
Greece transposes DAC6: the Directive on the mandatory disclosure of potentially aggressive tax planning arrangements

The new law implements Council Directive (EU) 2018/822 adopted on 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (**DAC6**). A deferral of the time limits for filing and exchange of information, allowed under Council Directive (EU) 2020/876 adopted on 24 June 2020 is also being introduced. As a result, **tax reporting and information exchange dates fall after the beginning of 2021**. However, **the new rules entered into force on 01 July 2020** and the scope of reporting includes arrangements implemented as of **25 June 2018**.

In accordance with the new rules, Greek **intermediaries and taxpayers must report to the tax authorities**, information about certain, broadly defined, potentially aggressive cross-border arrangements. Member States must subsequently automatically exchange relevant information. Taxes **excluded** from the scope include **VAT and customs duties**.

The rules are, in accordance to the explanatory report to the law, designed to enable tax authorities to be timely informed about the design and use of potentially aggressive tax planning structures and thus to adopt the necessary **measures to prevent** the implementation of tax avoidance and evasion.

The law is largely in alignment with the contents of the Directive. It also adopts the option allowed by the Directive to give a **waiver** from filing information to intermediaries who operate within the limits of the Greek laws that define the lawyer profession, where reporting would breach the **attorney-client privilege** under Greek law. In such cases there is an obligation to notify other intermediaries or relevant persons involved (taxpayers) of their filing obligations.

What type of arrangements are required to be reported

Arrangements to be reported are those which (a) involve either **more than one EU Member State or a EU Member State and a third country** and (b) contain at least one of a number of features and elements (referred to as '**hallmarks**') listed in the law. Hallmarks are considered in accordance to the rules to present a strong indication of tax avoidance.

Generic hallmarks and a number of specific hallmarks may only lead to a reporting obligation if they meet the "**main benefit test**" which is satisfied if it can be established that the main benefit or one of

the main benefits which, having regard to all relevant facts and circumstances, a person may reasonably expect to derive from an arrangement is the obtaining of a tax advantage.

Which persons are obliged to report: intermediaries but also taxpayers themselves

The persons obliged to report to the Greek tax authorities are intermediaries, (such as lawyers, accountants, banks, financial advisors etc.) who are tax resident, have a permanent establishment, or are incorporated or registered with a professional association in Greece.

Intermediaries are those persons who either:

- **design**, market, organise or make available for implementation or manage the implementation of a reportable cross-border arrangement, or
- know or could be reasonably expected to know that they have undertaken to provide, directly or by means of other persons, **assistance or advice** with respect to the above activities.

Where no intermediary is liable to reporting because, for instance,

- an arrangement is implemented **in-house**, or
- the intermediary does not have a **presence in Greece**, or
- disclosure would breach the **attorney-client privilege**,

the reporting obligation lies with the person (corporate or individual) implementing the arrangement, i.e. effectively the **taxpayer** even if such person **does not have a presence in Greece**, as long as such person receives **income** or generates **profits** or carries on an **activity** in Greece.

Which are the relevant dates

The deadline for reporting is in general 30 days from implementation-related triggering events determined in the law or from the provision of advice or assistance. Information is automatically exchanged by the Greek tax authorities within one month of the end of the quarter in which the information was filed.

The following extended deadlines now apply:

- information on reportable cross-border arrangements the first step of which was implemented **between 25 June 2018 and 30 June 2020** must be filed **by 28 February 2021**,
- for reportable cross-border arrangements made available for implementation or ready for implementation, or where the first step in their implementation has been made between **01 July 2020 and 31 December 2020** the period of 30 days for filing information starts as of **01 January 2021**,

- for intermediaries providing, directly or by means of other persons, aid, assistance or advice between **01 July 2020 and 31 December 2020** the period of 30 days for filing information starts as of **01 January 2021**,
- in the case of marketable arrangements, the first periodic report is to be filed by **30 April 2021**,
- the first information is to be communicated by the Greek tax authorities by **30 April 2021**.

Penalties

The following penalties are imposed, per each reportable cross-border arrangement, for infringements of the relevant obligations:

- in case of failure to file information a penalty of Euro 5,000 or, in case of double-entry bookkeeping, Euro 10,000,
- in case of filing of inaccurate or incomplete information a penalty of Euro 2,500 or, in case of double-entry bookkeeping, Euro 5,000,
- in case of delay in filing information a penalty of Euro 250 or, in case of double-entry bookkeeping, Euro 500 for every month of delay up to three months; after the lapse of three months, a penalty of Euro 2,500 or, in case of double-entry bookkeeping, Euro 5,000,
- in case of failure by an intermediary exempt due to an attorney-client privilege to notify another intermediary or the taxpayer of the obligation to file information, a penalty of Euro 5,000 or, in case of double-entry bookkeeping, Euro 10,000.

Penalties are in general capped at 10 times the applicable penalty, e.g. at **Euro 100,000** (except with respect to delayed filing where the penalty is in principle capped at 2 times), however guidelines clarifying how such caps are to be applied are expected to be issued.

Going forward

Due to the broad definition of reportable arrangements, taxpayers, advisors and other intermediaries will need to be in a position to identify reportable arrangements in order to comply with any filing or notification obligations and in order to properly coordinate with other persons. Going forward, the Greek tax authorities are also expected to issue guidelines refining the relevant obligations.

For further information, please contact:

Daphne Cozonis

Partner

T (+30) 210 69 67 000

E d.cozonis@zeya.com

Established in 1893, Zepos & Yannopoulos is one of the leading and largest Law firms in Greece providing comprehensive legal and tax services to companies conducting business in Greece.

280, Kifissias Ave.
152 32 Halandri
Athens, Greece

newsletters@zeya.com
Tel.: (+30) 210 69 67 000
Fax: (+30) 210 69 94 640

www.zeya.com

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