Tax authority answers questions about DAC6 3/19/21

Director, Tax, PwC Latvia
Vita Sakne

The reporting obligation under DAC6[1] has been in force since January 2021 and some member states issued guidance on the application of DAC6 provisions as they were preparing to pass the directive in their national law a long time ago. The Latvian State Revenue Service ("SRS") has now published answers to questions frequently asked by Latvian tax consultants, credit institutions and other intermediaries about evaluating the reporting obligation, as well as other technical matters around DAC6 reporting. This article explores key clarifications and interpretations in the SRS guidance.

General questions

Who is liable to report?

In their answers the SRS have stated who is subject to the reporting obligation and when. So the reporting obligation primarily applies to –

- tax consultants,
- accountants,
- lawyers,
- financial service providers (including credit institutions), and
- any other individual or entity

that proposes, markets or organises a particular cross-border arrangement or manages its implementation, or provides assistance, support or advice on designing, marketing or organising the arrangement or managing its implementation.

The SRS reminds us that under the Cabinet of Ministers' Rule No. 210 attorneys-at-law are not liable to disclose information on a reportable cross-border arrangement where the reporting obligation would breach their legal professional privilege. The SRS also points to the need to immediately inform other intermediaries or the taxpayer who is to file a report with the SRS.

The SRS also explains that external accounting service providers are exempt from the reporting obligation if two conditions are met. An external accounting service provider will not be considered an intermediary under Rule No. 210 if he provides only book-keeping and tax compliance services for completed transactions and takes no part in designing transactions, nor provides assistance, support or advice on designing, marketing or organising or making available for implementation a reportable cross-border arrangement or managing its implementation. If required, the external accounting service provider must be able to prove that he was not aware of being involved in a reportable cross-border arrangement. If the external accounting service provider prepares also legal documents, this may significantly affect their reporting obligation.

How to value a reportable cross-border arrangement?

Many reporters were struggling to determine the value of a reportable cross-border arrangement, which is a mandatory disclosure in the DAC6 report. The SRS says that when it comes to valuation, each case should be assessed on its merits, but this will typically be the amount of a payment, the amount of a contribution to share capital, or the arm's length value of a transaction.

The SRS has also interpreted the term "deductible cross-border payment" used in paragraph 32.1 of Rule No. 210: a cross-border payment to be included in the payer's expenses, i.e. a payment reducing the tax base (e.g. for CIT, PIT or capital gains tax purposes).

Informing other intermediaries and the reference number of the reportable arrangement

A key aspect the SRS has clarified is that there is nothing to prevent the intermediary or the taxpayer from informing another person involved in the cross-border arrangement that he faces the obligation to report a cross-border arrangement under DAC6.

It is also important to remember that where the intermediary is an attorney-at-law and the cross-border arrangement involves the reporting obligation, the intermediary must immediately inform other intermediaries or the taxpayer. Also, if two or more intermediaries have taken part in the arrangement, Rule No. 210 accepts that a report is filed by only one of them but the others only provide the SRS with the report's reference number assigned by the SRS.

However, the reporter will not receive the reference number immediately. This will be sent to the reporter's email address once the SRS has successfully processed the report and its EDS status has changed to "Accepted." PwC's experience suggests that this process may take more than a month.

Questions affecting credit institutions

Are credit institutions liable to report a cross-border arrangement? When are they liable? How far back does this obligation go?

Many questions have been asked about a credit institution's reporting obligation and cases where it is considered an intermediary under Rule No. 210.

One of the questions is whether a cross-border arrangement meeting DAC6 hallmarks must be reported by a credit institution not involved in designing, marketing, organising or implementing the arrangement but found it during a customer due diligence review. Well, if the credit institution could not have been aware of being involved in a reportable cross-border arrangement but found it in the course of its customer due diligence or transaction supervision procedures, the credit institution is liable to file a report with the SRS within 30 days after finding DAC6 hallmarks. In such cases any cross-border arrangement that meets DAC6 hallmarks and is put in place after 25 June 2018 must be reported.

DAC6 reporting for trust and overnight services

If a credit institution is authorised to deal in customer assets (trust services) and a transaction meets one of the DAC6 hallmarks, the credit institution is liable to report it to the SRS under the general procedure prescribed by Rule No. 210. Merely considering a trust application does not place the credit institution under a reporting obligation.

Making a cash transfer at the end of each business day as part of overnight services would be considered a reportable cross-border arrangement under paragraph 33.1.2 of Rule No. 210 if information on those

transactions has been filed with the SRS in accordance with section 100(1)(6) of the Taxes and Duties Act.

[1] Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements