

Ready for DAC 6?

Bulgarian National Revenue Agency (NRA) has officially announced and activated two new e-services in its web-based platform in connection with DAC 6 mandatory disclosure of Aggressive Tax Planning Arrangements.



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The **EU Council Directive 2011/16** on administrative cooperation in the field of taxation regulating mandatory disclosure rules in relation to cross-border tax arrangements (DAC6), has been in force since 25 June 2018 and is duly implemented in the **Bulgarian Tax and Social Security Procedure Code** (Section VII).

The new legislation aims at transparency and fairness in taxation when it comes to cross-border tax arrangements, which meet specific hallmarks, when more than one EU country or an EU country and a non-EU country are engaged.

Failure to comply with DAC 6 reporting obligations may lead not only to monetary sanctions, but also may draw the attention of the competent authorities within the EU to the business activities of the participating companies and face a reputational risk for the participants and the consultants involved as well.

DAC 6 aims at giving tax authorities early warning of any new cross-border tax arrangements implemented in practice. Given the fact that the information will be automatically exchanged amount the EU tax authorities, the member-states will be able to share their best practices.

Competent Authority in Bulgaria is the executive director of the National Revenue Agency.

Which cross-border arrangements are affected by DAC 6 mandatory reporting in Bulgaria?

Notification is mandatory for any arrangement (schemes) where the following requirements are met:

- Participants from more than one EU countries or an EU country and a non-EU country are engaged (note: depends on where each participant is tax resident; or has permanent establishment; or carries on an activity in a different jurisdiction without being tax resident or permanently established there, etc.); and
- There is a potential risk of obtaining a tax advantage, i.e. the arrangement includes at least one indicator - “hallmarks” (note: some of the hallmarks are only triggered if it can be established that the main benefit or one of the main benefits which a person may reasonably expect to derive from the cross-border arrangement is to obtain a tax advantage, i.e. the schemes satisfies the “main benefit” test).

First Deadlines are Coming: 31 January 2021 / 28 February 2021

- First deadline for reporting comes for those schemes that could be treated as Aggressive Tax Planning Arrangements occurring within the period 1 July 2020 - 31 Dec 2020. They must be reported to the NRA by 31 January 2021.
- For any Aggressive Tax Planning Arrangements occurring within the period 25 June 2018 - 30 June 2020 the report must be filed by the end of February 2021.

For all other ongoing arrangements subject to report, the intermediaries and taxpayers involved are required to file information with NRA within thirty days after the reportable cross-border arrangement is made available for implementation; or after the reportable cross-border arrangement is ready for implementation; or when the first step in the implementation of the reportable cross-border arrangement has been made; or when the intermediary provided aid, assistance or advice (in case an intermediary is involved), which occurs first.

Who is obliged to report?

Primarily, these are the intermediaries (consultants) involved. The legal definition of “intermediary” is quite broad and could catch different service providers, including banks, other financial institutions, accountants, lawyers and other tax advisers. If more than one EU intermediary participates, then all of them have the obligation to report. It is possible one of the intermediaries to file the report to the respective competent authority and to provide the “arrangement reference number” to the others.

When the business needs to report?

In case the intermediary is prevented from making the disclosure because of **legal privilege**, applicable for lawyers for example, then the intermediary is still obliged to provide to NRA

information about the other participating intermediaries and/or companies involved, without providing detailed information about the reportable arrangement. Then the NRA will expect to receive the overall information from the other participating companies/intermediaries which are not restricted from disclosure due to legal privilege.

The taxpayers involved will be obliged to report the scheme when no intermediary is involved or the intermediary is not tax resident; or not established in the EU; or is not registered as a member of a professional body/association involved in legal, tax or other consultancy services in any member-state.

The information that needs to be reported includes details of the intermediaries and relevant taxpayers involved, the hallmarks met, information about the arrangement; the member states or persons likely to be affected by the arrangement; list of applicable legal acts and specific clauses, based on which the arrangement is possible to be implemented.

Monetary Sanctions under the Bulgarian law

Failure to report a tax arrangement to the NRA may result in monetary sanctions up to BGN 10,000 (c. EUR 5,000).