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INTERNATIONAL BUT PERSONAL

DAC6
THE EU DIRECTIVE
ON CROSS-BORDER
TAX ARRANGEMENTS

INTRODUCTION

On 25 May 2018 the Council of the European Union adopted Directive 2018/822/EU as the sixth amendment to the Directive on Administrative Cooperation 2011/16/EU, commonly referred to as "DAC 6", which imposes extensive reporting requirements with respect to cross-border tax planning arrangements affecting at least one EU member state. DAC 6 is part of the continuing efforts of the EU Commission to clamp down on tax avoidance and evasion in the internal market by creating transparency regarding potentially aggressive cross-border tax planning schemes.

The reporting obligations under DAC 6 are very broad and do not just apply to tax lawyers and therefore create a new set of compliance issues for the legal profession, in particular for lawyers involved in cross-border M&A transactions. Since DAC 6 only provides a general framework and gives the member states significant discretion regarding the transformation into national laws, it is useful for any practitioner who can be a potential "intermediary" to have an overview over the various laws and regulations in the EU member states.

CZECH REPUBLIC

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1. When was DAC 6 implemented into the National Tax Law of the Czech Republic?

DAC 6 was implemented into the Czech Tax Law by Act no. 343/2020 Coll., and the new provisions dealing with reporting obligation of advisors and other professionals involved in tax-planning schemes came into force on 29 August 2020.

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

Czech tax authorities have not issued any guidelines concerning DAC 6 implementation yet.

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

The Czech implementation of the DAC 6 directive copies the provisions of DAC 6. Therefore, the reportable cross-border arrangement constitutes any cross-border arrangement that contains at least one of the hallmarks.

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

The cross-border arrangement is constituted by any arrangement which concerns either more than one member state, or a member state and a third state, where at least one of the following conditions is met:

- not all of the participants in the arrangement are resident for tax purposes in the same jurisdiction;
- one or more of the participants in the arrangement is simultaneously resident for tax purposes in more than one jurisdiction;
- 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 such arrangement forms part or the whole of the business of that permanent establishment;

- 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;
- such arrangement has a possible impact on the automatic exchange of information or the identification of beneficial ownership.

The reporting requirements do not cover any national arrangements or similar structures.

- How are the hallmarks and the “main benefits” test in Annex IV to DAC 6 defined and interpreted in your jurisdiction?

The Czech implementation of DAC 6 applied the minimum requirements and copies the definitions of the hallmarks and the “main benefits” test of the aforementioned directive.

- What constitutes a “tax benefit” under the legislation in your jurisdiction?

Obtaining of a tax advantage constitutes a “tax benefit” under the Czech legislation.

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

The achievement of the tax benefit is required to be the sole or the main purpose only in connection with certain hallmarks. Such criteria are the same as in DAC 6 since the Czech implementation copies its provisions.

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

No, the Czech laws only regulate the potential risk of tax avoidance covered by the hallmark.

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

No such list has been adopted.

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

Usually, the intermediary is subject to the reporting obligation. The intermediary has to notify about the reportable cross-border arrangement that is within its knowledge, in its possession or controlled by it. The relevant taxpayers become subject to the reporting obligation instead of the intermediary to the extent that the intermediary is obliged to observe professional confidentiality regarding certain arrangements. The relevant taxpayer always becomes subject to the reporting obligation if there is no intermediary involved in such arrangement.

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

Intermediaries associated in the professional chambers and providing tax, legal, notarial, or auditing services are not entitled to file information on the reportable cross-border arrangement where the reporting obligation would breach their confidentiality obligations under Czech law. Such intermediaries are only required to inform other known intermediaries of the concerned cross-border arrangement and its relevant taxpayer.

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 report on cross-border tax arrangements under DAC 6 has to contain:

- identification of the intermediary and the relevant taxpayer of the arrangement (name, date and place of birth, state of tax residence, tax identification number ("DIČ") or other similar number);
- list of associated enterprises of the relevant taxpayers;
- detailed information concerning the hallmark;
- summarised content of the cross-border arrangement (identification, general description);
- day of the implementation of the first step of such arrangement;
- detailed information on laws and international treaties the arrangement is based on;
- value of the arrangement;
- the EU member state of the relevant taxpayer and all other possibly concerned EU member states;
- identification of other persons within the meaning of DAC 6 possibly concerned by the arrangement and their EU member state.

The Czech Ministry of Finance and Tax Administration shall specify a format to be used for reporting. The format has not been published yet since the deadlines were extended (see Question 7).

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

Reports on cross-border arrangements implemented in the past have to be filed by 28 February 2021 if the first step of the arrangement was implemented between 25 June 2018 and 30 June 2020.

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

The competent authority for filing a report under DAC 6 is the Specialized Tax Office (“Specializovaný finanční úřad”).

7. What is the deadline for filing a report?

The report on the cross-border arrangement has to be filed within 30 days from the day on which

- the arrangement was made available for implementation, or
- the arrangement was ready to implement, or
- the first step of such an arrangement was implemented.

If multiple aforementioned moments occur, the day invoking the starting point of the filing period shall be the one occurring earlier.

Due to the COVID-19 pandemic, the deadlines were extended (see below).

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

The government extended the deadlines until 30 January 2021 due to 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 tax authority may impose a penalty of CZK 500,000 to the subject of the reporting obligation for breaching the reporting obligation.

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

No such processes have been adopted.

10. Contact details

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