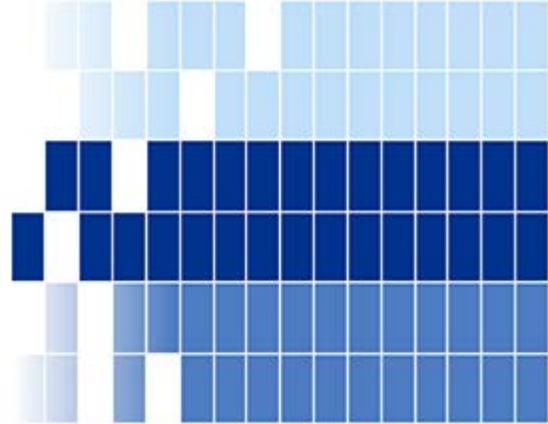




Tax News

KPMG in Bulgaria



Mandatory disclosure of information in relation to reportable cross-border tax arrangements

February 2020

Is the cross-border tax arrangement reportable?

Does the arrangement have one or more *hallmarks*?

Who is liable to report?

What type of information needs to be reported?

What is the reporting deadline?

Penalties and sanctions

How to get prepared?

In this issue of Tax News we highlight the main aspects of the recently adopted rules for disclosing information to the revenue authorities in relation to reportable cross-border tax arrangements, which will enter into force on 1 July 2020.

The new rules were introduced by means of amendments to the Tax and Social Security Procedure Code ("TSSPC") promulgated in State Gazette Issue No 102 on 31st December 2019. Their purpose is to transpose the so-called DAC 6 Council Directive 2018/822¹ (hereinafter "DAC 6" or "the Directive") in the national legislation. The law provides for disclosure of information on certain cross-border tax arrangements to the revenue authorities and for the subsequent exchange of this information between the tax administrations of the Member States.

The new reporting obligations will come into force on 1 July 2020. Additionally, cross-border tax arrangements, whose first step was implemented in the

period from 25 June 2018 to 30 June 2020 would need to be reported by 31 August 2020.

¹ *Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements.*

Is the cross-border tax arrangement reportable?

According to the TSSPC, reportable cross-border tax arrangement may include an arrangement, contract, deal, agreement, advice, scheme, plan, transaction or a series thereof, which may consist of more than one part or step.

For an arrangement to be classified as *reportable cross-border tax arrangement*, it needs to concern more than one Member State or a Member State and a third country and at least one of the conditions provided for under the TSSPC to be met as regards the said arrangement. These conditions vary, from cases where the parties in the arrangement are tax residents in different jurisdictions to situations where the arrangement may have an impact on the identification of the beneficial owner.

The new requirements shall not apply in relation to VAT, customs and excise duties and mandatory social security.



Does the arrangement have one or more hallmarks?

Meeting the definition of cross-border tax arrangement is not sufficient for the arrangement to be reportable to the tax administration. For this, the arrangement must have one or more hallmarks, or in accordance to the terminology used in the TSSPC - to fall within one or more of the categories provided for under the legislation.

In defining the relevant *hallmarks*, the national legislation generally mirrors the relevant provisions in DAC 6 (see Annex IV of the Directive). In brief, the *hallmarks* can be grouped in several main areas (including hallmarks related to transfer pricing, hallmarks related to cross-border transactions, generic hallmarks and so on). Certain of these hallmarks are coupled with the so called "the main benefit test". In these cases, the existence of a hallmark is not sufficient to consider the arrangement as reportable, but it is additionally required to determine that the main benefit or one of the main benefits which, taking into account all the relevant facts and circumstances, the taxable person may expect to derive from the cross-border tax arrangement is the obtaining of a tax advantage.



Who is liable to report?

