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PRACTITIONERS' CORNER

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The 2013 Law of European Delegation[1] gives the Italian government the power to transpose 35 EU directives, including Directive 2011/16/EU.

Effective January 1, 2013, Directive 2011/16/EU repeals Directive 77/799/EEC and sets new ways and procedures for administrative cooperation between member states on the administration and implementation of national legislation in the tax field.

Globalization, taxpayers' mobility, the increasing number of cross-border transactions, and the internationalization of financial instruments make it difficult for member states to ascertain the correct amount of taxes owed.

Directive 2011/16/EU states that:

> this increasing difficulty affects the functioning of taxation systems and entails double taxation, which itself incites tax fraud and tax evasion, while the powers of control remain at the national level. It thus jeopardizes the functioning of the internal market. Therefore, a single Member State cannot manage its internal taxation system, especially as regards direct taxation, without receiving information from other Member States. In order to overcome the negative effects of this phenomenon, it is necessary to develop new administrative cooperation between the Member States' tax administrations.

Directive 2011/16/EU covers the exchange of information on request in its article 5, which provides that on request of the competent authority of a member state, the competent authority of the requested member state will forward the information that may be useful for the correct assessment of taxes (''of any kind, regardless of how they are collected, except for indirect taxes already covered by European Union legislation on administrative cooperation between Member States''), including information on one or more specific cases and relevant information that it has or obtains as a result of an administrative investigation.

Directive 2011/16/EU also establishes the automatic exchange of information as a general rule, as well as a compulsory cooperation instrument between states in tax matters.

Article 8 (''Scope and conditions of mandatory automatic exchange of information'') of Directive 2011/16/EU provides that the competent authority of each member state will communicate to the competent authority of any other member state, by automatic exchange, any available information on tax periods beginning on January 1, 2014, involving residents in the latter member state and concerning the following categories of income and capital:

- income from employment;
- director's fees;
- life insurance products not covered by other EU legal instruments on exchange of information and similar measures;

[1]Law 234 of December 24, 2012, replaced the traditional annual ''Community Law'' with the ''Law of European Delegation'' and the ''European Law.'' The Law of European Delegation confers legislative powers for the transposition of directives and other legislation of the European Union into Italian law, while the European law provides rules for the direct implementation of obligations stemming from membership in the EU.

- pensions; and
- ownership of and income from real estate.

According to article 8(2), by January 1, 2014, member states will inform the European Commission of the above income categories on which they have information available, as well as of any subsequent amendments thereto.

Starting in 2017, the exchange of information should also cover dividends, capital gains, and royalties.

Under article 29, member states are required ''to bring into force the laws, regulations, and administrative provisions necessary to comply with Article 8 of this directive with effect from January 1, 2015,'' promptly informing the European Commission that it has put the compliance measures into force.

Directive 2011/16/EU also covers the spontaneous exchange of information by establishing that each national competent authority will communicate information to the competent authority of any other member state if the circumstances listed in its article 9 are verified:

- the competent authority of a member state has reason to assume that there may be a tax loss in the other member state;
- in a member state, a taxpayer gets a tax reduction or tax exemption that should result in a tax increase or a liability to tax in the other member state;
- business dealings between two taxpayers in different member states are conducted through one or more states in order to obtain a tax reduction in one or both of the states concerned;
- the competent authority of a member state has reasonable grounds to assume that a tax reduction is the result of artificial transfers of profits within groups of enterprises; or
- information forwarded to one member state by the competent authority of the other member state has enabled information to be obtained that may be useful in assessing liability to tax in the latter member state. ◆