

# Mandatory Disclosure Rules

## Greek implementation of DAC6 into domestic legislation

This article provides a summary of the Greek transposition of mandatory disclosure rules under DAC6 into domestic law.

### Status

On July 29, 2020, the Greek Parliament approved Law 4714/2020 (hereinafter "the Greek DAC6 Law") implementing the Council Directive (EU) 2018/822 (EU) (hereinafter "DAC6" or "the Directive") into domestic legislation. The Greek Parliament also transposed the Directive (EU) 2020/876 into domestic legislation, adopting a six-month deferral of the reporting deadlines. The Greek DAC6 Law was published in the official governmental Gazette on July 31, 2020.

No further commentaries or guidance have been issued by the Greek Tax Authority on the provisions of the Greek DAC6 Law.

Please note that this summary is based on information available as at May 12, 2021.

### Scope

The scope of the Greek DAC6 Law is closely aligned with the Directive, with no extension of the scope for VAT, custom duties, excise duties and compulsory social contributions. The Greek mandatory disclosure rules (MDRs) apply only to "cross-border arrangements" (i.e. domestic transactions are out of scope).

### Definitions

The definitions in the Greek DAC6 Law are mainly aligned with the Directive. In particular, the definitions of "cross-border arrangement", "bespoke arrangement", "marketable arrangement" and "associated enterprise" mirror the text of the Directive.

### 1) Arrangement

The Greek DAC6 Law does not provide for a detailed definition of the term "arrangement". However, in the explanatory memorandum accompanying the law, there

is a reference to the "Model Mandatory Rules for CRS Avoidance Arrangements and Opaque Offshore Structures" of the OECD that define "arrangement" as an agreement, scheme, plan or understanding, whether or not legally enforceable, including all the steps and transactions that bring it into effect. It is further noted that the concept of "arrangement" for DAC6 purposes should be broad enough so that the scope of the law is not limited. In this context, it is explained that a reportable cross-border arrangement should be assessed in a manner consistent with the hallmarks.

### 2) Intermediary

Under the Greek DAC6 Law, the definition of "intermediary" mirrors the text of the Directive and refers to both primary and secondary intermediaries. The explanatory memorandum notes that intermediaries are only required to disclose information that is within their knowledge, possession or control, and that they are not required to examine or seek further information or conduct additional due diligence to establish whether an arrangement is reportable.

### 3) Taxpayer

The Greek DAC6 Law replaces the term "relevant taxpayer" with the term "relevant person", which is similarly defined.

### Hallmarks and Main Benefit Test

The list of hallmarks under the Greek DAC6 Law is aligned with the Annex of the Directive. No further commentaries or clarifications on the hallmarks have been provided so far.

In line with the Directive, the Main Benefit Test (MBT) applies only for category A and B hallmarks as well as for hallmarks C1(b)(i), C1(c) and C1(d). No further guidance has been provided so far on the interpretation of the MBT.

## **Reporting - Intermediary**

For a person to qualify as an intermediary within the meaning of the Greek DAC6 Law, a Greek nexus is required, i.e. at least one of the following conditions must be met:

- The person is resident for tax purposes in Greece; or
- The person is not tax resident in any EU Member State, but (i) has a permanent establishment in Greece through which it provides services with respect to the arrangement, or (ii) is incorporated in Greece or governed by Greek laws, or (iii) is registered to a professional association related to legal, tax or consultancy services in Greece.

In case of a reporting obligation in multiple Member States in relation to the same reportable arrangement, the intermediary can be exempt from reporting to the Greek Tax Authority if the intermediary can prove, by any appropriate means, that the same information has been filed in another Member State.

In case of multiple intermediaries involved in the same reportable arrangement, all intermediaries are obliged to report the information. However, the intermediary can be exempt from reporting if it can prove, by any appropriate means, that the same information has been filed by another intermediary.

No clarification on the term “by any appropriate means” is provided under the Greek DAC6 Law.

## **Legal Professional Privilege**

Under the Greek DAC6 Law, legal professional privilege (LPP) applies only to Greek lawyers with respect to activities performed in their capacity as lawyers.

Greek lawyers that are subject to LPP are required to notify, without delay, any other intermediary involved or, if there is no such intermediary, the relevant taxpayer of their reporting obligations.

No further clarifications of the term “without any delay” has been provided.

