

REPORTING OBLIGATION ON CROSS-BORDER ARRANGEMENTS

Following the OECD's BEPS project (Base Erosion and Profit Shifting) a new Directive 2011/16/EU on administrative cooperation in the field of taxation – **DAC 6** brings a new reporting obligation **on cross border arrangements**, which fulfil certain criteria.

Reporting obligation falls on "**intermediaries**", i.e. mostly advocates, tax advisors, but in certain situations directly on the taxpayer itself. EU member countries are obliged to implement DAC 6 by the end of 2019.

In the Czech Republic, the amendment will be valid from 1. 1. 2020 and effective from 1st July 2020. From that day the reporting obligation will be effective retrospectively from 25th June 2018, i.e. the date when DAC 6 became effective.

Non-compliance by either intermediaries or taxpayers will attract penalties up to 500.000 CZK.

Cross border arrangements can be split into two groups, whereas into the first group fall the arrangements, which need to be reported if the below criteria are met together with the **Main benefit test**. **The Main benefit test is met where one of the main benefits expected from an arrangement is a tax advantage.**

1. **The first group** of cross border arrangements, which meet the main benefit test, contain one of the following criteria:
 - 1.1 Taxpayer or participant under a confidentiality condition in respect of how the arrangements secure a tax advantage,
 - 1.2 Intermediary paid by reference to the amount of tax saved or whether the scheme is effective,
 - 1.3 Standardised documentation and/or structure,
 - 1.4 Loss-buying,
 - 1.5 Converting income into capital,
 - 1.6 Circular transactions resulting in the round-tripping of funds with no other primary commercial function,

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- 1.7 Deductible cross-border payment between associated persons:
 - a) To a 0 percent or near 0 percent tax jurisdiction,
 - b) Which is tax exempt for the recipient,
 - c) Which benefits from a preferential tax regime in the recipient jurisdiction.
2. **Second group** of reported arrangements are to be reported irrespective of the Main benefit test:
 - 2.1 Deductible cross-border payment between associated persons:
 - a) To a recipient not resident for tax purposes in any jurisdiction,
 - b) To blacklisted countries,
 - 2.2 Deductions for deprecation claimed in more than one jurisdiction,
 - 2.3 Double tax relief claimed in more than one jurisdiction in respect of the same income,
 - 2.4 Asset transfer where amount treated as payable is materially different between jurisdictions,
 - 2.5 Arrangements which have the effect of undermining reporting requirements under agreements for the automatic exchange of information,
 - 2.6 Arrangements involving the use of unilateral transfer pricing safe harbour rules,
 - 2.7 Transfers of hard to value intangibles for which no reliable comparables exist where financial projections or assumptions used in valuation are highly uncertain,
 - 2.8 Cross-border transfer of functions/risks/assets causing a more than 50 percent decrease in earnings before interest in tax during the next three years.

An intermediary may be exempt from its reporting requirements if it can show that another intermediary has reported the arrangement. An intermediary unable to report due to domestic legal professional privilege rules is required to inform other intermediaries of their reporting obligations. Where there is no intermediary or the intermediary is subject to legal professional privilege, the report must be made by the taxpayer.

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