

Current tax information for our clients

20 May 2020

Declaration of reportable tax arrangements in tax returns

The requirement to report cross-border tax arrangements entered into force on 1 January 2020. The reporting requirement rules will become applicable for the first time as of 1 July 2020 to all cases in which the first step in implementing a reportable cross-border tax arrangement was made after 24 June 2018. The sixth amendment to the Directive on Administrative Cooperation (DAC 6) has thereby been implemented in national law.

Cross-border tax arrangements within the meaning of the German Tax Code [AO] must be reported electronically to the German Federal Central Tax Office [BZSt] using an official mandatory dataset via an official interface. Furthermore, reportable tax arrangements must also be declared in the tax return as of 1 July 2020.

1. Legal basis and timeline for application

If a user has implemented a cross-border tax arrangement within the meaning of German law or a corresponding regulation of another EU Member State, the user has to declare this arrangement as of 1 July 2020 in the tax return for

the type of tax concerned and the fiscal year or date of taxation during/at which the tax advantages of the cross-border tax arrangement are to show their effect for the first time. If the tax advantages have an effect on several types of tax and several taxable periods/dates, the arrangement is to be declared in all tax returns concerned (see draft guidance of the German Federal Ministry of Finance [BMF] of 2 March 2020, marginal ref. 255).

The reporting requirement applies to all taxes levied by a member state, particularly income, corporate income and trade tax. This particularly does not cover value added tax, including import VAT and customs duties. These must therefore not be declared in the tax return.

Intentional or reckless violations of the reporting and declaration requirements constitute administrative offences punishable by a fine of up to EUR 25,000. This, however, does not apply to reportable events occurred until 30 June 2020, therefore not to events for example that must already be declared in the tax return for 2019.

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2. Declaration in new tax return forms

The declaration of cross-border tax arrangements is already contained in the following tax return forms for 2019 in particular:

- Attachment – Further information [Anlage WA] to the corporate income tax return 2019 (lines 29a and 29b)
- Form “GewSt 1 A” for the trade tax return 2019 (lines 32a and 32b)
- Tax return 2019 for separate and uniform assessment of the basis for taxation of income (e. g. for commercial partnerships) (lines 38 and 39)
- and Attachment Other [Anlage Sonstiges] to the income tax return 2019 (lines 11 and 12).

First, it needs to be declared that a cross-border tax arrangement was used. Then, the 'identifier' [Ordnungsmerkmal] must be provided. For this, entering the registration number and disclosure number allocated by the German Federal Central Tax Office or competent authority of another EU Member State will suffice. If a registration number and disclosure number are not yet available, this should be noted on the tax return (see draft guidance of the BMF of 2 March 2020, marginal ref. 257).

3. Potential delay of first-time reporting

The draft BMF guidance of 2 March 2020 provides for a delay of first-time reporting to the German Federal Ministry of Finance [BZSt] by two months:

If the first step in implementing a reportable cross-border tax arrangement was made after 24 June 2018 and before 1 July 2020, reporting is to occur to the BZSt within two months after 30 June 2020, in derogation from the law (30 days). However,

no objections shall be raised if these cross-border tax arrangements are filed by 30 September 2020 at the latest (draft BMF guidance of 2 March 2020, marginal ref. 267).

If the event of significance to reporting has occurred after 30 June 2020, failure to meet the deadline shall not be contested until 30 September 2020 (marginal ref. 268).

Moreover, the European Commission has proposed to postpone the deadlines contained in DAC 6 by three months on account of the COVID-19 pandemic (see press release of the European Commission of 8 May 2020). The initiative comes in the form of a Directive amending DAC 6 and proposes the following:

Change the date for

- the beginning of the 30-day period for reporting cross-border arrangements from 1 July 2020 to 1 October 2020
- for the reporting of cross-border arrangements that became reportable from 25 June 2018 to 30 June 2020 (the so-called 'historical' arrangements) from 31 August 2020 to 30 November 2020
- for the first exchange of information on reportable cross-border arrangements, that is from 31 October 2020 to 31 January 2021.

The European Commission also proposes a possibility to further extend the deferral period once, for a maximum of three additional months. It is proposed that this option would only be invoked if during the initial period of deferral, the exceptional circumstances of severe risks for public health caused by the COVID-19 pandemic persist and the EU Member States are forced to implement or

maintain (renewed) lockdown or similar measures.

Unanimous agreement among EU Member States is required in order for the EC's proposal to be adopted and enter into force.

It remains to be seen whether the deadline for first-time declaration of cross-border tax arrangements will be amended accordingly in the tax return (1 July 2020).

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Your direct contact persons at KPMG AG Wirtschaftsprüfungsgesellschaft are always at your disposal to answer any question you may have.

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