

Hungary passes act to implement Mandatory Disclosure Rules

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Executive summary

On 12 July 2019, the Hungarian Parliament approved the *Hungarian Act LXXXII of 2019 on the modification of certain tax legislation and other related laws for approximation with the European Union law* implementing 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 retroactively cover arrangements where the first step is implemented between 25 June 2018 and 1 July 2020.

The Hungarian legislation entered into force on 23 July 2019 and will be effective from 1 July 2020.

The final Hungarian Mandatory Disclosure Rules (MDR) legislation is substantially aligned to the requirements of the Directive. The Hungarian Tax Authority has yet to publish explanatory notes or official guidance on the application of the Hungarian MDR legislation.

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 (the Directive or DAC6), 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.

Scope of taxes covered

The scope of taxes covered under the Hungarian 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 overall definition of reportable arrangements included in the final Hungarian legislation is fully aligned with the DAC6 definition. The Hungarian final legislation does not

extend the scope of the Directive to domestic arrangements. Also, the Hungarian final legislation does not include any hallmarks in addition to Hallmarks A-E included in Annex IV of the Directive.

Hallmarks A-E of the Directive

Most elements of the hallmarks included in DAC6 are not expressly defined.

The Hungarian final legislation transposes the DAC6 Hallmarks A-E with a description and scope identical to the Directive. However, since the Hungarian Tax Authority has yet to publish official guidance, no interpretative clarifications currently accompany the final Hungarian 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, considering all relevant facts and circumstances, a person may reasonably expect to derive from an arrangement, is the obtaining of a tax advantage. The Hungarian final legislation includes the same MBT concept.

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

The Hungarian final legislation includes an exemption from the reporting obligation for intermediaries where the reporting obligation would breach LPP (as defined in each Hungarian law applicable to legal, tax and accounting activities). Under Hungarian general law, the definition and scope of LPP differs depending on the nature of the services and advice provided. Broadly, tax advisors and accountants are not expected to be exempt from the reporting obligation due to LPP, whereas lawyers are likely to be exempted from reporting based on LPP (subject to the nature of the advice provided). Until more clarity is obtained from national guidance, the application of LPP to the different categories of intermediaries should be reviewed on a case by case basis.

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

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 are included in the final Hungarian 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 Hungarian reporting deadlines are fully aligned with DAC6.

Penalties

In the case of a failure to report or in the case of late, incorrect, false or incomplete reporting, the Hungarian Tax Authority may levy default penalties on the persons liable

for reporting up to an amount of HUF500,000. However, no such penalties shall be levied in the case of late, incorrect, false or incomplete reporting if the person liable for reporting or notification proves that he acted in the given situation as generally expected.

Nonetheless, in the case of a breach described above, the Hungarian Tax Authority may levy default penalties up to an amount of HUF5,000,000 if the persons liable for reporting or notification do not complete or not lawfully complete their liability within the deadline specifically set by the Hungarian Tax Authority.

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 Hungary 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.

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