

# Mandatory Disclosure Rules

## Romania enacts DAC6 transposition regulations

This article provides a summary of the Romanian regulations to incorporate mandatory disclosure rules under DAC6 into domestic law.

### Status

On January 31, 2020, regulations to incorporate Directive (EU) 2018/822 on mandatory disclosure rules (hereinafter “DAC6” or “the Directive”) into Romanian law were published in the Romanian Official Gazette.

The Romanian tax authorities are also expected to issue additional guidance, to provide clarification on the interpretation of specific terms and provisions in the Romanian DAC6 legislation.

Please note that this summary is based on information available as at January 31, 2020.

### Scope

The scope of the Romanian legislation mirrors the text of the Directive. An intermediary is required to report cross-border tax arrangements that (i) contain specific hallmarks laid down in the regulations (i.e. the text does not include domestic arrangements) and (ii) relate to the categories of taxes set out in the Directive on Administrative Cooperation (i.e. VAT, customs duties, excise duties and social security contributions are excluded from the scope of the reporting regime).

### Definitions

The 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 set out in the Romanian legislation are in line with those laid down in the Directive. The main benefit test will only apply in respect of those hallmarks specifically noted in the Directive (i.e. category A and B hallmarks and paragraphs (1)(b)(i), (1)(c) and (1)(d) of the category C hallmarks).

### Reporting - Intermediaries

The intermediary is only obliged to report if they have a presence in Romania, determined with reference to 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 list of reportable information largely mirrors the requirements of the Directive.

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

### **Legal Professional Privilege**

Intermediaries that are bound by legal professional privilege under domestic law are required to report the arrangements only if they receive consent (in writing) from the relevant client.

Exempt intermediaries are required to notify – without delay – any other intermediary or, if there is no such 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**

Reporting timelines for relevant taxpayers mirror the requirements of the Directive.

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 required to file the information is the one that features first in the list below:

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

A taxpayer will not be required to report if there is evidence that another taxpayer reported the information to the Romanian tax authorities.

It has not yet been clarified what type of evidence is deemed sufficient to convincingly demonstrate reporting by another party.

### **Penalties**

The following penalties are relevant:

- Between RON 20,000 and RON 100,000 (approx. EUR 4,000 and EUR 20,000) – applicable to both intermediaries and taxpayers – if the information is not disclosed or it is disclosed after the relevant deadline;
- Between RON 5,000 and RON 30,000 (approx. EUR 1,000 and EUR 6,000) – applicable to intermediaries that benefit from a waiver for legal professional privilege – if they fail to notify the other intermediaries involved (or the taxpayer) of their reporting obligation.

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

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