

Mandatory Disclosure Rules

Bulgaria amended its legislation to transpose DAC6

This article provides a summary of the Bulgarian legislation transposing mandatory disclosure rules under DAC6 into domestic law.

Status

With amendments to the Bulgarian Tax and Social Security Procedure Code (TSSPC) promulgated in State Gazette Issue No 102 on December 31, 2019, Directive (EU) 2018/822 on mandatory disclosure rules (hereinafter “DAC6” or “the Directive”) was transposed into Bulgarian domestic law. The provisions will come into operation on July 1, 2020.

Please note that the summary is based on information available as at January 31, 2019.

Scope

The scope of the Bulgarian law transposing DAC6 is closely aligned with the Directive – no extension of scope proposed for VAT, customs duties or excise duties. Bulgarian mandatory disclosure rules (MDRs) will also only apply for “cross-border arrangements with a potential tax avoidance risk” (i.e. domestic transactions will not be in scope).

Definitions

The provisions of the TSSPC transposing DAC6 are closely aligned with the Directive.

In particular, the definitions of “relevant taxpayer”, “associated enterprise” and “marketable arrangement” have the same meaning as the Directive.

In addition, the TSSPC includes the following definitions and clarifications of terms used in the Directive:

1) Consultant

The term “intermediary” is replaced with the term “consultant”, which is similarly defined.

2) Cross-border tax arrangement

The TSSPC uses the term “cross-border tax arrangement”, which in general terms reflects the definition of “cross-border arrangement” as provided for by the Directive.

An additional clarification is made that “cross-border tax arrangement” may include an arrangement, an agreement, a consent, an opinion, a scheme, a plan, a transaction or a series of transactions.

3) Tax Advantage

For the purposes of the mandatory disclosure rules, a definition of the term “tax advantage” was introduced in the TSSPC. “Tax advantage” shall be deemed to include any benefit for a taxpayer which may consist of a reduction of the tax base or tax due, avoidance or deferral of tax, use of a tax relief or of a tax relief in excess of the one which is due, or other advantages that could improve the tax status of a taxpayer.

Hallmarks & Main Benefit Test

The list of hallmarks is closely aligned with Annex IV of the Directive.

The main benefit test should apply to the same hallmarks as those in the Directive (i.e. category A and B hallmarks and paragraphs (1)(b)(i), (c) and (d) of the category C hallmarks).

Reporting - Intermediaries

The intermediary is obliged to report if it has a presence in Bulgaria (by virtue of local tax residence, a permanent establishment, incorporation or registration with a professional association related to legal, taxation or consultancy services).

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

Returns will be submitted electronically. The format for reporting will be approved by an order from the Bulgarian tax authorities and will be published on the tax authority’s website.

Reporting – Intermediaries (cont.)

The information that is required to be disclosed by an “intermediary” largely mirrors the requirements of the Directive.

The Bulgarian tax authorities will assign a unique number that will be used to identify the arrangement in all Member States. The tax authorities will also issue a disclosure number to identify the specific provision of information (i.e. evidence of reporting).

The intermediary should provide the unique arrangement number to all other intermediaries or taxpayers in due time. No further detail on the meaning of “due time” is provided.

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.

An intermediary will not be required to report if:

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

However, where the arrangement has already been reported by another party, intermediaries that provide aid, assistance or advice for individual parts or stages of an arrangement are required to provide information on this individual part or stage of the arrangement.

Legal Professional Privilege

There is no requirement for an intermediary to disclose information where the intermediary is obliged by law to keep the information confidential, unless the taxpayer has consented to the disclosure.

If legal professional privilege applies, the intermediary should notify the other intermediary / relevant taxpayer of the reporting obligation within 14 days. The reporting timeline of 30 days shall commence for the other parties from the date of notification.

Notwithstanding the above, the intermediary is still obliged to inform the Bulgarian tax authorities that another intermediary or relevant taxpayer (as applicable) has a reporting obligation.

Reporting – Relevant Taxpayer

The taxpayer is obliged to report in cases where:

- there is no intermediary involved in the cross-border tax arrangement;
- no intermediary is involved in the arrangement that has sufficient nexus in Bulgaria to trigger a reporting obligation;
- legal professional privilege applies.

An obligation to report in Bulgaria arises if the taxpayer:

- is tax resident in Bulgaria; or
- has a permanent establishment or a fixed base which benefits from the arrangement in Bulgaria; or
- receives income or generates profits in Bulgaria even if the taxpayer is not tax resident and does not have a permanent establishment or a fixed base in Bulgaria or any other Member State; or
- carries on an activity in Bulgaria even if the taxpayer is not tax resident and does not have a permanent establishment or a fixed base in Bulgaria or any other Member State.

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 tax resident;
2. Member State where the taxpayer has a permanent establishment or a fixed base which benefits from the arrangement;
3. Member State where income is received or profits are generated even if the taxpayer is not tax resident and does not have a permanent establishment or a fixed base in any Member State;

Reporting – Relevant Taxpayer (cont.)

4. Member State in which business is pursued even if the taxpayer is not tax resident and does not have a permanent establishment or a fixed base in any Member State.

Where multiple taxpayers are involved, the relevant taxpayer that is required to file information will be 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 the arrangement has been reported by another taxable person; or
- The taxpayer has evidence that it reported the arrangement in another Member State.

Penalties

Penalties of BGN 2,000 – BGN 5,000 (approx. EUR 1,000 – EUR 2,500) will apply to individuals and BGN 5,000 – BGN 10,000 (approx. EUR 2,500 – EUR 5,000) to sole traders or legal entities for the following offences:

- Failure to report a reportable cross-border arrangement;

- Failure to notify other intermediaries / taxpayers within 14 days where legal professional privilege is claimed.

Penalties of BGN 1,000 – BGN 3,000 (approx. EUR 500 – EUR 1,500) will apply for individuals and BGN 2,000 – BGN 8,000 (approx. 1,000 – EUR 4,000) for sole traders or legal entities for the provision of incomplete or inaccurate information.

Penalties of BGN 200 – BGN 800 (approx. EUR 100 – EUR 400) will apply for individuals and BGN 500 – BGN 1,500 (approx. EUR 250 – EUR 750) for sole traders or legal entities for the following offences:

- Failure to provide the unique arrangement number to other intermediaries or relevant taxpayers in due time.
- Failure to provide the Bulgarian tax authorities with details of other intermediaries and relevant taxpayers where legal professional privilege is claimed.

In cases of repeated violations of the reporting obligations, the above mentioned penalties may double.

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

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