

## Slovenia passes Act amending the *Tax Procedure Act* to implement Mandatory Disclosure Rules

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### Executive summary

The Slovenian National Assembly approved, on 28 May 2019, the Act amending the *Tax Procedure Act* (ZDavP-2L) (TPA) implementing, among other provisions, the European Union (EU) Directive on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive).

The amendments to the Slovenian TPA were published in the *Official Gazette* of 7 June 2019 (No 36/2019) and entered into force on 22 June 2019. The rules implementing the DAC6 will be effective from 1 July 2020. However, reports will retroactively cover arrangements where the first step is implemented between 25 June 2018 and 1 July 2020.

The final Slovenian Mandatory Disclosure Rules (MDR) legislation is significantly aligned to 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.<sup>1</sup>

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.<sup>2</sup> 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 final Slovenian MDR legislation is significantly aligned with the Directive. For the time being, there is no detailed guidance or further clarifications published by the Slovenian Ministry, although the Act itself gives an option to the Ministry to adopt more detailed guidance on the MDR rules at a later stage. Further bylaws and guidance are expected to be issued towards the end of 2019.

A comparison between the final Slovenian MDR legislation and the requirements of the Directive is summarized below.

### Scope of taxes covered

The scope of taxes covered under the Slovenian final 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 definition of reportable arrangements included in the Slovenian TPA is aligned with the DAC6 definition. Slovenia did not broaden the definition of reportable arrangements to include domestic arrangements. Also, the Slovenian legislation does not include any additional hallmarks to those included in DAC6 (the Slovenian TPA in this respect refers to Annex IV of the Directive, without specifying hallmarks in the national legislation itself).

### Hallmarks A-E of the Directive

Most elements of the hallmarks included in DAC6 are not expressly defined. The final Slovenian legislation does not provide any further interpretative clarifications. As stated above, the Act itself however gives an option to the Ministry of Finance to publish further guidance with respect to the MDR provisions at a later stage (expected by the end of 2019).

### Additional hallmarks

The final Slovenian MDR legislation does not include any additional hallmarks.

### 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, is the obtaining of a tax advantage.

Slovenian national legislation refers to Annex IV of the Directive and does not provide further guidance or clarification in this respect. Therefore, the MBT under the final Slovenian legislation fully aligns with the description included in the Directive.

### Intermediaries

Under the Directive, intermediaries with EU nexus have the primary obligation to report arrangements to the tax authority. Aligned with the Directive, the Slovenian legislation defines intermediaries by reference to nexus in Slovenia.

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

The final Slovenian MDR legislation exempts intermediaries from the obligation to report where the reporting obligation would breach LPP under the national legislation. This means that only lawyers are exempt from the reporting obligation in Slovenia due to LPP.

As stated above, at this stage, there is no further guidance issued. Thus, it is not yet clear whether an in-house tax team could be regarded as an intermediary or whether employees of an entity can themselves be an intermediary.

Further clarifications are expected to be issued by the end of 2019.

## 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 same trigger events also apply in Slovenian national legislation.

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 1 July 2020.

The Slovenian reporting deadlines are aligned with DAC6.

## Penalties

Failure to comply with the MDR reporting requirements can result in monetary penalties for intermediaries or relevant taxpayers if they fail to report, or if they fail to notify another intermediary or relevant taxpayer of the reporting obligation (when LPP exempts the primary reporting obligation).

For relevant taxpayers and intermediaries (who are individuals), penalties up to a maximum of €400 can be imposed for failure to comply with reporting obligations.

For relevant taxpayers and intermediaries (who are legal entities), non-compliance penalties can be imposed up to a maximum of €15,000 for small companies and up to a maximum of €30,000 for medium and large-sized companies. In addition, the “responsible person” of the legal entity which is the relevant taxpayer or intermediary may also be subject to penalties up to €4,000.

For serious offenses under the Slovenian TPA, higher penalties may apply up to a maximum of €100,000 for small companies and €150,000 for larger companies. Serious offense penalties up to €20,000 can also be imposed on the “responsible person” of the legal entity which is the relevant taxpayer or intermediary.

## Next steps

Determining if there is a reportable cross-border arrangement raises complex technical and procedural issues for taxpayers and intermediaries. Due to the significance of the regime enacted in the final legislation, taxpayers and intermediaries who have operations in Slovenia should review their policies and strategies for logging and reporting tax arrangements so that they are fully prepared for meeting their obligations and specific deadlines.

Intermediaries and taxpayers should work with their advisors to assess and review arrangements implemented after 25 June 2018 and determine whether they are likely disclosable. The Slovenian Ministry of Finance has not yet published any detailed guidance and it is difficult to predict how the tax authorities will react to reported arrangements and whether reporting itself would trigger tax audits or any other adverse tax consequences. More guidance is expected to be issued by the end of 2019.

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## 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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