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Proposed European Commission Directive Deferring DAC6 Reporting Timelines

In light of the COVID-19 crisis and the disruptions to business and the movement of people, the European Commission (following weeks of intense lobbying) published a proposed Directive on 8th May to defer (among other things) the reporting and consequently the exchange of information under DAC6 (EU Mandatory Disclosure Rules).

Brief recap of DAC6

DAC6 applies to cross-border tax arrangements which meet one or more specified hallmarks and which concern either more than one EU member state, or an EU member state and a non-EU country. It imposes a reporting obligation for these tax arrangements whether or not the arrangement is in accordance with national tax laws and in certain cases whether or not a tax advantage is a primary benefit of the arrangement.

Currently under DAC6, all reportable arrangements for the period between 25 June (when the DAC6 Directive came into force) and 30 June 2020 are required to be reported to the Irish Revenue Commissioners (or the relevant national tax authority in another EU member state) not later than 31 August 2020 (so that such information is then subsequently exchanged by the relevant tax authority with other EU member states). Thereafter, any reportable arrangements from 1 July 2020 must be reported to the Irish Revenue Commissioners (or the relevant national tax authority in another EU member state) within 30 days after the arrangement.

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Proposed deferral of DAC6 reporting timelines

The proposed Directive if adopted would change the following DAC6 reporting timelines:

- ▣ all so-called 'historical' reportable arrangements for the first period between 25 June 2018 and 30 June 2020 would now be required to be reported to the relevant EU member state tax authority by 30 November 2020 and the subsequent exchange of information by that EU tax authority with other EU member states would also be pushed out by 3 months to be exchanged by 31 January 2021;
- ▣ all reportable arrangements in the period from 1 July to 30 September 2020 would now be required to be reported to the relevant EU member state tax authority by 31 October 2020 (note the earlier proposed date of 1 month compared to the reporting of historical reportable arrangements) and the subsequent exchange of information by that EU tax authority with other EU member states would also be pushed out, with such information to be exchanged by 31 January 2021; and
- ▣ thereafter any reportable arrangements that become reportable after 1 October 2020 would now be required to be reported to the relevant EU member state tax authority within 30 days.

The proposed Directive also proposes a possibility to further extend the deferral period once, for a maximum of three additional months. It is proposed that this option would only be invoked if during the initial period of deferral, the exceptional circumstances of severe risks for public health caused by the COVID-19 pandemic persist and EU Member States are forced to implement new or continue existing lockdown measures. The possibility to only further defer once appears to be a deliberate move to appease certain EU member states who have reservations about the deferral.

The proposed Directive requires unanimous approval and in addition, the European Commission has set an ambitious deadline for EU member states to transpose the Directive into national laws by 31 May 2020, with its provisions applying from 1 June 2020.

Conclusion

The proposed Directive if adopted and implemented will be welcomed by many parties so that all relevant parties have more time to implement procedures for identifying reportable arrangements, reporting such arrangements and exchanging information about such reportable arrangements. However, the European Commission have been careful to ensure the maximum deferral is limited to 6 months and that the proposed Directive merely extends the timelines for complying while ensuring that all prior reportable arrangements remain reportable.

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