



## EUROPEAN COMMISSION

DIRECTORATE-GENERAL

TAXATION AND CUSTOMS UNION

Direct taxation, Tax Coordination, Economic Analysis and Evaluation

**Direct Tax Policy & Cooperation**

Brussels, TAXUD/D2/(2018) 116745

### Meeting report

1. **Meeting with Irish Tax Institute to discuss mandatory disclosure rules for intermediaries**
2. **Participants:**
3. **Commission:**    **Irish Tax Institute:**    **Date**    **and**    **place:**    Brussels    (HRMC)  
11/01/2017 12.30-13.30
4. **Flash report**

COM explained that the purpose of the meeting was to have an exchange of views on Irish experience with mandatory disclosure regime, taking into account the Commission's work on intermediaries and aggressive tax planning.

Institute provided some background on Irish mandatory disclosure regime (MDR). It was introduced in 2011, inspired with the UK example where it had existed already several years before. Stressed that MDR was additional anti-avoidance measure next to GAAR or Protective Notifications (taxpayer can be provided with the cap for penalties if he does certain notifications regarding his "risky" tax affairs). It was unlike the UK where MDR (called DOTAS) were introduced at the same time with GAAR. There was no developed market for off-the-shelf products in IE unlike UK.

Meeting was considered of mutually beneficial and ended with prospect of further contacts.

### 5. Detailed discussion

*Professional privilege:* It has been explained that tax advisors can have various background in IE (solicitors, accountants, others). May or may not be members of Irish tax institute. No specific legal regulation of "tax advisor" profession who can be anybody.

Professional privilege relates only to legal profession, therefore there may be issue of uneven playing field. It has been and still is a lively topic, although no statistics are known if or how often has been invoked. It is not fully clear how far does it go.

According to some it should relate only to cases when prosecution is pending, then communication between lawyer and its client is protected. This corresponds to the approach in anti-money laundering directive. It seems that it would concern only a limited number of advisers. In case when adviser cannot make a disclosure the obligation falls on its client/taxpayer.

*Hallmarks:* There are two main groups of hallmarks in Ireland – generic and specific. It seems that generic hallmarks can work for EU 28. Specific hallmarks are designed to

respond to specific risks which may differ across EU. Transfer from (high-taxed) income to (low-taxed) capital income is one of targets in IE. Discretionary trusts are other example where advisors have to take more care, however that often concerns family issues. There is also a list in IE of what does not have to be reported, in order to avoid burden with relation to ordinary planning.

*Tax advantage (main benefit test as a filter):* Specific question could be if the "main benefit test" should apply. According to Institute, it is an integral part of the MDR at the national level which address tax avoidance. It requires certain consideration. Hallmarks without test would have to wide coverage.

*Cross-border issues and national vs EU regime:* According to Institute it may happen that certain situation would be caught by hallmark in one MS but not in another. Some hallmarks suggested within public consultation may be too wide or fully appropriate, e.g. financing company in low-tax jurisdiction as a member of the group.

Some BEPS risks will be addressed with other (EU, legal) instruments, e.g. limitation of interests.

*Other issues:*

- *Offshore:* No substantial feedback on the UK latest consultation paper concerning concealing beneficial ownership which concerns also tax evasion. Voluntary disclosure project is under way in IE with deadline on 1 May 2017. This shall contribute to or complement the offshore monitoring.
- *SME:* there was no apparent need for exemption concerning SMEs in the national MDR, at the EU level it may differ, depends what may be the exact targets.
- IE tax authorities (revenue service) disclose to public/press those taxpayers with some defaults Large companies invest a lot in risk analysis to avoid any reputation damage

**6. Report by:**

**7. Copies:** TAXUD.D2