

Mandatory Disclosure Rules

Malta enacts DAC6 transposition regulations

This article provides a summary of the Maltese regulations to incorporate mandatory disclosure rules under DAC6 into Maltese domestic law.

Status

On December 17, 2019, regulations to incorporate Directive (EU) 2018/822 on mandatory disclosure rules (hereinafter “DAC6” or “the Directive”) into Maltese law were published in the Maltese Official Gazette.

The provisions in the regulations will be fully operational on July 1, 2020 but reporting also extends to arrangements the first step of which was implemented on or after June 25, 2018.

Please note that the summary is based on information available as at January 1, 2020.

Scope

The scope of the regulations is closely aligned with the Directive, with no extension of scope proposed for e.g. VAT, customs duties or excise duties (which are excluded from the scope of DAC6). Maltese mandatory disclosure rules will also only apply for “cross-border arrangements” (i.e. domestic transactions will not be in scope).

Definitions

The main definitions included in the regulations align with the text of the Directive. In particular, the definitions of “associated enterprise”, “intermediary”, “relevant taxpayer”, “cross-border” and “marketable arrangement” mirror the text of the DAC6.

In addition, the regulations clarify that an intermediary should have the right to provide evidence that the person did not know and could not reasonably be expected to know that they were involved in a reportable cross-border arrangement.

Hallmarks

The list of hallmarks in the Maltese regulations is closely aligned to the hallmarks in DAC6.

No specific clarification on how the hallmarks will be interpreted is provided in the regulations.

Reporting - Intermediaries

Reporting timelines mirror the requirements of the Directive, i.e. for bespoke arrangements, 30 days as of the relevant reporting trigger.

The information to be disclosed largely mirrors the requirements of the Directive.

The intermediary is required to report if it has a presence in Malta. The regulations provide that an intermediary should have a Maltese reporting obligation if:

- i. the intermediary is resident in Malta for tax purposes;
- ii. the intermediary is not resident for tax purposes in any EU Member State (including Malta) but has a permanent establishment in Malta through which the services with respect to the arrangement are provided;
- iii. the intermediary is incorporated in Malta or is governed by the laws of Malta and the provisions of sub-paragraphs (i) and (ii) do not apply;
- iv. the intermediary is registered with a professional association related to legal, taxation or consultancy services that is established in Malta and subparagraphs (i), (ii) and (iii) do not apply.

An intermediary should only be required to report information which is in its knowledge, possession or control.

An intermediary will not be required to report if:

- The intermediary has evidence that the same information was reported in another Member State; or
- There is evidence that the same information has already been reported by another intermediary.

Legal Professional Privilege

Under the terms of the regulations, certain categories of intermediaries (e.g. advocates, notaries, accountants, auditors, employees and officers of financial institutions or insurers) may be entitled to a waiver for legal professional privilege if reporting such information would constitute an offence under the relevant article of the Maltese Criminal Code.

Where legal professional privilege applies, the intermediary is required to notify any other intermediaries or relevant taxpayers that the waiver applies. The regulations further state that this notification must be made without delay which should not exceed seven working days.

The Maltese regulations also require an intermediary to provide a list to the Maltese tax authorities, on an annual basis, of the reportable cross-border arrangements where legal professional privilege has been claimed.

Reporting – Relevant Taxpayer

Reporting timelines for relevant taxpayers mirror the requirements of the Directive.

The relevant taxpayer is required to report if it has a presence in Malta. The regulations provide that a relevant taxpayer will have a reporting obligation if:

- i. the taxpayer is resident in Malta for tax purposes;
- ii. the taxpayer is not resident for tax purposes in any EU Member State (including Malta), but has a permanent establishment in Malta which benefits from the arrangement;
- iii. the relevant taxpayer receives income or generates profits in Malta, although the relevant taxpayer is not resident for tax purposes and has no permanent establishment in any EU Member State and the provisions of subparagraphs (i) and (ii) do not apply;
- iv. the relevant taxpayer carries on an activity in Malta, although the relevant taxpayer is not resident for tax purposes and has no permanent establishment in any other EU Member State and sub-paragraphs (i), (ii) and (iii) do not apply.

Where multiple taxpayers are involved, the relevant taxpayer that is required to file the information is the one that features first in the list below:

- 1) The taxpayer that agreed the arrangement with the intermediary;
- 2) The taxpayer that is managing the implementation of the arrangement.

A taxpayer will not be required to report if:

- There is evidence that the arrangement has been reported by an intermediary; or
- There is evidence that the arrangement has been reported by another taxpayer; or
- The taxpayer has evidence that the information has been reported in another Member State.

The regulations also require that a relevant taxpayer provides details to the Maltese tax authorities regarding the use of the arrangement in each of the years for which the relevant taxpayer uses it.

Penalties

The Maltese regulations provide that the following penalties will apply where a relevant taxpayer or an intermediary fails to fulfil its obligations:

- The following penalties will apply for failure to report information on a timely basis in a complete and accurate manner:
 - a fixed penalty of EUR 200; and
 - a daily penalty of EUR 100 for each day the default existed subject to a cap of EUR 20,000.
- Failure to collect and retain documentation for a period of five years – EUR 2,500;
- Where an intermediary or relevant taxpayer fails to comply with a request made by the Maltese tax authorities, the applicable penalties are:
 - a fixed penalty of EUR 1,000; and
 - a daily penalty of EUR 100 for each day the default existed subject to a cap of EUR 30,000.

For more information, please refer to KPMG's [EU Mandatory Disclosure Rules page](#) or contact the following:

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