Regeringskansliet  
(Finansdepartementet)  
103 33 Stockholm

Remiss: Europeiska kommissionens förslag till direktiv om ändringar i direktiv 2011/16/EU vad avser automatiskt informationsutbyte i fråga om beskattning

After the Lisbon Treaty, law making in the field of direct taxation is one of the few policy areas which continues to be subject to unanimity voting in the Council of the European Union (EU). Thus the adoption of any legislative measures in the field of direct taxation has to be done according to the Special Legislative Procedure prescribed in the Lisbon Treaty. Even the current proposal, which contains only four amending articles to the Council Directive 2011/16/EU, should therefore go through the same legislative procedure, where the Council of the EU has to act unanimously.

As suggested in the recitals to the proposed amendment to the Directive 2011/16/EU, its underlying objective is to strengthen and refine the existing legal instrument in order to combat tax fraud and tax evasion more effectively particularly within the EU. In order to achieve this objective, the proposed amendment seeks to expand the scope of the already existing legal provisions dealing with the automatic exchange of information in the EU.

A related objective of the current proposal is to counter the problem created by some Member States, which have unilaterally entered into an agreement with the United States on Foreign Accounts Tax Compliance Act (FATCA). Such unilateral moves by the Member States could potentially distort the smooth functioning of the EU’s internal market. The categories which are covered for exchange of information under FATCA are: A. dividends; B. capital gains; C. any other income generated in connection with assets held in a financial account; and D. account balances. Thus the proposed amendment to the Directive 2011/16/EU seeks to expand the scope of automatic exchange of information in the EU to include dividends, capital gains, other financial income and account balances.

It is also noteworthy that Article 8 of Directive 2011/16/EU contains list of items such as income from employment, directors fees, pensions, income from immovable property, which are subject to the automatic exchange of information regime. However such information should be provided by a competent authority of a Member State to its counterpart from another Member State only if it is ‘available’ with that authority.
However Article 3a of the proposed amending directive does not include the word ‘available’ to the new items subject to exchange of information. The same article however declares that the Commission shall submit a report on the Directive on or before 2017 and decide whether or not the word ‘available’ in Article 8 will be repealed or not.

Since an amendment to the Directive 2011/16/EU requires unanimity in the Council of the EU, every Member State including Sweden shall have the legal right to exercise its veto power, if it so desires. Sweden has adopted the Council Directive 2003/48 on taxation of savings income in the form of interest payments. This is one of the few complex EU legal instruments, which lacks uniform application as some Member States follow the provisions on withholding taxation system and the rest the information system. Sweden and majority of the Member States have opted for the information system, and the current proposal for the amendment of Directive 2011/16/EU merely seeks to extend the scope of capital transactions to the exchange of information system. As such there should not be any objections from Sweden for the amendment of the Directive 2011/16/EU.