

DAC 6 LAW APPROVED

On 21 March 2020, the Luxembourg Parliament passed the first vote to transpose Directive 2018/822 amending Directive 2011/16/EU (commonly referred to as "**DAC 6**"), which requires EU intermediaries – or taxpayers – to report certain cross-border arrangements as defined in DAC 6 to local tax authorities (the "**Law**").

BACKGROUND

On 8 August 2019, the Luxembourg Government tabled bill n°7465 before the Luxembourg Parliament, aiming to implement DAC 6, which has now been adopted by first vote in the Parliament and a second vote has been dispensed with.

The Law has adopted, to a great extent, the provisions as per the drafting of the Directive (for more detailed information, please refer to the [Client Briefing of 11 March 2020](#)), e.g. in relation to cross-border arrangements, intermediaries, associated enterprises and information to report, but contains certain differences and clarifications compared to the initial bill of law. The amendments follow, in principle, the proposals of the Finance and Budget Commission of the Parliament, which are closely linked to the opinion of the State Council.

KEY ELEMENTS

Reporting Deadline

EU Member States were supposed to transpose DAC 6 by 31 December 2019 into their domestic laws, and shall apply those provisions as from 1 July 2020. In this respect, tax authorities shall receive (by 31 August 2020 at the latest) reports with regard to cross-border arrangements that were implemented between 25 June 2018 and 1 July 2020.

For cross-border arrangements established after this date, reporting shall be made within 30 days (starting (i) on the day after the cross-border arrangement becomes available to the taxpayer for implementation, or (ii) on the day after the cross-border arrangement is ready for implementation, or (iii) when the first

step of the cross-border arrangement has been implemented (the "**Key Event**").

Note that an absence of, delayed, incomplete or false reporting could lead to penalties up to €250,000 and be determined on a case-by-case basis.

Intermediary

Reporting obligations are placed primarily on intermediaries. The Law defines this notion broadly and regards an intermediary as any person who helps in designing, marketing, organising, making available for implementation or managing the implementation of a reportable arrangement, including persons that know, or could reasonably be expected to know, that they have agreed to provide assistance or advice in relation to the above-mentioned services.

Reportable Arrangements

The provisions of the Law apply to reportable cross-border arrangements (the "**Arrangements**"), i.e. Arrangements concerning a Member State and either another Member State or a third country.

Arrangements will be reportable if they contain at least one of the five hallmarks listed in the appendix attached to the Law. These hallmarks describe characteristics or features of Arrangements that may display an indication of a potential risk of tax avoidance.

Some hallmarks must fulfil the main benefit test (the "**MBT**"). The Law states that the MBT will be regarded as satisfied if it can be established that the main benefit, or one of the main benefits, which a person may reasonably expect to derive from an Arrangement, having regard to all relevant facts and circumstances, is the obtaining of a tax advantage.

Please note that this only applies with respect to direct taxes – thus, Arrangements leading solely to an indirect tax advantage are excluded.

However, the Law also provides for specific hallmarks which are not linked to the MBT. For more details on these specific hallmarks, please refer to our [Client Briefing dated 11 March 2020](#).

Professional Secrecy and Exemptions

Extending the initial bill of law, the Law now provides for a reduced reporting obligation; not only for lawyers, but also for chartered accountants and auditors, on the basis of professional secrecy (the "**Exempt Intermediaries**"). The Law waives any reporting obligation of such Exempt Intermediaries to the Luxembourg tax authorities. Consequently, Exempt Intermediaries will no longer be required to file anonymised reporting, as foreseen by the initial bill of law.

However, Exempt Intermediaries will be subject to a notification obligation to intermediaries which are not subject to legal professional secrecy, or, in the absence of such intermediaries, to the taxpayer affected by the relevant reporting obligations.

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