

## Romania issues draft mandatory disclosure regime legislation

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### Executive summary

On 9 January 2020, the Romanian Government circulated draft 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 draft legislation was subject to public consultation. The Romanian draft legislation is now subject to the formal legislative process and is likely to be amended before final enactment.

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

The key highlights of the Romanian draft legislation are summarized below.

### Key highlights

- ▶ The scope of the taxes covered under the Romanian draft 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 definition of reportable arrangements does not include domestic arrangements.
- ▶ The Romanian reporting deadlines do not differ from the DAC6 reporting deadlines.
- ▶ With respect to legal professional privilege (LPP), the current draft legislation states that those intermediaries who may invoke the LPP according to national law (currently only lawyers) should report the required information to the National Agency for Fiscal Administration only to the extent it is not about the information that they are aware of during the assessment of the client's legal situation in some judicial proceedings or of fulfilling the obligation to defend or represent the client in court proceedings or in connection with the respective procedures. This reporting may be done only in situations where the relevant taxpayer gives its consent to the intermediary by waiving their right related to the LPP. If the taxpayer does not grant its consent, the intermediary needs to notify any other intermediary or, if there is no other intermediary, the relevant taxpayer of their reporting obligations.
- ▶ In the case of multiple reporting obligations, the relevant intermediary or taxpayer shall be exempt from filing the information if it has conclusive proof, beyond any doubt (no further explanation of this expression is provided in the draft legislation), that the same information has been filed in another Member State.
- ▶ Each relevant taxpayer shall file the information about their use of the arrangement to the tax administration in each of the years for which they use it.
- ▶ The level of penalties in the case of non-compliance events varies as follows: between LEI20,000 (approx. €4,000) to LEI100,000 (approx. €20,000) for failure to report or late reporting, between LEI10,000 (approx. €2,000) to LEI50,000 (approx. €10,000) for incorrect or incomplete information and between LEI5,000 (approx. €1,000) to LEI30,000 (approx. €6,000) for failure to notify another intermediary or the relevant taxpayer.
- ▶ The hallmarks included in the draft legislation mirror hallmarks A-E specified in Annex IV of the Directive with a slight amendment on one of the conditions of the main benefit test under hallmark C.

## 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 Romania 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.

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## Endnote

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

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