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Luxembourg Tax Update - 11 May 2020

## DAC 6 reporting obligations starting as from 1 October 2020

On 8 May 2020, as a result of the COVID-19 pandemic, the EU Commission proposed a three-month postponement of the starting date for the filing and exchange of information on reportable cross-border arrangements as provided under Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (“DAC 6”).

Under the proposal, the reporting process in Luxembourg (and other EU Member States) would begin as from 1 October 2020 (as opposed to 1 July 2020, the original start date). However, the date from which DAC 6 applies will remain 1 July 2020. In particular, this means that reportable arrangements made during the postponement period will still have to be reported within 30 days (see below).

### As from 1 October 2020:

- Affected intermediaries (not subject to legal professional privilege) and taxpayers will have to file information on reportable cross-border arrangements with the Luxembourg tax authorities within 30 days from the first to occur of the following: (i) the day after the reportable arrangement is made available for implementation; (ii) the day after the reportable arrangement is ready for implementation; or (iii) the day when the first step in the implementation of the reportable arrangement has been made (“**Triggering Events**”). Intermediaries that qualify as secondary intermediaries (or service providers) will be required to file information within 30 days from the day after they provided, directly or by means of other persons aid, assistance or advice.
- Information on reportable cross-border arrangements with a Triggering Event occurring between 1 July 2020 and 30 September 2020 will have to be reported within 30 days.
- Information on reportable cross-border arrangements whose first step was implemented between 25 June 2018 and 30 June 2020 will have to be reported before 30 November 2020.

Intermediaries must make the first periodic report of marketable arrangements by 31 January 2021.

The Commission proposal does not contain any provisions on the notification obligations of intermediaries covered by legal professional privilege, since those measures are optional under DAC 6 and the related detailed provisions have been left to the discretion of individual Member States. Under the Luxembourg law of 25 March 2020 implementing the DAC 6 provisions into domestic law ("**DAC 6 Law**"), within 10 days of a Triggering Event occurring as from 1 July 2020, such intermediaries must notify any other intermediary not covered by legal professional privilege of their reporting obligations – or they must notify the relevant taxpayers, as the case may be. It is to be expected that these domestic provisions will also be modified to include the 1 October 2020 start date for notification obligations.

Furthermore, under the EU Commission proposal, tax authorities would now have to exchange their first information on reportable cross-border arrangements by 31 January 2021. Under the current text, the automatic exchange of information between tax authorities of all EU Member States must take place within one month of the end of the quarter in which the information was filed, with the first information to be communicated by 31 October 2020.

Finally, depending on the evolution of the COVID-19 pandemic, the EU Commission has proposed an option to extend the deferral period for filing and exchanging information for up to three additional months.

The EU Commission's proposal is a response to acute concern on the part of governments of the European Union and professional associations, which have highlighted a number of challenges, the COVID-19 pandemic among them. Concerns raised include the late enactment of domestic legislation by many Member States and a lack of detailed guidance and reporting schema details, as well as differing interpretations of key notions between Member States. These concerns have been exacerbated by the pandemic (especially due to a smaller available workforce and changes in how IT resources must be used), which has affected the operations of intermediaries and taxpayers and their ability to prepare for the start of reporting obligations.

This is a welcome proposal that will give intermediaries and taxpayers precious time to further determine their precise reporting obligations under the law, which may still be uncertain in some instances – in particular given the lack of detailed guidance provided by the authorities to date. It will also give them more time to implement or finalise the rollout of internal reporting processes.

The proposal will now have to be adopted by the Council of the EU and subsequently implemented into the national laws of the EU Member States.

## **How can we help?**

Monitoring the practical impact of the DAC 6 Law has already proven to be a complicated and time-consuming exercise for intermediaries and taxpayers.

The partners and your usual contacts at Arendt & Medernach are at your disposal to further assess and advise on your reporting obligations under the DAC 6 Law, and to ensure that your operating processes are aligned with these obligations.

Our experts are dedicated to excellence and can provide a full range of services covering all reporting obligations under DAC 6.

- **Analysis:** in-depth and insightful legal analysis of DAC 6 concepts and intricacies
- **Assessment:** identification of potentially reportable transactions or structures and definition of reporting duties
- **Strategy:** tailored advice on strategic approaches
- **Reporting:** comprehensive and customised reporting solutions
- **Training and seminars:** Training of key compliance officers and team members to master DAC 6 reporting obligations

<sup>1</sup> For more details on the Luxembourg law implementing DAC 6 provisions, please refer to [our newflash DAC 6 Law introducing mandatory disclosure rules in Luxembourg passed](#).

## your contacts



**ERIC FORT**

Partner  
Tax Law

[Learn more\\_](#)



**ALAIN GOEBEL**

Partner  
Tax Law

[Learn more\\_](#)



**THIERRY LESAGE**

Partner  
Tax Law

[Learn more\\_](#)



**VINCENT MAHLER**

Partner  
Tax Law

[Learn more\\_](#)



**JAN NEUGEBAUER**

Partner  
Tax Law

[Learn more\\_](#)



**YANN FIHEY**

Director  
Arendt Regulatory & Consulting

[Learn more\\_](#)



**Arendt & Medernach SA**  
Registered with the Luxembourg Bar  
RCS Luxembourg B 186371

[arendt.com](http://arendt.com)

41A avenue JF Kennedy  
L-2082 Luxembourg  
T +352 40 78 78 1

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