

Mandatory Disclosure Rules

Slovenia enacts DAC6 transposition regulations

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

Status

On June 7, 2019, regulations to incorporate Directive (EU) 2018/822 on mandatory disclosure rules (hereinafter “DAC6” or “the Directive”) into Slovenian law were published in the Slovenian Official Gazette. The amendments entered into force on June 22, 2019.

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 February 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). Slovenian mandatory disclosure rules (MDRs) will only apply for “cross-border arrangements” (i.e. domestic transactions will not be in scope).

Definitions

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

In addition, the regulations clarify that an intermediary should have the right to provide evidence that they did not know and could not have reasonably been expected to know that they were involved in a reportable cross-border arrangement. All relevant facts and circumstances, as well as the extent of available information and the intermediary’s relevant professional knowledge and understanding will be considered.

Hallmarks

The list of hallmarks in the Slovenian regulations is closely aligned with the hallmarks in DAC6.

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

Reporting - Intermediaries

Reporting timelines are broadly aligned with 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 Slovenia. The regulations provide that an intermediary should have a Slovenian reporting obligation if:

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

Reporting (cont.)

An intermediary will not be required to report if:

- The intermediary can prove 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.

No further guidance is provided on what type of evidence would be considered sufficient.

Legal Professional Privilege

Under the terms of the regulations, intermediaries that are lawyers may be entitled to a waiver for legal professional privilege if reporting such information would infringe national legislation on professional privilege.

Where legal professional privilege applies, the intermediary is required to immediately notify (in writing) any other intermediaries or – if no other intermediaries are involved, relevant taxpayers, that the waiver applies. No further guidance is provided on the interpretation of the term “immediately”.

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 Slovenia. The regulations provide that a relevant taxpayer will have a reporting obligation if:

- i. the taxpayer is resident in Slovenia for tax purposes;
- ii. the taxpayer has a permanent establishment in Slovenia that benefits from the arrangement and is not resident for tax purposes in any other EU Member State;
- iii. the relevant taxpayer receives income or generates profits in Slovenia, although the relevant taxpayer is not resident for tax purposes and does not have a permanent establishment in Slovenia or any other EU Member State;
- iv. the relevant taxpayer carries on an activity in Slovenia, although the relevant taxpayer is not resident for tax purposes and does not have a permanent establishment in Slovenia and does not have the connecting factors in subparagraphs (i), (ii) and (iii) to any other EU Member State.

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
- 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 Slovenian tax authorities regarding the use of the arrangement in each of the years for which the relevant taxpayer uses it.

Penalties

The Slovenian 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:
 - For individuals a fixed penalty of EUR 400;
 - For legal entities a maximum of EUR 15,000 for small companies and maximum of EUR 30,000 for medium and large-sized companies;
 - For the responsible person within the legal entity the fine can go up to EUR 4,000.

The Slovenian law includes fines for serious offenses that can go up to:

- EUR 100,000 for small companies,
- EUR 150,000 for medium and large-sized companies,
- EUR 20,000 for the responsible person in the legal entity.

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

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