Newsletter

Council Directive (EU) 2018/822 as of 25 May 2018 ("DAC6 Directive") will have far-reaching consequences for Swiss and Liechtenstein tax advisors, banks, management companies and clients with EU based wealth and management structures and EU tax resident clients. Reporting deadline for existing structures may be as early as 31st August 2020.

Answers to the 5 most frequently asked questions

On 25 May 2018 the European Union adopted a new Directive 2018/822 ("DAC6 Directive") to increase transparency regarding potentially aggressive cross-border tax arrangements and subsequently create an automatic information exchange among the EU member states. DAC6 Directive obligates EU member states to adopt and publish by 31 December 2019 the laws and regulations necessary to comply with the DAC6 Directive (the DAC6 Directive and the laws and regulations of the EU member states, collectively "DAC6").

1. Who is subject to the new reporting obligations?

The primary reporting obligation under DAC6 lies with the intermediary. An Intermediary is a person involved in designing, marketing, organizing, making available for implementation or managing the implementation of a reportable arrangement. In order to qualify as an intermediary, the person must also have a connection to a EU member state (i.e. has to be a resident, have a permanent establishment, be incorporated, or be registered with certain professional bodies in an EU member state). The term "Intermediary" encompasses tax advisers, lawyers, auditors, accountants, management companies, banks, etc. However, these reporting obligations will not apply to lawyers, chartered accountants and auditors because they are subject to legal professional privilege. Where there is no intermediary, or a legal professional privilege applies, reporting obligations will fall on the taxpayer concerned.

While DAC6 will only apply within the EU, Swiss and Liechtenstein intermediaries with EU-resident clients should, at a minimum, inform their EU-resident clients about their potential reporting obligations. Swiss and Liechtenstein intermediaries with a EU connection will need to analyze whether the services offered to clients by those entities are potentially reportable.

Structures and individuals can potentially be also affected, even if they are based in Switzerland or Liechtenstein, e.g.: (i) A group head-quartered in Switzerland or Liechtenstein with EU subsidiaries, or a group head-quartered abroad with Swiss or Liechtenstein subsidiaries and transactions with EU subsidiaries; (ii) Swiss or Liechtenstein advisors managing the implementation of certain arrangements; (iii) individuals of Asian or Russian origin who relocate to EU; (iv) individuals, who are tax residents of Cyprus, Malta, Italy and other EU member states; (v) Tax transparent investment funds, Swiss and Liechtenstein trusts, foundations, holding companies and securitization companies need to analyze their structures whether such structures are potentially reportable transactions.

According to the comments of the European Fund and Asset Management Association, transactions involving a tax-exempt investment fund or a fund subject to a specific low corporate tax rate, or a fund subject to subscription tax, should not per se be deemed as reportable for DAC6 purposes because such tax advantages are foreseen by the law.

2. What is a reportable cross-border arrangement?

A tax arrangement will be reportable if (i) it is cross-border (i.e. involving another member state or a third country) and (ii) includes a characteristic or feature that presents an indication of potential risk of aggressive tax planning ("Hallmark"). An arrangement may comprise more than one step or part. Certain Hallmarks further require that the main benefit test is satisfied, i.e. that one of the main objectives of the arrangement is to obtain a tax advantage. There will be a mandatory automatic exchange of information on such reportable cross-border arrangements via the Common Communication Network (CCN) which will be set up by the EU.

An arrangement will only be reportable if it encompasses a cross-border element. However, the mere cross-border nature of an arrangement does not in itself imply an obligation to declare an arrangement. A case-by-case analysis is necessary in order to determine whether

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the cross-border arrangement is actually reportable.

The scope of DAC6 includes all taxes levied by a EU member state, with the exception of VAT, customs duties, excise duties and compulsory social contributions.

3. What are the reporting process and deadlines?

The reporting process will start as of 1 July 2020. As of this date, concerned intermediaries or taxpayers will have to file the reportable information within thirty days from the first to occur: (i) the day after reportable arrangement is made available for implementation, or (ii) the day after reportable arrangement is ready for implementation, or (iii) the day when the first step in the implementation of the reportable cross-border arrangement has been made.

In addition, reportable arrangements which were initiated between 25 June 2018 and 30 June 2020 must be reported before 31 August 2020. Arrangements which were initiated before 25 June 2018 do not need to be reported.

4. What information has to be reported?

The following information will need to be reported under DAC6:

1. *Identification of the taxpayers and intermediaries involved*
2. *Details of the Hallmarks that generated the reporting obligation*
3. *A summary of the arrangement*
4. *The date of the first step in implementing the reportable arrangement*
5. *Details of the relevant domestic tax rules*
6. *The value of the arrangement*
7. *The identification of the member state of the relevant taxpayer(s) and any other member states which are likely to be concerned by the reportable cross-border arrangement*
8. *The identification of any other person in a member state likely to be affected by the reportable cross-border arrangement, indicating the corresponding member state*

5. What penalties apply

Penalties will be imposed on intermediaries or taxpayers that do not comply with the transparency measures. For example, in Luxembourg, late, incomplete or inaccurate reporting, non-reporting or non-compliance with the notification obligations will be subject to a maximum fine of EUR 250,000. In Malta a maximum fine is EUR 30,000.

Do you have any questions? – We're looking forward to your call/message!

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