

EU Direct Tax Newsalert

Bill introducing DAC6 legislation in Romania



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On 31 January the Ordinance for amending and supplementing Law 207/2015 regarding the Fiscal Procedural Code to implement mandatory disclosure rules pursuant to Council Directive (EU) 2018/822 ("DAC6") was published in the Official Gazette.

Briefly, DAC6 obliges certain intermediaries or taxpayers to report to the tax authorities any cross-border tax planning arrangements which fall within certain "hallmarks", i.e. characteristics.

Our comments below are based on the Ordinance implementing DAC6 into Romanian legislation.

Scope and taxes covered

The Romanian version of the law is closely aligned with the DAC6 Directive's scope, hallmarks and reporting requirements.

According to the law, the reporting obligation generally applies to any intermediary which designs, markets, organises, makes available for implementation or manages the implementation of a reportable cross-border arrangement in line with the provisions of the Directive or which provides, directly or by means of other persons, aid, assistance or advice with respect to the above actions concerning a reportable cross-border arrangement.

Although not specifically mentioned in the Ordinance, the taxes covered seem to be direct taxes (i.e. VAT, customs duties and excise duties are excluded). The law refers only to cross-border arrangements, the domestic ones being outside the scope of this legislation.

Date of Application and reporting timelines

Starting July 1, 2020, intermediaries and, under certain conditions, taxpayers, have the obligation to report each cross-border arrangement within 30 days, which begins with the day following the date on which any of the following moments first occurs: the arrangement is made available for implementation, is ready for implementation or the first step in the implementation was made. However, if any of the above moments occurred between June 25, 2018

and July 1, 2020, qualifying arrangements will have to be reported by August 31, 2020 to the National Agency of Finance Administration (ANAF).

Legal professional privilege

As a rule, intermediaries operating under a legal professional privilege in line with the law are exempt from the reporting obligation, if the relevant taxpayer provides the written consent to waive this privilege. In case the waiver is not granted, the intermediary notifies any other intermediary involved in the arrangement or, if no other intermediaries are involved, the relevant taxpayer, of its obligation to report the arrangement.

Penalties

The law sets out the penalties applying to intermediaries or taxpayers for failing to comply with the various requirements within the deadlines stipulated. These include:

- a penalty of RON 20,000 to RON 100,000 for failing to report an arrangement or reporting with delay;
- a penalty of RON 5,000 to RON 30,000 for an intermediary subject to legal professional privilege failing to notify another intermediary or the relevant taxpayer.

Takeaway

The Romanian Tax Authorities are expected to release further guidance on the application of the Romanian DAC6 rules in practice.

Taxpayers and intermediaries operating in Romania and in Europe need to understand the importance and impact of DAC6. Impact assessment, analysis and timely action are needed to ensure compliance on and after July 1, 2020. The use of technology through appropriate data and reporting tools will be the key to satisfying these multiple new reporting requirements in a coordinated manner.

