



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.

SLOVAK REPUBLIC

PAUL Q

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

DAC 6 was implemented into Slovak tax law by amendment of Act no. 442/2012 Coll. on International Assistance and Cooperation in Tax Administration. The amendment was published in the Slovak Collection of Laws on 15 October 2019 under the number 305/2019 Coll. The Amendment came into force as of 1 January 2020, but the vast majority of provisions, including the obligation to report cross-border reportable arrangements, became effective as of 1 July 2020.

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

Only the guidelines on filing the reports issued by the Financial Administration of the Slovak Republic are available, and only in Slovakian (https://www.financnasprava.sk/_img/pfsedit/Dokumenty_PFS/Infoservis/AVI/2020/2020.06.26_DAC6_XML_schema.pdf).

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

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

The definition of "reportable cross-border arrangement" under the amendment corresponds with the definition of such arrangement under DAC 6.

The amendment defines a "cross-border arrangement" as an arrangement or arrangements (that might involve various elements) 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:

- (i) at least one natural person or entity participating in the cross-border arrangement is not a resident for tax purposes in the same jurisdiction as the other natural persons or entities participating in the cross-border arrangement;

- (ii) at least one natural person or entity participating in the cross-border arrangement is simultaneously resident for tax purposes in more than one jurisdiction;
- (iii) at least one natural person or entity participating in the cross-border arrangement 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;
- (iv) at least one natural person or entity participating in the cross-border arrangement carries on an activity in another jurisdiction without being resident for tax purposes or creating a permanent establishment situated in that jurisdiction;
- (v) such arrangement has a possible impact on the automatic exchange of information or the identification of beneficial ownership.

The "cross-border arrangement" is reportable if it meets at least one of the hallmarks.

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

The definitions of "hallmarks" and "main benefits" test under the amendment are practically identical to the definitions of those terms under DAC 6. Neither the amendment nor its explanatory report provides for a special interpretation of those terms. This means that, the "hallmarks" and "main benefits" test included in the EU Directive equally apply in Slovakia as well.

An arrangement meets the "main benefits" test where 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.

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

The Slovak tax laws do not provide for a specific definition of the "tax benefit".

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

Not all hallmarks are linked to and require the “main benefits” test. Therefore, in order for such cross-border arrangements to become reportable, it is not necessary that achievement of tax advantage is the main benefit or one of the main benefits of the structure.

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

Each hallmark is in general defined as characteristics or features of cross-border arrangements that present an indication of a potential risk of tax avoidance.

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

There is no whitelist of non-reportable “standard” tax arrangements adopted in Slovak Republic.

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

The primary reporting obligation lies with the intermediary. If no intermediary is involved, or if all intermediaries benefit from a legal professional privilege, the reporting obligation falls on the relevant taxpayer.

The definitions of both “intermediary” and “taxpayer” follow the definitions of those terms included in the DAC 6.

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

Intermediaries such as lawyers or tax advisers are exempted from reporting obligation where the Slovak professional confidentiality obligations apply.

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?

Beyond the information required under DAC 6, the amendment requires also further information on intermediaries, users and the notified measure (it is envisaged that this information will be further specified by the implementing regulations to DAC 6).

The information should be reported electronically in a form published on the website of the Financial Administration of the Slovak Republic.

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

Arrangements where the first step was implemented between 25 June 2018 and 30 June 2020 were to be reported no later than 28 February 2021 (the original deadline of 31 August 2020 was extended due to the COVID-19 pandemic).

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

The reports should be filed with the Financial Administration of the Slovak Republic.

7. What is the deadline for filing a report?

Both intermediaries and taxpayers should file a report within 30 days following the day the reportable arrangement is made available for implementation, is ready for implementation, or has been made.

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

The deadlines for reporting were extended due to the COVID-19 pandemic by 6 months as follows:

- (i) reportable arrangements shall be reported no sooner than 1 January 2021 and no later than 31 January 2021;
- (ii) arrangements where the first step is implemented between 25 June 2018 and 30 June 2020 shall be reported no later than 28 February 2021.

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

A penalty of up to €30,000 may be imposed (even repeatedly) for failure to report the required information on reportable cross-border arrangements within the deadlines.

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

Our firm has not implemented any specific processes regarding the DAC 6 compliance so far.

10. Contact details

Paul Q Law Firm

Mr. Boris Brhlovic

Partner

E-mail: brhlovic@paulqlaw.com



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