



Portugal

DAC 6 Domestic Implementation

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General information

Territory	Portugal
Tax authority	Autoridade Tributária e Aduaneira (AT)
Status of legislation	Implemented Enters into force on 22 July 2020. Reportable cross-border transactions for which first implementation step takes place between 25 June 2018 and 30 June 2020 is to be reported by 28 February 2021.
Taxes covered	Personal income tax, corporate income tax, value added tax, real estate taxes and stamp tax.
Taxes excluded	Not relevant
Domestic transactions	Yes

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Definitions further clarified by guidance

Relevant taxpayer	Any person or entity to whom an arrangement to report is made available or is prepared to apply an arrangement to report or who has applied any step or part of an arrangement to report.
Associated enterprise	A person who is related to another person in at least one of the following ways: <ul style="list-style-type: none">• A person that participates in the management of another person because he/she is in position to exercise significant influence over the other person• A person participates in the control of another person through a participation higher than 25% of the voting rights• A person participates in another person's capital through a property right that, directly or indirectly, is higher than 25% of the share capital• A person is entitled to 25% or more of another person's profits.
Marketable arrangement	Those designed, marketed, ready to apply or made available for application, without requiring substantial adaptation.

Cross-border arrangement

An arrangement that concerns more than one Member State of the European Union or one Member State and a third country, if at least one of the following conditions is met:

- Not all the participants are tax residents in the same jurisdiction
- Any of the participants is simultaneously tax resident in more than one jurisdiction
- Any of the participants is active in another jurisdiction through a permanent establishment located in that jurisdiction and the mechanism forms part or all of the activity of that permanent establishment
- Any of the participants carries out an activity in another jurisdiction without being tax resident in that jurisdiction or creating a permanent establishment therein
- The arrangement has a possible impact on the automatic exchange of information related to financial accounts or on the identification of the beneficial owner.

Intermediary

Any person:

- Who designs, commercialises, organises or makes available for application or administers the application of a reportable arrangement
- Excludes the mere communication of information strictly descriptive of existing tax regimes, tax benefits and the advice strictly provided on an already existing tax situation of the relevant taxpayer, the exercise of the mandate in the tax administrative procedure, the tax challenge procedure, the tax criminal procedure or the tax administrative offence procedure, and advice on the conduct of the respective procedures.

Tax advantage

It is not defined

Made available for implementation

It is not defined

Hallmark

Characteristics that translate, objectively and by themselves, the indication of a potential risk of tax evasion, including avoiding legal obligations to report information on financial accounts or to identify beneficial owners.

3 Additional hallmarks

Additional hallmarks

None

4 Operation of legal professional privilege (LPP)

Operation of legal professional privilege (LPP)

An intermediary bound by legal or contractual professional privilege is required to inform the taxpayer that the latter must comply with the communication obligation of the mechanism. However, in the event that the intermediary has not been informed of the fulfilment of that duty by the relevant taxpayer, such obligation must be carried out by the intermediary.

The fulfillment of the communication obligations prevails over the LPP to which the intermediary is subject to, legally or contractually.

The LPP cannot be invoked to exempt from the reporting obligations.

5 Reporting deadline

Intermediaries**Within 30 days following (whichever occurs first):**

- the day after the reportable arrangement is made available for implementation; or
- the day after the reportable arrangement is ready for implementation; or
- the moment when the first step in the implementation of the reportable arrangement is made.

There is a 30 days deadline to file information that takes place between 1 July 2020 to 31 December 2020 is to be reported by 1 January 2021.

In addition, intermediaries are also required to file information within 30 days beginning on the day after they provided, directly or by means of other persons, aid, assistance, or advice.

Reportable transactions for which first implementation step takes place between 25 June 2018 and 30 June 2020 is to be reported by 28 February 2021.

For marketable arrangements, the intermediary is required to submit a report every 3 months, providing any new relevant information available. The first update report must be sent by 30 April 2021.

**Users
(where LPP applies)**

If there is no intermediary, the taxpayer must report the mechanism, within 30 days following (whichever occurs first):

- the day after the reportable arrangement is made available for implementation; or
- the day after the reportable arrangement is ready for implementation; or
- the day after the reportable arrangement, when the first step in the implementation of the reportable arrangement has been made.

The obligation of notification to the taxpayer by the intermediary is bound by legal or contractual professional privilege is be fulfilled by 15 January 2021, and the taxpayer must communicate the arrangement within the following 30 days.

