



EU Direct Tax Newsalert

Draft Law implementing DAC6 in Luxembourg submitted to the Parliament

On 8 August 2019, the Luxembourg Government tabled a Bill (n°7465) and its brief commentary before the Luxembourg Parliament setting out draft legislation (the “draft Law”) that will implement the EU Directive on the mandatory disclosure and exchange of cross-border tax arrangements, also known as DAC6.

In brief, DAC6 obliges service providers or, alternatively, taxpayers to report on cross-border tax planning arrangements that meet certain hallmarks.

The draft Law now needs to go through the Luxembourg legislative process, and may be subject to amendments before final voting by the Luxembourg Parliament.

Draft Law in a nutshell

The draft Law follows DAC6 very closely. As matters of example, no reporting will therefore be applicable in relation to purely domestic arrangements, and only direct taxes such as e.g. corporate income tax, municipal business tax, and net wealth tax are in scope (VAT, duties, etc. are excluded).

The draft Law includes the notions of cross-border arrangement, intermediary, relevant tax payer, associated enterprises which are identical in wording to those included in the Directive. The commentary of the draft Law clarified that accountants, tax and financial advisors, banks and consultants can be intermediaries.

Cross-border arrangements may be reportable if they meet at least one of the hallmarks set out in the Draft Law, which are identical in wording to the list of hallmarks in Appendix IV of DAC6.

The reporting timelines are also in line with DAC6, i.e., the reportable cross border arrangements whose first implementation step occurs between 25 June 2018 and 1 July 2020 are to be reported as from 1 July 2020, and by 31 August 2020 at the latest.

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

Key clarifications

- **Legal professional privilege** applies to lawyers acting within the limits applicable to the exercise of their profession. However, they remain liable to provide the tax authorities with information linked to the reportable cross-border arrangement (but without any client-specific information). They have the obligation to inform, within 10 days, other intermediaries or the taxpayer of their respective reporting obligation following the partial waiver applying to the lawyer.
- **Main benefit test** should be fulfilled with regards to generic hallmarks (A) and a number of specific (B and certain C) hallmarks. This will be the case if obtaining a tax advantage is the main benefit, or one of the main benefits, that a person is expecting to derive from an arrangement. The draft Law takes the position that the tax advantage may either be obtained in the EU or in a third country, it covers direct taxes only and that it is an objective test.
- **The information to be reported** matches that listed as to be exchanged between tax authorities, as specified in DAC6. The Draft Law does not include a template form for the reporting. In addition, each relevant taxpayer is required to file, in their Luxembourg corporate tax return, information about their use of the arrangement in each of the years for which they use it.
- Luxembourg proposes to set **penalties** up to EUR 250,000, to be determined on a case-by-case basis. The intentional character (or not) of the breach will be considered. The intermediary/taxpayer has the possibility to file a recourse in front of the Tribunal against the amount of the fine.

Next steps and takeaway

The draft Law closely follows DAC6. This is welcome. However, there is no detailed guidance and indication whether such guidance will be issued by the Luxembourg tax authorities before 1 July 2020. A prudent approach should thus be taken when tracking and collecting information on transactions that are potentially reportable.

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