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EU Direct Tax News Alert

Germany: No Covid-19 deferral of deadline for reporting cross-border tax arrangements

At a Federal Press Conference on 6 July 2020, a speaker of the German Ministry of Finance made the surprise announcement that, following a decision of the Minister of Finance, Germany will not be exercising the option given in the recent EU Directive to extend the reporting deadlines for DAC 6.

Council Directive (EU) 2020/876

The "Council Directive (EU) 2020/876 of 24 June 2020 amending Directive 2011/16/EU to address the urgent need to defer certain time limits for the filing and exchange of information in the field of taxation because of the COVID-19 pandemic" allows Member States to defer the deadlines for the (initial) notification of reportable arrangements by 6 months. On this basis, reportable arrangements implemented during the transitional period (first implementation step in the period from 25 June 2018 to 30 June 2020) would have to be reported by 28 February 2021 instead of 31 August 2020. For "new arrangements" where the event triggering the reporting obligation occurs in the period from 1 July to 31 December 2020, the 30-day reporting deadline would not begin before 1 January 2021. This Council directive was the end of a process initiated by the proposals of the Commission in early May.

Surprising decision

Since the beginning of these discussions, statements from politicians and the public administration had left no doubt that Germany would follow the regulation agreed at EU level. In order to ensure the rapid implementation of the changes, the legislator had even included an authorisation in the Corona Tax Assistance Act of 19 June 2020 allowing the Federal Ministry of Finance to implement the provisions of EU law by means of a circular.

However, following the Federal press conference, it has now become clear that the deferral option will not be exercised by Germany after all. It is understood that even the limited deferment proposal set out in the draft circular of 2 March 2020 (on the application of the new rules) will also not be forthcoming.

According to this proposal, no objections would have been raised where arrangements which should have been reported before 1 September 2020 were notified by 30 September 2020.

Before, only two Member States had announced not to opt for a deferral on the basis of the Directive. Germany's decision is therefore even more surprising.

What next?

A Ministry of Finance circular on the application of the reporting obligation for cross-border tax arrangements is currently undergoing its final approval. It will probably be published sometime in July.

Takeaway

As a result of these developments the deadlines remain unchanged under German DAC6 legislation, so that from 1 July 2020 onwards, arrangements must be reported within the 30-day reporting period; for arrangements implemented in the transitional period (first implementation step in the period from 25 June 2018 to 30 June 2020) the deadline remains 31 August 2020.

As of today, 20 Member States have announced and additional 2 are expected to announce that they will opt to defer on the basis of the Directive and only three others – Austria, Finland and now Germany - have chosen not to.

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