

## Belgium publishes legislation on Mandatory Disclosure Rules

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### Executive summary

On 12 December 2019, the Belgian Parliament adopted legislation implementing 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.<sup>1</sup>

The Belgian legislation, which was published in the Belgian *Official Gazette* on 30 December 2019, will enter into force and be effective on 1 July 2020.

The final Belgian Mandatory Disclosure Rules (MDR) legislation is broadly aligned to the requirements of the Directive and its text is the same as the draft Belgian legislation issued on 26 November 2019 as discussed in EY Global Tax Alert, [Belgium publishes draft proposal on Mandatory Disclosure Rules](#), dated 17 December 2019.

The key highlights of the Belgian legislation are summarized below.

## Key Highlights

- ▶ The scope of the taxes covered under the Belgian legislation is fully aligned with the Directive and applies to all taxes except value-added tax, customs duties, excise duties and compulsory social security contributions.
- ▶ The Belgian legislation defines a reportable cross-border arrangement exactly in line with the Directive. Namely an arrangement is reportable if:
  - The arrangement meets the definition of a cross-border arrangement; and
  - The arrangement meets at least one of the hallmarks A-E specified in Annex IV of the Directive.
- ▶ The Belgian legislation does not cover domestic arrangements and does not include any hallmarks in addition to hallmarks A-E included in Annex IV of the Directive.
- ▶ The description of the hallmarks included in the Belgian legislation follows the text of the hallmarks included in DAC6. Most elements of the hallmarks included in DAC6 are not expressly defined.
- ▶ In accordance with DAC6, under the Belgian legislation, the main benefit test will be satisfied if it can be established that the main benefit or one of the main benefits which, having regard to all relevant facts and circumstances, a person may reasonably expect to derive from an arrangement, is the obtaining of a tax advantage.
- ▶ The definition of an intermediary under the Belgian legislation is in line with the Directive.
- ▶ The Belgian legislation exempts intermediaries from the obligation to report where the reporting obligation would breach 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 addition, the LPP exemption can only apply if the intermediary advising on the determination of the legal position of the relevant taxpayer has taken no part in co-planning, designing or implementing the

reportable arrangement. In addition, the LPP exemption can only be claimed if the relevant intermediary advising on the determination of the legal position of the relevant taxpayer has taken no part in co-planning, designing or implementing the reportable arrangement.

- ▶ The LPP exemption can only be claimed if the relevant intermediary informs the other intermediaries or relevant taxpayer(s) of its LPP exemption and their obligations to report. The relevant taxpayer can, in writing, waive the LPP and allow the concerned intermediary to comply with his reporting duty.
- ▶ The LPP exemption cannot be applied to obligations to report in respect of marketable arrangements.
- ▶ The Belgian reporting deadlines are fully aligned with DAC6 which requires reporting to start from 1 July 2020 and exchanges between jurisdictions will start from 31 October 2020. However, reports will retroactively cover arrangements where the first step is implemented between 25 June 2018 and 1 July 2020.
- ▶ Under the final Belgian legislation, 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.

The penalties will increase progressively within a specific scale. Penalties in a higher range will apply when an intermediary or relevant taxpayer commits multiple infringements.

Non-compliance with reporting obligations for arrangements implemented in the interim period (i.e., between 25 June 2018 and 1 July 2020) will attract a lower 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.

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## Endnotes

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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