



# Sweden proposes mandatory disclosure rules relating to tax arrangements

## Global Tax Alert

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On January 15, 2019, the Swedish government published an official report on the outcomes of an inquiry regarding reporting obligations relating to tax schemes. The purpose of this inquiry was to review the possibility of introducing a reporting obligation on advisers and "users" of tax schemes in Sweden, in order to implement 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 in relation to reportable cross-border arrangements (abbreviated as DAC 6).

The scope of the proposed Swedish reporting obligation is broader than DAC 6 as it also covers purely domestic arrangements, whereas DAC 6 only focuses on cross-border arrangements. Other than this, the proposed reporting obligations follow the minimum standards set out in DAC 6.

### Reportable arrangements

The proposed rules introduce a new reporting obligation regarding "reportable arrangements." An arrangement is reportable if it contains certain characteristics (referred to in DAC 6 as "hallmarks"), such as the "conversion of income," conditions of confidentiality, contingent fees based on the tax benefit of an arrangement, "circular transactions," arrangements involving a non-transparent legal/beneficial ownership chain, etc. Under the general rule, an arrangement is reportable only if obtaining a tax benefit is the most important purpose, or one of the most important purposes, that the taxpayer can reasonably expect from the arrangement. There are, however, exceptions to the general rule, meaning that not all arrangements need to have a tax benefit in order to be reportable. The characteristics that are considered reportable under Swedish rules are the same as the hallmarks under DAC 6.

Not all taxes are covered by the new rules. The scope for purely domestic arrangements has been limited to arrangements seeking to avoid taxes levied under the Income Tax Act (1999:1229) or the Act on yield tax on pension funds (1990:661). As regards cross-border arrangements, the scope corresponds to the scope of DAC 6, meaning the reporting obligations covers taxes of every kind, except VAT, customs and excise, and social security contributions.

### Persons required to report the arrangements

An adviser (referred to in DAC 6 as "intermediary") is required to report relevant tax arrangements to the Swedish Tax Agency. An adviser is either a person who "designs, markets, provides or organises a reportable arrangement" or a person who "knows or can reasonably be expected to know that they have undertaken, either direct or through other persons, to contribute to the design, marketing, provision or organisation of a reportable arrangement." It is only Swedish advisers (*ie*, advisers who have nexus with Sweden) who are required to report in Sweden. However, advisers in other EU member states may be required to report cross-border arrangements concerning Sweden in other member states.

Members of the Swedish Bar Association are also covered by the obligation to report tax arrangements when they act as advisers. However, a restriction has been proposed to allow members of the Swedish Bar Association or their legal practices not to report certain information when doing so would be contrary to the attorney–client privilege. An adviser should be able provide information about himself or herself, as well as the characteristics of the tax arrangement without violating the attorney-client privilege.

The user of a reportable arrangement (or the relevant taxpayer in DAC 6 terminology) is obliged to report a tax scheme if their adviser is unable to do so due to attorney-client privilege. Other instances where the relevant taxpayer is obliged to report includes situations where, for instance, there is no Swedish or other EU advisers or the arrangement has been designed by the taxpayer himself or herself.

### **Information that has to be reported**

When reporting a relevant tax arrangement to the Swedish Tax Agency, certain information must be included in the report, such as:

- Identification details of all advisers and users
- A description of the arrangement and the rules that form the basis for the arrangement
- Information about the date on which the first step in the arrangement was taken or will be taken
- Information about the value of the arrangement and
- Identification of the other member states which are likely to be affected by the arrangement.

It is only information that the advisor or the user has knowledge of, or access to, that needs to be reported. However, a user is presumed to have such knowledge or access to such information.

### **Consequences of non-compliance**

Failures to meet the reporting obligation are subject to a fine ("reporting charge").

The charge for incorrect or incomplete filing or not reporting within the requisite time is SEK15,000 for advisers and SEK7,500 for users. If the reporting obligation has not been met within 60 days thereafter, a second reporting charge will be levied. This charge is SEK50,000 for advisers and SEK25,000 for users. However, if the breach occurs within the context of the business activities of the person required to report, the charge can be higher depending on the overall turnover in the company. The maximum charge is SEK500,000 for advisers and SEK250,000 for users.

### **Entry into force and reporting timelines**

The new reporting obligations are proposed to enter into force on July 1, 2020.

Information must be filed in the first instance on reportable cross-border arrangements during the "catch-up phase" where the first step was taken between June 25, 2018 and June 30, 2020. Information about such arrangements has to be reported by August 31, 2020.

After the catch-up phase, and for tax arrangements occurring after June 30, 2020, the reporting obligations must be met within 30 days beginning on the day after the arrangement was made available or the day after the first step in the arrangement was taken, whichever comes first. In some cases, the 30 day period begins on the day after the advisors provided their advice.

For marketable arrangements, the advisor is required to file updates at the end of each calendar quarter. The updates must contain information about new users of the arrangement.

Please contact the authors or your local DLA Piper advisor to discuss the impact of the EU Directive and the proposed new Swedish reporting obligations.

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