

News Flash

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**DAC 6 – Reporting obligation for
cross-border arrangements in
Slovakia**

DAC 6 – Reporting obligation for cross-border arrangements

By the amendment to Act no. 442/2012 Coll. on international assistance and cooperation in tax administration, Slovakia has implemented Council Directive (EU) 2018/822 of May 25, 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, known as DAC6. Below, we present you a brief overview of obligations that arise from this legislation and that can impose a reporting obligation to a tax subject, natural and legal person.

The subject to the reporting shall be arrangements of potentially aggressive cross-border tax planning. The introduction of this reporting obligation aims to strengthen tax transparency, prevent tax avoidance and tax evasion.

The first reporting obligations must be fulfilled **by January 31, 2021 and by February 28, 2021** in relation to reportable cross-border arrangements introduced between June 2018 and December 2020. New arrangements from January 1, 2021 will be subject to a 30-day period from the introduction of a new reportable cross-border arrangement.

Cross-border arrangements that are subject to reporting

In order for an arrangement to fulfil the characteristics of cross-border arrangement, the arrangement must concern at least two member states or a member state and non-member state within which the natural persons or entities involved in the arrangements have a residence for tax purposes, a permanent establishment or they conduct an operation there, or this cross-border arrangement proved the possibility to avoid obligations related to the automatic exchange of information about financial accounts or information related to the identification of the beneficial owner of the income.

The reportable cross-border arrangement is every cross-border arrangement if it contains at least one of the hallmarks listed in the Annex no. 1a of Act no. 442/2012 Coll. as amended (Annex IV of the mentioned EU Council Directive). The hallmark means a characteristic or feature of a cross-border arrangement that presents an indication of a potential risk of tax avoidance. For example, it may be the aspect of using company's losses, changing the classification of income or capital, avoiding the automatic exchange of information on financial accounts, etc. **The mentioned Annex no. 1a defines which hallmarks should be taken into account only where they fulfil the main benefit**

test (i.e., it can be established that the main benefit or one of the main benefits, a person may reasonably expect to derive from an arrangement is the obtaining of a tax advantage) and which should be assessed alone.

Person liable to file information

The primary obliged subject is a person that designed, marketed, organized, made available for implementation or managed the implementation of a reportable cross-border arrangement, or a person who in relation to these arrangements offered a help, support or assistance, i.e., it is a person who is **an intermediary**.

If the intermediary is bound by a legal duty of confidentiality (e.g., tax advisers, lawyers) and all intermediaries involved in the reportable arrangement are bound by a legal duty of confidentiality regarding the specific reportable arrangement which was offered, proposed, etc. to an user (her/his client), the obliged person instead of the intermediary is **the user of the reportable arrangement (i.e., relevant taxpayer)**, to which the obligation to file information about the reportable arrangement to a relevant authority is transferred.

The user becomes obliged person even in a case, when he proposes the reportable

arrangement on his own without using the services of the intermediary, so-called “in-house”.

The user becomes obliged person even in a case, when the reportable arrangement is provided by an intermediary directly to the user, but this intermediary is not an intermediary from EU member state.

The notification process

Information on the reportable cross-border arrangement shall be notified by the obliged person to the competent authority of the Slovak republic, which is the Financial Directorate of the Slovak republic, electronically **via the financial administration portal and using the electronic structured DAC6 Notification form.**

The information notified by the obliged person to the financial administration include: identification data of the persons concerned, including the state of tax residence, the data on the reportable cross-border arrangement (name, description, hallmarks), date of the implementation and the estimated value of the reportable cross-border arrangement.

If the obliged person is a user (a relevant taxpayer) operating in more than one member state, the law determined the mechanism for determining in which country the user files information:

- The user files information to the relevant authority of the Slovak republic if the user is a tax resident in the Slovak republic. If the user has also a tax residence in a member state other than the Slovak republic, then he must file the information on the reportable arrangement to one competent authority from those member states where is his residence and file a *declaration* to the authority of the another country where he has a residence, that he has already filed the same information to the relevant authority of another member state.
- If the user doesn't have a tax residence in the Slovak republic, nor in any other

member state, the user shall file the information to the relevant authority in the Slovak republic if he has a permanent establishment in the Slovak republic which benefits from the reportable arrangement.

- If the user has income from sources in the Slovak republic and is not a tax resident in the Slovak republic nor in another member state, the user files information to the relevant authority of the Slovak republic, if he doesn't have a permanent establishment in the Slovak republic or in another member state that benefits from the reportable arrangement.
- If the user carries on an activity in the Slovak republic and is not a tax resident in the Slovak republic or another member state, the user files the information to the relevant authority of the Slovak republic, if he doesn't have a permanent establishment in the Slovak republic or another member state which benefits from the reportable arrangement, doesn't have an income from the sources in the Slovak republic or another member state.

The user who would be obliged to file information in the Slovak republic is exempted from the reporting obligation if he files electronically to the relevant authority in the Slovak republic a *declaration* that the same information on the reportable arrangement, which he should file to the relevant authority in the Slovak republic, has already been filed by him to the relevant authority in another member state.

If there are more users who are required to file information on the same reportable arrangement and are aware of each other being involved in the same reportable arrangement, these users may agree on a joint representative who will electronically file a *mutual declaration* confirming that the same information on the reportable arrangement has already been filed by another user.

The deadlines

In relation to the new arrangements from January 1, 2021, the obliged person is obliged to file the information within **30 days** from the availability, preparation or implementation of the reportable arrangement and subsequently within 30 days from the last day of the calendar quarter, if new information is available to the intermediary since the last submission.

In relation to the arrangements implemented between June 2018 and December 2020, it applies that:

- **Until January 31, 2021**, the obliged persons are obliged to file information to the relevant authority in the Slovak republic on the reportable arrangements **the first step of which was implemented from July 1, 2020 to December 31, 2020**.
- **Until February 28, 2021**, the obliged persons are obliged to file information to

the relevant authority in the Slovak republic on the reportable arrangements **the first step of which was implemented from June 25, 2018 to June 30, 2020**.

Penalties

The tax office is entitled to impose a fine of up to **EUR 30,000**, even repeatedly, in the event of non-compliance with the above obligation.

Our recommendation

We recommend you evaluating the cross-border arrangements in which you were involved from 2018 in terms of the above-mentioned characteristics, in order to identify a possible reporting obligation. We also recommend you paying attention to the new cross-border arrangements. The reporting obligation arises only in case when you identify cross-border arrangements that are subject to the reporting.

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