21 October 2019

Global Tax Alert

Ireland publishes draft legislation on Mandatory Disclosure Rules

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Executive summary

On 17 October 2019, the Irish Government published draft legislation in Finance Bill 2019 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 retrospectively cover arrangements where the first step is implemented between 25 June 2018 and 1 July 2020.[1]

The Irish draft legislation is subject to the formal legislative process and may be amended before final enactment which is expected in late December 2019.

If implemented as currently proposed, the Irish Mandatory Disclosure Rules (MDR) legislation will be broadly aligned with the requirements of the Directive.

The key highlights of the Irish draft legislation are summarized below.

Key highlights

- The scope of taxes covered follows those covered by the Directive.
- Key definitions including "reportable cross-border arrangement," "intermediary" and "relevant taxpayer" also broadly follow those of the Directive.

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- The hallmarks, which apply only apply to cross-border arrangements, are transposed directly from the Directive.[2]
- Time limits for filing reports are aligned to those in the Directive. In addition, periodic reporting by intermediaries of marketable arrangements may also apply on a three-month basis.
- Taxpayers are required to include the reference number assigned to a reportable cross-border arrangement in their annual tax return in each of the years for which they use it in accordance with Article 8ab, paragraph 11 of DAC6.
- Where an intermediary or relevant taxpayer fails to report an arrangement within the 30-day reporting period a penalty not exceeding €500 per day per arrangement can be imposed.
- Where an intermediary or relevant taxpayer fails to meet their obligations under the transitional provisions for arrangements implemented before 1 July 2020, a penalty of up to €4,000 per arrangement can be imposed. If the failure continues after a penalty is imposed there is a further penalty of €100 per day per arrangement.
- Where an intermediary fails to meet its obligations relating to a marketable arrangement, or as a result of a claim for legal professional privilege a penalty of up to €4,000 per arrangement can be imposed. If the failure continues after a penalty is imposed there is also a further penalty of €100 per day per arrangement.
- Where a taxpayer fails to the include the reference number assigned to a reportable cross-border transaction in its annual tax return, a penalty not exceeding €5,000 can be imposed.

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

A detailed Global Tax Alert will be issued shortly.

Endnotes

1. See EY Global Tax Alert, *EU publishes Directive on new mandatory transparency rules for intermediaries and taxpayers*, dated 5 June 2018.
2. Ireland has had a domestic mandatory disclosure regime since 2011 which will continue to operate separate and alongside this new cross-border regime.

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EYG no. 004733-19Gbl

1508-1600216 NY
ED None

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