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EU Direct Tax Newsalert

Estonian draft law implementing DAC6

On 18 July 2019, the Estonian Ministry of Finance published a draft law amending the Tax Information Exchange Act (TIEA) and implementing Council Directive 2018/822 of 25 May 2018 amending Council Directive 2011/16/EU on Administrative Cooperation in the field of taxation in relation to reportable cross-border arrangements (the so-called "DAC6"). In brief, DAC6 obliges service providers or, alternatively, taxpayers to report on cross-border tax planning arrangements that meet certain hallmarks.

Status

The draft bill must now follow the Estonian legislative procedure and may be amended before final enactment. It is expected to enter into effect on 1 July 2020 in line with the Directive. With respect to the transitory period, the draft bill states that arrangements implemented between 25 June 2018 and 30 June 2020 must be reported at the latest by 31 August 2020.

The Republic of Estonia Tax and Customs Board is currently preparing a manual on DAC6 and developing an IT solution for reporting via e-tax/customs system.

Terminology

The term "intermediary" has been replaced with "informant" (unofficial translation into English), as the term "intermediary" has a different meaning in the Estonian legal system. Furthermore, the term "scheme" is used instead of "arrangement."

Scope

The draft bill is limited to schemes which have a potential impact on tax obligations, information exchange concerning financial accounts or through which, the identity of the beneficiary can be hidden. In line with the EU Directive, i.e. indirect taxes and excise duties, are not included, nor are domestic arrangements. The draft law mentions that tax advisors, lawyers and credit institutions (banks) are primary obliged to report.

Hallmarks

The hallmarks and the main benefit test are in line with the Directive. The explanatory memorandum of the draft bill also provides

some clarifications and examples for a better understanding of the schemes in scope.

Legal Professional Privilege (LPP)

The rendering of legal services could be covered by an LPP, which means that if the informant happens to be a lawyer, employee of a legal firm or an auditor, they have a right not to report to the relevant tax authorities, when it would cause a conflict with the LPP. In such cases, in line with the Directive, the informant has the obligation to first (i) inform another informant(s) related to the scheme, or if one does not exist (ii) inform the relevant taxpayer about such obligation. The taxpayer may waive the LPP and then the reporting obligation shifts back to the informant.

No yearly reporting by the taxpayer

The draft law leaves out article 8ab section 11, which states that necessary measures may be taken by each Member State to require that each relevant taxpayer files information about their use of arrangements to the tax administration in each of the years for which they use it, as being expendable.

Penalties

The penalties to compel informants to oblige to the reporting duty should not exceed EUR 3,300. In addition, for legal entities, the fine for any unfulfilled reporting obligation is up to EUR 3,200 and for an individual up to EUR 1,200. The draft law also states that when assessing the fulfilment of the reporting obligation, the privilege against self-incrimination must be respected. It is not clear yet, how and when this might affect the compliance.

Takeaway

DAC6 is transposed as a minimum standard into the domestic law of Estonia. Still, there are many open questions and hopefully more clarity will be provided in the guidance which is expected to be issued by the Estonian tax authorities.

