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EU Direct Tax Newsalert

Draft bill implementing DAC6 pending final vote in Bulgarian Parliament

On 27 November 2019 the Bulgarian Parliament adopted, on a first (preliminary) reading, the draft bill implementing the Council Directive 2018/822/EU of 26 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (the so-called "DAC6") into the local legislation.

In brief, under DAC6 intermediaries and, ultimately, taxpayers are subject to new reporting obligations with respect to cross-border tax planning arrangements that meet certain features ("hallmarks").

The provisions will take effect on 1 July 2020, with specific transitional measures applicable to arrangements implemented between 25 June 2018 and 30 June 2020.

Transposition into Bulgarian law

The draft bill overall follows the DAC6 scope, hallmarks and reporting requirements. Its key aspects are summarised below:

Scope

The scope of reporting will include potentially aggressive tax arrangements concerning two or more EU Member States or an EU Member State and a third country.

"Arrangements", which are defined broadly to include an agreement, scheme, plan, transaction, etc. or series thereof, can involve several parts or stages of implementation or execution.

VAT, customs duties and excise duties are outside the scope of the new reporting regime.

Hallmarks

The DAC6 reporting obligations focus on cross-border tax planning arrangements that meet certain hallmarks intended to highlight potential risk of tax avoidance. The reporting obligation only arises if one of these hallmarks is triggered.

The hallmarks under the Bulgarian draft bill follow those under DAC6. No additional hallmarks are introduced.

In line with DAC6, certain hallmarks trigger reporting obligations only where obtaining

of a tax advantage is the main benefit or one of the main benefits of the arrangement.

While other hallmarks trigger reporting in all cases, regardless of whether obtaining a tax advantage is the main benefit or not.

Reporting obligations

The reporting obligation falls on the intermediary or the taxpayer according to detailed rules regarding the parties and jurisdictions involved.

A reference to a reportable cross-border arrangement will also be made in the annual tax return of the taxpayer.

Where bound by professional (legal) privilege, an intermediary will be exempt from reporting obligation, unless the taxpayer explicitly consents to it. An intermediary exempt from reporting obligations will nevertheless have to notify the Bulgarian National Revenue Agency of other existing intermediaries under the reportable arrangement, or the relevant taxpayer, regardless of whether the reporting obligation for them may arise in another EU Member State. The latter notification requirement is not based on the DAC6.

The reporting obligations will start to apply as of 1 July 2020, but will cover arrangements implemented after 25 June 2018, which will have to be disclosed retrospectively.

Penalties

Administrative penalties for not filing a DAC6 report can be up to BGN 10 thousand / approx. EUR 5 thousand.

Next steps and takeaway

By 4 December 2019 members of the Parliament can propose amendments in the draft bill, while the final legislation should be adopted in the weeks following (not later than the end of December 2019).

No official guidance has been prepared (or announced to be expected) by the Bulgarian tax authorities at this stage. Certain open questions would remain in practice with respect to the interpretation of some of the rather widely defined hallmarks.