

Netherlands issues draft mandatory disclosure regime legislation

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Executive summary

On 12 July 2019, the Dutch Government published formal draft legislation and draft explanatory notes addressing the implementation of the European Union (EU) Directive on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive). Under DAC6, taxpayers and intermediaries are required to report cross-border reportable arrangements from 1 July 2020. However, reports will retrospectively cover arrangements where the first step is implemented between 25 June 2018 and 1 July 2020.¹

Previously a draft proposal for public consultation was issued by the Dutch Government on 19 December 2018.² The Dutch formal draft legislation is subject to the formal legislative process, including debate in Parliament, and is likely to be amended before final enactment.

If implemented as currently proposed, the Dutch Mandatory Disclosure Rules (MDR) legislation will be broadly aligned to the requirements of the Directive. The explanatory notes provide clarity on the interpretation of the Dutch MDR legislation and how the Dutch Government anticipates the reporting process to operate.

The key highlights of the Dutch draft legislation and explanatory notes are summarized below.

Key Highlights

- ▶ The scope of taxes covered is not broader than the Directive.
- ▶ The definition of reportable arrangements follows DAC6.
- ▶ In addition to Hallmarks A-E included in DAC6, the Dutch draft explanatory notes also include additional information on the interpretation and application of the hallmarks.
- ▶ The definition of intermediaries is broadly aligned to the definition in DAC6.
- ▶ The Dutch reporting deadlines are broadly aligned to the DAC6 reporting deadlines.
- ▶ Penalties for failures to report up to a maximum of €830,000 are expected to apply as well as the possibility of criminal prosecution in specific cases.

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

A detailed Global Tax Alert is forthcoming.

Endnotes

1. See EY Global Tax Alert, [EU publishes Directive on new mandatory transparency rules for intermediaries and taxpayers](#), date 5 June 2018.
2. See EY Global Tax Alert, [The Netherlands publishes draft mandatory disclosure rules](#), date 31 January 2019.

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