

Mandatory Disclosure Rules

Croatia enacts DAC6 transposition bill

This article provides a summary of the Croatian legislation to transpose mandatory disclosure rules under DAC6 into domestic law.

Status

On November 29, 2019, the Croatian Parliament approved a bill to transpose Directive (EU) 2018/822 on mandatory disclosure rules (hereinafter “DAC6” or “the Directive”) into Croatian domestic law. The bill has been published in the Official Gazette and entered into force on January 1, 2020.

The provisions will come into operation on July 1, 2020.

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

Scope

The scope of the law is closely aligned with the Directive – no extension is proposed for VAT, customs duties or excise duties. Croatian mandatory disclosure rules (MDR) will also only apply for cross-border arrangements (i.e. the bill does not address domestic arrangements).

Definitions

The definitions in the Croatian law are closely aligned with the text of the Directive.

In particular, the definitions of “intermediary”, “relevant taxpayer”, “associated enterprise”, “marketable arrangement” and “cross-border arrangement” have the same meaning as in the Directive.

The legislation does not provide definitions of the terms “arrangement” and “tax advantage”.

Hallmarks & Main Benefit Test

The list of hallmarks contained in the Croatian MDR legislation is closely aligned with Annex IV of the Directive.

The main benefit test should apply to the same hallmarks as those in the Directive (i.e. category A and B hallmarks and paragraphs (b)(i), (c) and (d) of the category C hallmarks).

Reporting - Intermediaries

An intermediary is only obliged to report if it has a presence in Croatia (by virtue of local tax residence, a permanent establishment, incorporation or registration with a relevant professional organization).

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

The information that is required to be disclosed by an “intermediary” largely mirrors the requirements of the Directive.

The law does not state whether Croatian tax authorities are required to assign a unique number that will be used to identify the arrangement in all Member States and whether these numbers need to be forwarded between intermediaries and taxpayers.

The legislation also does not clarify in which manner and language the information need to be reported.

Where an intermediary has a reporting obligation in multiple Member States, the information should be filed only with the relevant authorities in the Member State that features first in the list below:

- 1) Member State in which the intermediary is resident for tax purposes;
- 2) Member State in which the intermediary has a permanent establishment through which the services with respect to the arrangement are provided;
- 3) Member State in which the intermediary is incorporated or governed by the laws of;
- 4) Member State in which the intermediary is registered with a professional association related to legal, taxation or consultancy services.

Reporting – Intermediaries (cont.)

An intermediary will not be required to report if:

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

The law does not clarify what type of evidence is deemed sufficient to convincingly demonstrate that reporting was completed by another intermediary.

Legal Professional Privilege

Intermediaries may be granted a waiver from filing information based on protection of legal professional privilege to the extent that the intermediary is subject to Croatian professional confidentiality provisions.

Exempt intermediaries are required to notify – within three days – any other intermediary or, if there is no such intermediary, the relevant taxpayer, of their reporting obligation.

Reporting – Relevant Taxpayer

Reporting timelines for relevant taxpayers mirror the requirements of the Directive as does the information that is required to be disclosed.

Relevant taxpayers are obliged to also submit information on the use of arrangements on an annual basis.

Where a taxpayer has a reporting obligation in multiple Member States, the information shall be filed only in the Member State that features first in the list below:

- 1) Member State where the taxpayer is resident for tax purposes;
- 2) Member State where the taxpayer has a place of business or designated base which benefits from the arrangement;
- 3) Member State where the taxpayer receives income; or
- 4) Member State in which the taxpayers pursues business.

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

- 1) Taxpayer that agreed the reportable cross-border arrangement with the intermediary; or
- 2) 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 taxable person; or
- The taxpayer has evidence that it reported the arrangement in another Member State.

The Croatian law does not clarify what type of evidence is deemed sufficient.

Penalties

Non-fulfilment of reporting obligations should be deemed to arise in the following cases:

- Failure to report an arrangement;
- Delay in reporting;
- Failure to notify other intermediaries or the relevant taxpayer about the exemption from filing due to a waiver for legal professional privilege.

Penalties for an entity that does not comply with its reporting obligations range from HRK 2,000 to HRK 200,000 (approximately EUR 270 to EUR 27,200).

For a responsible person within that entity the penalties range from HRK 2,000 to HRK 20,000 (approximately EUR 270 to EUR 2,720).

Finally, if an individual is liable to submit the report, the penalty for late or incorrect submission ranges from HRK 1,000 to HRK 100,000 (approximately EUR 135 to EUR 13,600).

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

Tomislav Borošak

Director
KPMG in Croatia
tborosak@kpmg.com

Raluca Enache

Director
KPMG's EU Tax Centre
Enache.Raluca@kpmg.com

kpmg.com/socialmedia



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