



The EU Council reached agreement on the automatic exchange of information on potentially aggressive cross-border arrangements ("DAC 6")

On 13 March 2018, during the ECOFIN meeting, the EU Council reached agreement on the "Proposal for a Council Directive as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements" (known as DAC 6, hereinafter "the Proposal", which amends the provisions of Council Directive 2011/16/EU on administrative cooperation in the field of taxation). The Proposal broadly reflects the recommendations laid down in Action 12 of the BEPS project.

Once implemented, the Proposal will require the intermediaries (including tax advisors, accountants and lawyers) to report to the national authorities of EU Member States tax schemes that are considered potentially aggressive crossborder arrangements. The obligation is shifted on taxpayers in case the intermediaries cannot share the information due to professional privilege or secrecy rules or in case, for instance, the cross-border scheme is developed by in-house tax consultants or lawyers. Furthermore, once adopted, the Proposal will ensure within the EU the automatic exchange of the reported information that shall be collected in a central database held by the EU Commission.

Pursuant to the Proposal, an arrangement is deemed potentially aggressive and shall be reported when it meets at least one of the "hallmarks" listed in the Proposal. An "hallmark" is an element indicative of the aggressive nature of the arrangement. By way of example, the list of the Proposal includes the following: the intermediary's entitlement to receive a fee for the arrangement which is set by reference to the amount of the tax advantage resulting from the arrangement itself; the arrangement has the effect of converting income into capital, gifts or categories of income which are more favourably taxed; the arrangement envisages schemes put in place between associated enterprises based on deduction without inclusion of the cross-border payment, whereby the recipient is not tax resident in any tax jurisdiction or schemes which have the effect of undermining the reporting obligation. Pursuant to the Proposal, reportable information are to be filed with national authorities within thirty days starting from the former of the following days: i) the day following that in which the arrangement is made available or ready for implementation or ii) the day in which the first step in the implementation of the arrangement took place. Special rules apply for the reporting of arrangements taking place in the interim period of adoption of the Proposal.

Once the Proposal is adopted, Member States shall be obliged to implement its rules by 31 December 2019. The reporting requirements will apply as from 1 July 2020. Member States shall be required to exchange information every three months, not later than one month after the end of the quarter in which the information was filed. The first mandatory automatic exchange of information will thus be completed by 31 October 2020.

The EU Council will adopt the proposal without further discussion once the text shall be finalized in all official languages.

For further information: **Maisto e Associati**

Milan

Piazza F. Meda 5
20121
T: +39.02.776931

Rome

Piazza d'Aracoeli 1
00186
T: +39.06.45441410

London

2, Throgmorton Avenue
EC2N 2DG
T: +44.207.3740299

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