

German Government issues update on draft Mandatory Disclosure Rules

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Executive summary

On 9 October 2019, the German Federal Government issued an update of the draft legislation on Mandatory Disclosure Rules 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). The draft legislation contains some changes compared to the ministerial draft bill that was issued two weeks earlier.¹

Under DAC6, taxpayers and intermediaries are required to report cross-border reportable arrangements as from 1 July 2020. However, reports will retrospectively cover arrangements where the first step is implemented between 25 June 2018 and 1 July 2020.²

Key Highlights

Only two weeks after the German Ministry of Finance published an amended draft bill on the Mandatory Disclosure Rules, the German Federal Government has issued an update of the draft legislation. The draft bill is subject to the further legislative process which is expected to be finalized by 31 December 2019 as required by the Directive. Like the ministerial draft bill, the Government's draft does not contain any reporting obligations for purely domestic arrangements and is broadly aligned to the requirements of the Directive.

The most significant change compared to the previous ministerial draft bill is a change to the hallmark regarding cross-border payments between two or more associated enterprises (the equivalent of hallmark C1 under the Directive), which was suggested in the many comments on the ministerial draft bill. According to the Government's draft bill, only those payments which are deductible for the payor as operating expenses are considered relevant. However, this limitation would currently only apply to the subset of the C1-equivalent hallmark which is not subject to the so-called "main benefit test." Presumably, this is an editorial mistake which could be corrected during the legislative process.

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

Endnotes

1. See EY Global Tax Alert, [German Ministry of Finance amends draft Mandatory Disclosure Rules](#), dated 30 September 2019.
2. See EY Global Tax Alert, [EU publishes Directive on new mandatory transparency rules for intermediaries and taxpayers](#), date 5 June 2018.

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

Ernst & Young GmbH, Berlin

- ▶ Dirk Nolte dirk.nolte@de.ey.com

Ernst & Young GmbH, Düsseldorf

- ▶ Cornelia Wolff cornelia.wolff@de.ey.com

Ernst & Young GmbH, Munich

- ▶ Christian Ehlermann christian.ehlermann@de.ey.com
- ▶ Katja Nakhai katja.nakhai@de.ey.com

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

- ▶ Tobias Appl tobias.appl2@ey.com
- ▶ Thomas Eckhardt thomas.eckhardt@ey.com
- ▶ Tamara Haydu tamara.haydu1@ey.com
- ▶ Stefan Heinen stefan.heinen1@ey.com
- ▶ Julia Koeth julia.koeth1@ey.com
- ▶ Lukas Kronen lukas.kronen1@ey.com

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EYG no. 004571-19Gbl

1508-1600216 NY
ED None

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