsory social security contributions. This information is to be

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<sup>1</sup>Tax and Duty Manual(TDM) [Part 35-01-01A](#) sets out the role of Exchange of Information Branch in International Tax Division in relation to the exchange of information under various legal instruments and provides guidance on the exchange of information on request and spontaneously.

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 has been transposed into Irish law by way of regulations<sup>2</sup> and by introducing a new section 891GA into the Taxes Consolidation Act 1997 in Finance Act 2016. The new measures apply from 1 January 2017.

The OECD framework provides for the compulsory spontaneous exchange of information on six categories of taxpayer-specific rulings. 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**
  - 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 applies from 1 April 2016.

This document outlines the scope of each of these initiatives and the procedures for their effective implementation. [Section 2](#) provides an overview of the Council Directive, [Section 3](#) provides an overview of the OECD framework, [Section 4](#) sets out how the exchange of information provisions will be implemented by Revenue, [Section 5](#) addresses spontaneous exchange of information in respect of rulings under Council Directive 2011/16/EU while [Section 6](#) contains contact details.

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

[...]

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<sup>2</sup> European Union (Administrative Cooperation in the Field of Taxation) (Amendment) Regulations 2016 (SI No. 619 of 2016)

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

### 1.1. Scope

Council Directive (EU) 2015/2376 amends Council Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.

Council Directive (EU) 2015/2376 requires Member States to exchange information on advance cross-border rulings and APAs that are provided to companies and other entities<sup>3</sup> in respect of **all taxes except** VAT, Customs Duties, Excise Duties and compulsory social security contributions<sup>4</sup>. Advance cross-border rulings that exclusively concern the tax affairs of an individual are specifically excluded.

It should be noted that the Directive 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.

The Directive 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.

#### **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.

<sup>3</sup> 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](#).

<sup>4</sup>As per Article 2 of [Council Directive 2011/16/EU](#).

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.

#### **Definition of an 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**
- that **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)** that 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 the Directive clarify that the automatic exchange provisions apply to both binding and non-binding 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<sup>5</sup>.

### 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 has to be exchanged at the latest by the end of September of that year and, for rulings provided in the latter half of the calendar year, information has to 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.

### 1.4. Full Text of Council Directive

[Full text of Directive](#)

## 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 certain 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<sup>6</sup>”.

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 Practices<sup>7</sup>

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<sup>5</sup> As per Article 8a, paragraph 3 of Council Directive 2011/16/EU as amended by Council Directive (EU) 2015/2376.

<sup>6</sup> Paragraph 97, chapter 5, section II A of OECD/G20 BEPS Action 5: Final Report.

<sup>7</sup> 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

(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 accounts<sup>8</sup>. 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.
- 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

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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.

<sup>8</sup> This does not include correlative adjustments.

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"> <li>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);</li> <li>The country of residence of the ultimate parent company of the taxpayer; <b>and</b></li> <li>The country of residence of the immediate parent company of the taxpayer.</li> </ul>
Unilateral APA and any other cross-border unilateral transfer pricing ruling	<ul style="list-style-type: none"> <li>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;</li> <li>The country of residence of the ultimate parent company of the taxpayer; <b>and</b></li> <li>The country of residence of the immediate parent company of the taxpayer.</li> </ul>
Downward Adjustment Ruling	<ul style="list-style-type: none"> <li>The countries of residence of all related parties with whom the taxpayer enters into transactions covered by the ruling;</li> <li>The country of residence of the ultimate parent company of the taxpayer; <b>and</b></li> <li>The country of residence of the immediate parent company of the taxpayer.</li> </ul>
PE Ruling	<ul style="list-style-type: none"> <li>The country of residence of the head office or the country of the PE, as the case may be;</li> <li>The country of residence of the ultimate parent company of the taxpayer; <b>and</b></li> <li>The country of residence of the immediate parent company of</li> </ul>

	the taxpayer.
Related Party Conduit Ruling	<ul style="list-style-type: none"> <li>• The country of residence of any related party making payments to the conduit (directly or indirectly);</li> <li>• 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;</li> </ul> <p><b>and</b></p> <ul style="list-style-type: none"> <li>• 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.</li> </ul>

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

- it is issued on or after 1 April 2016 (or comes 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 basis<sup>9</sup> 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.<sup>10</sup> This timeframe is different to that provided for by the EU Directive (see

<sup>9</sup> 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.

section [2.3](#) above).

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

## 2.4. Full Text of OECD Framework

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.

## 3. Implementation by Revenue

### 3.1. Application of Exchange of Information Requirements

The exchange of information requirements outlined in [sections 2](#) and [section 3](#) above apply to taxpayer-specific communications that Revenue provides to companies and other entities in respect of direct taxes<sup>11</sup> that come within the definition of an advance cross-border ruling or an APA as provided for by Council Directive (EU) 2015/2376 and/or that come within one of the five categories of rulings as provided for in the OECD framework. The requirements outlined in the EU Directive and OECD framework are not mutually exclusive and a Revenue communication may fall within both.

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 the EU Directive 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 Cases Division are set out in Tax and Duty Manual (TDM) [Part 37-00-40](#) Large Cases Division: Opinions/Confirmations on Tax/Duty Consequences of a Proposed Course of Action (formerly Tax Briefing 4 of 2014).

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<sup>10</sup> This refers to certain Revenue officers in Exchange of Information Branch, International Tax Division who are authorised to exchange information with other tax administrations.

<sup>11</sup> 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.

- Guidelines that apply in relation to opinions sought by taxpayers whose affairs are dealt with in Personal Division, or Medium Enterprises Division are set out in. <https://www.revenue.ie/en/tax-professionals/rts/index.aspx>

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;
- 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<sup>12</sup>.

