LEGALINK

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.

GREECE

Moussas & Partners

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

Law 4714/2020 (articles 49-57) implemented DAC 6 into domestic legislation and amended the relevant provisions of Laws 4170/2013 and 4174/2013.
Further, the Greek Independent Authority of Public Revenue has issued:
1) Decision 1017/28-1-2021 defining the date and manner in which the reportable information has to be reported and providing an extension of the deadline for initial DAC 6 reporting (see Question 7).
2) Decision 1009/19-1-2021 defining the liaison departments of the Greek tax authority as well as their responsibilities.
3) Circular No. E. 2137/21-7-2020 on the procedures for the exchange of information and the reporting cases that may trigger this exchange.

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

A cross-border arrangement is any arrangement (or series of arrangements) involving either more than one member state, or a member state and a third country, to the extent that at least one of the following conditions is met (art. 50 par. 2 of Law 4714/2020):
a) Not all of the participants in the arrangement are resident for tax purposes in the same jurisdiction;

i. One or more of the participants is simultaneously resident for tax purposes in more than one jurisdiction;

ii. One or more of the participants carries on a business in another jurisdiction through a permanent establishment, and the arrangement forms part or the whole of the business of that permanent establishment;

iii. One or more of the participants carries on an activity in another jurisdiction without being resident for tax purposes or creating a permanent establishment therein;

iv. Such arrangement has a possible impact on the automatic exchange of information or the identification of beneficial ownership.

For a cross-border arrangement to be reportable, at least one of the "hallmarks" which constitute indication of tax evasion must be met (art. 50 par. 2 of Law 4714/2020). Greek law provides a detailed list of hallmarks divided into 5 categories (A, B, C, D, E). Hallmarks under category A, B and under points (b)(i), (c) and (d) of paragraph 1 of category C may only be triggered if the "main benefits" test is satisfied. That test is 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 (art. 56 of Law 4714/2020).

The hallmarks can be summarised as follows:

Hallmarks
Category A: Generic hallmarks linked to the "main benefits" test
1. An arrangement where a condition of confidentiality arises which may require the relevant taxpayer or a participant not to disclose how the arrangement could secure a tax advantage vis-à-vis other intermediaries or the tax authorities. 2. An arrangement where the intermediary is entitled to receive a fee which is fixed by reference to the tax advantage (contingent fees/success fees). 3. An arrangement that has substantially standardised documentation and/or structure and is available to more than one relevant taxpayer without a need to be substantially customised for implementation.
Category B: Specific hallmarks linked to the "main benefits" test
1. An arrangement involving the artificial use of tax losses (purchase of a loss-making company, change of business and use of losses, inter alia, by transferring losses to another country or accelerating their use). 2. An arrangement that has the effect of converting income into capital, gifts or other categories of revenue which are taxed at a lower level or exempt from tax. 3. An arrangement which includes circular transactions resulting in the round-tripping of funds, namely through involving interposed entities without other primary commercial function or transactions that offset or cancel each other or that have other similar features.
Category C: Specific hallmarks related to cross-border transactions
1. The arrangement involves deductible cross-border payments between two or more associated enterprises, where at least one of the following conditions occurs: a) the recipient is not a tax resident (or resident for tax purposes) in any tax jurisdiction;

b) although the recipient is tax resident in a jurisdiction, that jurisdiction either does not impose any corporate tax or imposes corporate tax at the rate of zero or almost zero, or is included in a list of third-country jurisdictions which have been assessed by member states collectively or within the framework of the OECD as being non-cooperative;

c) the payment benefits from a full exemption from tax in the jurisdiction of the recipient's tax residence;

d) the payment benefits from a preferential tax regime in the jurisdiction of the recipient's tax residence.

2. Deductions for the same depreciation on the asset are claimed in more than one jurisdiction.

3. Relief from double taxation in respect of the same item of income or capital is claimed in more than one jurisdiction.

4. The arrangement involves asset transfers and there is a material difference in the amount being treated as payable in consideration for the assets in those jurisdictions involved.

Category D: Specific hallmarks concerning automatic exchange of information and beneficial ownership
1. An arrangement which may have the effect of undermining the reporting obligation under the laws implementing Union legislation or any equivalent agreements on the automatic exchange of financial account information (Common Reporting Standard). 2. An arrangement involving a non-transparent legal or beneficial ownership chain.
Category E: Specific hallmarks concerning transfer pricing
1. An arrangement which involves the use of unilateral safe harbour rules. 2. An arrangement involving the transfer of hard-to-value intangibles. 3. An arrangement involving an intra-group cross-border transfer of functions or risks or assets, if the projected annual earnings before interest and taxes (EBIT), during the three-year period after the transfer, of the transferor(s) are less than 50% of the projected annual EBIT if the transfer had not been made.

The Greek jurisdiction has not adopted a whitelist of non-reportable "standard" tax arrangements.

