13 August 2019

Global Tax Alert

Luxembourg Government submits draft law implementing Mandatory Disclosure Rules to Parliament

NEW! EY Tax News Update: Global Edition

EY's new 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 8 August 2019, the Luxembourg Government submitted the draft law (Draft Law) implementing the European Union (EU) Directive on the mandatory disclosure and exchange of information on cross-border tax arrangements (DAC6 or the Directive)[1] to the Luxembourg Parliament. 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 ("transitional period").[2]

The Draft Law will now go through the legislative process, which involves the analysis of the text by a dedicated parliamentary commission, the collection of opinions from different advisory bodies (most importantly the Council of State), discussion and vote of the text in a parliamentary session and finally its publication in the *Official Gazette* (Memorial). The entire process may take several months and is expected to be completed before year-end.

If implemented as currently proposed, the Luxembourg Mandatory Disclosure Rules (MDR) legislation will be aligned with the requirements of the Directive. Most importantly, no additional hallmarks are included in the Draft Law.

The key highlights of the Draft Law are summarized below.

Building a better working world

Key Highlights

- In line with DAC6, cross-border arrangements are defined as arrangements concerning more than one Member State or a Member State and a third country (i.e., domestic arrangements are therefore excluded). Any cross-border arrangement or series of arrangements that meets at least one of the hallmarks (as set out in Annex IV of DAC6) must be reported.
- The Draft Law does not add any further domestic or cross-border hallmarks than those included in the Directive.
- The definition of "intermediaries" is aligned with the definition in the Directive and covers any person that designs, markets, organizes or makes available for implementation or manages the implementation of the reportable cross-border arrangement as well as any person that has undertaken to provide, directly or by means of other persons, aid, assistance or advice with respect to such activities mentioned immediately above.
- Intermediaries subject to Article 35 of the Law on the Legal Profession (i.e., lawyers) are granted a waiver from filing information on a reportable cross-border arrangement where the reporting obligation would breach their legal professional privilege. However, they must notify any other intermediary or, if there is no such intermediary, the relevant taxpayer of their reporting obligations regarding a particular reportable cross-border arrangement **within 10 days** beginning on the day after the arrangement: (i) was made available for implementation, or (ii) was made ready for implementation, or (iii) when the first step in the implementation was undertaken, whichever occurs first. In addition, lawyers will nevertheless have to file **within 30 days** certain information on a reportable cross-border arrangement with the Luxembourg tax authorities.
- Reporting deadlines are in accordance with those stated under the Directive (i.e., 31 August 2020 for arrangements whose first step of implementation falls within the transitional period and 30 days beginning on the day defined above for arrangements after the transitional period).
- Failure to comply with the MDR reporting obligations (e.g., failure to report, late compliance, incomplete/inexact reporting, failure to notify/late notification in the context of lawyer's obligation to notify other intermediaries/the relevant taxpayer within 10 days) can result in monetary **penalties amounting to a maximum of €250,000**.
- Luxembourg taxpayers to whom a reportable cross-border arrangement is made available for implementation, or who are ready to implement or have implemented the first step of such an arrangement will have to declare in the context of their annual income tax returns the use of the arrangement for each year where the arrangement is being used.

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

The Draft Law will now go through the legislative process, which involves the analysis of the text by a dedicated parliamentary commission, the collection of opinions from different advisory bodies (most importantly the Council of State), discussion and vote of the text in a parliamentary session and finally its publication in the *Official Gazette* (Memorial). As noted above, the entire process may take several months and is expected to be completed before year-end.

A detailed Global Tax Alert is forthcoming.

Endnotes

1. Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements.

2. See EY Global Tax Alert, *EU publishes Directive on new mandatory transparency rules for intermediaries and taxpayers*, dated 5 June 2018.

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

Ernst & Young Tax Advisory Services Sàrl, Luxembourg City

- Bart Van Droogenbroek, *Tax Leader* bart.van.droogenbroek@lu.ey.com
- Anja Taferner, *MDR Country Leader* anja.taferner@lu.ey.com
- Jacques Linon, *Banking & Insurance Tax Leader* jacques.linon@lu.ey.com
- Olivier Bertrand, *Private Equity Tax Leader* olivier.bertrand@lu.ey.com
- Dietmar Klos, *Real Estate Tax Leader* dietmar.klos@lu.ey.com
- Fernando Longares, *TMT & Life Science Tax Leader* fernando.longares@lu.ey.com
- Christian Schlesser, *Commercial & Public Sector Tax Leader* christian.schlesser@lu.ey.com
- Vincent Rémy, *Asset Management Tax Leader* vincent.remy@lu.ey.com
- Nicolas Gillet, *Transfer Pricing Leader* nicolas.gillet@lu.ey.com
- Elmar Schwickerath, *Global Compliance & Reporting Leader* elmar.schwickerath@lu.ey.com
- Manuela Abreu, *Wealth & Asset Management Tax* manuela.abreu@lu.ey.com

Ernst & Young LLP (United States), Financial Services International Tax Desks – Luxembourg, New York

- Jurjan Wouda Kuipers jurjan.woudakuipers@ey.com
- Michel Alves de Matos michel.alvesdematos@ey.com

Ernst & Young LLP (United States), Luxembourg Tax Desk, New York

- Serge Huysmans serge.huysmans@ey.com
- Xavier Picha xavier.picha@ey.com

Ernst & Young LLP (United States), Luxembourg Tax Desk, Chicago

- Alexandre J. Pouchard alexandre.pouchard@ey.com

Ernst & Young LLP (United States), Luxembourg Tax Desk, San Jose

- Andres Ramirez-Gaston andres.ramirezgaston@ey.com

EY | Assurance | Tax | Transactions | Advisory

About EY
EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

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. For more information about our organization, please visit ey.com.

EYG no. 003751-19Gbl

1508-1600216 NY
ED None

ey.com