

## Greece publishes Mandatory Disclosure Rules legislation: A detailed overview

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### Executive summary

In July 2020, the Greek Government published draft legislation to implement the European Union (EU) Directive on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive).

The draft legislation was issued on 7 July 2020, with a public consultation launched and comments on the proposals requested by 14 July 2020. On 29 July 2020, the Greek Parliament passed the Law by number 4714/2020, by which the draft MDR legislation was finalized.

The Greek Mandatory Disclosure Rules (MDR) legislation is broadly aligned to the requirements of the Directive.

The Greek legislation also provides for a six-month deferral to the reporting deadlines under DAC6 following the adoption on 24 June 2020 by the Council of the EU of amendments to the Directive.<sup>1</sup> This amendment permits Member States an option to defer for up to six months the time limits for the filing and exchange of information on cross-border arrangements under DAC6.

## Detailed discussion

### Background

The Council of the EU Directive 2018/822 of 25 May 2018 amending Directive 2011/16/EU regarding the mandatory automatic exchange of information in the field of taxation (the Directive or DAC6), entered into force on 25 June 2018.<sup>2</sup>

The Directive requires intermediaries (including EU-based tax consultants, banks and lawyers) and in some situations, taxpayers, to report certain cross-border arrangements (reportable arrangements) to the relevant EU member state tax authority. This disclosure regime applies to all taxes except value-added tax (VAT), customs duties, excise duties and compulsory social security contributions.<sup>3</sup> Cross-border arrangements will be reportable if they contain certain features (known as hallmarks). The hallmarks cover a broad range of structures and transactions. For more background, see EY Global Tax Alert, [Council of the EU reaches an agreement on new mandatory transparency rules for intermediaries and taxpayers](#), dated 14 March 2018.

EU Member States were to adopt and publish national laws required to comply with the Directive by 31 December 2019. The Greek MDR legislation was finalized on 31 July 2020, when it was published in the *Official Gazette*.

The Greek legislation is broadly aligned with the provisions of the Directive.

### Scope of taxes covered

The scope of the taxes covered under the Greek legislation is fully aligned with the Directive and applies to all taxes except VAT, customs duties, excise duties and compulsory social security contributions.

### Reportable arrangements

Under the Directive, 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.

Under DAC6, cross-border arrangements are defined as arrangements concerning more than one Member State or a Member State and a third country. The hallmarks can be distinguished as hallmarks which are subject to the main benefit test (MBT), and those which by themselves trigger a reporting obligation without being subject to the MBT.

The overall definition of “reportable arrangements” included in the Greek legislation aligns with the DAC6 provisions. The definition of reportable arrangements in the Greek legislation does not include domestic arrangements, nor does it include any additional hallmarks (i.e., in addition to hallmarks A-E as set out in the Directive).

### Hallmarks A-E of the Directive

Most elements of the hallmarks included in DAC6 are not expressly defined. The Greek legislation does not provide additional clarifications on these elements.

### Main benefit test

In accordance with DAC6, the MBT 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.

In accordance with the provisions of the Directive, the Greek legislation also provides that in the context of hallmark C1(b)(i), C1(c), or C1(d) (i.e., those hallmarks that require the MBT to be met), the presence of conditions set out in these subparagraphs of paragraph 1 of hallmark C cannot alone be a reason for concluding that an arrangement satisfies the MBT.

### Intermediaries

Under the Directive, intermediaries with EU nexus have the primary obligation to report arrangements to the tax authority. The Directive gives Member States the option to exempt intermediaries from the obligation to report where the reporting obligation would breach legal professional privilege (LPP). If there are no intermediaries which can report, the obligation will shift to the taxpayers.

The Greek legislation exempts intermediaries from reporting if the obligation to report constitutes a breach of the LPP. However, intermediaries that are exempt from reporting due to LPP, are obliged to notify other intermediaries or, if there is no other intermediary, the relevant taxpayers, without delay, of their reporting obligations.

In particular, the Greek legislation provides an LPP exemption to lawyers. This exemption covers individuals qualified as lawyers that provide legal advice and law firms. Both are regulated by the Greek Code of Lawyers.

However, tax advisors who are not acting in their capacity as lawyers, auditors and accountants are required to report.

The definition of “intermediary” is in line with the relevant provision of the Directive. The term “intermediary” is defined to include any person that designs, markets, organizes or makes available for implementation or manages the implementation of a reportable cross-border arrangement.

An “intermediary” is also defined as any person that provides, either directly or by means of other persons, aid, assistance or advice with respect to designing, marketing, organizing, making available for implementation or managing the implementation of a reportable cross-border arrangement.

