



EU Direct Tax Newsalert

German draft proposal implementing DAC6

On 26 September 2019, the German Ministry of Finance published a draft proposal regarding the implementation of mandatory disclosure rules pursuant to the EU's Council Directive 2018/822/EU which entered into force on 25 June 2018 (DAC6).

Status

The draft proposal is subject to a consultation process with business and professional associations ending on 30 September 2019 and is expected to be proposed to the German Parliament soon. It may be amended before or within the legislative procedure. In line with the EU Directive, the final provisions will take effect as of 1 July 2020. Arrangements implemented between 25 June 2018 and 30 June 2020 must be reported by 31 August 2020.

Scope

The draft proposal refers to cross-border arrangements only. It remains to be seen whether this fact reflects a final settlement of the preceding controversy within the German coalition government about introducing reporting obligations for domestic arrangements as well. The draft regulations follow the EU Directive closely. Based on the proposal, the reporting obligation generally applies to the intermediary. Indirect taxes and excise duties are not in scope.

Hallmarks

The hallmarks included in the German draft proposal are mainly in line with the hallmarks listed in DAC6. It is not intended to include additional hallmarks. In some points, however, the detailed design of the hallmarks differs from DAC 6. As an example, the application of the hallmarks relating to cross-border payments between related parties is, in contrast to DAC6, not limited to payments being tax deductible. Within the main benefit test, no tax advantage shall be given pursuant to the draft proposal if such tax advantage has an impact in Germany only and is explicitly provided by German law. The explanatory notes also provide some clarifications and examples for a better understanding of the schemes in scope.

Legal Professional Privilege (LPP)

Although German law provides an LPP to lawyers, certified tax advisors and auditors, the LPP is of less significance under the current proposal than expected on the grounds of DAC6. If an intermediary is involved, the relevant "abstract" information of an arrangement must always be reported by the intermediary (first reporting; see below). Only the second reporting with regard to personal information may shift to the relevant taxpayer if the intermediary is subject to an LPP. In addition, such shift occurs only where the intermediary has informed the taxpayer about the LPP and the LPP has not been waived by the taxpayer.

Reporting

The reporting to the German tax authorities consists of two parts: the first reporting entails "abstract information", i.e. any reportable data not disclosing the identity of persons such as details of the hallmarks, and the second reporting entails personal information (taxpayer and persons participating or being affected by the arrangement). Each tax arrangement reported will receive a registration number and each reporting a disclosure number. Both numbers must be stated in the first tax return reflecting the tax arrangement.

Penalties

Based on the draft proposal, penalties of up to EUR 25,000 may be triggered by violating the mandatory reporting of tax arrangements, where the first step of implementation is made after 30 June 2020, as well as by non-compliance with the obligation to state the registration and disclosure numbers in the tax return.

Takeaway

Taxpayers should be aware of this new disclosure obligation. As there are still many open questions, more clarity might be provided by the German tax authorities in a circular letter in the future.

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