



## PwC's EU Direct Tax Group

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# EU Direct Tax Newsalert

## Austrian law implementing DAC6

On 19 September 2019, the Austrian Parliament passed a law implementing Council Directive 2018/822 of 25 May 2018 amending Council Directive 2011/16/EU on Administrative Cooperation in the field of taxation in relation to reportable cross-border arrangements (the so-called "DAC6"). In brief, DAC6 obliges service providers or, alternatively, taxpayers to report on cross-border tax planning arrangements that meet certain hallmarks.

### Status

The draft was just issued by the Austrian Parliament and will be published soon. The EU-MPFG will enter into force on July 1<sup>st</sup> 2020. Arrangements, where the first step of implementation took place in the period between June 25<sup>th</sup> 2018 and June 30<sup>th</sup> 2020 will have to be reported until August 31<sup>st</sup>. Arrangements advised from July 1<sup>st</sup> 2020 onwards will have to be reported within 30 days after the triggering event.

### Key points

The EU-MPFG applies only to cross-border arrangements, i.e. purely domestic arrangements are not reportable. The only notable difference to the directive is that the wording of Sec. 4 EU-MPFG provides for a general limitation of the reporting obligation to transactions that entail a "potential risk of": tax avoidance, circumvention of reporting under common reporting standards on avoidance of UBO identification. However, it remains to be seen how this regulation will be enforced in practice.

### Scope

The EU-MPFG is limited to schemes which have a potential impact on tax obligations, information exchange concerning financial accounts or through which, the identity of the ultimate benefited owner can be hidden. In line with the EU Directive, i.e. indirect taxes and excise duties, are not covered, nor are domestic arrangements.

### Legal professional privilege

The so-called "legal professional privilege" has been implemented, i.e. if the intermediary has a legal obligation of confidentiality the reporting obligation is shifted from the

intermediary to the taxpayer. The intermediary has to inform the taxpayer and other intermediaries immediately about the shift of the obligation. However, if the taxpayer lifts the duty of confidentiality, he can shift the obligation back to the intermediary.

### Hallmarks

The hallmarks and the main benefit test are strongly in line with the Directive. It regulates the reporting obligation for (potentially) aggressive cross-border tax arrangements if these fulfil certain "hallmarks". The reporting obligation applies either to the intermediary or to the taxpayer himself.

### Form of reporting

The reporting must be made via the online service (FinanzOnline) of the Austrian Ministry of Finance (BMF). The reporting has to be made either in English or in German, although certain information items must always be provided in English. In case the arrangement was already reported in another Member State or by another intermediary, only the reference number of the reporting has to be submitted.

### Penalties

Anyone who violates the EU-MPFG, by not or not fully filing the reporting, not fulfilling their reporting obligation within the prescribed period, reporting incorrect information or not fulfilling their obligations in connection with the legal professional privilege, has to settle a monetary penalty. If the obligated person did not comply with the EU-MPFG intentionally, the penalty will be up to EUR 50.000 (EUR 25.000 in case of gross negligence). There is no possibility to avoid this penalty by filing a voluntary self-disclosure.

### Outlook

On the basis of the wording of the law, there are still many open questions, especially in connection with the concept of the intermediary and the concrete scope of the hallmarks. A decree with explanatory examples will be published by the BMF in the near future.

