KPMG

Euro Tax Flash from KPMG's EU Tax Centre

Council of the EU announces adoption of DAC6 and DAC2 deferrals

European Union – Council of the EU –Directive on Administrative Cooperation – Mandatory Disclosure Requirements – Common Reporting Standard – Reporting deadlines

The Council of the European Union (EU) announced on June 24, 2020 that the EU will give Member States the option to delay by up to six months the deadlines for filing and exchanging information under the EU mandatory disclosure rules (MDR) and the common reporting standard (CRS).

Background

In a Coreper meeting on June 3, 2020, EU Member States reached a compromise on an optional maximum six-month deferral of reporting deadlines for the purposes of the mandatory disclosure requirements for intermediaries and relevant taxpayers under the Directive on Administrative Cooperation (DAC6).

The amendment also refers to a deferral of certain deadlines under the EU common reporting standard (CRS) for reporting financial institutions, transposed into EU law via a previous amendment to the Directive of Administrative Cooperation (DAC2).

For the deferral to become applicable, formal unanimous agreement in the Council of the EU is required, subsequent to the European Parliament expressing an opinion on the proposal. It was announced in an ECOFIN report to the European Council (June 5, 2020) that this amendment to DAC will be adopted before July 1, 2020, under the written procedure, whereby Member States express their vote in writing, within a set deadline.

The European Parliament voted in favor of the proposed deferral on June 19, 2020. Please refer to Euro Tax Flash issue 431 for further details.

Council announcement

On June 24, 2020 the Council of the EU announced that it had adopted the amendment to the Directive on Administrative Cooperation allowing Member States an option to defer by up to six months the time limits for the filing and exchange of information under the EU MDRs and CRS. The EU Council's announcement notes that the optional deferral is in response to the severe disruption to the activities of many financial institutions, tax advisers, and tax authorities caused by the COVID-19 pandemic and lockdown measures.

With respect to DAC6 (MDR), the amendments as adopted give EU Member States the option to delay the deadlines for filing information on reportable cross-border arrangements by up to six months, as follows:

- By **February 28, 2021** (previously August 31, 2020) for arrangements where the first step was implemented between June 25, 2018 and June 30, 2020 (so-called "historical arrangements").
- The start date for the 30 days reporting deadline to begin by **January 1, 2021** (originally July 1, 2020).

  This will also apply with respect to cross-border arrangements for which the reporting trigger occurs between July 1, 2020 and December 31, 2020. The deadline for a reportable cross-border arrangement that is made available for implementation or is ready for implementation, or where the first step in its implementation has been made during the deferral period will therefore be **January 30, 2021**.
- The new deadline for the first periodic report on marketable arrangements would be **April 30, 2021.**

With respect to DAC2 (CRS), it was agreed to defer by six months the time limit for automatic exchanges of information on financial accounts of which the beneficiaries are tax residents in another Member State, so that information that relates to the 2019 reporting period can be exchanged within 12 months following the end of the calendar year 2019 or the other appropriate reporting period.

The amendment provides the possibility for the Council to extend the deferral period once, for a maximum of three further months. Any extension would depend on the evolution of the pandemic and would be subject to strict conditions, i.e. provided that severe risks to public health, hindrances and economic disturbance caused by the COVID-19 pandemic continue to exist and Member States apply lockdown measures.

The amended Directive will enter into force the day after the text is published in the Official Journal of the EU. It is up to each Member State to opt for and communicate the deferral.

Reactions from Member States

EU Member States that have already made announcements or have published draft laws in this respect include:

- Belgium, the Czech Republic, Luxembourg and the UK: will opt for the full six-month deferral;
- Ireland and Sweden: deferral confirmed but intended timeframe to be announced;
- Finland: will not opt for a deferral.

Other countries, such as Germany, Hungary, Latvia, Lithuania, Romania and countries that have not yet completed DAC6 transposition into domestic law (such as Cyprus, Italy, Portugal and Spain) are also expected to opt for the six-month deferral but have not formally announced their choice yet.

EU Tax Centre comment

With the formal announcement from the Council, the legislative process for the adoption of the deferral at EU level is almost complete. Member States are therefore expected to announce their positions in the coming days; however, some countries may only express their position once the text has been published in the Official Journal of the EU, which is expected shortly.

Please refer to KPMG's MDR Updates page for previous updates on the implementation of DAC6 into domestic legislation.

For further information on KPMG services and technology designed to assist you in meeting the demands of the new EU MDR regime, please refer to KPMG's EU Mandatory Disclosure Rules page.

Should you have any queries, please do not hesitate to contact KPMG's EU Tax Centre, or, as appropriate, your local KPMG tax advisor.

Raluca Enache
Director, KPMG's EU Tax Centre

KPMG's EU Tax Centre, Laan van Langerhuize 9, 1186 DS Amstelveen, Netherlands