



Euro Tax Flash from KPMG's EU Tax Centre



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New Mandatory Disclosure Requirements for Intermediaries and Taxpayers to enter into force on June 25, 2018

ECOFIN – Mandatory Disclosure Requirements – Tax Transparency – Tax Intermediaries

The new mandatory disclosure requirements for intermediaries and relevant taxpayers will enter into force on June 25, 2018 i.e. twenty days after their publication in the Official Journal on June 5, 2018.

These are the most recent amendments to the Directive on administrative cooperation in the field of taxation (“DAC 6”), which must be implemented by Member States before December 31, 2019 and which will apply from July 1, 2020. Intermediaries and relevant taxpayers will also be required to disclose information on reportable cross-border arrangements, the first step of which is to be implemented between June 25, 2018, and July 1, 2020. This information should be filed by August 31, 2020.

Background

Following a proposal put forward by the European Commission on June 21, 2017 (see [ETF 330](#)), DAC 6 was formally adopted by the Economic and Financial Affairs Council (ECOFIN) on May 25, 2018 (see [ETF 366](#)). DAC 6 introduces an obligation on intermediaries to disclose potentially aggressive tax planning arrangements and the subsequent exchange of this information between tax administrations.

According to the final text, tax intermediaries are required to disclose qualifying cross-border arrangements (see [ETF 359](#)) to tax authorities within 30 days of implementation. In the absence of an intermediary (e.g. the obligation is not enforceable upon an intermediary due to legal professional privilege, the intermediary is located outside the EU or because an in-house

arrangement is agreed), the obligation to disclose falls on the taxpayer – defined as any person that uses a reportable cross-border arrangement to potentially optimize their tax position.

Qualifying arrangements have to be reported within 30 days beginning on:

- (a) the day after the reportable cross-border arrangement is made available for implementation, or
- (b) the day after the reportable cross-border arrangement is ready for implementation, or
- (c) when the first step in the implementation of the reportable cross-border arrangements has been made, whichever occurs first.

Where the obligation is shifted to the taxpayer, the timing of disclosure is maintained.

The Directive leaves it up to the Member States to lay down rules on penalties applicable for infringements of the mandatory disclosure requirements, with the only requirement being that any penalties are effective, proportionate and dissuasive.

Publication and Entry into force

The Directive will enter into force on June 25, 2018, twenty days after its publication in the Official Journal of the European Union on June 5, 2018. Member States are required to adopt and publish the laws, regulations and administrative provisions necessary to comply with the Directive by December 31, 2019 at the latest. The provisions will apply from July 1, 2020.

Member States must also take the necessary steps to require intermediaries and relevant taxpayers to disclose information on cross-border arrangements - the first step of which is to be implemented between the date of entry into force of the Directive (June 25, 2018) and date of application (July 1, 2020) of DAC 6. Information on these reportable arrangements will have to be reported by August 31, 2020.

EU Tax Centre comment

The publication of DAC6 in the Official Journal is relevant as it determines the date of entry into force. This date is particularly important as it marks the beginning of the retroactive effect of the Directive. Despite the July 2020 application date, intermediaries and relevant taxpayers will be required to file information on reportable cross-border arrangements the first step of which is to be implemented after June 25, 2018. Although information related to such arrangements must be reported by August 2020, persons that could qualify as intermediaries or relevant taxpayers might want to consider collecting the necessary information as early as the date of entry into force.

Should you have any queries, please do not hesitate to contact [KPMG's EU Tax Centre](#) or, as appropriate, your local KPMG tax advisor.



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