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URL: http://www.deloitte-tax-news.de/german-tax-legal-news/government-announces-it-will-not-defer-dac-6-reporting-deadlines.html

08.07.2020

German Tax and Legal News

Government announces it will not defer DAC 6 reporting deadlines

Germany to opt out of six-month extension for reporting deadlines.

An announcement from Germany's federal Ministry of Finance (MOF) on 6 July 2020 indicates that, contrary to general expectations, the German government will not adopt the option to allow up to a six-month deferral of the reporting deadlines under EU Directive 2018/822 (referred to as "DAC 6"), which EU member states may choose to grant under an agreement reached at the EU level in response to the coronavirus (COVID-19).

DAC 6 requires intermediaries (or, under certain circumstances, relevant taxpayers) to provide information to the appropriate tax authorities on reportable cross-border arrangements (RCBAs), i.e., arrangements that have one or more of the hallmarks listed in the annex to the directive. The tax authorities, in turn, must exchange information with their EU counterparts through an EU portal.

On 24 June 2020, the European Council reached agreement on the optional six-month delay to the reporting deadlines for intermediaries or relevant taxpayers under DAC 6 and a delay to the exchange of information under DAC 6 until the beginning of 2021, through Council Directive (EU) 2020/876. The directive entered into force on 27 June 2020 and gives EU member states the option to delay the reporting requirements under DAC 6 for up to six months. With the optional six-month delay, RCBAs that were implemented in the period between 25 June 2018 and 30 June 2020 would have to be reported by 28 February 2021 instead of by 31 August 2020. For RCBAs that are implemented between 1 July 2020 and 31 December 2020, the general 30-day reporting deadline would not start to run until 1 January 2021.

The German government initially indicated that it would follow the EU agreement and would implement the six-month deferral into German domestic law, as permitted under the new directive.

However, in a press conference on 6 July 2020, the spokeswoman of the German MOF announced that the German government does not plan to allow any deferral of the original reporting deadlines under DAC 6. In addition, it was announced in the press conference that even the one-month deferral period proposed in the draft decree from the German tax authorities on the application of the DAC 6 rules (see GTLN dated 13 March 2020), which would postpone the 31 August 2020 reporting deadline to 30 September 2020 based on the expected availability of the technical standard for data transmissions, may not be implemented in the final decree.

The announcement from the MOF likely comes as a surprise to taxpayers and advisers and may be viewed as a disappointing development. This may particularly be the case given that Germany had supported the EU initiative to allow for deferral of the relevant deadlines and the government already had taken preparatory measures to implement the deferral into German tax law. The vast majority of EU member states have announced that they will implement the amended directive and allow for a six-month deferral of the relevant deadlines.

The decree from the German tax authorities on the application of the DAC 6 rules currently is being finalized and is expected to be published during July 2020. Based on the current information available, RCBAs that were implemented in the period from 25 June 2018 until 30 June 2020 will have to be reported to the tax authorities by 31 August 2020 and RCBAs that were implemented after 30 June 2020 will have to be reported within the regular 30-day period.

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