

Portugal postpones MDR reporting deadlines for six months

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Executive summary

On 11 August 2020, the Portuguese Government enacted legislation postponing for six months the reporting deadlines under the domestic law that implements the European Union (EU) Directive on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive).

This provision has been enacted in the context of the transposition into Portuguese law of the EU Directive 2020/876, of 24 June, which enables Member States to defer, up to six months, the time limits for the filing and exchange of information on cross-border arrangements foreseen in DAC6.

Detailed discussion

Under DAC6, taxpayers and intermediaries are required to report cross-border arrangements from 1 July 2020 onwards. However, DAC6 also applies retrospectively to cover arrangements where the first step of implementation occurred between 25 June 2018 and 1 July 2020.¹

On 24 June 2020, the Council of the EU amended the Directive 2011/16 in order to provide Member States with 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. The amendments also provide the possibility

of one further extension for a maximum additional three months, by unanimous decision of the Council, depending on the evolution of the pandemic.²

In this context, the Portuguese Government enacted the Decree-Law nr. 53/2020, of 11 August, to transpose the six-month deferral into Portuguese law.

The reporting deadlines under the new Portuguese Mandatory Disclosure Rules (MDR) framework are as follows:

- ▶ Cross-border arrangements where the first step of implementation took place between 25 June 2018 and 30 June 2020 shall be reported by 28 February 2021.
- ▶ For cross-border arrangements where the first step of implementation took place between 25 June 2018 and 30 June 2020 and where the intermediary has a legal or contractual obligation of professional secrecy:
 - The intermediary should notify the relevant taxpayer by 1 December 2020 of the latter's obligation to report in 30 days.
 - In cases where the relevant taxpayer does not inform the intermediary that they have complied with their obligation to report within the 30-day period from the intermediary's notification, the intermediary must report the arrangement by 28 February 2021.
- ▶ For cross-border arrangements where the first step of implementation took place between 25 June 2018 and 30 June 2020, the 10-day period for an intermediary or a relevant taxpayer to provide proof to the Portuguese Tax Authorities that the same information has already been filed in another Member State by the intermediary/relevant taxpayer or in Portugal by another intermediary/relevant taxpayer will end by 10 March 2021.
- ▶ For cross-border and relevant domestic arrangements that are made available for implementation, are ready for implementation or where the first step of implementation has been made between 1 July 2020 and 31 December 2020, the period of 30 days to report the arrangements will start on 1 January 2021.
- ▶ For intermediaries who have provided, directly or by means of other persons, aid, assistance or advice between 1 July 2020 and 31 December 2020, the period of 30 days to report the arrangements will start on 1 January 2021.
- ▶ For arrangements covered by a legal or contractual professional privilege which are made available for implementation, ready for implementation or where the first step of implementation occurred between 1 July 2020 and 31 December 2020, the five-day deadline for the intermediary to notify the relevant taxpayer of the relevant reporting obligation to the Portuguese Tax Authorities will start on 1 January 2021.
- ▶ In the case of marketable arrangements, the first periodic report shall be made by the intermediary to Portuguese Tax Authorities by 30 April 2021.
- ▶ The first exchange of information by the Portuguese Tax Authorities to the tax authorities or the remaining Member States should occur by 30 April 2021.

The Decree-Law also creates a DAC6 Forum that should be used to monitor the implementation of the Portuguese Law nr. 26/2020, of 21 July, that transposed DAC6, with the purpose of assisting its application and clarifying doubts, taking into account the experience of application in other Member States. The DAC6 Forum and respective functioning rules should be determined by instructions to be issued by the Minister of Finance.

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 Portugal should review their policies and strategies for logging and reporting tax arrangements so that they are fully prepared for meeting these obligations.

Endnotes

1. 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, [Council of the EU adopts amendments for deferral of MDR filing deadlines](#), dated 24 June 2020.

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