# Obligation to report aggressive tax arrangements to the tax administration

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## In brief

***New tax transparency rules will require intermediaries (such as third party accountants, lawyers and tax consultants) to report potentially aggressive cross-border arrangements used by their clients to national tax administrations.***

The EU has adopted a new mandatory reporting regime for potentially aggressive cross-border tax arrangements with Directive 2018/822/EU.

The reporting obligation will start to apply as of 1 July 2020, but will cover arrangements implemented after 25 June 2018, which will have to be disclosed retrospectively.

The obligation to report to the revenue authorities will fall to intermediaries helping clients to use aggressive tax arrangements such as accountants, lawyers, tax consultants and others. In case no intermediary is used or the intermediary is prevented from reporting due to professional secrecy rules, the taxpayer itself will be obliged to make the disclosure.

The scope of reporting will include potentially aggressive tax arrangements concerning two or more EU Member States or an EU Member State and a third country. The gathered information will be exchanged between all EU Member States on a quarterly basis.

### Reportable aggressive cross-border tax arrangements

The features making an arrangement reportable have a wide scope and may encompass many situations. Below is a summary of some of them.

The following features trigger reporting in all cases (regardless of whether obtaining a tax advantage is the main benefit or not):

- deductible cross-border payments to related parties not resident in any tax jurisdiction, or resident in a black-listed tax jurisdiction;
- tax depreciation of the same asset in more than one jurisdiction;
- claiming double taxation relief for the same item in two or more jurisdictions;
- transfer of assets between jurisdictions with a material difference in the price used for tax purposes;
- non-transparent legal or beneficial ownership chains used;
- transfer of hard-to-value intangibles between related parties;
- use of unilateral transfer pricing safe harbour rules;
- intragroup cross-border transfer of functions, risks or assets resulting

in a significant profit shift (more than 50%).

Reporting is triggered in the following situations when the obtaining of a tax advantage is the main benefit or one of the main benefits of the arrangement:

- the service agreement with the intermediary does not permit the taxpayer to disclose how the arrangement works (i.e., confidentiality clause);
- the intermediary receives a success fee based on the tax advantage obtained;
- implementation of a standardized tax structure;
- acquiring a loss-making entity, discontinuing its activities and utilizing the losses to reduce tax liabilities;
- deductible cross-border payments to related parties subject to a zero or almost zero tax rate, full exemption or a preferential tax regime.

## What needs to be reported?

Details on:

- the intermediary;
- the taxpayer involved;
- the arrangement put in place.

## Penalties

Member States have to impose effective, proportionate and dissuasive penalties for violations of the mandatory disclosure obligations by intermediaries or taxpayers.

## Next steps

Businesses should consider whether they could be potentially affected by the increased scrutiny of governments towards potentially aggressive tax practices and take appropriate action to prepare.

## *Let's talk!*

For a deeper discussion of how these issues might affect your business, please contact:

*PricewaterhouseCoopers Bulgaria EOOD*

*9-11 "Maria Louisa" Blvd., 1000 Sofia*

*Phone: +359 2 91 003*

*www.pwc.bg*

**Orlin Hadjiiski**
Partner
Tax and Legal Services
orlin.hadjiiski@pwc.com

**Nikolay Ilchev**
Senior Manager
Tax Services
nikolay.ilchev@pwc.com

**Elizabeth Sidi**
Senior Associate
Tax Services
elizabeth.sidi@pwc.com