



EBF 2017 Tax Conference

Additional Tax Reporting for EU banks?

Mandatory Disclosure of Potentially Aggressive Tax Planning Arrangements

Problem & Solution

- **Aggressive cross border tax planning in Internal Market**
 - **Disclose potential schemes for early warning and audit**
 - **Exchange information with all Member States**
 - **Via amendment to 'DAC'**

What? - Material Scope (i)

- All schemes that include at least one indicator – '**Hallmark**'
- The **hallmarks** determine what arrangements are reportable
 - ❖ There is **no presumption of tax avoidance**
 - ❖ The **authorities may determine** whether there is an illegitimate tax practice based on the information
- **No action** by the authorities **does not mean clearance**

What? Material Scope (ii) Categories of Hallmarks

- Generic hallmarks & some of the specific ones require an additional "**main benefit**" test;
- **Main benefit** refers to obtaining a tax advantage, including through the way that the scheme is structured

What? Material Scope (iii)

- **Only cross-border arrangements** are reportable:
 - ❖ Two or more Member States; or
 - ❖ One Member State and a third country
- The focus is on implications on the internal market (regardless of possible involvement of a third country)

Personal Scope – Who is liable to disclose?

- **The Intermediary responsible for:**
 - 'designing, marketing, organising or managing the implementation of the tax aspects of a reportable cross border arrangement' (Art 3,(b),21)
 - 'only the intermediary that carries the responsibility for designing and implementing' (Article 8aaa,3)
- **or Taxpayer if:**
 - ❖ No intermediary (in-house schemes), Waiver (professional secrecy), Intermediary outside the EU