

Mandatory Disclosure Rules

France enacts mandatory disclosure rules

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

Status

Directive (EU) 2018/822 on mandatory disclosure rules (hereinafter “DAC6” or “the Directive”) was transposed into French law in October 2019. It is expected that the French tax authorities will also publish guidelines in the course of 2020. These guidelines may be issued first in a draft version with comments gathered from interested stakeholders via a public consultation.

Please note that the summary is based on information available as at January 6, 2020.

Scope

The scope of the law is closely aligned with the Directive, with no extension to additional types of taxes or domestic transactions, i.e. VAT, customs duties and excise duties are excluded and the French mandatory disclosure rules (MDR) will only apply with respect to “cross-border arrangements”.

Definitions

The law is closely aligned with the Directive. In particular, the terms “associated enterprise” and “relevant taxpayer” are defined in line with DAC6.

In addition, the law clarifies the following:

1) Intermediary

The definition of an intermediary in French law mirrors the definition provided in DAC6. The law allows a secondary intermediary to prove that it did not know and could not have been reasonably expected to know that it was involved in a reportable cross-border arrangement.

The law also adds that an intermediary benefiting from an authorization to practice in France delivered by a professional association related to legal, taxation or consultancy services will qualify as an intermediary for the purposes of DAC6.

2) Cross-border arrangement

The French law defines the term “cross-border arrangement” to include “any arrangement in the form of an agreement, scheme or plan, whether or not enforceable, concerning France and another State, Member State of the European Union or not” provided the arrangement has a cross-border element.

3) Main benefit test and tax advantage

The French legislation does not provide a definition for the term “tax advantage”. However, when considering the application of the main benefit test, the French tax authorities have indicated that the legislative intention and the object of the relevant law should be taken into consideration.

Hallmarks

The list of hallmarks is closely aligned with Annex IV of the Directive. The French legislation does not provide clarification on the interpretation of any of the hallmarks. No additional hallmarks are included.

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 should only be obliged to report if it has a presence in France (local residence, permanent establishment – PE, incorporation or professional registration).

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

In this regard, the French legislation defines the first step of implementation as any legal act, economic or accounting operation or fiscal election for the purposes of implementing the cross-border arrangement.

Reporting – Intermediaries (cont.)

The information that is required to be disclosed largely mirrors the requirements of DAC6.

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

An intermediary will not be required to report if:

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

The law does not clarify what evidence is deemed sufficient to convincingly demonstrate reporting by another intermediary.

Legal Professional Privilege

Where an intermediary benefits from a waiver from legal professional privilege, the intermediary is required to notify any other intermediary of the requirement to disclose the arrangement.

The intermediary may also be required to notify the relevant taxpayer and to provide the taxpayer with all information necessary to report the arrangement correctly.

It is also possible for taxpayers to waive privilege, in which case the intermediary should report the arrangement directly.

Reporting – Relevant Taxpayers

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

A taxpayer will only have a requirement to report arrangements to the French tax authorities if the taxpayer has a presence or “nexus” in France.

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) 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 taxable person; or
- The taxpayer has evidence that it reported the arrangement in another Member State.

The law does not clarify what evidence is deemed sufficient to convincingly demonstrate the reporting by another relevant taxpayer.

Penalties

Failure to comply with a reporting or notification obligation will result in a maximum penalty of EUR 10,000.

Where the offence is the intermediary or taxpayer’s first offence committed in the calendar year and the three preceding years, the maximum penalty will be lowered to EUR 5,000.

The maximum penalty imposed on an intermediary or taxpayer in a calendar year will be limited to EUR 100,000.

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

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