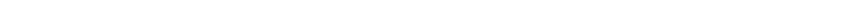
Consultants

The reporting mechanism is based on the understanding that cross-border tax arrangements are supported, in number of cases, by various consultants. Thus, it is deemed appropriate that the main obligation for disclosing information to the tax administration be imposed on such consultants. The term consultant includes any person that designs, markets, organizes or manages the implementation or makes available for implementation of a reportable cross-border tax arrangement. In addition, consultant encompasses also any person that knows or could be reasonably expected to know that they have undertaken to provide (directly or by means of other persons) aid, assistance or advice with respect to designing, marketing, organizing, making available for implementation or managing the implementation of a reportable cross-border tax arrangement.

A few exemptions are laid down in the legislation, under which the consultant is not obliged to disclose information concerning the reportable cross-border tax arrangement. Special attention deserves the professional privilege exemption (i.e. where the consultant is liable by law to treat the information as confidential). If the waiver for professional privilege applies, the consultant is obligated to inform in due course the other consultants on the arrangement or, if they are not aware of any other consultants, the taxable person of their reporting obligation to the revenue authorities. At the same time, however, the consultant who invoked the professional privilege exemption is required to inform the revenue authorities about the other consultants on the reportable cross-border tax arrangement or about the taxable person that are supposed to disclose information concerning the arrangement.

Taxable person

In certain situations, the reporting liability will lie with the taxable person. This will be the case where there is no consultant on the arrangement (for example, when the arrangement is prepared by the taxable person) or the consultant invoked the professional privilege exemption or the consultant is not connected to the EU (e.g. they are not resident in the EU, do not have permanent establishment in the Union, etc.).



What type of information needs to be reported?

The legislation provides a list of information that the consultant or the taxable person is required to prepare and file to the revenue authorities in relation to their reporting obligation.

Bearing in mind that cross-border tax arrangements may consist of number of steps and that different consultants may be assisting on these steps it is possible in practice for a consultant not to have the full picture on the arrangement. Thus, it is accepted that the consultants are obliged to provide information for a given cross-border tax arrangement that is within their knowledge, possession or control. Similar clarification is missing regarding the taxable persons, given that they are supposed to have all the necessary information about the reportable cross-border tax arrangement.



What is the reporting deadline?

Generally, the liable consultants or taxable persons need to file the necessary information concerning the reportable the cross-border tax arrangement to the revenue authorities within 30 days as of the date on which the arrangement was made available for implementation, or was ready to be implemented, or the first step of its implementation has been taken.



Penalties and sanctions

The administrative sanctions laid down in the legislation for infringements of the new rules are capped to BGN 5 thousand for individuals and BGN 10 thousand for legal persons and sole proprietors, for each single infringement. In addition, considering the current standards and understandings of tax justice, transparency and social responsibility, possible mis-reporting may also lead to serious reputational risk that an ever-smaller number of businesses could afford to take.

The reporting of a cross-border tax arrangement should not automatically lead to the conclusion that it constitutes an illegal tax practice. On the other hand, the new rules explicitly clarify that lack of action by the revenue authorities in relation to information reported to them about cross-border tax arrangement will not imply acceptance of its validity or of the tax treatment applied. In other words, the legally relevant position of the tax administration will be made known, as usual, in the course of the tax control proceedings provided for under the TSSPC.



How to get prepared?

The multitude of specifics of the new rules call for in-depth analysis by the taxable persons of their transactions and arrangements, in order to evaluate which cross-border tax arrangements need to be reported to the revenue authorities. The new requirements may also be seen as a trigger for revision, modernization or creation of new internal rules and processes for the monitoring, risk assessment and the taking of well-informed management decisions for how to arrange and manage relationships with different business partners, in both cross-border as well as local set-ups.



For information

Alexander Hadjidimov

Director, Tax

Tel.: +359 (2) 9697 700

Fax: +359 (2) 9697 878

ahadjidimov@kpmg.com

Martin Dlagnekov

Manager, Tax

Tel: +359 (2) 9697 700

Fax: +359 (2) 9697 878

mdlagnekov@kpmg.Com



kpmg.com/bg



[Privacy](#) | [Legal](#)

KPMG Bulgaria EOOD, 45/A Bulgaria Boulevard, 1404 Sofia, Bulgaria.

© 2020 KPMG Bulgaria EOOD, a Bulgarian limited liability company and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.