

TAX

COVID-19 Practical Considerations: Deferral of DAC6

26 June 2020

Council Directive (EU) 2018/822 ("DAC6") is an EU directive that imposes mandatory reporting of cross-border arrangements by certain intermediaries (and in some cases taxpayers).

As discussed in our briefing "[COVID-19 Practical Considerations: Proposed Deferral of DAC6](#)" the EU Commission has noted the overwhelming disruption of the COVID-19 restrictions around Europe and in this context published a draft directive to defer the upcoming DAC6 deadlines by an initial three months and provided for the possibility of a further three-month deferral. The directive has been amended and adopted providing Member States with an optional **effective 6 month deferral of reporting dates**.

OPTIONAL DEFERRAL BY MEMBER STATES

Intermediaries should monitor developments regarding the adoption of the deferral in their own Member State, as the deferral is optional, not compulsory for each Member State. Thus, there is the possibility that certain Member States will continue to apply the original date for DAC 6 reporting, leading to potentially different reporting dates across different Member States. We expect that Ireland will adopt the deferral following release of the following statement on 18 June 2020.

"Revenue can confirm that the filings for DAC6 returns, which were originally scheduled to commence on 1 July, will also be deferred – further details on the new arrangements for DAC6 will issue shortly."

Proposed Deferral of Reporting

Reporting Obligation	Original Date	Optional Deferral Date
Reporting of the 'historical' cross-border arrangements (i.e. arrangements that became reportable from 25 June 2018 to 30 June 2020).	31 August 2020	28 February 2021
Beginning of the period of 30 days for reporting cross-border arrangements.	1 July 2020	1 January 2021
First exchange of information by Revenue authorities on reportable cross-border arrangements.	31 October 2020	30 April 2021

It is important to note that this is not a postponement of the entry into force of the rules, but rather a potential deferral of the reporting deadlines and therefore the "look back" period will still end on 30 June 2020. However, the deadline for reporting for cross-border arrangements implemented between 1 July and 31 December would not be until 1 January 2021, with the two-year lookback reporting deadline occurring in February. Thus, there would be different reporting deadlines, however, these deadlines will not occur until January/February 2021.

As noted in our previous briefing, "[Multinationals: taking control of your DAC6 reporting requirements](#)", while the primary DAC6 reporting obligations will normally rest with intermediaries, there are certain circumstances in which the reporting obligations will fall on the taxpayer.

Where more than one intermediary or taxpayer has reporting obligations under the directive, an intermediary or taxpayer shall be exempt from reporting if it has proof, that the same information has been filed in another Member State

Different reporting dates may mean that Member States which choose to implement their reporting obligations earlier will likely receive more reports, as intermediaries or taxpayers based in those Members States may not be able to rely on reports which would, at a future date, have been made by other intermediaries or taxpayers in other Member States.

LOCATION OF REPORTING FOR INTERMEDIARIES

Intermediaries should also note that they cannot choose which Member State to report to (for example to avail of later reporting dates). Where the intermediary is liable to file information on reportable cross-border arrangements with more than one Member State, the information should be filed in the Member State that features first in the below:

- the Member State where the intermediary is resident for tax purposes;
- the Member State where the intermediary has a permanent establishment through which the services with respect to the arrangement are provided;
- the Member State which the intermediary is incorporated in or governed by the laws of;
- the Member State where the intermediary is registered with a professional association related to legal, taxation or consultancy services.

LOCATION OF REPORTING FOR TAXPAYERS

Similarly where a taxpayer has an obligation to file information on reportable cross-border arrangements with more than one Member State, the information should be filed in the Member State that features first in the below:

- the Member State where the relevant taxpayer is resident for tax purposes;
- the Member State where the relevant taxpayer has a permanent establishment benefiting from the arrangement;
- the Member State where the relevant taxpayer receives income or generates profits, although the relevant taxpayer is not resident for tax purposes and has no permanent establishment in any Member State;
- the Member State where the relevant taxpayer carries on an activity, although the relevant taxpayer is not resident for tax purposes and has no permanent establishment in any Member State.

CONCLUSION

The 6 month deferral is a welcome development but it is important that intermediaries and taxpayers do not delay in preparing to meet their reporting obligations because reporting dates may not be deferred in all Member States in which they operate.

DAC6 reporting obligations are already complicated by the fact that, although the obligations are based on an EU directive, certain countries have extended the reporting obligations beyond those required under the directive. In addition, the interpretation of key aspects of DAC6 by Revenue authorities across the EU differs and the application of Legal Professional Privilege (LPP) is based on each country's LPP laws, which also differ across jurisdictions. The optional nature of the deferral of reporting obligations is likely to result in yet another aspect of the directive being applied differently across the EU.

KEY CONTACTS

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