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By PwC Deutschland | 28. Mai 2018

ECOFIN-Council formally accepts the changes to the Mutual Assistance Directive in relation to the reporting obligation for cross border arrangements (DAC6)

In its sitting on 25 May 2018, the ECOFIN council formally accepted the Directive to amend the Mutual Assistance Directive 2011/16/EU to provide for the mandatory exchange of information in the area of taxation for reportable cross-border arrangements.

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ECOFIN had already reached a political agreement on the planned reporting obligation for cross-border tax arrangements at its plenum on 13 March 2018.

There were no significant changes from the draft agreed upon in March (see also our **blog post**) ; some added technical references are, however, of interest. In addition certain differences between the German version of the Directive and the English one (which was the basis of the negotiations) have now been removed. By way of example, the term “scheme” (German “Modell”), previously used in the German version, has been replaced by the term “arrangement” (German “Gestaltung”) which more accurately reflects the term used in the negotiated English version.

A brief summary follows:

The reporting obligation

The new regulations state that *intermediaries* and *taxpayers* are obliged to report certain *cross-border arrangements* to the tax authorities.

Intermediaries

The term “intermediary" means any person that designs, markets, organises, makes available for *implementation*, or manages the *implementation* of a reportable cross-border arrangement.

In relation to the three criteria decisive for when the reporting obligation deadline of 30 days should begin to run - namely the day after the reportable cross-border arrangement is made available for *implementation* to that relevant taxpayer, or the day after the reportable cross-border arrangement can be *implemented* or when the first *implementation* step of the reportable cross-border arrangement is carried out - certain linguistic changes have now been made in the German version. In particular, the term “implementation” (German “Umsetzung”) has replaced the term “use” (“Nutzung”) and the term “ready for implementation” (German “umsetzungsbereit”) has replaced term “ready for use” (German “nutzungsbereit”).

With regard to which intermediaries the Member States may exempt from the reporting obligation, the German version, rather than translating the original term “legal professional privilege”(German “Privilegien der Angehörigen von Rechtsberufen”) literally, now applies the more precise description of all intermediaries, which according to the law of the Member State are subject to a legal obligation of confidentiality.

Taxpayers

Taxpayers may be obliged to report themselves where, for example, they have developed the reportable cross-border arrangement themselves or where the intermediary is exempt because of legal professional privilege.

Reportable cross-border arrangements

A cross-border arrangement will be reportable where at least one of the “hallmarks” (A1-E3) is fulfilled.

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The text describing the generic hallmark (A2) where the intermediary is entitled to receive a fee, which is fixed by reference to the amount of the tax advantage, has now been changed; however the substance remains the same.

Penalties

The final version now makes clear that Member States must now *pass* effective measures, rather than the situation in the earlier version which only required the Member States to *determine* measures.

Application

No changes have been made to the March document with regard to the date of application.

The Directive will come into force 20 days after its publication in the Official Journal.

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Note:

On 8 March 2018, the Conference of Ministers of Finance adopted certain key points on a "mandatory reporting for national tax arrangements", on the basis of which a bill is currently being drafted

Schlagwörter

DAC 6, ECOFIN, reportable cross-border arrangements, tax avoidance