

Tax & Legal Weekly Alert

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DAC 6 – The implementation of Directive 2018/822 regarding the mandatory and automatic disclosure of information in the tax field with regards to cross-border arrangements, which are subject to reporting

On January 31, 2020, Emergency Ordinance no. 5/2020 was published in the Official Gazette no. 68/31.01.2019, bringing a series of changes to Law no. 207/2015 regarding the Tax Procedural Code.

Amendment of Government Ordinance no. 6/2019 regarding the establishment of tax debt restructuring

On January 31, 2020, Emergency Ordinance no. 6/2020 was published in the Official Gazette no. 72/31.01.2019, bringing a series of changes to tax debt restructuring legislation.



DAC 6 – The implementation of Directive 2018/822 regarding the mandatory and automatic disclosure of information in the tax field in regards to cross-border arrangements, which are subject to reporting

Briefly, this directive requires that *any person who designs, markets, organizes, makes available for implementation or manages the implementation of a reportable cross-border arrangement* – i.e., the intermediary or, as the case may be, the taxpayer – to report information about the transaction in question to the National Agency for Fiscal Administration (N.A.F.A.).

Moreover, the amendments regulate those criteria to consider in determining the reportable nature of the transaction - i.e., *the distinctive signs that indicate a certain degree of tax risk or breach of compliance obligations*.

In addition to introducing new concepts or redefining existing ones, such as *an associated enterprise, cross-border arrangement, intermediary, marketable or custom arrangements*, the amendments also regulate the field and conditions of the mandatory and automatic disclosure of information with regards to reportable arrangements. Thus, the following aspects must be considered:

- Within **30 days**, the intermediaries or, as the case may be, the taxpayers report information within their knowledge, possession or control to N.A.F.A., with regards to reportable cross-border arrangements;
- In the case of intermediaries who are subject to an obligation of *professional secrecy*, they address the reportable cross-border arrangements only after having obtained the written consent of the relevant taxpayer;
- Non-reporting or delayed reporting by intermediaries or the relevant taxpayers of the reportable cross-border arrangements is a contravention and is subject to a fine ranging between RON **20,000 - RON 100,000**.

These provisions will apply starting with the **1st of July, 2020**. The first reporting by the relevant intermediaries or taxpayers takes place until the **31st of August, 2020** for the cross-border arrangements related to the period between **25th of June, 2018 – 1st of July, 2020**.

Amendment of the Government Ordinance no. 6/2019 (GO 6/2019) regarding the establishment of fiscal facilities

Significant amendments are brought to the Government Ordinance no. 6/2019 regarding the restructuring of tax debts (commonly referred to as "Amnesty"), such as:

- The RON 1 mil. threshold to access the restructuring measures of the tax liabilities **is removed**;
- A new article is introduced in regards to *other categories of debtors* to which the provisions of OG 6/2019 may apply, such as debtors losing their reschedule program due to forecasted cash flow not allowing the success of the rescheduling;
- The deadlines for submitting the notification expressing the intention to apply the restructuring is amended: the debtor who wishes to restructure his tax liabilities has the obligation to notify the competent tax authority of his intention between **August 08th - October 31st, 2019** and **February 1st - March 31st, 2020**;
- The guarantees constituted by the debtors in the form of the *guarantee letter/guarantee insurance policy or the establishment of cash collateral at a unit of the State Treasury* are to be used according to the Tax Procedural Code only in the event that the restructuring plan does not stipulate the way to capitalize the cash flow or the assets of the debtor, which were at the basis of the guarantees issued;

- The official restructuring request may be submitted until **July 31st, 2020**, under penalty of preclusion;
- For the debtors who, at the date of enforcement of this ordinance, are undergoing an investigation by the European Commission in regards to state aid matters, the term is **6 months** from the date the European Commission approves the way of granting the facility.

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