

Spain issues draft mandatory disclosure regime legislation

NEW! EY Tax News Update: Global Edition

EY's new Tax News Update: Global Edition is a free, personalized email subscription service that allows you to receive EY Global Tax Alerts, newsletters, events, and thought leadership published across all areas of tax. Access more information about the tool and registration [here](#).

Also available is our [EY Global Tax Alert Library](#) on ey.com.

On 20 June 2019, the Spanish Government published draft legislation and draft guidance addressing the implementation of the European Union (EU) Directive on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive). Under DAC6, taxpayers and intermediaries are required to report cross-border reportable arrangements from 1 July 2020. However, reports will retrospectively cover arrangements where the first step is implemented between 25 June 2018 and 1 July 2020.¹

The draft legislation is subject to public consultation and comments on the proposals are requested by 12 July 2019. The Spanish draft legislation is subject to the formal legislative process and is likely to be amended before final enactment.

If implemented as currently proposed, the Spanish Mandatory Disclosure Rules (MDR) legislation and guidance will be broadly aligned to the requirements of the Directive.

The key highlights of the Spanish draft legislation and guidance are summarized below.

Key highlights

- ▶ The scope of taxes covered is not broader than the Directive.
- ▶ The definition of reportable arrangements does not include domestic arrangements.
- ▶ In addition to Hallmarks A-E included in DAC6, Spain's draft guidance also includes additional information on the interpretation and application of these hallmarks.
- ▶ The definition of intermediaries is not broader than the definition in DAC6.
- ▶ The Spanish draft legislation includes an annual reporting obligation, detailing the use of reportable cross-border arrangements that have already been reported before any tax authority. This obligation is not required under the Directive. The draft legislation includes a list of nexus thresholds with Spain which give rise to this obligation.
- ▶ Penalties for failures to report are expected to apply and will range between €3,000 and up to the maximum of the fees received/agreed or the value of the tax impact of the arrangement.

- ▶ Intermediaries are exempt from the obligation to report where the reporting obligation would breach legal professional privilege (LPP). LPP is foreseen both for lawyers and other intermediaries, but only in limited cases. If there are no EU intermediaries which can report, the obligation will shift to the taxpayer.
- ▶ The Spanish Tax Authority will publish on its website, for information purposes, the most relevant reported cross-border arrangements as well as the tax information related to the applicable regime or characterization of such cases.

Next Steps

Determining if there is a reportable cross-border arrangement raises complex technical and procedural issues for taxpayers and intermediaries. Taxpayers and intermediaries who have operations in Spain should review their policies and strategies for logging and reporting tax arrangements so that they are fully prepared to meet these obligations.

A detailed Global Tax Alert will be issued shortly.

Endnote

1. See EY Global Tax Alert, [EU publishes Directive on new mandatory transparency rules for intermediaries and taxpayers](#), date 5 June 2018.

For additional information with respect to this Alert, please contact the following:

Ernst & Young Abogados, Madrid

- ▶ Araceli Saenz de Navarrete Crespo araceli.saenzdenavarretecrespo@es.ey.com
- ▶ Miguel Muñoz miguel.munozperez@es.ey.com
- ▶ Tatiana de Cubas Buenaventura tatianade.cubasbuenaventura@es.ey.com

Ernst & Young LLP (United States), Spanish Tax Desk, New York

- ▶ Jose A. (Jano) Bustos joseantonio.bustos@ey.com
- ▶ Isabel Hidalgo isabel.hidalgo.galache1@ey.com

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

© 2019 EYGM Limited.
All Rights Reserved.

EYG no. 003011-19Gbl

1508-1600216 NY
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.

ey.com