



PwC's EU Direct Tax Group

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EU Direct Tax Newsalert

Draft legislation implementing DAC6 published in Ireland

On 17 October 2019, the Irish Minister for Finance published draft legislation as part of Finance Bill 2019 to implement mandatory disclosure rules pursuant to Council Directive (EU) 2018/822 ("DAC6").

In brief, DAC6 obliges service providers ("intermediaries"), or taxpayers in certain circumstances, to report on cross-border arrangements that meet certain hallmarks.

The new provisions operate in addition to the domestic mandatory disclosure regime introduced in Ireland with effect from 2011.

Status

Finance Bill 2019 must be passed by both Houses of the Oireachtas (Ireland's national parliament) before it passes into law. This process must be completed by 31 December 2019. The Bill may be amended prior to its enactment.

Irish Revenue has confirmed that guidance notes will be published in early 2020.

Scope and Date of Application

The draft legislation aligns very closely to DAC6, cross-referencing the Directive for the list of hallmarks and other definitions.

In line with the Directive, the provisions apply from 1 July 2020. Under transitional measures, arrangements implemented between 25 June 2018 and 30 June 2020 must be reported by 31 August 2020.

VAT, customs duties and EU excise duties are excluded from the scope of the draft legislation. Wholly domestic arrangements are similarly not within scope.

The draft legislation contains definitions of "arrangement" and "tax advantage", terms which are not defined within DAC6. The terms are closely aligned to their meanings in the Irish mandatory disclosure regime.

Reporting

The draft legislation provides that Irish Revenue will assign a reference number to each cross-border arrangement reported.

The intermediary must notify the relevant taxpayer and any other intermediary involved in the arrangement of this reference number within a five-day timeframe. Similarly, taxpayers must share a reference

number with other relevant taxpayers involved in the same arrangement within a five-day timeframe.

Taxpayers must disclose the reference number on their tax return for any chargeable period in which they enter into an arrangement or obtain/seek to obtain a tax advantage from an arrangement.

Penalties

The draft legislation sets out the penalties applying to intermediaries/taxpayers for failing to comply with the various requirements within the time limits stipulated. These include the following:

A penalty of up to €500 per day to apply:

- where an intermediary or taxpayer fails to report an arrangement, or
- where an intermediary fails to share the reference number assigned with the taxpayer / any other intermediary

A penalty of up to €5,000 to apply where the taxpayer fails to report the reference number in their tax return as appropriate.

A lower penalty of up to €4,000 to apply where an intermediary or taxpayer fails to report an arrangement falling within the transitional measures by 31 August 2020.

The quantum of penalty in each case is to be determined by the Irish courts having regard to:

- in the case of an intermediary, their fee or likely fee in connection with the arrangement, and
- in all other cases, the amount of any tax advantage gained or sought from the arrangement.

Next steps and takeaway

The draft legislation is very closely aligned to DAC6. However, the requirement for an intermediary to notify any other intermediary of the reference number assigned to an arrangement within a short timeframe is not provided for in the Directive and could pose practical difficulties. It is hoped that the legislation will be amended in this regard prior to enactment.

The draft legislation is expected to be enacted by 31 December 2019 and guidance notes are expected to issue in early 2020.

