

Czech Tax Authority issues guidance on selected DAC6 questions

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The Czech General Financial Directorate (GFD) recently released a document (available [HERE](#) in Czech) that contains answers to selected questions on the application of *Act No. 164/2013 Coll.*, on international cooperation in tax administration regarding mandatory disclosure of reportable cross-border arrangements (DAC6).

The guidance does not contain many practical examples.

This Alert summarizes certain key issues addressed by the guidance.

DAC6 reporting language

The GFD states that the Czech tax administrator should accept the relevant report in either Czech or English; in some cases, however, the tax administrator may request additional translation to the Czech language.

Transitory period - incomplete transposition of the European Union (EU) Directive

The GFD states that if a cross-border arrangement is made available or is ready for implementation on or before 28 August 2020 (i.e., prior to the date of entry into force of the Czech DAC6 legislation), but the first step in the implementation of the arrangement has not been made by that date, the arrangement is not reportable.

The arrangement may become reportable after the first step in its implementation is made. The GFD states that, in this case, the DAC6 has been incompletely transposed (most likely in relation to the period from 1 July 2020 to 28 August 2020) and the legislator's future steps to correct the transposition in relation to this period cannot be ruled out.

Precondition for reportable cross-border arrangements

The GFD indicates that the basic precondition for an arrangement to become reportable is the concurrence of the following two aspects:

- ▶ The existence of a specific arrangement proposed by someone (intermediary, taxpayer or its employee)
- ▶ A certain tax advantage for arrangements subject to the main benefit test (MBT). Specifically, the GFD states that these two aspects must be satisfied also for the concealment of income or assets or the avoidance of the Organisation for Economic Co-operation and Development (OECD) Common Reporting Standard (CRS) as described in the category D hallmarks.

According to the GFD, if the above conditions are not satisfied simultaneously, the cross-border arrangement is not subject to the reporting obligation. If the above conditions are satisfied simultaneously, the arrangement must be assessed for satisfaction of at least one of the hallmarks (or, where appropriate, subject to the MBT).

A-ID and D-ID numbers

The GFD states that

- ▶ An arrangement identification number (A-ID) is a unique arrangement identifier that is automatically generated after a new report is processed (i.e., A-ID is assigned to a cross-border arrangement first reported within the EU).
- ▶ A report identification number (D-ID) is a unique identifier of the submission that is automatically generated after a new report, or an additional, non-corrective report, is processed.

The GFD recommends that obliged entities include their e-mail address in the contact information section of the report; the e-mail address is necessary for sending the A-ID and D-ID identification numbers after processing the report as well as for the tax administrator's potential communication in the case of incorrect submissions.

Reporting an arrangement in another EU Member State

The GFD states that an obliged entity is not required to report a reportable cross-border arrangement if it filed a report containing the same data in another EU Member State, or if another obliged entity has submitted a report containing the same data in one of the EU Member States.

If a reportable cross-border arrangement has been reported by another obliged entity or filed in another EU Member State, the GFD recommends keeping the A-ID and D-ID identification numbers, which may serve as evidence of compliance with the reporting obligation.

Hallmark E1¹

The GFD states that Czech individual binding assessments (Advance Pricing Agreements, APAs) generally do not satisfy hallmark E1 (as the Czech Republic follows the internationally accepted standards and the assessment of individual transactions is in compliance with the recommendations of the OECD and the EU Joint Transfer Pricing Forum). However, the GFD further states that each individual binding assessment and its content should be assessed on a case-by-case basis.

Is signing a contract the first step in the implementation of an arrangement?

According to the GFD, the very act of signing a contract does not necessarily have to be perceived as the first step in the implementation of the arrangement. The subsequent (first) step in the performance of the previously signed contract may be deemed the first step in the implementation of the arrangement. According to the GFD, this is to prevent possible antedating of contracts to avoid a possible reporting obligation.

Person affected by the arrangement

According to the GFD, the person affected is a person who is neither the relevant taxpayer, nor an intermediary of the arrangement, i.e., does not directly participate in the given arrangement, but could be affected by the arrangement.

Arrangement value

According to the GFD, the value of an arrangement is not linked to the amount of the tax advantage achieved through the arrangement. It may equal, e.g., the amount of consideration, or the registered capital. In the case of a loan, it will be the amount of the loan principal. In the case of a transfer of an interest in a company, it will be the value of the ownership interest.

Correction of a previously submitted report

In the case of a correction, the form must include the identification number of the given arrangement (A-ID) and also the identification number of the previous (erroneous) submission (D-ID), which is the subject of correction. According to the GFD, such additional report will then be considered the valid report; consequently, all the relevant information has to be re-entered in the subsequent report.

Marketable arrangement

The GFD states that a marketable arrangement could be compared to “boxed software” and, conversely, a bespoke arrangement is tailored to the needs of a specific relevant taxpayer of the arrangement.

The GFD further states that in the case of a marketable arrangement, professional confidentiality applies to the taxpayer rather than the arrangement itself. In this case, the intermediary shall report other information about the arrangement, except for the relevant taxpayer information. According to the GFD, in the case of a marketable arrangement with an intermediary applying professional confidentiality, the intermediary should, when the arrangement is sold to the relevant taxpayer, inform the relevant taxpayer of its reporting obligation and provide the relevant taxpayer with the relevant A-ID. The relevant taxpayer should then submit a subsequent report on the marketable arrangement identified by the A-ID.

Endnote

1. Application of unilateral safe harbor rules in the area of transfer pricing.

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EYG no. 008726-20Gbl

1508-1600216 NY
ED None

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