



EU Direct Tax Newsalert

Draft bill introducing DAC 6 legislation in Romania

On 9 January 2020, the Romanian Minister for Finance invited public comments, to be received within 10 days, on a draft bill (Draft Ordinance for amending and supplementing Law 207/2015 regarding the Fiscal Procedural Code) to implement mandatory disclosure rules pursuant to Council Directive (EU) 2018/822 (“DAC6”).

Briefly, DAC 6 obliges certain intermediaries or taxpayers to report to the tax authorities any cross-border tax planning arrangements which fall within certain “hallmarks”, i.e. characteristics.

Our comments below are based on the draft bill. The order is expected to be enacted into law by the end of January and take effect on 1 July 2020.

Scope and taxes covered

The draft legislation is closely aligned with the EU Directive’s scope, hallmarks and reporting requirements.

Based on the proposal, the reporting obligation generally applies to any intermediary which designs, markets, organises, makes available for implementation or manages the implementation of a reportable cross-border arrangement in line with the provisions of the Directive or which provides, directly or by means of other persons, aid, assistance or advice with respect to the above actions concerning a reportable cross-border arrangement.

Although not specifically mentioned in the draft legislation, the taxes covered are direct taxes (i.e. VAT, customs duties and excise duties are excluded). The draft legislation refers only to cross-border arrangements, the domestic ones being outside the scope of this legislation.

Date of application and reporting timelines

In line with the Directive, its provisions apply starting 1 July 2020. As per transitional rules included, the arrangements for which the first step was implemented between 25 June 2018 and 30 June 2020 should be reported by 31 August 2020. Starting 1 July 2020, reportable arrangements should be reported to the National Agency of Finance Administration (ANAF) within 30 days from the date the arrangement is made available for implementation, is ready for implementation or

the first step in the implementation was made, whichever occurs first.

Legal professional privilege

As a rule, intermediaries operating under a legal professional privilege in line with the law are not exempt from the reporting obligation.

As an exception, however, intermediaries representing a client in judicial proceedings are not subject to the reporting obligations, unless the client waives their right to professional secrecy and notifies the intermediary accordingly. This exception applies only for information obtained during the assessment of the client’s legal situation or the fulfilment of the obligation to defend or represent the client in, or in relation to, judicial proceedings. In such cases, the intermediary has to notify any other intermediaries involved in the arrangement or, if no other intermediaries are involved, the client, of their/its obligation to report the arrangement.

Penalties

The draft legislation sets out the penalties applying to intermediaries or taxpayers for failing to comply with the various requirements within the deadlines stipulated. These include:

- a penalty of RON 20,000 to RON 100,000 for failing to report an arrangement or reporting with delay;
- a penalty of RON 10,000 to RON 50,000 for reporting incorrect or incomplete information;
- a penalty of RON 5,000 to RON 30,000 for an intermediary subject to legal professional privilege failing to notify another intermediary or the relevant taxpayer.

Takeaway

The draft bill closely follows DAC 6, without any notable deviations, but it lacks clarifying elements. The unclear aspects of the DAC 6 Directive are not clarified in the draft bill. The Romanian Tax Authorities are expected to release further guidance (potentially also clarifying some aspects) on the application of the Romanian DAC 6 rules in practice.

The Romanian Minister for Finance has confirmed that guidance notes are to be published in early 2020.

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For more detailed information, please do not hesitate to contact:

Andreea Mitriță
+40.722.942.017
(andreea.mitrită@pwc.com)

Or your usual PwC EUDTG contact

