



Euro Tax Flash from KPMG's EU Tax Centre



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As previously reported, in [Euro Tax Flash 369](#), mandatory disclosure requirements for intermediaries and relevant taxpayers entered into force in the European Union on June 25, 2018 and must be implemented by Member States before December 31, 2019, to be applied as of July 1, 2020. Intermediaries are also required to track reportable transactions as of June 25, 2018 and disclose this information to the tax authorities by August 31, 2020.

This Special Edition Euro Tax Flash summarizes the implementation of the new rules into Member States' domestic legislation to date and what can be expected from the European Commission going forward.

Background

Following a proposal put forward by the European Commission, the new mandatory disclosure requirements were introduced as an amendment to the Directive on Administrative Cooperation in the Field of Taxation ("DAC 6") and will apply from July 1, 2020.

DAC 6 introduces an obligation on intermediaries to disclose information on cross-border arrangements that meet certain criteria to their domestic tax authorities and rules for the subsequent exchange of this information between tax administrations. According to the final text, from July 1, 2020, all disclosures must be made within 30 days of implementation.

Intermediaries and relevant taxpayers will also be required to disclose information on reportable cross-border arrangements, the first step of which is to be implemented between June 25, 2018 and July 1, 2020. This information should be filed by August 31, 2020.

Please refer to the [KPMG Summary and Observations memo](#) for further details.

Implementation into domestic legislation

Although EU Member States have until the end of 2019 to implement DAC 6 into domestic legislation, several jurisdictions have already published draft legislation or introduced mandatory disclosure rules.

The issue of whether countries give intermediaries the right to a waiver for legal professional privilege is particularly relevant because where the obligation is not enforceable upon an intermediary, the requirement to disclose falls on the taxpayer. At this stage it appears that the waiver for legal professional privilege is being considered by a number of Member States, including Austria, Belgium, the Czech Republic, France, Germany, Poland and Slovakia. However, the details of which categories of intermediaries will benefit from the waiver and for what types of advice are still being discussed.

While official documents have not yet been made public, it would appear that a working group within the German Ministry of Finance is working on draft DAC 6 implementation legislation that will uphold legal professional privilege for several categories of intermediaries.

Member States have the option to extend disclosure rules beyond the scope of DAC 6. Poland, for example, has already signed new disclosure requirements into law. Highlights of the Polish law include extending the scope to VAT, excise and customs duties (specifically excluded from DAC), including not only cross-border, but also certain domestic arrangements, and levying penalties of up to roughly EUR 2.5 million for non-compliance. A consultation process on the implementation of the new rules is expected to start in December 2018.

For further details, please refer to a recent [Tax Alert](#) published by KPMG in Poland.

Some jurisdictions have submitted draft legislation for consultation, or are considering doing so in the near future. Public consultation on the Italian text, which mirrors DAC 6, ended in September 2018, the Lithuanian government has also recently published draft legislation for consultation, while the Swedish and Dutch tax authorities are expected to start the process in December 2018 and early 2019, respectively. The Ministry of Finance in Slovakia also circulated a DAC 6 implementation questionnaire to the local industrial chambers in September 2018.

Most of the remaining Member States are in the process of setting up DAC 6 working groups or have delayed the process to 2019 in order to prioritize the implementation of provisions of the Anti-Tax Avoidance Directive for which the deadline is January 1, 2019.

Guidance from the European Commission

The EU has not issued accompanying guidance to the text of the Directive, other than the comments made in its Recital. Under the rules governing the legislative process in the European Union, the European Commission's role is limited to proposing new legislation and it

cannot intervene in the adoption and implementation of the EU legislation. However, the European Commission can provide technical and logistical support (e.g. adopt standard forms, set up the means for tax authorities to exchange information, etc.), monitor the functioning of a piece of legislation and bring action against Member States for failure to meet their obligations under EU law (via the infringement procedure).

It is, therefore, unlikely that the European Commission will provide any further guidance on the interpretation and application of DAC 6. If additional commentaries are published by the Commission, they will not have legal authority and will only serve as general guidance for Member States' tax authorities. The tax authorities would be under no legal obligation to follow the Commission's interpretation.

However, it is worth highlighting the [Summary of a meeting](#) between the representatives of the European Commission and the Member States' representatives in charge of DAC 6 implementation that was held in Brussels, on September 24, 2018. Several issues were discussed during that meeting, including that:

- there is no obligation on intermediaries to actively investigate beyond information that is within their knowledge, possession or control and
- the value of an arrangement is not directly linked to the tax benefit, but refers to the transaction and its exact meaning depends on the type of arrangement.

It was also suggested that for more details on the interpretation of the terms "tax benefit" and "tax advantage", reference should be made to the Commission Recommendation of December 6, 2012 on aggressive tax planning (2012/772/EU).

We are aware of discussions between various professional bodies to request Member States' representatives to push for further clarification meetings with the Commission, but it is unclear at this stage if this will occur.

EU Tax Centre comment

In addition to the points that are left up to Member States to decide (e.g. waiver for legal professional privilege, level of penalties for non-compliance, etc.), a number of terms used in DAC 6 are either not defined or are very broadly defined (tax arrangement, tax benefit, participant, etc.), which could lead to inconsistent interpretation among Member States. Additional guidance on such terms would be useful in determining reportable items and ensuring some level of consistency within the EU. Where given an opportunity to do so, it may be constructive for interested parties to actively participate in any consultation processes related to the implementation of the new mandatory disclosure rules.

KPMG's EU Tax Centre is working together with Member firms of the KPMG network to develop an MDR technology solution that will assist interested organizations in assessing, tracking and reporting potentially reportable cross-border arrangements. For further details, please refer to your local KPMG tax advisor.

Should you have any queries, please do not hesitate to contact [KPMG's EU Tax Centre](#), or, as appropriate, your local KPMG tax advisor.



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