In addition, the exchange of information requirements can also apply to opinions given in the context of a tax audit or other Revenue intervention and may also apply to responses provided by Revenue on foot of expressions of doubt. However, as these are 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.

The new 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) From 1 April 2016 Revenue will be 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 will also be communicated to the European Commission.

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<sup>12</sup> 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 sections [2.3](#) and [3.3](#) 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 the EU Directive and the OECD framework Revenue will be exchanging 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 policy<sup>13</sup>.
- 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.

Where the ruling is being exchanged under the EU Directive, Revenue will also be providing:

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<sup>13</sup> 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".

- 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 [3.1](#) 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 Cases 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 [sections 2](#) and [section 3](#) 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 the EU Directive, 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 [3.1](#)), the reason why they are considered related (i.e. % 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

From 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 the EU Directive or 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 pursuant to Council Directive (EU) 2015/2376 is covered by the obligation of taxpayer confidentiality and enjoys the protection extended to similar information under the national law of the Member State that receives it<sup>14</sup>. Confidentiality requirements also apply to information exchanged under the relevant legal instrument<sup>15</sup> in line with the OECD framework.

## 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<sup>16</sup> ('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

<sup>14</sup> This is provided for in Article 16 of Council Directive 2011/16/EU.

<sup>15</sup> 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.

<sup>16</sup> S.I. No. 549 of 2012

that other Member State. The Directive applies to all taxes other than value-added tax, EU excise duties and customs duties.

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<sup>17</sup>, 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

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<sup>17</sup> 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).

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 Council Directive 2011/16/EU will also be exchangeable under Council Directive (EU) 2015/2376 and/or the OECD framework for the compulsory spontaneous exchange of information in respect of rulings (see part 2 and 3 of this manual). As such, there is no requirement to separately exchange them under Council Directive 2011/16/EU.

However, where an opinion issued by Revenue 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 exchange these under Council Directive 2011/16/EU.

#### 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 paragraph 6 or (ii) is otherwise within the scope of paragraph 1 of Article 9, it will provide the 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 the Directive 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<sup>18</sup>.

### 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 [eoirevenue.ie](mailto:eoirevenue.ie) or telephone (01) 8589814.

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

[...]

<sup>18</sup> This is provided for in Article 16 of Council Directive 2011/16/EU.

## Annex 1: Extract from Article 1 of Council Directive (EU) 2015/2376

“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.”

The full text of the Directive is available [Council Directive](#).

## 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<sup>1920</sup>

1	Albania	69	Jersey
2	Andorra	70	Jordan
3	Angola	71	Kazakhstan
4	Anguilla	72	Kenya
5	Antigua and Barbuda	73	Korea
6	Argentina	74	Latvia
7	Armenia	75	Liberia
8	Aruba	76	Liechtenstein
9	Australia	77	Lithuania
10	Austria	78	Luxembourg
11	Bahrain	79	Macau, China
12	Barbados	80	Malaysia
13	Belgium	81	Maldives
14	Belize	82	Malta
15	Benin	83	Mauritius
16	Bermuda	84	Mexico
17	Bosnia and Herzegovina	85	Monaco
18	Botswana	86	Mongolia
19	Brazil	87	Montenegro
20	British Virgin Islands	88	Montserrat
21	Brunei Darussalam	89	Morocco
22	Bulgaria	90	Namibia
23	Burkina Faso	91	Netherlands
24	Cabo Verde	92	New Zealand
25	Cameroon	93	Nigeria
26	Canada	94	North Macedonia
27	Cayman Islands	95	Norway
28	Chile	96	Oman
29	China (People's Republic of)	97	Pakistan
30	Colombia	98	Panama
31	Congo	99	Papua New Guinea
32	Cook Islands	100	Paraguay
33	Costa Rica	101	Peru
34	Côte d'Ivoire	102	Poland

<sup>19</sup> Based on [OECD list of members of the Inclusive Framework](#) in respect of BEPS as at December 2019

<sup>20</sup> 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.

35	Croatia	103	Portugal
36	Curaçao	104	Qatar
37	Czech Republic	105	Romania
38	Democratic Republic of the Congo	106	Russian Federation
39	Denmark	107	Saint Kitts and Nevis
40	Djibouti	108	Saint Lucia
41	Dominica	109	Saint Vincent and the Grenadines
42	Dominican Republic	110	San Marino
43	Egypt	111	Saudi Arabia
44	Estonia	112	Senegal
45	Eswatini	113	Serbia
46	Faroe Islands	114	Seychelles
47	Finland	115	Sierra Leone
48	France	116	Singapore
49	Gabon	117	Slovak Republic
50	Georgia	118	Slovenia
51	Germany	119	South Africa
52	Gibraltar	120	Spain
53	Greece	121	Sri Lanka
54	Greenland	122	Sweden
55	Grenada	123	Switzerland
56	Guernsey	124	Thailand
57	Haiti	125	The Bahamas
58	Honduras	126	Trinidad and Tobago
59	Hong Kong, China	127	Tunisia
60	Hungary	128	Turkey
61	Iceland	129	Turks and Caicos Islands
62	India	130	Ukraine
63	Indonesia	131	United Arab Emirates
64	Isle of Man	132	United Kingdom
65	Israel	133	United States
66	Italy	134	Uruguay
67	Jamaica	135	Viet Nam
68	Japan	136	Zambia

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

### Information to be exchanged with other Member States

The information that will be exchanged with other Member States with regard to tax rulings is set out in Subsection 6 of paragraph 3 of Article 1 of Council Directive 2015/2376 and section 891GA of the TCA 1997.

#### Subsection 6 of paragraph 3 of Article 1

Subsection 6 of paragraph 3 of Article 1 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)**

Section 891GA (3) 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 Subsection 8 of paragraph 3 of Article 1 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;

A more recent version of this manual is available.