



PwC's EU Direct Tax Group

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EU Direct Tax Newsalert

Draft bill introducing DAC 6 legislation in Belgium.

On 26 November, the draft bill implementing the EU Council Directive 2018/822/EU of 26 May 2018, also known as "DAC6 Directive", was introduced in the Belgian Parliament.

In short, DAC6 provides for the obligation to declare certain cross-border tax arrangements to the Belgian tax authorities. This obligation is incumbent on both taxpayers and intermediaries, such as tax advisers and consultants. The DAC6 Directive is generally considered as an important step in the tax transparency rules in Europe.

The Belgian draft legislation in a nutshell

The draft law aims to implement the DAC6 Directive in Belgium and the draft bill closely follows the DAC6 Directive.

Based on the draft bill, **cross-border arrangements** may be reportable if they meet at least one of the hallmarks set out in the draft law, which are identical in wording to the list of hallmarks in the appendix to the directive. This appendix provides for both **general and specific hallmarks**, e.g. acquisition of loss-making companies in order to use these losses, conversion of income into capital, gifts or other categories of revenue that are taxed at a lower level or exempt from tax, specific hallmarks related to transfer pricing, etc....

Certain hallmarks may only be taken into account if they meet the "**main benefit test**", i.e. where a tax benefit is the main or one of the main objectives of the arrangement.

Timeline and next steps

The draft bill provides that the reportable cross border arrangements whose first implementation step occurs between 25 June 2018 and 1 July 2020 are to be reported as from 1 July 2020, and by 31 August 2020 at the latest. As from 1 July 2020, there is a thirty-day turnaround period to report to the domestic tax authorities.

The draft law will now go through the Belgian legislative process, and ultimately be subject to a final vote by the Belgian Federal Parliament.

Key clarifications

An **intermediary** is broadly defined by the explanatory statement of the draft law, and covers both individuals and legal persons. Reference is made to BEPS action 12 distinguishing between 'promoter' and 'service provider'. Both have to

be considered as intermediaries according to the explanatory statement.

The **main benefit test** should be fulfilled with regards to generic hallmarks and a number of specific (category B and certain hallmarks of category C) hallmarks, in line with the DAC6 Directive. The test is met when obtaining a tax advantage is the main benefit, or one of the main benefits, that a person is expecting to derive from an arrangement. There is no specific guidance in the Belgian draft bill on this.

An intermediary may potentially not be allowed to actually report following the Belgian professional secrecy rules which apply to e.g. registered lawyers and registered tax consultants. In this case, the intermediary has to inform the taxpayer and/or other intermediaries (if any) that there is a reporting obligation due but that the actual reporting is prevented due to legal professional secrecy rules. This is known as the so-called **legal professional privilege**. If there are no other intermediaries, the taxpayer can at all times waive the professional secrecy enabling the advisor to make the reporting. The professional secrecy rules do not apply for reporting obligations related to so-called 'market-ready' arrangements.

An arrangement that has substantially **standardised documentation and/or structure** falls within the scope of category A and should therefore be reported, provided that the 'main benefit test' has been fulfilled.

Penalties ranging from EUR 1,250 to EUR 100,000 per infraction may be applied by the tax authorities. The intentional character (or not) of the breach will be considered and further guidance on the applicable penalties is expected.

Next steps and takeaway

The draft law closely follows the DAC6 Directive. The draft legislation is now with the Parliament for discussion and approval.

A final vote is expected to take place before year-end. Belgian and EU taxpayers are recommended to consider the impact of this DAC6 directive.

