

# Mandatory Disclosure Rules

## Slovakia publishes DAC6 transposition bill

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

### Status

On October 14, 2019 the Slovak Government published legislation to transpose Directive (EU) 2018/822 on mandatory disclosure rules (hereinafter “DAC6” or “the Directive”) into Slovak national legislation.

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

Please note that this summary is based on information available as at January 17, 2020.

### Scope of the draft law

The scope of the Slovak law is closely aligned to the text of the Directive. An intermediary is required to report cross-border tax arrangements that (i) contain specific hallmarks laid down in the legislation (i.e. the legislation does not address domestic arrangements) and (ii) that relate to the categories of taxes set out in the Directive on Administrative Cooperation; meaning that VAT, customs duties, excise duties, social security contributions and fees levied by public authorities and dues of a contractual nature are excluded from the scope of the reporting regime.

### Definitions

The definitions in the legislation are, in general, closely aligned with those in the Directive. In particular, the definitions of the terms “associated enterprise”, “cross-border arrangement”, “marketable arrangement” and “intermediary” mirror the text of the Directive. While Slovak legislation replaces the DAC6 term “relevant taxpayer” with “user”, the definition is closely aligned with its DAC6 equivalent.

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

### Hallmarks and Main Benefit Test

The hallmarks set out in the Slovak law are in line with those laid down in the Directive.

The main benefit test should also only apply to the same hallmarks as those specifically noted in the Directive (i.e. category A and B hallmarks and paragraphs (1)(b)(i), (1)(c) and (1)(d) of the category C hallmarks).

### Reporting - Intermediaries

The reporting timelines mirror the requirements of the Directive (i.e. 30 days as of the relevant reporting trigger for reportable bespoke arrangements).

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

The intermediary is only obliged to report if it:

- 1) is tax resident in Slovakia;
- 2) has a permanent establishment (PE) in Slovakia through which the services with respect to the arrangement are provided;
- 3) is incorporated in Slovakia;
- 4) is registered with a professional association in Slovakia.

In the case of (2), (3) and (4) above, the intermediary would qualify as a reporting entity in Slovakia only if it is not resident in any other EU Member State and does not have a permanent establishment in another EU Member State through which the services are provided.

Slovak law does not outline the priority in which reports should be filed by intermediaries that have a reporting obligation in multiple Member States. However, the scope of reporting obligations for intermediaries above may serve to minimize Slovak reporting obligations for EU-based intermediaries.

### **Reporting – Intermediaries (cont.)**

If there is more than one intermediary involved in the cross-border arrangement, each of the intermediaries has an obligation to report the information to the Slovakian authorities.

If there are multiple intermediaries in Slovakia that have to provide this information, the intermediaries can submit an electronic joint declaration stating that the information has already been submitted by one of the intermediaries.

If the information has already been reported in another Member State, the intermediary may also be relieved from its reporting obligation where it submits an electronic statement confirming that the information has been submitted in another Member State.

Models for submitting electronic declarations will be published on the Slovak Financial Directorate website in due course.

### **Legal Professional Privilege**

Intermediaries may be granted a waiver from filing information where legal professional privilege applies. The categories of intermediaries that may rely on legal professional privilege in Slovakia include tax advisors, auditors, banks and attorneys at law.

Exempt intermediaries are required to notify – without delay – any other intermediary or, if there is no such intermediary, the relevant taxpayer of their reporting obligation. No further clarification on the term “without delay” has been provided in the legislation.

In cases where there are no other intermediaries involved in the transaction or all the relevant intermediaries benefit from a waiver for legal professional privilege, the exempt intermediary is required to:

- 1) inform the user without delay of its reporting obligations, and
- 2) provide the user with all the information on the reportable arrangement that is required for the user to meet its reporting obligation in a correct and timely manner.

### **Reporting – Users (Relevant Taxpayer)**

Reporting timelines for users mirror the requirements of the Directive .

In cases where there is no qualifying intermediary or where professional privilege applies, the user is only obliged to report:

- when resident in Slovakia (domicile, habitual place of abode, place of management or registered office); or
- when a domestic Slovak presence or so-called “nexus” can be established for a non-EU user (by operating through a domestic PE, earning income or engaging in an economic activity).

Slovak law does not outline the priority in which reports should be filed by users which have a reporting obligation in multiple Member States. However, the scope of reporting obligations for users above may serve to minimize Slovak reporting obligations for EU-based taxpayers.

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.

If there is more than one user involved in the cross-border arrangement, each user has an obligation to report the information to the Slovakian authorities.

If there are multiple users in Slovakia that have a reporting obligation, the users can submit an electronic joint declaration stating that the information has already been submitted by one of the users. The user that files the report should also include data identifying each of the users on whose behalf the report has been filed.

All users that sign the joint declaration are held jointly and severally liable for the submission of this declaration.

### **Penalties**

A fine up to EUR 30,000 will be applied for failures to submit information, a declaration (including an electronic joint declaration) or for failing to meet the relevant deadlines. The fine will be applied to the liable person which can be either the intermediary or the taxpayer.

The fine can be applied for each breach of the Slovak MDR reporting obligations.

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

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