

MANDATORY DISCLOSURE REGIME FOR INTERNATIONAL TRANSACTIONS

As of 1 July 2020, Hungary has implemented the latest amendment to 2011/16/EU Directive (“DAC6”). The purpose of DAC6 is to increase transparency in cross-border transactions to effectively combat tax evasion. DAC6 imposes significant obligations on taxpayers and their advisors to report a wide range of transactions to the relevant tax authority. For the purposes of the reporting obligation, transactions can be categorized practically as (i) not reportable, (ii) reportable under all circumstances and (iii) reportable depending on their tax treatment.

WHAT TRANSACTION ARE REPORTABLE?

The reportable transactions have certain characteristics (“hallmarks”) which include the most typical tax planning structures, for example:

- Tax-driven cross-border company reorganizations, including the relocation of assets;
- Intra-group arrangements in which the economic advantage for one party may not be justified (e.g. management services performed by the parent company to the subsidiary);
- Transactions resulting in double-dipping tax deduction; or
- Transactions aimed at jeopardizing the identification of the beneficial owner or the exchange of information for tax purposes.

WHO IS OBLIGED TO REPORT?

The reporting obligation lies with the intermediaries of the transactions, i.e. the participating advisors and facilitators of the transaction. In the absence of an intermediary obliged to report the transactions, the taxpayer (i.e. the company participating in the transaction) shall report the transaction.

Generally, the law aims to have each transaction reported by only one intermediary or taxpayer and in only one member state of the European Union.

WHAT IS THE REPORTING DEADLINE?

The reporting obligation has a retroactive effect to include transactions going back to 25 June 2018. The general reporting deadline is 30 days from the starting date the law including an intricate set of rules for such date. The earliest date for reporting is 31 January 2021.

WHAT IS THE SANCTION FOR NON-COMPLIANCE?

Failure to report can be subject to a maximum HUF 500,000 (EUR 1,355) fine in Hungary levied by the tax authorities. The maximum fine is HUF 5,000,000 (EUR 13,550) if the tax authority explicitly requested the fulfilment of the reporting obligation, and, it is not or erroneously fulfilled. Note that foreign tax authorities can also levy fines, which can be significantly higher than the fine under the Hungarian regulation.

POTENTIAL ISSUES

These new rules are complicated and significant and present a number of challenges to both taxpayers and their advisors, some obvious and some less so. Among the issues which we see as likely to give rise to concern and on which we are available provide assistance are the following:

- most obviously, analysis and consideration is needed for any transaction to identify the likely appropriate treatment;
- if it is considered that the transaction is reportable, questions arise as to the form of the report and, for example, in which of several involved jurisdictions it might be filed;
- advisors and intermediaries may face difficult issues if they consider a filing is necessary and the tax payer does not;
- what evidence of a filing having been made should an intermediary or advisor accept, to absolve them of any liability to file.

As the first reporting deadline (31 January 2021) approaches, and thereafter, we anticipate that many such practical questions will arise.

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LKT NEWS

TAX

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OUR SERVICES

Our tax advisory team at LKT, based on their unique experience amassed working together with the other practice areas of LKT, can help your enterprise to **identify the reportable transactions** and to **develop the tools for future compliance** as well as solving any other potential issues. Note that LKT as a law firm is not obliged to report such transactions directly to the tax authorities since DAC6 exempts from the reporting obligation those intermediaries (e.g. law firms) whose legal professional privilege under national law would be breached by the reporting of the cross-border arrangement.

TAX ADVISORY TEAM

The tax advisory team of LKT, lead by dr. Balazs Kantor provides a broad range of services to its clients. The team assists its clients with tax optimal structures for their investments (including green field investments, real estate and M&A transactions, corporate reorganizations, etc.), representation during disputes with the tax authorities and tax advice regarding their day-to-day operation.

All of the members of the tax advisory team are lawyers and members of the Budapest Bar.

The practice is ranked by Legal 500.

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