



Brussels, February 19 2015

Automatic exchange of personal financial information between States: Issues for EU investors behind the recently adopted new Directive on Administrative Cooperation (DAC2)

DAC2 is now a reality (Directive 2014/107/EU of 9 December 2014).

As the representative organisation of European individual investors, Better Finance does not question the necessity for EU Member States to ensure that they collect all the tax revenues that are due to them. However, DAC2 raises serious issues for European investors, such as:

- privacy and data protection;
- the still unresolved:
 - o double taxation of financial income (dividends in particular) within the EU;
 - o and other tax discriminations imposed by Member States when investment providers and investors are domiciled in different Member States.

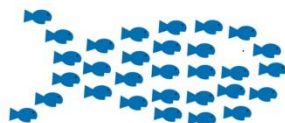
The newly launched EU “Capital Market union” initiative cannot succeed if it does not tackle these unjustified internal barriers.

Background

The EC justifies the DAC2 the following way.

“In today’s difficult economic climate, many EU Member States need more than ever to ensure that they collect all the tax revenues that are due to them in order to fund public expenditure and reduce public debt. They also need to ensure that the tax rules are seen to apply fairly to every individual resident in their jurisdiction. But in the world of today in which individuals are active in several different countries it can be easier to avoid or evade taxes. This is why EU Member States recognise the need to cooperate more closely to prevent tax fraud and evasion and ensure the fairness of taxation systems both within the EU and internationally.”

The cooperation systems in place between EU Member States ensure information exchange between the tax authorities of EU Member States for a range of income categories paid across borders to individuals. Currently the European Union has two pieces of legislation which provide automatic exchange of information for direct taxation purposes: the Savings Taxation Directive and the Directive on Administrative Co-operation in Direct Taxation.





The Commission will assist the Council in its discussions on alignment of the aforementioned EU legislation on automatic exchange of information with the OECD Global Standard on automatic exchange of financial account information which is expected to be formally adopted by the OECD in mid-2014. The alignment will aim to limit the administrative burden of such legislation on financial sector businesses whilst preserving the specific needs of the EU internal market.”

The current status

Member States (MS) are required to implement the Directive by January 2016 and the first actual exchange of information will take place in September 2017. Austria has been granted a derogation to start in 2018.

The EU Commission is working to bring third countries on board. The idea is to skip the second version of the EU Savings Directive (which will be phased out) and conclude agreements on the basis of the new standards.

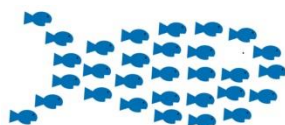
Lots of time has been spent in the Experts Group set up by the Commission discussing technical issues in relation with the actual transfer of information (“Common Reporting Standard Schemes” for the IT development).

More importantly for individual investors however, the WP29¹ which is in charge of looking into the data-protection and privacy issues seems inclined to take a critical stance toward DAC2. In statement adopted on February 4, 2015 and recently released, it has (again!) stressed the need respect the principles of “*purpose limitation and necessity*” in assessing whether such massive transfer of information were justified and to make sure that appropriate safeguards were put in place to respect taxpayers privacy. WP29’s opinion will presumably have a lot of influence on how (not if) DAC2 is implemented.

The role of the AEFI and Better finance

The Commission’s Expert Group on Automatic Exchange of Financial Account Information for Direct Taxation Purposes (AEFI Group) was set up in October 2014 to provide the European Commission with advice from stakeholders, which will allow the Commission to assist the Council and Member States to ensure that EU legislation on automatic exchange of information in direct taxation is effectively aligned and fully compatible with the OECD Global Standard on automatic exchange of financial account information.

¹ The Article 29 Data Protection Working Party was set up under the Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. It has advisory status and acts independently.





A Better Finance representative and tax expert applied to the position and was selected as a member of the AEFI.

Much time has been devoted to the discussion of its draft report that should come out soon.

Financial Institutions insist that the given timeline is not realistic, mainly because it is highly doubtful that each MS will, by January 2016, have put in place all implementing measure (legislation and administrative guidelines). Time will tell whether or not they are heard on this point.

Data protection and privacy are key issues for Better Finance and for the other experts of the Group. Therefore, Better finance is likely to support the AEFI first report.

