



**LEGALINK**

INTERNATIONAL BUT PERSONAL

**DAC6**  
THE EU DIRECTIVE  
ON CROSS-BORDER  
TAX ARRANGEMENTS

## CYPRUS

### Ioannides Demetriou LLC

#### 1. When was DAC 6 implemented into the National Tax Law of Cyprus?

DAC 6 has not been implemented into Cyprus legislation to this date. The provisions of DAC 6 are expected to be transposed into the Cyprus legislation by amending the Law on the Administrative Cooperation in the Field of Taxation of 2012 (“Administrative Cooperation Law”) in the following months. Thus, the input provided is based on the draft Bill which has been circulated and announcements issued by the Tax Department, and it may be subject to revision following the implementation of the local legislative framework.

#### 2. Have the tax authorities in your jurisdiction issued guidelines for the application and enforcement of the obligations under DAC 6?

The Cyprus Tax Department has not issued guidelines for the application and enforcement of the obligations under DAC 6; such guidelines are expected following the enactment of the implementing law.

A brief announcement of the Tax Department in this respect, issued in September 2019, urges persons with an obligation to report cross-border arrangements to gather relevant information for reportable arrangements implemented within the period of 25 June 2018 to 30 June 2020, so that they are in a position to comply with their obligations.

The said announcement further includes the following:

- The information which should be reported for each reportable cross-border arrangement includes the following, as applicable:
  - the identification of intermediaries and relevant taxpayers, including inter alia their name, date and place of birth (in the case of an individual), residence for tax purposes, TIN and, where appropriate, the persons that are associated enterprises to the relevant taxpayer,
  - details of the hallmarks that make the cross-border arrangement reportable,
  - summary of the content of the reportable cross-border arrangement, including a reference to the name by which it is commonly known, if any, and a description in abstract terms of the relevant business activities or arrangements, without leading to the disclosure of a commercial, industrial or professional secret or of a

commercial process, or of information the disclosure of which would be contrary to public policy,

- the date on which the first step in implementing the reportable cross-border arrangement has been made or will be made,
- details of the national provisions that form the basis of the reportable cross-border arrangement,
- the value of the reportable cross-border arrangement,
- the member state of the relevant taxpayer(s) and any other member states which are likely to be concerned by the reportable cross-border arrangement,
- the identification of any other person in a member state likely to be affected by the reportable cross-border arrangement, indicating to which member states such person is linked.

– What constitutes a reportable cross-border tax arrangement under the laws and regulations of your jurisdiction?

The draft Bill defines “reportable cross-border arrangement” as “any cross-border arrangement that contains at least one of the hallmarks set out in Annex IV”.

– What constitutes a “cross-border” arrangement? To what extent are national structures also covered?

The draft Bill defines a “cross-border arrangement” as “an arrangement concerning either at least two member states or a member state and a third country, where at least one of the following conditions is met:

(a) not all of the participants in the arrangement are resident for tax purposes in the same jurisdiction;

(b) one or more of the participants in the arrangement is simultaneously resident for tax purposes in more than one jurisdiction;

(c) one or more of the participants in the arrangement carries on a business in another jurisdiction through a permanent establishment situated in that jurisdiction and the arrangement forms part or the whole of the business of that permanent establishment;

(d) one or more of the participants in the arrangement carries on an activity in another jurisdiction without being resident for tax purposes or creating a permanent establishment situated in that jurisdiction;

(e) such arrangement has a possible impact on the automatic exchange of information or the identification of the beneficial owner.

– **How are the hallmarks and the "main benefits" test in Annex IV to DAC 6 defined and interpreted in your jurisdiction?**

The draft Bill mainly reflects Annex IV of DAC 6 and further provides in relation to the "main benefits" test that the test will be satisfied if it can be established that the main benefit or one of the main benefits which, having regard to all relevant facts and circumstances, a person may reasonably expect to derive from an arrangement is the obtaining of a tax advantage in respect of taxes determined under section 4 of the Administrative Cooperation Law.

Section 4 of the Administrative Cooperation Law currently includes all taxes of any kind imposed by the Republic of Cyprus or another member state, or on its behalf or its territorial or administrative subdivisions, including local authorities, and excludes VAT, customs duties, excise duties covered by other legislation on administrative cooperation between member states, compulsory social security contributions payable to the Republic of Cyprus or another member state or a subdivision thereof, or to social security public institutions.

The above provisions included in the draft Bill are currently under intensive discussions, in particular in relation to which taxes will be covered under the implementing law, thus it remains to be seen whether the above provision will be adopted in the implementing law.

