

Belgium issues draft mandatory disclosure regime legislation

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Executive summary

On 26 November 2019, the Belgian Government published draft legislation and explanatory notes addressing the implementation of the European Union (EU) Directive on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive). Under DAC6, taxpayers and intermediaries are required to report cross-border reportable arrangements from 1 July 2020. However, reports will retrospectively cover arrangements where the first step is implemented between 25 June 2018 and 1 July 2020.¹

The Belgian draft legislation is subject to the formal legislative process and is unlikely to be amended before final enactment.

If implemented as currently proposed, the Belgian Mandatory Disclosure Rules (MDR) legislation will be broadly aligned to the requirements of the Directive.

The newly issued guidance provides clarity on the interpretation of the Belgian MDR legislation and how the Belgian Government anticipates the reporting process to operate.

The key highlights of the Belgian draft legislation and guidance are summarized below.

Key highlights

- ▶ The scope of taxes covered under the Belgian draft legislation is aligned with the Directive and applies to all taxes except value-added tax, customs duties and compulsory security contributions.
- ▶ The definition of “reportable arrangements” does not include domestic arrangements.
- ▶ The hallmarks included in the draft Belgian legislation mirror Hallmarks A-E specified in Annex IV of the Directive.
- ▶ The definition of intermediaries is broadly aligned to the definition in DAC6.
- ▶ The draft Belgian legislation exempts intermediaries from the obligation to report where the reporting obligation would breach the legal professional privilege (LPP). The exemption for LPP is only expected to apply in limited cases, namely where the determination of the legal position of the relevant taxpayer is at stake (e.g., where an intermediary advises the taxpayer on the possible outcome and risks of starting legal proceedings), or where the relevant taxpayer is represented or defended in court. In practice, this appears to imply that the LPP exemption under this legislation may have limited application.
- ▶ The Belgian reporting deadlines do not differ from the DAC6 reporting deadlines.
- ▶ Failure to report or late reporting is expected to result in monetary penalties ranging between €5,000 and €50,000, and insufficient or incomplete reporting is expected to result in monetary penalties ranging between €1,250 and €12,500.
- ▶ Non-compliance with reporting obligations for arrangements implemented in the interim period (i.e., between 25 June 2018 and 1 July 2020) is expected to attract a milder penalty if reported before 31 December 2020.

Next steps

Determining if there is a reportable cross-border arrangement raises complex technical and procedural issues for taxpayers and intermediaries. Taxpayers and intermediaries who have operations in Belgium should review their policies and strategies for logging and reporting tax arrangements so that they are fully prepared for meeting these obligations.

A detailed Global Tax Alert is forthcoming.

Endnote

1. See EY Global Tax Alert, [EU publishes Directive on new mandatory transparency rules for intermediaries and taxpayers](#), dated 5 June 2018.

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