

# Mandatory Disclosure Rules

## Cyprus publishes DAC6 transposition bill

This article provides a summary of the Cypriot draft legislation to transpose mandatory disclosure rules under DAC6 into domestic law.

### Status

Draft legislation to transpose Directive (EU) 2018/822 on mandatory disclosure rules (hereinafter “DAC6” or “the Directive”) into Cypriot national legislation was subject to a public consultation procedure that closed on November 12, 2019. It is expected that a bill will be presented to the Cypriot Parliament in the coming weeks and that the bill will enter into law in late February or early March of 2020.

Tax authorities are expected to issue official guidance after the enactment of the law, to provide clarification on the interpretation of specific terms and provisions in the Cypriot DAC6 legislation.

Please note that this summary is based on information available as at January 1, 2020.

### Scope of the draft law

The scope of the Cypriot bill mirrors the text of the Directive. An intermediary is required to report cross-border tax arrangements that contain specific hallmarks laid down in the draft (i.e. the draft bill does not address domestic arrangements) and that relate to taxes set out in the Directive on Administrative Cooperation.

### Definitions

Definitions in the legislation are closely aligned with those in the Directive. In particular, the definitions of the terms “relevant taxpayer”, “associated enterprise”, “cross-border arrangement”, “intermediary” and “hallmark” mirror the text of the Directive.

### Hallmarks and Main Benefit Test

The hallmarks are in line with those laid down in the Directive. The main benefit test should only apply in respect of those hallmarks specifically noted in the Directive (i.e. category A and B hallmarks and paragraphs (b)(i), (c) and (d) of category C hallmarks).

The Main Benefit Test shall be limited to tax advantages obtained in relation to taxes levied in EU Member States.

### Reporting - Intermediary

The intermediary is only obliged to report if they have a presence in a EU Member State (local residency, permanent establishment, incorporation or professional registration).

Where an intermediary has a reporting obligation in multiple Member States, the information shall be filed only in the Member State that features first in the list below:

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

The reporting timelines mirror the requirements of the Directive, i.e. 30 days as of the relevant reporting trigger for reportable bespoke arrangements.

The information to be disclosed largely mirrors the requirements of the Directive. The content of the report referred to in Article 8ab No. 14 (a)-(d) of DAC6 can be submitted to the Cypriot authorities in any official language of the EU.

The Cypriot tax authorities may require to be provided with additional information or documents in relation to an arrangement within 14 days of the date when the arrangement is reported.

### **Reporting – Intermediary (cont.)**

The bill includes a provision on the protection of reporting in “good faith”. This provision (also applicable in other areas of Cypriot legislation) aims to give intermediaries the opportunity to prove that, based on the information available to them at the time of the assessment, the decision to report the tax arrangement was made in good faith, even if at the later stage it will appear that the arrangement was not reportable.

An intermediary can be relieved from its reporting obligation if the intermediary can prove that a reportable cross-border arrangement has already been reported by another intermediary. The bill does not clarify what evidence is deemed sufficient to convincingly demonstrate reporting by another intermediary.

### **Legal Professional Privilege**

Intermediaries may be granted a waiver from filing information based on protection of legal professional privilege to the extent the intermediary qualifies as a “lawyer” as defined by the relevant Cypriot law.

In such circumstances, exempt intermediaries are required to notify – without delay – any other intermediary, or if there is no such other intermediary, the relevant taxpayer of their reporting obligation.

No further clarification on the term “without delay” has been included in the guidance.

### **Reporting – Relevant Taxpayer**

The reporting timelines for relevant taxpayers should mirror the requirements of the Directive, i.e. 30 days as of the relevant reporting trigger for reportable arrangements.

Where a taxpayer has a reporting obligation in multiple Member States, the information shall be filed only in the Member State that features first in the list below:

- 1) Member State where the taxpayer is resident for tax purposes;
- 2) Member State where the taxpayer has a place of business or designated base which benefits from the arrangement;
- 3) Member State where the taxpayer receives income; or
- 4) Member State in which the taxpayers pursues business.

Where multiple taxpayers are involved, the relevant taxpayer that is to file information will be the one that features first in the list below:

- 1) Taxpayer that agreed the arrangement with the intermediary;
- 2) Taxpayer that is managing the implementation of the arrangement.

A taxpayer will not be required to report if:

- There is evidence that the arrangement has been reported by an intermediary; or
- There is evidence that the arrangement has been reported by another taxpayer; or
- The taxpayer has evidence that it reported the arrangement in another Member State.

The bill does not clarify what kind of evidence is deemed sufficient to convincingly demonstrate the reporting by another party.

### **Penalties**

Gradual penalties will be imposed depending on the type of failure:

- Complete omission;
- Incomplete / inaccurate reporting;
- Delayed reporting.

Penalties will be capped to EUR 20,000 per reportable arrangement depending on type and extent of violation.

For more information, please refer to KPMG's [EU Mandatory Disclosure Rules page](#) or contact the following:

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