– **What constitutes a "tax benefit" under the legislation in your jurisdiction?**

The draft Bill provides that a tax advantage for the purpose of determining the "main benefits" test includes:

- (i) relief or additional relief from tax,
- (ii) refund or additional refund of tax,
- (iii) avoidance or reduction of imposed tax,
- (iv) deferral of tax payment or acceleration of tax return, or

(v) avoidance of the obligation to withhold tax

where gaining the tax advantage cannot be reasonably considered to be consistent with the principles on which the provisions relating to the reportable cross-border arrangement are based.

- Is it required that the achievement of the "tax benefit" is the sole or the main purpose of the structure?

According to the draft Bill, the achievement of the tax benefit should be the main or one of the main benefits of the arrangement, as one may reasonably expect, if the arrangement is considered to be reportable by virtue of falling under category A, category B or category C(1)(b)(i), (c) and (d) hallmarks.

- Do the laws and regulations of your jurisdiction require a connection to a potential abuse of tax structures?

The draft Bill does not include express provisions requiring a connection to a potential abuse of tax structures.

- Did your jurisdiction adopt a whitelist of non-reportable "standard" tax arrangements?

No whitelist of non-reportable tax arrangements has been adopted in Cyprus to date.

### 3. Who is subject to the reporting obligation (taxpayer, intermediary, other)?

According to the draft Bill, the reporting obligation lies with an intermediary. In the event there is no intermediary involved or the intermediary notifies the relevant taxpayer or another intermediary of the application of an exemption under the relevant provisions, the obligation to file information on a reportable cross-border arrangement lies with the other notified intermediary, or, if there is no such intermediary, with the relevant taxpayer.

- Do the laws and regulations of your jurisdiction address the issue of potential legal conflicts of intermediaries with professional confidentiality obligations?

The draft Bill provides that an intermediary who is restricted in reporting relevant information due to legally recognised legal privilege is exempt from reporting, provided that he has notified, without delay, to every other intermediary or, if there is no other intermediary, to the relevant taxpayer, the obligation for reporting. For the purposes of the said exemption, the legally

recognised legal privilege applies only where the intermediary is a lawyer who practices the profession as defined under the Cyprus Advocates Law.

#### **4. What information must be included in a report on cross-border tax arrangements under DAC 6 in your jurisdiction and is there a specific format to be used?**

The information expected to be required when reporting a cross-border tax arrangement is as noted under Question 1 above. However, details on the precise information to be reported and the specific format to be used, if any, are still anticipated following the enactment of the implementing law.

#### **5. Is there an obligation to report tax arrangements which were already implemented in the past? If yes, what is the cut-off date?**

The draft Bill includes an obligation to report tax arrangements which have commenced in the period from 25 June 2018 to 30 June 2020 by 28 February 2021.

The Cyprus Tax Department issued an announcement in July 2020 indicating the following timeframes for reporting:

- i. a reportable cross-border arrangement which has been carried out between 25 June 2018 and 30 June 2020 should be reported by 28 February 2021,
- ii. a reportable cross-border arrangement which has been carried out between 1 July 2020 and 31 December 2020 should be reported within 30 days starting from 1 January 2021, and
- iii. a reportable cross-border arrangement which has been carried out after 1 January 2021 should be reported within 30 days beginning on the day after the reportable cross-border arrangement is made available for implementation or is ready for implementation, or when the first step in its implementation has been made, whichever occurs first.

#### **6. Who is the competent authority for filing a report under DAC6 in your jurisdiction?**

The competent authority for filing a report in Cyprus will be the Cyprus Tax Department of the Ministry of Finance.

## 7. What is the deadline for filing a report?

The first deadline for filing a report is 28 February 2021, based on the announcement of the Tax Department. However, this is expected to be confirmed upon enactment of the implementing law.

- Has there been an extension of deadlines due to the COVID-19 pandemic?

## 8. What are the penalties and/or other legal consequences for failing to submit a DAC 6 report within the applicable deadline?

The draft Bill provides for the following penalties:

- i. administrative fines from €10,000 to €20,000 for failure to report,
- ii. administrative fines from €1,000 to €5,000 for a delay in reporting of up to 90 calendar days, and
- iii. administrative fines from €5,000 to €20,000 for a delay of more than 90 calendar days.

## 9. Has your firm implemented specific processes regarding DAC 6 compliance? If yes, please describe.

In light of the fact that the implementing law has not yet been enacted, our firm is currently reviewing cross-border arrangements which may be considered to be reportable so as to be in a position to comply with our obligations upon implementation of the local law. Specific processes will be implemented upon enactment of such legislation.

## 10. Contact details

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