Every intermediary is obliged to file information on reportable cross-border arrangements to the Greek tax authority, provided that the person meets at least one of the following conditions:

- (a) Is resident for tax purposes in Greece
- (b) Although the intermediary is not resident for tax purposes in any Member State:
  - Has a permanent establishment in Greece through which the services with respect to the arrangement are provided
  - Is incorporated in Greece, or governed by the Greek laws
  - Is registered with a professional association related to legal, taxation or consultancy services in Greece

The Greek legislation does not provide clarity on whether employees of an entity can themselves be regarded as intermediaries or whether an “in house” tax team could be regarded as such.

Furthermore, the Greek legislation provides that if, in the context of a cross-border arrangement, more than one intermediary is involved, then the obligation to file information on such arrangement lies with all intermediaries involved. However, an intermediary shall be exempt to the extent that it has proof, based on any appropriate means, that the required information has already been filed by another intermediary (reliance on proof).

## Reporting deadlines

Under DAC6, for intermediaries (and relevant taxpayers), the trigger events for reporting under the Directive are when the reportable arrangement is “made available for

implementation”; or when the reportable arrangement is “ready for implementation”; or when “the first step of implementation has been made.” The same trigger events apply in the Greek draft legislation.

Under the Directive, reporting starts from 1 July 2020 and exchanges between jurisdictions from 31 October 2020. However, reports will retroactively cover arrangements where the first step is implemented between 25 June 2018 and 1 July 2020.

Nevertheless, the Greek legislation provides a six-month deferral to the reporting deadlines under DAC6 following the adoption on 24 June 2020 by the Council of the EU of amendments to the Directive. As a result, the reporting timelines for Greece will be as follows:

- ▶ With respect to reportable cross-border arrangements which are made available for implementation, or are ready for implementation, or where the first step in respect of such arrangements is made between 1 July 2020 and 31 December 2020, the 30-day deadline for filing information shall begin from 1 January 2021.
- ▶ The deadline for filing information on “historical” cross-border arrangements, the first step of which was implemented between 25 June 2018 and 30 June 2020, is amended to 28 February 2021.
- ▶ The first periodic report in the case of marketable arrangements shall be made by 30 April 2021.
- ▶ The first exchange of information in respect of reportable cross-border arrangements between Greece and other Member States shall be made by 30 April 2021.

## Penalties

According to the Greek legislation, the penalties that are expected to apply depend on whether the party that was liable to report the arrangement (i.e., the intermediaries or the relevant taxpayer, if there are no intermediaries or even if there are such intermediaries, they are exempt due to LPP) keeps a revenue-expenses book or double-entry accounting books.

In particular, the penalties that are expected to apply are as follows:

	Revenue-expenses book		Double-entry books	
	Penalty per arrangement	Maximum penalty per tax audit	Penalty per arrangement	Maximum penalty per tax audit
Failure of filing the information	€5,000	€50,000	€10,000	€100,000
Filing of inaccurate or incomplete information	€2,500	€25,000	€5,000	€50,000
Failure of notifying the other liable persons by the intermediary regarding the exemption (due to LPP)	€5,000	€50,000	€10,000	€100,000

Late filing							
Penalty per month of delay and up to three months		Penalty for filing after three months		Maximum penalty per calendar year		Maximum penalty upon audit	
Revenue-expenses book	Double entry books	Revenue-expenses book	Double entry books	Revenue-expenses book	Double entry books	Revenue-expenses book	Double entry books
€250	€500	€2,500	€5,000	€5,000	€10,000	€25,000	€50,000

## Next steps

The Greek legislation has clarified some questions with respect to the interpretation and implementation of DAC6, however many questions remain unanswered. No additional clarifications were provided during the subsequent legislative process. However, further clarifications are expected to be provided through interpretative official guidelines.

Determining if there is a reportable cross-border arrangement raises complex technical and procedural issues for taxpayers and intermediaries. Due to the scale and significance of the regulations included in the legislation, taxpayers and intermediaries who have operations in Greece should review their policies and strategies for logging and reporting tax arrangements so that they are fully prepared for meeting their obligations.

## Endnotes

1. See EY Global Tax Alert, [Council of the EU adopts amendments for deferral of MDR filing deadlines](#), dated 24 June 2020.
2. 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.
3. DAC6 sets out a minimum standard. Member States can take further measures; for example, (i) introduce reporting obligations for purely domestic arrangements; (ii) extend the scope of taxes covered; (iii) bring forward the start date for reporting.

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