



**Mandatory Disclosure Requirements of Reportable Cross-Border Arrangements  
under DAC6 – What are the consequences for the legal profession?**

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The Council Directive (EU) 2018/822 on Mandatory Exchange of Information in the field of Taxation (“The Directive”) amends the Council Directive (EU) 2011/16. The Directive has been transposed in the Republic of Cyprus on the 31<sup>st</sup> of March 2021 with the publication of the Law on Administrative Cooperation in the Field of Taxation (Amending) Law of 2021 (L.41(I)/2021) (hereinafter the “**Law**”) in the Official Gazette of the Republic of Cyprus and amends the Law on Administrative Cooperation in the Field of Taxation of 2018 (L.33(I)/2018). It is nevertheless expected that along with the implementation of the law, an Order containing guidelines with regards to the application of the law.

**Obligations of Intermediaries**

The participants in each cross-border arrangement which falls within the definition of “intermediary” have an obligation to declare within 30 days to the Tax Department any information that has or will come to their knowledge, disposal or control regarding a cross-border arrangement when the characteristics and details of which fall within one of the five categories of arrangements (referred to as “Hallmarks”).

**Main Definitions**

The Law provides amongst others the definitions of intermediary, cross border arrangement, reportable cross border arrangement, hallmark which are all of essence to grasp the ambit of the Law.

Intermediary is defined as any person which performs, disposes in the market, organizes or manages the application of a cross border arrangement. An intermediary is also any person who, taking into account of all relevant facts and circumstances and based on the available information and the relevant experience and understanding required for the provision of such services, knows or can reasonably be assumed that he knows that he has undertaken to provide, directly or through other persons, assistance, contribution or advice with regards to the performance, disposal in the market, organization or management of the application of a cross border arrangement.

According to the Directive, a cross border arrangement exists if one of the following conditions is met:

- a) One or more of the participants in the arrangement is/are tax resident/s in an EU Member State, and the other or the same participant/s:
  - Is/are tax resident/s or simultaneously tax resident/s in a different jurisdiction, or



- Carry on a business in another jurisdiction through a permanent establishment situated in that jurisdiction and the arrangement forms part or the whole of the business of that permanent establishment , or
- Carry on an activity in another jurisdiction without being resident for tax purposes or creating a permanent establishment situated in that jurisdiction.

b) Such arrangement has a possible impact on the automatic exchange of information or the identification of beneficial ownership.

Participant is a wider term as it may include not only the direct parties in an arrangement (for example, it may include person providing guarantees etc.)

Arrangement is broadly defined and includes all types of arrangements, transactions, payments, schemes, and structures legally enforced or not. It includes a series of arrangements and an arrangement may also include more than one step. However at least one of the hallmarks as provided by the Directive should be triggered in order for an arrangement be reportable.

The following questions, if all are answered to the affirmative, lead to the conclusion that an arrangement is reportable:

- Is there an arrangement?
- Does the arrangement have a cross-border dimension
- Is one of the hallmarks fulfilled?
- Is the hallmark subject to the main benefit test?
- Is the main benefit test satisfied?

### **Application of the Law**

The Law regards reportable cross border arrangements of which the first stage has taken place since **the 25<sup>th</sup> of June 2018** and after. Intermediaries have a reporting obligation for any reportable cross border arrangement within 30 days from the next date from which this has been made available for application or was ready for application or the first stage has taken place or where the intermediary provided assistance, contribution or advice.

For any reportable cross border arrangement that has taken place between 25/06/2018 and 31/12/2020, intermediaries have a reporting obligation when that has been made available for application or was ready for application or the first stage has taken place within the below periods or where the intermediary provided assistance, contribution or advice within the below periods.

**Reportable Cross Broder Arrangements of period:      Deadline of Reporting Obligation:**

**25/06/2018 – 30/06/2020**

**28/02/2021**

**01/07/2020 – 31/12/2020**

**31/01/2021**



Due to the fact that in certain circumstances, the deadlines for the submission of information as determined by the Directive has already lapsed, the Tax Department has announced the postponement of the imposition of administrative fines for the overdue submission of information until the 30<sup>th</sup> of September 2021 in the following circumstances:

- (a) Reportable cross border arrangements that have been carried out between 25 June 2018 and 30 June 2020 and should have been submitted by the 28<sup>th</sup> of February 2021.
- (b) Reportable cross border arrangements that have been carried out between 1 July 2020 and 31 December 2020 and should have been submitted by the 31<sup>st</sup> of January 2021.
- (c) Reportable cross border arrangements that have been carried out between 1 January 2021 and 31 August 2021 and should have been submitted within 30 days from the date on which those have been made available for application or were ready for application or the first stage towards their application has taken place, whichever has taken place first.
- (d) Reportable cross border arrangements for which secondary intermediaries have provided assistance, contribution or advice between 1 January 2021 and 31 August 2021 and should have filed the information within 30 days calculated from the next date on which they have provided the assistance, contribution or advice.

### **The consequences for the legal world**

All lawyers are thus urged to check all cross border arrangements that have handled in the period between 25/06/2018 until today for the purposes of complying with the Law.

From now on, lawyers when providing certain services may be regarded as intermediary as referred above. Some examples are:

- The incorporation of a Cypriot company with the drafting of the Memorandum & Articles of Association and the Statutory Declaration (Form HE1).
- The process for the transfer of a registered office from and to the Republic of Cyprus in accordance with Sections 354B-354IE of the Companies Law, Cap. 113.
- The registration of trade marks or patents and the appearance before any administrative authority for the aforementioned purposes as well as other proceedings on the basis of the Trade marks Law, Cap. 268, the Patents Law of 1998 (L16(I)/1998) and the Legal Protection of Industrial Designs & Templates Law of 2002 (L4(I)/2002).
- The appearance before any Court for the carrying out of a proceeding on behalf of any person:
  - When the proceedings referred to above, are provided by the lawyer following a request for the provision of legal opinion as to how those shall be carried out to facilitate or uphold the planning, organization and management of a reportable cross border transaction, then the lawyer constitutes an Intermediary and subject to the obligations of legal professional



privilege (as defined in the Code of Advocates' Conduct Regulations of 2002 on the basis of Section 24 of Advocates Law, Cap. 2), shall have a reporting obligation.

- The lawyer has an obligation only with regards to the information that has in his disposal but if such information will be submitted by another Intermediary as part of the information regarding the arrangement and there is proof for that, then the lawyer is relieved from the obligation to inform the other Intermediary or the taxpayer.
- If the proceedings referred to above, are provided by a lawyer at the request of the client for their carrying out without further details being disclosed to the lawyer in order for the latter to be in a position to know that the proceedings are carried out in the context of a reportable cross border arrangement, the lawyer shall not be regarded as an Intermediary and shall not have a reporting obligation.

Finally, in accordance with the Law, a lawyer acting as an Intermediary is relieved from the obligation to submit to the Tax Department of information that are covered by legal privilege. In those cases, a lawyer is under an obligation to inform, within 10 days, any other Intermediary, or if there is no other Intermediary, to the interested taxpayer the obligation of submitting the relevant information in accordance with the Law. We shall make clear that the legal professional privilege applies only in those instances where the lawyer performs the profession as defined in the Advocates Law, Cap. 2.

Intermediaries, including lawyers of course, can submit information with regards to reportable cross border arrangements via Ariadne portal in the electronic service DAC6 by uploading a relevant file.

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