



PwC's EU Direct Tax Group

EUDTG is PwC's pan-European network of EU law experts. We specialise in all areas of direct tax, including the fundamental freedoms, EU directives and State aid rules. You will be only too well aware that EU direct tax law is moving quickly, and it's difficult to keep up. But, it is crucial that taxpayers with an EU or EEA presence understand the impact as they explore their activities, opportunities and investment decisions. Find out more on: www.pwc.com/eudtg

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EU Direct Tax Newsalert

Gibraltar implements DAC 6

On 30 January 2020 the Gibraltar Government published the Income Tax (Amendment) Regulations 2020 ("the Regulations").

The Regulations amend the Income Tax Act 2010 for the purpose of implementing Council Directive (EU) 2018/822 of 25 May 2018 ("the Directive") amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements.

The Directive imposes a new obligation on EU-based tax consultants, banks, lawyers, and other intermediaries to disclose any cross-border arrangement that contains one or more features or "hallmarks," if they are identified as intermediaries for the purposes of the Directive.

The hallmarks cover a range of structures and transactions, including certain deductible payments which are taxed at a rate of zero or nearly zero when received as well as intercompany transactions which meet specific transfer pricing hallmarks, such as any transfer of hard-to-value intangibles.

Scope

The scope of reporting will include potentially aggressive tax arrangements concerning two or more EU Member States or an EU Member State and a third country.

"Arrangements", which are defined broadly to include an agreement, scheme, plan, transaction, etc. or series thereof, can involve several parts or stages of implementation or execution.

There is no requirement to report on purely domestic arrangements and VAT, customs and excise duties are also outside the scope of the new reporting regime.

Hallmarks

The DAC6 reporting obligations focus on cross-border tax planning arrangements that meet certain hallmarks intended to highlight potential risk of tax avoidance. The reporting obligation only arises if one or more of these hallmarks is triggered.

The hallmarks introduced by the Regulations follow those contained in the Directive. No additional hallmarks are introduced.

In line with the Directive, certain hallmarks trigger reporting obligations only where obtaining of a tax advantage is the main benefit or one of the main benefits of the arrangement.

While other hallmarks trigger reporting in all cases, regardless of whether obtaining a tax advantage is the main benefit or not.

Reporting obligations

The reporting obligation falls on the intermediary or the taxpayer according to detailed rules regarding the parties and jurisdictions involved.

Where bound by professional (legal) privilege, an intermediary will be exempt from the reporting obligation. An intermediary exempt from reporting obligations will nevertheless have to notify other intermediaries or if there is no such intermediary the relevant taxpayer of their reporting obligations.

The reporting obligations will start to apply as of 1 July 2020, but will cover arrangements implemented after 25 June 2018, which will have to be disclosed retrospectively.

Penalties

Administrative penalties for not filing a DAC6 report are £300. The penalty for providing inaccurate information can be up to £3,000.

Next steps and takeaway

No official guidance has been issued by the Gibraltar tax authorities at this stage. Certain open questions would remain in practice with respect to the interpretation of some of the rather widely defined hallmarks.

