

## France publishes legislation on Mandatory Disclosure Rules

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### Executive summary

On 22 October 2019, the French Government published legislation 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). 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.<sup>1</sup>

Draft guidance should be issued before the end of the year and should be subject to public consultation. In addition, an order indicating the information to report will be issued by 30 December 2019.

The French Mandatory Disclosure Rules (MDR) are broadly aligned to the requirements of the Directive.

The key highlights of the French legislation are summarized below.

## Key highlights

The French legislation does not contain any information regarding the taxes covered by the reporting obligation.

- ▶ In accordance with the Directive, under the French legislation, 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 (equivalent to hallmarks A-E specified in Annex IV of the Directive).
- ▶ The French legislation defines the term “cross-border arrangement” as any arrangement in the form of an agreement, scheme or plan, whether it is enforceable, concerning France and another State, irrespective of whether it is a member of the EU.
- ▶ The definition of reportable arrangements does not include “domestic” arrangements.
- ▶ The French legislation does not provide clarification on the definition of the hallmarks and does not include any additional hallmarks.
- ▶ The definition of intermediaries is the same as provided for under Article 3, Paragraph 21 of DAC6, except it does not mention the right of any person to provide evidence that it did not know and could not reasonably be expected to know that it was involved in a reportable cross-border arrangement.
- ▶ The French legislation provides that intermediaries benefiting from Legal Professional Privilege (LPP) under Article 226-13 of the French Penal Code have to report cross-border arrangements if they have the relevant taxpayer’s agreement to do so.
- ▶ In the absence of the relevant taxpayer’s agreement, intermediaries benefiting from LPP must notify any other intermediary of its reporting obligation. If there is no other intermediary the notification must be addressed to the relevant taxpayer. In such a case, intermediaries benefiting from LPP also must transmit to the relevant taxpayer the information that must be reported. The French legislation specifies that these notifications should be made by any means that gives them a certain date.
- ▶ The French legislation exempts permanent establishments of French intermediaries located outside France from the reporting obligation to the French Tax Authority when the arrangement is related to their activity.
- ▶ The French legislation also adds that an intermediary benefiting from an authorization to practice in France delivered by a professional association related to legal, taxation or consultancy services are subject to the reporting obligation.
- ▶ The Directive provides that an intermediary will be exempted from the reporting obligation if it has proof that the same information has been filed by another intermediary. The French legislation specifies that an intermediary will be exempted from the reporting obligation if it has proof that:
  - The report has been entirely filed by another intermediary in France or in the EU; or
  - The report has been filed by another intermediary in France or in the EU and the other intermediaries (or the relevant taxpayer if there is no other intermediary) have received the notification. In such a case, the exemption only applies to the intermediary if it has not received the notification. (At this stage, it is unclear which circumstances will be covered by this section of the text).
- ▶ The French reporting deadlines are aligned with the DAC6 reporting deadlines. However, the French legislation adds that the relevant taxpayer must report cross-border arrangements within 30 days beginning on the day it receives the notification from the intermediary benefiting from LPP.
- ▶ The French legislation defines the first step of implementation as any legal act, economic or accounting operation or fiscal election for the purposes of implementing the cross-border arrangement.
- ▶ The Directive provides that Member States may take the necessary measures to require that each relevant taxpayer file information about their use of the tax arrangement in each of the years for which they use it. In accordance with this option under the Directive, the French legislation requires that each taxpayer involved in a reportable cross-border arrangement file annually information about their use of the arrangement for the previous year.
- ▶ Penalties up to a maximum of €10,000 for failures to report, or failures to notify, are expected to apply. The amount of the penalty cannot exceed €5,000 for the first failure to report of the current calendar year and the three previous years. The amount of the penalty applied to the same intermediary or taxpayer cannot exceed €100,000 per year.

- ▶ The French legislation provides that cross-border arrangements for which the first step is implemented between 25 June 2018 and 1 July 2020 must be reported by 31 August 2020 by promoters at the latest. On the other hand, service providers giving aid, assistance, or advice must report arrangements only if they have received a notification by an intermediary benefiting from LPP during this transitional period.

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

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### 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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