

Mandatory Disclosure Rules

Mandatory disclosure rules in the Czech Republic

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

Status

On November 29, 2019, the Czech Parliament initiated an approval process in respect of a bill to transpose Directive (EU) 2018/822 on mandatory disclosure rules (hereinafter “DAC6” or “the Directive”) into Czech domestic law.

The approval process was finalized and the law should become effective during August or September 2020 depending on the date of its publication in the Collection of Law.

Please note that the summary is based on information available as at August 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. Czech MDR will also only apply for cross-border arrangements (i.e. the law does not address domestic arrangements).

Definitions

The definitions in the Czech law are closely aligned with the Directive. In particular, the definitions of “intermediary”, “associated enterprise”, “relevant taxpayer”, “marketable arrangement” and “cross-border arrangement” have the same meaning as in DAC6.

In relation to the definition of an intermediary, the explanatory memorandum to the law clarifies that, where a bank allows a person to open a bank account but has no knowledge that the bank account will be used as part of a reportable cross-border arrangement, the bank will not be considered to be an intermediary.

The explanatory memorandum also adds that an entity must objectively know that it is involved in a reportable arrangement in order for it to be considered to be an intermediary. Objective knowledge will be determined by reference to the criteria set out in DAC6.

Hallmarks & Main Benefit Test

The list of hallmarks is closely aligned with Annex IV of the Directive.

The explanatory memorandum clarifies that, for the purposes of the main benefit test, a “tax advantage” is the benefit that could arise from the avoidance of a tax liability, including, for example, a lower tax rate being applied in a jurisdiction.

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

Reporting - Intermediaries

The primary reporting obligation lies with the intermediaries of reportable cross-border arrangements, to the extent that information on such arrangements is within their knowledge, possession or control.

Intermediaries that are not bound by professional privilege in respect of a reportable arrangement are required to report the requested information in the Czech Republic if they meet one of the following conditions:

- 1) tax residence in the Czech Republic;
- 2) permanent establishment (PE) in the Czech Republic through which the services with respect to the arrangement are provided;
- 3) incorporation in the Czech Republic;
- 4) registration with a professional association in the Czech Republic.

In the case of (2), (3) and (4) above, the intermediary would qualify as a reporting entity in the Czech Republic only if it is neither resident in any other EU Member State, nor has a permanent establishment in another EU Member State through which the services are provided.

Reporting – Intermediaries (cont.)

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 Czech law states that a standard form will be developed which will be required to be filed electronically.

The explanatory memorandum also clarifies that the value of the arrangement to be reported should be the market value (as opposed to the tax value) of the arrangement.

An intermediary will not be required to report if:

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

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

Information filed by an intermediary should be retained for a period of 10 years from the reporting deadline.

Legal Professional Privilege

Certain intermediaries (Czech tax advisors, advocates, notaries, auditors) may be granted a waiver from filing information due to legal professional privilege. Legal professional privilege of intermediaries in other EU Member States will also be respected.

Each intermediary that benefits from a waiver for legal professional privilege has the obligation to inform other intermediaries known to them and any relevant taxpayers participating in the arrangement that they are not required to report the arrangement due to legal professional privilege (a so called information duty – please refer to the section on penalties for further information).

Legal professional privilege does not apply with respect to marketable arrangements.

The intermediary should also retain the information notified to other intermediaries or relevant taxpayers for a period of 10 years where legal professional privilege is claimed.

Reporting – Relevant Taxpayer

Reporting timelines for relevant taxpayers and the information that is required to be disclosed mirror the requirements of DAC6.

Relevant taxpayers should also report on the use of reported arrangements each year.

A relevant taxpayer will be obliged to report arrangements in the Czech Republic if it meets one of the following conditions:

- 1) Is liable to tax in the Czech Republic by virtue of tax residency, PE, registered office or place of business;
- 2) Operates in the Czech republic through a PE, which benefits from the arrangement;
- 3) Receives income or profits in the Czech Republic; or
- 4) Pursues an activity in the Czech Republic.

In the case of (2) above, a taxpayer qualifies as a relevant taxpayer in the Czech republic only if it is not liable to tax in another EU Member State.

In relation to (3) and (4) above, a taxpayer qualifies as a relevant taxpayer in the Czech Republic only if it is neither liable to tax in another EU Member State, nor operating in another EU Member State through a permanent establishment which benefits from the arrangement.

A taxpayer will not be required to report if:

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

The Czech law does not clarify what evidence is deemed sufficient.

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; or
2. The taxpayer that is managing the implementation of the arrangement.

Information filed by a relevant taxpayer is required to be retained for a period of 10 years from the reporting deadline.

Penalties

A relevant taxpayer or an intermediary that fails to fulfil their reporting obligations may be fined up to CZK 500,000 (approx. EUR 20,000).

Intermediaries that benefit from a waiver for legal professional legal and that do not comply with their obligation to inform clients (or other relevant intermediaries) about the requirement to report (information duty) may be fined up to CZK 500,000 (approx. EUR 20,000).

The same amount may also be assessed if an intermediary or relevant taxpayer breaches the obligation to retain relevant documents for 10 years.

Deferral of reporting deadlines

Following the adoption of Council Directive 2020/ 876, allowing EU Member States to defer the DAC6 reporting deadlines by up to six months, the Czech Republic has opted to defer the reporting deadlines as follows:

- February 28, 2021 for “historical arrangements”, i.e. reportable cross-border arrangements the first step of which was implemented between June 25, 2018 and June 30, 2020.
- The start date for the 30 days reporting deadline to begin by January 1, 2021 (originally July 1, 2020).
- January 30, 2021 for reportable cross-border arrangements where the first step in its implementation was made between July 1 and 31 December 2020 or for reportable arrangements made available for implementation or ready for implementation between 29 August and 31 December 2020. The latter category results from the later implementation of Czech law.
- April 30, 2021 for the first periodic report on marketable arrangements.

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

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