

FURTHER EU STEPS AGAINST AGGRESSIVE TAX PLANNING – MANDATORY DISCLOSURE REGIME

The EU introduced new rules in 2018 to increase visibility of the potentially aggressive tax planning structures. Member states should implement these rules by appropriate amendments to local legislation by the end of 2019, such changes to be effective from July 2020. This amendment of 2011/16/EU Directive (“DAC6”) will impose significant obligations on taxpayers and intermediaries (e.g. tax consultants and lawyers), preparation by those effected should be started early.

THE NEW OBLIGATIONS

According to the DAC6 Directive, if a cross-border arrangement has certain hallmarks, it is assumed that it is aimed at tax evasion and specific information on the arrangement should be disclosed to the competent authority. This obligation will lie primarily with the intermediaries who assisted in the planning or implementation of the arrangement. If the reporting of the cross-border arrangement would result in the breach of legal professional privilege under national law (e.g. for lawyers), the taxpayers should report the arrangements.

AFFECTED TRANSACTIONS / ARRANGEMENTS

DAC6 defines the “hallmarks” broadly, including the most typical tax planning structures. Certain hallmarks result in an automatic reporting obligation (e.g. if double taxation relief is claimed for the same item of income or capital in more than one jurisdiction), while other hallmarks shall only be taken into account if the main benefit or one of the main benefits of the arrangement is a tax advantage (e.g. if the arrangement has the effect to convert income into capital, gifts or other categories of revenue which are taxed at a lower level or exempt from tax). As examples, typical tax planning structures in Hungary that may fall under the scope of DAC6 can be the following:

- Tax-driven cross-border company reorganizations;
- Intra-group agreements in which the economic advantage for the Hungarian affiliate may not be supported easily (e.g. management services performed by the parent company to the Hungarian subsidiary).

Competent authorities will forward the reported information to the other competent authorities of the EU member states on a quarterly basis. As a result, the tax planning schemes are likely to be known by all competent authorities at EU level. Furthermore, DAC6 requires Member States to impose material penalties in case of non-fulfilment of the obligations on taxpayers and involved intermediaries.

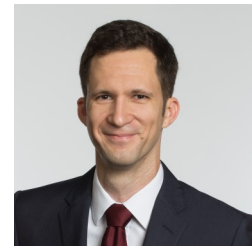
The exact content of the local regulations in Hungary is not yet known, however, DAC6 will impose significant administrative tasks on taxpayers and on intermediaries. Any cross-border arrangements implemented after 25 June 2018 shall be reported by 31 August 2020 and, as a general rule, arrangements implemented after 1 July 2020 shall be reported within 30 days.

With regard to the DAC6 regulation, our firm can help you with the following:

- we can review and assess cross-border arrangements whether they fall within the scope of DAC6;
- we can assist you in the preparation for and fulfilment of the DAC6 reporting obligation.



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