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

The persons obliged to report to the Greek tax authorities are intermediaries (lawyers, banks, accountants, etc) who are tax residents, have a permanent establishment or are

incorporated or registered with a professional association in Greece. An "intermediary" is any person who designs, markets, organises or manages the implementation of a reportable cross-border arrangement, or any person who knows or could reasonably be expected to know that it has undertaken to provide, either directly or by means of other persons, aid, assistance or advice with respect to designing, organising or managing a reportable arrangement (art. 50 par. 2 of Law 4714/2020).

Professional privilege applies to Greek lawyers with respect to activities performed in their capacity as lawyers. In that case, the lawyer notifies without delay any other intermediary involved, or, if none, the relevant taxpayer about the reporting obligation. The relevant taxpayer has the reporting obligation, if one of the following conditions is met:

i. he is tax resident in Greece;
ii. he is not tax resident in any member state, but has his permanent establishment in Greece;
iii. he is not tax resident, nor has his permanent establishment in any member state, but he receives income, generates profits or carries on business in Greece.

The intermediary or the relevant taxpayer can be exempt from reporting if he can prove, by any appropriate means, that the same information has been filed by another intermediary/taxpayer in Greece or in another member state (art. 51 of Law 4714/2020).

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 list of information disclosed and communicated is aligned to the provisions of the Directive (art. 51 of Law 4714/2020). In summary, the following information is reported:

- the identification of the intermediaries and the relevant taxpayers.
- details of the hallmarks.
- a summary of the content of the reportable cross-border arrangement and a description in abstract terms of the relevant business activities.
- dates of the arrangement being made available or ready for implementation.
- details of the national provisions that form the basis of the reportable cross-border arrangement.
- the value of the reportable cross-border arrangement.
- the identification of the member state of the relevant taxpayer(s) and any other member states likely to be concerned.
- the identification of any other person in a member state likely to be affected.

In Greece, the format used is the one proposed by the EU.

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

There is an obligation to report tax arrangements the first step of which has been implemented between 25 June 2018 and 30 June 2020. These arrangements were to be reported by 28 February 2021 (art. 51 of Law 4714/2020).

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 in the Greek jurisdiction is Department E (liaison department) of the Independent Authority of Public Revenue.

7. What is the deadline for filing a report?

The deadline for filing a report by the intermediary or the relevant taxpayer is 30 days beginning:
- on the day after the reportable cross-border arrangement is made available for implementation, or
- on the day after the reportable cross-border arrangement is ready for implementation, or
- when the first step in the implementation of the reportable cross-border arrangement has been made, whichever occurs first.

Subject to the above, intermediaries are also required to file information within 30 days beginning on the day after they provided, either directly or by means of other persons, aid, assistance or advice with respect to designing or managing the implementation of a reportable cross-border arrangement.

In the case of marketable arrangements, that is, cross-border arrangements without a need to be substantially customised, the intermediary is obliged to file a periodic report every three months providing an update which contains new reportable information that has become available since the last report was filed. The first periodic report was to be submitted by 30 April 2021.

The automatic exchange of information between member states shall take place within one month from the end of the quarter in which the information was reported.

Due to the COVID-19 pandemic, a six-month deferral was enabled and the initial deadlines changed as follows:

- The 30-day deadline provided by DAC 6, which would normally start from 1 July 2020, was moved to 1 January 2021.

- The reporting deadline for cross-border arrangements the first step of which was implemented between 25 June 2018 and 30 June 2020, which would have been 31 August 2020, was changed to 28 February 2021.

- The first automatic exchange of information between the member states, which would normally be made by 31 October 2020, was moved to 30 April 2021 (art. 51 of Law 4174/2014).

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

The penalties depend on whether the person that was obliged to report the arrangement (the intermediaries, or the relevant taxpayer if there are no intermediaries or they are exempt) is required to maintain a simplified form of accounting books (book of revenues and expenses) or double-entry books.

For non-compliance, the following penalties shall apply (art. 55 of Law 4174/2020):

	Single-entry books		Double-entry books	
	Penalty per arrangement	Maximum penalty per tax audit	Penalty per arrangement	Maximum penalty per tax audit
Failure of filing the information	€5,000	€50,000	€10,000	€100,000
Filing of inaccurate or incomplete information	€2,500	€25,000	€5,000	€50,000
Failure to notify the other liable persons by an intermediary who is exempt due to professional privilege	€5,000	€50,000	€10,000	€100,000

Late filing							
Penalty per month of delay and up to 3 months		Penalty for filing after 3 months		Maximum penalty per calendar year		Maximum penalty to be imposed in a tax audit	
Single entry	Double entry	Single entry	Double entry	Single entry	Double entry	Single entry	Double entry
€250	€500	€2,500	€5,000	€5,000	€10,000	€25,000	€50,000

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

Our firm has not yet implemented any specific processes regarding DAC 6 compliance, but we regularly advise our clients on tax issues of a cross-border character.

10. Contact details

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