Reportable transactions for which first implementation step takes place between 25 June 2018 and 30 June 2020 is to be reported by 28 February 2021.

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Reporting principles for intermediary

Circumstances in which intermediary is obliged to report

Intermediary is obliged to report information that is within its knowledge, possession, or control on reportable arrangements.

Obligation to inform user what data was communicated

No

Priority of reporting where multi member state reporting obligations exist

Where the intermediary has an obligation to file information on the reportable cross-border arrangement with the competent authorities of more than one Member State, such information shall be filed only with the competent authorities of the Member State that features first in the list below:

- The Member State where the intermediary is resident for tax purposes;
- The Member State where the intermediary has a permanent establishment profiting from the arrangement;
- The Member State where the intermediary is incorporated or whose laws are governed;
- The Member State where the intermediary is registered with a professional association related to the provision of legal, tax or consultancy services.

Circumstances under which intermediary not required to report

In case of multiple reporting obligations, the intermediary shall be exempt from filing if it has proof that the same information has been filed in another Member State.

The intermediary shall also be exempt from filing the information if it presents documentary evidence to the tax authorities that the same information has already been communicated by another intermediary.

What will the tax authorities provide for the notification received

Information to be provided by the Portuguese authorities.

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Reporting principles for taxpayer

Circumstances in which taxpayer is obliged to report

The relevant taxpayer is obliged to report if:

- no intermediary was involved in the design, marketing, organizing or making available for implementation or managing the implementation of a reportable cross-border arrangement; or
- the taxpayer has been notified by the intermediary that he is bound by a legal or contractual professional privilege.

The relevant taxpayer must inform the tax authority in each of the years in which the reported mechanism is applied, including an update of previously reported information.

Priority of reporting where multiple taxpayers are involved

Where multiple taxpayers are involved, the obligation of reporting falls on:

- the relevant taxpayer who has agreed with the intermediary the arrangement to be communicated; or
- the relevant taxpayer administering the implementation of the arrangement.

Circumstances under which taxpayer not required to report

In case of multiple reporting obligations, the taxpayer shall be exempt from filing if it has proof that the same information has been filed in another Member State.

The taxpayer shall also be exempt from filing the information if they present documentary evidence to the tax authority that the same information has already been communicated by another taxpayer.

Proof that reporting obligation is satisfied by other taxpayer

Information to be provided by the Portuguese authorities.

8 Reporting principles applicable to all

Language

The mandatory information to be reported is to be submitted in Portuguese. However, for cross-border mechanisms, some information may be provided in Portuguese and/or English.

9 Penalties

Circumstances in which penalties may apply

Incomplete, late or non-filing.

For the reportable mechanisms which first implementation step took place between 25 June 2018 and 1 July 2020 no penalties will be applied if they are reported until 31 August 2020.

Amount

Assuming negligent behaviour:

1) Incomplete, late, or non-filing:

- Individuals: EUR 6,000 to EUR 40,000
- Companies: EUR 12,000 to EUR 80,000.

2) Omissions or inaccuracies:

- Individuals: EUR 2,000 to EUR 30,000
- Companies: EUR 4,000 to EUR 60,000.

Amount

3) No reply or late reply to requests of information from the tax authorities:

- Individuals: EUR 3,000 to EUR 40,000
- Companies: EUR 6,000 to EUR 80,000.

10 Country specifics

Country specifics / deviation from EU directive

The main differences from the Directive are (regarding hallmarks):

- The Portuguese regime includes domestic arrangements (relevant for hallmarks B, C, D, E – hallmark A is exclusively for international arrangements)
- Portuguese hallmarks D also includes: an arrangement that involves the exclusion or limitation of the liability of the taxpayer, the intermediary or any other participant in the mechanism
- Portuguese hallmark B 2. also includes: an arrangement that has the effect of obtaining a tax deduction of more favorably taxed, exempted or non-taxable payments (at the level of the beneficiary of such payments) or obtaining, in more than one entity, deductions for the depreciation of the same asset
- Portuguese hallmarks B also includes: an arrangement that includes the involvement of persons or entities without legal personality not subject to the relevant tax, total or partially exempted or more favorably taxed.

The main benefit test is very similar to the one in the Directive.



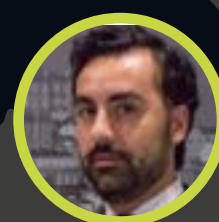
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