

Romanian Tax Authority publishes DAC6 guidance regarding national legislation on Mandatory Disclosure Rules

EY Tax News Update: Global Edition

EY's Tax News Update: Global Edition is a free, personalized email subscription service that allows you to receive EY Global Tax Alerts, newsletters, events, and thought leadership published across all areas of tax. Access more information about the tool and registration [here](#).

Also available is our [EY Global Tax Alert Library](#) on ey.com.

Executive summary

On 13 January 2021, the Romanian Tax Authority (ANAF) published the DAC6 guidance¹ (the Guidance) as provided for in the Government Ordinance no. 5/2020 of 28 January 2020 amending the Procedural Fiscal Code and implementing the European Union (EU) Directive on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive).

Detailed discussion

Background

As discussed in EY Global Tax Alert, Romania enacts final MDR legislation, dated 14 February 2020 addressing the approval of final Mandatory Disclosure Rules (MDR) legislation in Romania, the Romanian final legislation does not provide clarification on certain elements such as the hallmarks A-E of the Directive.

This Alert highlights certain clarifications provided by the Guidance on the hallmarks of the reportable cross-border arrangements, as well as for some basic definitions provided for in the EU Directive. It also includes general information on how to fill in and submit the DAC6 form to the Romanian tax authorities.

Main benefit test and meaning of “tax advantage”

The DAC6 Guidance includes a broad definition of the term “tax advantage” which is required for the main benefit test (MBT). The Guidance clarifies that it includes not only the obtaining of an exemption or refund of taxes and duties, but also situations in which the tax deductions are maximized and the fiscal losses or the incomes or gains are diminished, among others.

Hallmarks

Hallmark B3

A clarification with respect to hallmark B3 regarding the “round tripping of funds” is introduced by the Guidance which states that the original definition included in the EU Directive 2018/822 (as opposed to “money laundering” mentioned in the Romanian legislation transposing DAC6) should be used in applying this hallmark.

Hallmark C1

Another clarification introduced by the Guidance relates to the hallmark C1 with respect to the non-cooperatives jurisdictions and reference is made to the EU list of non-cooperative jurisdictions. It is also mentioned that the list of non-cooperating jurisdictions should be reviewed on the date of the reporting obligation, and not on the date of implementation of the arrangement. As regards hallmark C1 b(i), a clarification is introduced with respect to “almost equal to zero” which should be read as a tax rate of less than 1%.

Hallmark C2

A clarification introduced by the Guidance mentions that this hallmark C2 does not include the situations in which, and in order to avoid the double taxation, the tax credit related to the taxes paid in another jurisdiction is used (the case of a permanent establishment).

Hallmark D2

With respect to hallmark D2 a reference is made to the definition of “real beneficiary” included in the EU Directive 2015/849.

Hallmarks E1 and E3

With respect to hallmark E1 a reference is made to the definition of “safe harbor” as included in the Organisation for Economic Co-operation and Development Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017 - Chapter IV - Administrative approaches, E. Safe Harbors.

Regarding hallmark E3 and Earnings Before Interest and Taxes, the reference is made to “earnings/profits” and the definition included in the EU Directive 2018/822 as opposed to “revenues” as mentioned in the Romanian legislation transposing the EU MDR legislation.

Reporting

The Guidance also includes information on how to complete and submit the DAC6 form.

Reporting is completed by submitting either:

1. The template smart PDF form (Form A) that can be found on the Romanian Tax Authority’s website www.anaf.ro, by the person obliged to report or by a proxy, or
2. The PDF resulting from validation of XML file with DUKIntegrator (Form J).

Methods of submitting the declaration on the reportable cross-border arrangements in question are as follows:

- ▶ Through e-guvernare.ro for holders of a qualified digital certificate.
- ▶ Through Spatiul Privat Virtual (Virtual Private Space) for individuals who have credentials (username and password). This facility is not yet available and will likely be available at a later stage (given that the form/validations have been completed somewhat recently and the workload is very high).

Next steps

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 regime enacted in the final legislation, 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 their obligations and the specific deadlines.

Endnotes

1. https://static.anaf.ro/static/10/Anaf/AsistentaContribuabili_r/GHID_DAC6_13012021.pdf.

For additional information with respect to this Alert, please contact the following:

Ernst & Young SRL, Bucharest

- ▶ Miruna Enache miruna.enache@ro.ey.com
- ▶ Alexander Milcev alexander.milcev@ro.ey.com
- ▶ Costin Nanu costin.nanu@ro.ey.com

About EY

EY exists to build a better working world, helping to create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. EY member firms do not practice law where prohibited by local laws. For more information about our organization, please visit ey.com.

© 2021 EYGM Limited.
All Rights Reserved.

EYG no. 001076-21Gbl

1508-1600216 NY
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, legal or other professional advice. Please refer to your advisors for specific advice.

ey.com