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CROP

accountants & advisors

Introduction of mandatory reporting of cross-border arrangements

- Why report and what has to be reported?
- Who has to report?
- Time of reporting and sanctions in case of failure to report

Introduction of mandatory reporting of cross-border tax arrangements

From the first of July 2020, the European Directive on Mandatory Disclosure Rules, MDR or DAC6 (hereinafter: DAC6) will apply retroactively to 25 June 2018. As a result of the Dutch implementation of that Directive, intermediaries and/or taxpayers themselves have to report *potentially aggressive international tax arrangements* to the Tax and Customs Administration. These are tax arrangements in which residents of different countries are involved (which can be companies as well as natural persons) and which can possibly be used to evade tax. However, more common cross-border advice is also subject to the reporting obligation. DAC6 covers all taxes with the exception of VAT, excise duties, customs duties, (administrative) charges, retributions and social security contributions. The fine for any failure to comply with this obligation to report can amount to as much as a maximum of € 870,000!

Potentially aggressive international tax arrangements

At least two countries must be involved in order to assess whether there is such a tax arrangement, so that the tax arrangement is international.

In order to assess whether the tax arrangement is *potentially fiscally aggressive*, a list of so-called hallmarks has been drawn up. If the tax arrangement contains one or more of these hallmarks, it must be reported. For some of the hallmarks, the additional requirement is that obtaining a tax benefit is the most important benefit or one of the most important benefits of the tax arrangement.

In order to determine whether there is a *potentially aggressive international tax arrangement*, we have placed a [step-by-step plan](#) on our website. In that plan, we have summarised the hallmarks for you. The list in the Directive is a long list with great diversity, which unfortunately makes it impossible to give a simple main rule.

Although DAC6 was devised to identify aggressive tax arrangements, tax arrangements and transactions that cannot be considered aggressive may nevertheless be subject to the obligation to report.

Who should report?

The main rule of the Dutch obligation to report is that 'intermediaries' residing or established in the Netherlands must report the tax arrangement. These are, for example, tax advisers, but also accountants, civil-law notaries, lawyers and financial advisors. The obligation to report also applies to persons who are not primarily involved in the advice, but who are aware of and/or assist in it.

In the following situations, the obligation to report lies with the entrepreneur himself:

- There is no intermediary involved in the tax arrangement at all;
- Only an intermediary from outside the European Union is involved in the tax arrangement;
- The intermediary involved in the tax arrangement has a professional right of non-disclosure (e.g. a lawyer) and is therefore not required to report the tax arrangement himself.

For CROP clients this means that if we have been involved as an intermediary or auxiliary intermediary in a 'potentially aggressive international tax arrangement', we have to report this tax arrangement to the Tax and Customs Administration for you. An exception to this is if another intermediary himself has already reported the tax arrangement to the Tax and Customs Administration. If we as CROP wish to invoke this exception, we must include a reference number in our file as proof of this. The other intermediary will receive this reference number with the reporting.

If we only have knowledge of the existence of the tax arrangement but have not been involved in its content at all, then we are not held to report it. As indicated above, you as our client may then possibly have the obligation to report the tax arrangement to the Tax and Customs Administration yourself.

Time of reporting and retroactive effect

Reports can be made to the Tax and Customs Administration as from 1 January 2021. DAC6 has material retroactive effect to 25 June 2018. As a result, there are also different deadlines for the reporting:

- For tax arrangements for which the first step of implementation has been taken in the period between 25 June 2018 and 1 July 2020, the reporting must have taken place on 28 February 2021 at the latest;
- For tax arrangements for which the first step of implementation has been taken in the period between 1 July 2020 and 1 January 2021, the reporting must have taken place on 31 January 2021 at the latest;
- New tax arrangements that are subject to the obligation to report as of 1 January 2021 must always be reported within 30 days.

Fine

The fine for failing to comply with the obligation to report is at most € 870,000 per violation.

What must be reported and how?

The following information must be reported to the Tax and Customs Administration:

- Information of the taxpayer (company or natural person)
- A summary of the content of the tax arrangement
- The relevant hallmarks
- The relevant national legal provisions
- The value of the tax arrangement
- The implementation date
- The EU Member States involved

The report must be submitted in English via a data portal of the Dutch Tax and Customs Administration.

Work to do for you and for us

If we look at the substantial fines that can be imposed (per violation!) and the deadlines for the reporting itself, it is important to start taking stock in the short term. If your situation involves cross-border tax arrangements, these must be reported to the Tax and Customs Administration within the framework of DAC6.

We have already started the inventory for our clients. If our inventory shows that you have one or more cross-border tax arrangements that must be reported, we will inform you in advance. We will also indicate who actually has to make the report. If you yourself have to report tax arrangements to the Tax and Customs Administration, we can assist you with that.

We advise you to also make an inventory of whether you have entered into cross-border tax arrangements without using an intermediary. Of course you can call in our assistance and/or ask questions about DAC6. For this you can contact your regular contact persons at CROP, or send an e-mail to our DAC6 team: dac6@crop.nl.