## **Reporting – Relevant Taxpayer**

A relevant taxpayer is required to report to the Greek Tax Authority if:

- there is no Greek intermediary involved (i.e. an intermediary with nexus to Greece), or

- there is no intermediary involved, or
- the intermediary is subject to LPP.

The relevant taxpayer is required to report to the Greek Tax Authority only if they have a Greek nexus, namely if:

- the person is tax resident in Greece;
- the person is not tax resident in any EU Member State, but (i) has a permanent establishment in Greece which benefits from the arrangement, or (ii) receives income or generates profits in Greece, or (iii) carries on business activities in Greece.

In case of a reporting obligation in multiple Member States in relation to the same reportable arrangement, the relevant taxpayer can be exempt from reporting to the Greek Tax Authority if they can prove, by any appropriate means, that the same information has been filed in another Member State.

In case of multiple relevant taxpayers involved in the same reportable arrangement, the relevant taxpayer that is required to report is the one that features first in the list below:

- a) the relevant taxpayer that agreed the reportable cross-border arrangement with the intermediary;
- b) the relevant taxpayer that manages the implementation of the arrangement.

The relevant taxpayer can be exempt from their reporting obligation only if they have proof that the same information has been filed by another relevant taxpayer.

## **Reporting**

Under the Greek DAC6 Law, the information that should be disclosed and the reporting deadlines for intermediaries and relevant taxpayers mirror the requirements of the Directive.

Intermediaries (under the primary definition) and relevant taxpayers are required to file the information within 30 days, beginning on:

- the day after the reportable cross-border arrangement is made available for implementation to the relevant taxpayer, or
- the day after the reportable cross-border arrangement is ready for implementation by the relevant taxpayer, or

- when the first step in its implementation has been made in relation to the relevant taxpayer,
- whichever occurs first.

Intermediaries under the secondary definition are required to file the information within 30 days beginning on the day after they provided, directly or by means of other persons, aid, assistance or advice with respect to a reportable cross-border arrangement.

Following the adoption of Council Directive (EU) 2020/876, Greece opted for a six-month deferral of the reporting deadlines. Therefore, the deadline for reportable arrangements the first step of which was implemented during the look-back period (i.e. June 25, 2018 – June 30, 2020) was February 28, 2021. In addition, the Greek Tax Authority granted a further extension to March 2, 2021, with respect to reportable arrangements for which the reporting trigger occurred during the deferral period (i.e. July 1 – 31 December 2020) and from January 1, 2021 to January 31, 2021.

As of February 1, 2021, reportable arrangements are subject to the regular reporting deadline, i.e. 30 days from the relevant trigger as described above.

- In case of late reporting: a fine of EUR 250 (for entities with single-entry accounting books under Greek law) and EUR 500 (for entities with double-entry accounting books under Greek law), per month of delayed reporting and up to three months, for each reportable arrangement. In case of delayed reporting for more than three months, a fine of EUR 2,500 and EUR 5,000, respectively, applies for each reportable arrangement. The total amount of fines is capped at EUR 5,000 and EUR 10,000, respectively, per calendar year, in respect of each reportable arrangement. Should the fine be applied as a result of an audit, the total amount of fines is capped at EUR 25,000 and EUR 50,000, respectively, per tax audit, for each reportable arrangement.
- In case an intermediary subject to LPP fails to notify the other intermediary/ taxpayer of their reporting obligation: a fine of EUR 5,000 (for entities with single-entry accounting books under Greek law) and EUR 10,000 (for entities with double-entry accounting books under Greek law). The total amount of fines is capped at EUR 50,000 and EUR 100,000, respectively, per tax audit, for each reportable arrangement.

## **Penalties**

The following penalties apply under the Greek DAC6 Law:

- In case of non-reporting: a fine of EUR 5,000 (for entities with single-entry accounting books under Greek law) and EUR 10,000 (for entities with double-entry accounting books under Greek law), for each reportable arrangement. The total amount of fines is capped at EUR 50,000 and EUR 100,000, respectively, per tax audit, for each reportable arrangement.
- In case of incomplete or inaccurate reporting, a fine of EUR 2,500 (for entities with single-entry accounting books under Greek law) and EUR 5,000 (for entities with double-entry accounting books under Greek law), for each reportable arrangement. The total amount of fines is capped at EUR 25,000 and EUR 50,000 respectively per tax audit, for each reportable arrangement.

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

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