

Lithuanian President signs primary legislation on implementation of Mandatory Disclosure Regime

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Executive summary

On 30 July 2019, the President of Lithuania signed the primary legislation implementing the European Union (EU) Directive on the mandatory disclosure and exchange of reportable cross-border tax arrangements (referred to as DAC6 or the Directive) into Lithuanian law. 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

The final primary Lithuanian legislation is an enabling act which grants powers to the State Tax Inspectorate to issue the detailed Mandatory Disclosure Regime (MDR) regulations at a later point in time. The primary legislation covers the effective date of the proposed MDR rules, the definition of reportable arrangements, the definition of intermediaries and relevant taxpayers and some content on the anticipated reporting deadlines. The detailed regulations to be issued by the State Tax Inspectorate are expected to be issued by the end of 2019 and will address the detailed elements of the MDR rules, including the scope of taxes covered, the content of the hallmarks, the procedures for disclosure and the penalty regime for failures to report.

The Lithuanian MDR legislation will enter into force on 1 July 2020 and will be effective from that date.

The primary Lithuanian MDR legislation is broadly aligned to the requirements of the Directive with respect to the elements it covers. However, the detailed regulations will determine the extent to which the national legislation will fully align with the requirements of the Directive. Early indications from the State Tax Inspectorate indicate a policy intention for close alignment between DAC6 and the detailed national rules.

The key highlights of the primary Lithuanian MDR legislation are summarized below.

Key highlights

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.

The Lithuanian primary legislation defines reportable arrangements in the same manner as the Directive. However, the detailed content of the hallmarks will be included in the detailed regulations to be issued by the State Tax Inspectorate. Based on current indications from the State Tax Inspectorate, it is not anticipated that the detailed regulations will include any additional hallmarks other than those specified in Annex IV of the Directive.

Intermediaries

DAC6 defines two categories of intermediaries: promoters and service providers. The Lithuanian primary legislation defines intermediaries by reference to the same two categories and by reference to Lithuanian nexus.

Aligned with the Directive, under the Lithuanian primary legislation, intermediaries have the primary obligation to report arrangements to the tax authority. If there are no intermediaries which can report, the obligation will shift to the taxpayers.

The Directive gives the option to exempt intermediaries from the obligation to report where the reporting obligation would breach legal professional privilege (LPP). The primary Lithuanian legislation appears to imply that the detailed regulations to be issued by the State Tax Inspectorate may provide for such exemption. However, there is no specific reference in the primary Lithuanian legislation as to whether attorneys-at-law will be exempt from the reporting obligation due to LPP. Client advice provided by Lithuanian tax advisors is not generally covered by LPP.

Unlike the Directive, intermediaries cannot rely on reports made by another intermediary to relieve them of their own reporting obligation. Therefore, where there is more than one intermediary, the reporting obligation shall be incumbent on all the intermediaries involved in that cross-border arrangement.

Reporting deadlines

Under the Directive, reporting starts from 1 July 2020 and exchanges between jurisdictions from 31 October 2020. However, reports will retrospectively cover arrangements where the first step is implemented between 25 June 2018 and 1 July 2020. The Lithuanian reporting deadlines are aligned with the DAC6 reporting deadlines.

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

Endnote

1. See EY Global Tax Alert, [EU publishes Directive on new mandatory transparency rules for intermediaries and taxpayers](#), date 5 June 2018.

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EYG no. 003651-19Gbl

1508-1600216 NY
ED None

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