

ATOZ ALERT

2020 corporate tax returns: more tax rules, more reporting, time for action!

12 May 2021

On 4 May 2021, the Luxembourg tax authorities informed Luxembourg taxpayers about the release of the corporate tax forms and related appendices in respect of tax year 2020.

With the entry into force of the anti-hybrid rules of the 2nd Anti-Tax Avoidance Directive (“**ATAD2**”) on 1 January 2020 and the introduction of the mandatory disclosure regime applicable to tax intermediaries (“**DAC6**”) on 1 July 2020, the reporting requirements of Luxembourg corporate taxpayers have again increased this year. Since the 2020 corporate tax returns have to be filed by 30 June 2021, taxpayers should have a closer look at the information requested by the tax authorities as soon as possible in order to ensure they are able to file their tax returns on time.

Information on reported cross-border arrangements within the meaning of **DAC6**

The Luxembourg law of 25 March 2020 implementing the EU Directive 2018/822 (“**DAC6**”) requires intermediaries (i.e., tax advisers and other service providers) to report certain cross-border arrangements to the Luxembourg tax authorities. The main purpose of DAC6 is to increase transparency by providing tax authorities with early information regarding potentially aggressive or abusive tax planning schemes and to identify the promoters and users of those schemes. DAC6 operates through a system of hallmarks that may trigger reporting obligations and a main benefit test which serves as a threshold requirement for many of these hallmarks. Thus, DAC6 is a rather complex framework which requires a thorough and comprehensive analysis of all facts and circumstances of the transactions performed by taxpayers.

While the reporting responsibilities under DAC6 generally rest with the intermediary, they may shift to the relevant taxpayer under certain circumstances.

The reporting of cross-border arrangements based on DAC6 is subject to specific rules and filing requirements and is done independently of the tax returns filed by the taxpayer. However, corporate taxpayers are still required to indicate in their 2020 Corporate Income Tax (“**CIT**”) return (Tax Form 500) whether they used one or more reportable cross-border arrangements during tax year 2020. Where this is the case, i.e., where DAC6 reporting has been filed in relation with a transaction carried out by the taxpayer, Luxembourg corporate taxpayers will have to provide the reference (Arrangement ID) of the cross-border arrangements which have been reported in the EU in their 2020 corporate tax returns. As a reminder, the reporting of arrangements implemented between 25 June 2018 and 30 June 2020 had to be performed until 28 February 2021 and the 30-day reporting period applicable to reportable cross-border arrangements implemented between 1 July 2020 and 31 December 2020 started on 1 January 2021. Since 1 January 2021, the reporting needs to be done within 30 days beginning on either the day after the reportable cross-border arrangement is made available for implementation, or on the day after the reportable cross-border arrangement is ready for implementation, or when the first step in the implementation of the reportable cross-border arrangement has been made, whichever occurs first.

Information on hybrid mismatches

On 1 January 2019, the generic anti-hybrid mismatch provisions included in the first Anti-Tax Avoidance Directive 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices which directly affect the functioning of the internal market (“**ATAD1**”) were introduced in order to eliminate - in an EU context only - the double non-taxation created through the use of certain hybrid instruments or entities. Hybrid mismatches typically result from a different tax treatment of an entity, permanent establishment or financial instrument under the laws of two or more jurisdictions and may result in deduction without inclusion outcomes or double deduction.

These rules were replaced with effect as from 1 January 2020 by the amended anti-hybrid rules of ATAD2 which also aim at neutralising the effects of hybrid mismatches but which have a broader scope of application as they apply to an extended number of hybrid mismatch situations with both EU and third countries. The hybrid mismatch rules provided under article 168ter of the Luxembourg Income Tax Law (“**LITL**”) target a variety of different situations including direct hybrid mismatches between associated enterprises, structured arrangements between third parties, imported hybrid mismatches and tax residency mismatches. The 2020 tax form includes a list of questions (to be answered with “yes” or “no”) which aim to enable the tax authorities to identify one or more of those hybrid mismatch situations.

Since the anti-hybrid rules changed with effect as from 1 January 2020, taxpayers with a financial (and tax) year which differs from the calendar year are subject to two different sets of anti-hybrid rules during their tax year 2020. Those taxpayers will have to provide information so that the tax authorities are able to analyse the potential application of both the anti-hybrid rules which were in force until 31 December 2019 and the rules which came into force on 1 January 2020.

Other changes

In addition to the new sections introduced in relation to the DAC6 reporting and hybrid mismatches, the Corporate Income Tax Return Form 500 contains a number of other changes, such as an update of the sections dedicated to the application of the tax consolidation regime and to the application of the participation exemption regime, a new section on the exemption of profits or capital gains derived from controlled foreign companies (“**CFCs**”) and which have already been included in the taxable result of previous financial years, sections related to the new deductions introduced in the context of the Covid-19 pandemic, and to the deduction of carried forward exceeding borrowing costs as well as the determination of the carried forward unused interest capacity, to name a few. With these new sections, the corporate tax return form has become more technical, but also more relevant considering the changes to the LITL introduced in 2019 and 2020.

Next steps

With the release of the 2020 tax forms, the information to be provided to the Luxembourg tax authorities in relation to the new rules introduced in 2020 has become clearer. In the context of the COVID-19 crisis, the Law of 25 February 2021 extended the deadlines for filing the CIT, Municipal Business Tax (MBT) and Net Wealth Tax (NWT) returns from 31 March 2021 to 30 June 2021. However, given the late release of the related corporate tax forms, this leaves very little time for taxpayers to get ready.

Therefore, to be able to prepare their tax returns properly, corporate taxpayers should make sure that their situation and structure has been reviewed carefully or seek advice from their tax advisers as soon as possible in order to determine whether there are any hybrid mismatch situations arising in their global structure, be it because of the financial instruments used or the entities involved. If not already done in the context of the implementation of their investment structures, corporate taxpayers should also reach out to their tax advisers and any other intermediaries involved in the implementation of their investment structures, in order to determine if any reportable arrangements have been identified and reported in any EU member states by any of the intermediaries.

How we can help

Tax rules are evolving constantly and the anti-hybrid rules of ATAD2 are probably the most complex piece of tax legislation ever introduced in Luxembourg. This is why it is very important that corporate taxpayers can rely on a sound technical analysis of all the potential tax issues (ATAD2-related but also other tax issues, such as the CFC rules introduced as from 1 January 2019) that may arise/have arisen in their investment structures when they (or their service providers) prepare their tax returns. Here, communication between the tax adviser and the service provider preparing the tax returns will be key. ATOZ Tax Advisers and ATOZ Services offer true integrated services and work hand in hand to deliver top-notch services and advice to our clients and we believe that our synergies will substantially contribute to your efficiencies and will be key to your success.

As far as DAC6 is concerned, we have developed an IT solution to identify transactions likely to be reported within the framework of DAC6, to help taxpayers and intermediaries comply with their DAC6 reporting obligations by allowing them to individually assess whether or not a cross-border arrangement is reportable and, where applicable, to allocate the reporting obligation to one designated intermediary. Find out more here: www.dac6connect.com.

Do you have further questions?



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