



EU Direct Tax Newsalert

Draft Law implementing DAC6 in Portugal under public consultation

A draft Law prepared by the Portuguese Government, aiming at implementing the EU Directive on the mandatory disclosure and exchange of cross-border tax arrangements, also known as DAC6, is currently under public consultation.

Draft Law in a nutshell

In general, the draft Law follows DAC6 very closely, however, some specifications have been introduced, as follows:

- Arrangements are reportable either being purely domestic and cross-border, thus deviating from DAC6;
- The definition of “cross-border arrangement”, “marketable arrangement”, “bespoke arrangement” and the hallmarks that present an indication of a potential risk of tax avoidance are in line with DAC6 follow the definition included in DAC6;
- The following taxes are in scope: (i) in case of purely domestic reportable arrangements and cross-border reportable arrangements partially or wholly applied or with effects in Portugal – corporate income tax, personal income tax, municipal surtax, state surtax, autonomous taxation, VAT, property tax (annual property tax and property transfer tax) and stamp tax, including respective tax benefits (custom duties are excluded); (ii) in case of cross-border reportable arrangements – all taxes, including the respective tax benefits (VAT, custom duties, excise duties and social security contributions are excluded);
- The definition of “relevant taxpayer” and “intermediary” follows DAC6, excluding however intermediaries that carry out a juridical assessment of a pre-existing tax situation of the relevant taxpayer, performed within the scope of a juridical consultation or the exercise of a mandate granted under a tax procedure (administrative, judicial, penal or infraction), including also advice provided regarding the respective procedures;
- Intermediaries must communicate reportable arrangements regardless of the legal professional privilege, thus deviating from DAC6;

– Because purely domestic arrangements are also covered, deviating from DAC6 there is an additional obligation for the relevant taxpayer to report to the Portuguese Tax Authorities a reportable arrangement in the situation where an intermediary exists but the relevant taxpayer is aware that the intermediary did not comply with the reporting obligation (for whatever reason);

- Information to be communicated is in line with DAC6;
- The draft Law foresees penalties ranging from EUR 2,000 to EUR 80,000 for lack of compliance.

The reporting timelines are adjusted as purely domestic arrangements are also covered: (i) reportable cross-border arrangements applied / with effects outside Portugal whose first implementation step has occurred or occurs between 25 June 2018 and 30 June 2020 and (ii) purely domestic reportable arrangements and cross-border reportable arrangements partially or wholly applied or with effects in Portugal whose availability or first implementation step has occurred or occurs up to 30 June 2020, are to be reported by 31 August 2020 (10 September 2020 at the latest).

As from 1 July 2020, there is a thirty-day turnaround period to report to the Portuguese tax authorities.

Next steps and takeaway

After the public consultation period, the draft Law will go through the Portuguese legislative process, and may be subject to amendments before final voting by the Portuguese Parliament. It is also expected that standard forms for complying with this new reporting obligation are published, alongside with specifications, filing instructions and filing procedures.

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

Jaime Carvalho Esteves, PwC Portugal
+351 213 599 601
jaime.esteves@pwc.com

Leendert Verschoor, PwC Portugal
+351 213 599 671
leendert.verschoor@pwc.com

Catarina Gonçalves, PwC Portugal
+351 213 599 618
catarina.goncalves@pwc.com

Catarina Nunes, PwC Portugal
+351 213 599 621
catarina.nunes@pwc.com

or your usual PwC contact.

