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By PwC Deutschland | 13 May 2020

European Commission proposes postponement of DAC 6 rules due to Coronavirus crisis

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On 8 May 2020 the European Commission proposed deferring certain deadlines for filing and exchanging information under the Directive on Administrative Cooperation (DAC).

The proposed rules:

- Change the date for the first automatic exchange of information between Member States on reportable cross-border arrangements that feature in Annex IV to Council Directive 2011/16/EU (Hallmarks) from 31 October 2020 to 31 January 2021;
- Inclusion of Art. 27a DAC, according to which, the **30-day deadline for reporting** reportable cross-border tax structure, which are made available for implementation, or which are ready for implementation or for which the first step towards implementation had been made between 1 July 2020 and 30 September 2020, or where an intermediary within the meaning of Art. 3 No. 21 (2) DAC directly or indirectly provides aid, assistance or advice between 1 July 2020 and 30 September 2020, **should not be calculated** from the day after the event triggering the deadline, but from 1 October 2020 (currently from the day following the triggering of the deadline, but no earlier than 1 July 2020);
- The first date, from which updates on marketable arrangements within the meaning of Art 3 No. 24 DAC must be reported on a 3-month cycle, should be postponed to 31 January 2021 (currently 31 October 2020);
- Change the date for the reporting of the 'historical' cross-border arrangements (i.e. arrangements that became reportable from 25 June 2018 to 30 June 2020) from 31 August 2020 to 30 November 2020;
- Defer the time limit for exchanges of information on Reportable Financial Accounts by 3 months, i.e. until 31 December 2020.

The proposed tax measures only affect the deadlines for reporting obligations. The beginning of application of DAC 6 will remain 1 July 2020 and reportable arrangements made during the postponement period will have to be reported by the time the deferral has terminated. Equally, the information on financial accounts to be exchanged under DAC 2 during that period will have to be reported by the time the deferral has ended.

Considering the current uncertainty regarding the evolution of the COVID-19 pandemic, the proposed initiative also provides for the possibility of extending once the deferral period for the filing and exchange of information. The Commission will be empowered to give such extension by way of delegated acts.

Both the European Parliament and the Council have been informed of these proposals. Both institutions must agree to the proposal.

The Member States would then have to transpose the amending directive into national law by 31 May 2020, so that its provisions could be applied from 1 June 2020. Even though the process is being initiated immediately, experience has shown that it will take time. Against this background, it is currently unclear

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whether the currently scheduled date of 31 May 2020 can be met.

Keywords

DAC 6, reportable cross-border arrangements, tax avoidance