

Dutch Tax Authority issues guidance on reportable cross-border arrangements

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Executive summary

On 30 June 2020, the Dutch Government issued a decree containing official guidance from the Dutch Tax Authority on reportable cross-border arrangements 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).¹

The newly issued decree of 30 June 2020 provides clarity on the interpretation of the Dutch Mandatory Disclosure Rules (MDR) legislation and how the Dutch Government anticipates the reporting process to operate.

The decree confirms once more that the Dutch MDR legislation is broadly aligned to the requirements of the Directive.²

In a separate decree on 26 June 2020, the Netherlands officially announced their deferral of the DAC6 filing deadlines by six months. Under DAC6, taxpayers and intermediaries are required to report cross-border reportable arrangements from 1 July 2020. However, Member States are permitted to defer by up to six months the time limits for the filing and exchange of reportable arrangements in accordance with the amendments to EU Directive 2011/16 adopted and announced by the Council of the European Union on 24 June 2020.³

The key highlights of the newly issued decrees are summarized below.

Detailed discussion

Decree of 30 June 2020 containing official guidance from the Dutch Tax Authority

- ▶ When the MDR legislation was drafted, it was recognized that in practice intermediaries and relevant taxpayers may have difficulty in determining whether specific arrangements are subject to a reporting obligation. Hence, this guidance contains additional details on the reporting obligations arising from the Dutch MDR legislation.
- ▶ It contains specific examples to give more insight mainly on the hallmarks A3 (standardized documentation), B2 (conversion of income), B3 (roundtripping of funds), all category C hallmarks related to cross-border transactions, as well as briefly on the category E hallmarks concerning transfer pricing.
- ▶ The examples address situations whereby a hallmark is and is not triggered.
- ▶ Further remarks are made about the terms "cross border," "intermediary," "service provider," "relevant taxpayer" and the main benefit test.

Decree of 26 June 2020 addressing the deferral of time limits for the filing of reportable arrangements

- ▶ The Dutch Government officially announced on 26 June 2020 that the reporting deadlines under the Dutch MDR legislation are amended and deferred by six months in accordance with the amendment (EU Directive 2018/855)

to EU Directive 2011/16 adopted and announced by the Council of the European Union on 24 June 2020. The transitional period (from 25 June 2018 to 30 June 2020) remains as before and reportable arrangements from this period need to be filed ultimately by 28 February 2021. A new transitional period starts from 1 July 2020 until 31 December 2020. Arrangements from this period that are made available for implementation, are ready for implementation or where the first step of implementation has taken place need to be filed ultimately by 31 January 2021. The regular 30-day reporting obligation will start on 1 January 2021.

Implications

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 The Netherlands 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.

Endnotes

1. For background on MDR, see EY Global Tax Alert, [EU publishes Directive on new mandatory transparency rules for intermediaries and taxpayers](#), dated 5 June 2018.
2. See EY Global Tax Alert [Netherlands passes Act to implement Mandatory Disclosure Rules](#), dated 7 January 2020.
3. See EY Global Tax Alert, [Council of the EU adopts amendments for deferral of MDR filing deadlines](#), dated 24 June 2020.

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