



PwC's EU Direct Tax Group

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For more detailed information, please do not hesitate to contact:

Roberta Poza - PwC Spain
+34 915 684 365
roberta.poza.cid@pwc.com

Or your usual PwC contact

EU Direct Tax Newsalert

Spanish draft implementation

On 20 June 2019, the Spanish Ministry of Finance published the draft bill implementing the (EU) Directive on the mandatory disclosure and exchange of cross-border tax arrangements, also known as DAC6.

Status

The draft bill must now follow the entire Spanish legislative procedure and maybe amended before final enactment. It is expected to enter into force on 1 July 2020 in line with the directive.

The draft bill was subject to a public consultation which ended 12 July 2019.

With respect to the transitory period, the draft bill states that arrangements implemented between 25 June 2018 and 30 June 2020 must be reported in July and August 2020.

The main outcomes from the draft bill are as follows:

Scope

In line with the directive, i.e. indirect and special taxes are not included, nor domestic arrangements.

Hallmarks

Hallmarks are generally in line with the directive, however the draft bill includes clarifications or additional information in this sense.

- The draft bill includes the tax deferral as a tax benefit.

- With respect to hallmark A.2. (arrangement where an intermediary is entitled to receive a success fees based on tax advantage obtained), the draft bill states that the "success fee" may be total or partial. It also seems to consider A.3. (arrangement that has substantially standardized documentation and/or structure) to be equivalent to the commercial arrangement.

- In relation to the hallmark C.1. (deductible cross-border payments between associated enterprises), the draft bill establishes that: i) cross-border payments also include cross-border expenses, even if the payment has not been de facto made; ii) the recipient of the income could be an indirect recipient or the person to whom the income is attributed; iii) for zero or almost zero tax rates it considers an effective tax rate lower than 1%; iv) a regime authorized by the EU would not qualify as a preferential tax regime; and v) the non-cooperative jurisdiction are those jurisdictions included in the Spanish black list, Spain assumed the commitment to modify the list taking into consideration the EU list.

Legal Professional Privilege (LPP)

The draft bill recognizes the LPP, to any intermediary as defined in the Directive, in this sense, LPP generally upheld with respect to personal information of parties involved in a reportable arrangement, in particular non-wealth private and confidential data of clients to which the intermediary could have access as a result of his/her advise or legal representation. In other words, the LPP protects data whose disclosure may violate the personal and family honor and privacy, as well as data related to commercial, industrial or professional secrets, commercial procedures, and data whose disclosure could be against the public interest. Although, abstract information need to be reported. Taxpayer may allow the intermediary to inform by renouncing to the LPP.

Penalties

Penalties from EUR 1,000 for each data not reported, with a minimum of EUR 3,000 and a maximum equivalent to the fees of the intermediary. In those cases where there are no fees, the limit will refer to the market value of the activity of the intermediary. When the person obliged to report is the taxpayer, the maximum penalty will be the value of the tax arrangement.

The filing of returns by means other than the official electronic means will constitute a tax offence in those cases in which there is an obligation to do so by such means, and will be punishable by a fixed fine of EUR 250 per data or set of data referring to the same return with a minimum of EUR 750 and a maximum of EUR 1,000.

Penalties up to EUR 600 if the application of LPP is not notified to the taxpayer that will then be obliged to report.

Takeaway

Taxpayers should be aware of this new disclosure obligation. In particular, intermediaries like financial institutions, insurance entities and alternative investment funds should adjust or adopt internal procedures to comply with this new obligation.

In addition, taxpayers will be obliged to annually report the use of previously communicated arrangements.

