

Slovakia passes draft legislation to implement EU Mandatory Disclosure Rules

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Executive summary

The Slovak Government approved, on 29 May 2019, draft legislation implementing the European Union (EU) Directive on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive). However, the formal legislative process includes additional steps starting in September 2019, where the Slovak National Council will review the approved draft legislation once again and approve it to be finalized.

No substantial changes to the approved draft legislation are expected before its final enactment. The Slovak legislation will enter into force on 1 July 2020.

The Slovak Mandatory Disclosure Rules (MDR) legislation is aligned with the requirements of the Directive.

Detailed discussion

Background

The Council of the European Union Directive 2018/822 of 25 May 2018 amending Directive 2011/16/EU regarding the mandatory automatic exchange of information in the field of taxation (DAC6 or the Directive), entered into force on 25 June 2018.¹

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.² 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 are to adopt and publish national laws required to comply with the Directive by 31 December 2019.

The key differences between the Slovak legislation and the Directive are summarized below. This Alert also highlights any clarifications provided by the Government of the Slovak Republic or amendments to the Slovak legislation since the issuance of the draft legislation.

Scope of taxes covered

The scope of taxes covered under the approved Slovak draft 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 approved Slovak draft legislation aligns with the DAC6. Domestic arrangements and additional hallmarks are not included.

Hallmarks A-E of the Directive

Most elements of the hallmarks included in DAC6 are not expressly defined. The approved Slovak draft legislation also does not appear to provide clarification on specific elements of the hallmarks. The explanatory memorandum to the draft legislation describes some of the provisions of the legislation, but it does not focus on specific DAC terms and does not provide a specific interpretation or approach to undefined DAC terms.

The approved draft Slovak legislation appears to include all the hallmarks included in DAC6. Moreover, there are no additional hallmarks included in the approved draft Slovak legislation.

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, the obtaining of a tax advantage.

In the Slovak legislation, the same MBT description has been included.

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 that can report, the obligation will shift to the taxpayers.

The Slovak legislation exempts lawyers, statutory tax advisors and statutory auditors from the reporting obligation due to LPP.

DAC6 defines two categories of intermediaries: promoters and service providers. The Slovak approved draft legislation defines intermediaries by reference to the same two categories and by reference to nexus in Slovakia. There is no difference between the reporting obligations that apply to promoters or service providers.

However, the approved legislation does not provide any clarity on whether employees of an entity can themselves be an intermediary or whether an in-house tax team could be regarded as an intermediary.

Reporting deadlines

Under DAC6, for intermediaries (and relevant taxpayers), the trigger events for reporting under the Directive (from 1 July 2020) 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 trigger events for reporting in Slovakia fully align with the rules under DAC6 as described above.

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 30 June 2020. The same reporting deadlines apply under the approved draft Slovak legislation.

Penalties

The approved draft Slovak legislation provides the exact details, format and reporting deadline by which information should be submitted to a competent tax authority of the Slovak Republic.

Failure to comply with these legal requirements will be sanctioned by a penalty of up to €30,000, which can be imposed more than once for repeated failures to comply.

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 in the approved draft legislation, taxpayers and intermediaries who have operations in Slovakia should review their policies and strategies for logging and reporting tax arrangements so that they are fully prepared for meeting their obligations.

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. 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.

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

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