

8 May 2020

# Global Tax Alert

## European Commission proposes deferral for certain filing deadlines under the Mandatory Disclosure Rules

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### Executive summary

On 8 May 2020, the European Commission (the Commission) proposed a three-month extension to the deadlines for filing and exchanging information on cross-border arrangements under the European Union (EU) Directive 2011/16 due to the COVID-19 pandemic. The proposal also provides for the possibility of one further extension for filing and exchanging information for a maximum additional three months.

This proposal, if enacted, will be in the legal form of a Directive (the Proposed Directive). Given that the measures set out in the Proposed Directive relate to obligations in Directive 2011/16 which would otherwise become applicable within a short period of time, the Commission has stated that the Proposed Directive should enter into force as a matter of urgency.

The Proposed Directive will be discussed at a meeting of the members of the High-Level Working Party (Taxation) on 11 May 2020.

## Detailed discussion

### Background

The Council of the European Union Directive 2018/822 of 25 May 2018 amending Directive 2011/16/EU regarding the mandatory automatic exchange of information in the field of taxation (DAC6), entered into force on 25 June 2018.<sup>1</sup>

The Directive requires intermediaries (including EU-based tax consultants, banks and lawyers) and in some situations, taxpayers, to report certain cross-border arrangements (reportable arrangements) to the relevant EU member state tax authority. This disclosure regime applies to all taxes except value-added tax (VAT), customs duties, excise duties and compulsory social security contributions.<sup>2</sup> Cross-border arrangements will be reportable if they contain certain features (known as hallmarks). For more background, see EY Global Tax Alert, [Council of the EU reaches an agreement on new mandatory transparency rules for intermediaries and taxpayers](#), dated 14 March 2018.

### Proposed Directive amending DAC6

In the *Proposal for a Council Directive amending Directive 2011/16/EU*, the Commission has proposed amendments to certain time limits for filing and exchanging information under Directive 2011/16 concerning reportable cross-border arrangements as provided by DAC6.

The proposed rules are:

- ▶ Change the date from 31 August 2020 to 30 November 2020 for the reporting of the "historical" cross-border arrangements (i.e., arrangements that became reportable from 25 June 2018 to 30 June 2020).
- ▶ With respect to arrangements targeted by DAC6 starting 1 July 2020, where a reportable cross-border arrangement is made available for implementation, or is ready for

implementation, or where the first step in its implementation has been made between 1 July 2020 and 30 September 2020, the period of 30 days for filing information shall begin on 1 October 2020.

- ▶ Change the date for the first exchange of information on reportable cross-border arrangements from 31 October 2020 to 31 January 2021.

The proposal also provides for the possibility of one further extension for filing and exchanging information for a maximum additional three months, but only where the exceptional circumstances of severe risks for public health caused by the COVID-19 pandemic persist and Member States have to implement lockdown measures.

The Commission stated that the length of the deferral should not disrupt the established structure and functioning of Council Directive 2011/16. The proposal, if enacted in its current form, will merely extend the deadline for complying with the obligation to report and exchange information under Directive 2011/16, while still ensuring that no information remains without eventually being exchanged. It will be of limited duration and proportionate to the practical difficulties caused by the temporary lockdown aimed at containing the COVID-19 pandemic. Both the European Parliament and the Council have been informed about this proposal.

### Other proposals released by the Commission

For completeness, the proposals released by the Commission on 8 May 2020 also proposed a postponement of the entry into application of the VAT e-commerce package by six months and a deferral to the time limit for exchanges of information on Reportable Financial Accounts by three months until 31 December 2020.

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## Endnotes

1. For background on MDR, see EY Global Tax Alert, [EU publishes Directive on new mandatory transparency rules for intermediaries and taxpayers](#), dated 5 June 2018.
2. DAC6 sets out a minimum standard. Member States can take further measures; for example, (i) introduce reporting obligations for purely domestic arrangements; (ii) extend the scope of taxes covered; (iii) bring forward the start date for reporting.

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