Risks within reporting obligations for cross-border tax arrangements

MANDATORY REPORTING ACCORDING TO DAC-6 RULES COVERS A VERY WIDE SCOPE OF APPLICATION. VIOLATIONS MAY RESULT IN HARSH PENALTIES. TIGHT DEADLINES REQUIRE EARLY ACTION.

Executive Summary

- Certain cross-border tax arrangements must be reported to the tax authorities.
- The concept of tax planning is interpreted very broadly. A simple foreign connection may already suffice if there are tax implications.
- The report must be made within 30 days only.
- Violations may incur a penalty of up to € 25,000 per case.
- Tax compliance expertise is essential for risk assessment and risk mitigation.

Who is affected?

Since 1 July 2020, the regulations of the *6th EU Directive on Administrative Cooperation*, or in abbreviated form *DAC-6,* have been tightened within the German law. Cross-border tax arrangements must be reported to the Federal Central Tax Office (Bundeszentralamt für Steuern - BZSt) if they meet certain criteria (so-called *hallmarks*). The scope of application does not cover only the well-known "*big players*" in international tax arrangements. In principle, anyone who carries out cross-border activities that are tax relevant can be affected. An international business partner, investor or other parties involved in the design can be a trigger for an international reference. The only regularly remaining criteria for exclusion are the *hallmarks*, which often require a complex tax assessment and an in-depth tax compliance expertise.

What are the typical cases?

Not only is the financial sector affected. An increased risk of reporting requirements exists particularly in the real estate sector, e.g. in the case of real estate share deals with RETT blocker structures and international participants. The same applies to when a leasing company is operated from abroad or to project development in the case of international investments. In addition, classical companies are also affected by the obligation to report, e.g. when founding and making use of finance companies, especially in low-taxing foreign countries or when setting up central companies within a company in low-taxing countries, e.g. purchasing or service companies. An increased risk, furthermore, may be associated with many other constellations.

When to report?

The law provides for an obligation to report within 30 days. The deadline can be triggered when implementation is made available or when information and documents on the implementation are provided by a consultant.

What sanctions will be applied in case of violations?

Anyone who intentionally or carelessly fails to submit a report or fails to submit it in time risks a penalty of up to €25,000. A single economic event may result in several reporting obligations and thus in penalties.

Practical advice:

We recommend that potential risk cases be reviewed at an early stage in order to identify reportable cases and to be able to document non-reportable cases in a well-founded manner. In doing so, a careless failure to report, and thus a risk of incurring a penalty, can be avoided. This is, therefore, necessary in order to prevent liability. Expert advice thus serves both internal and external risk mitigation. Should a reportable transaction be identified, we offer a "*one-stop shop*" support, i.e. we advise you comprehensively from the examination of a reporting obligation to the notification of the authorities. If in the future a non-registration should be disputed, we will support you in your defence against the tax authorities. Our experienced experts are gladly at your disposal.

Your contact:

Dirk Koch
Lawyer, Tax adviser
Certified lawyer for tax law
Munich
dirk.koch@gsk.de

Petra Eckl
Lawyer, Tax adviser
Certified lawyer for tax law
Frankfurt
petra.eckl@gsk.de

Dominik Berka
Lawyer, Tax adviser
Frankfurt
dominik.berka@gsk.de

Felix Schill
Lawyer
Frankfurt
felix.schill@gsk.de

Stephan Wachsmuth
Lawyer
Munich
stephan.wachsmuth@gsk.de

GSK
STOCKMANN

Copyright
GSK Stockmann – all rights reserved. The reproduction, duplication, circulation and/or the adaption of the content and the illustrations of this document as well as any other use is only permitted with the prior written consent of GSK Stockmann.

Disclaimer
This client briefing exclusively contains general information which is not suitable to be used in the specific circumstances of a certain situation. It is not the purpose of the client briefing to serve as the basis of a commercial or other decision of whatever nature. The client briefing does not qualify as advice or a binding offer to provide advice or information and it is not suitable as a substitute for personal advice. Any decision taken on the basis of the content of this client briefing or of parts thereof is at the exclusive risk of the user.

GSK Stockmann as well as the partners and employees mentioned in this client briefing do not give any guarantee nor do GSK Stockmann or any of its partners or employees assume any liability for whatever reason regarding the content of this client briefing. For that reason we recommend you to request personal advice.

www.gsk.de

GSK Stockmann

BERLIN
Mohrenstrasse 42
10117 Berlin
T +49 30 203907-0
F +49 30 203907-44
berlin@gsk.de

HEIDELBERG
Mittermaierstrasse 31
69115 Heidelberg
T +49 6221 4566-0
F +49 6221 4566-44
heidelberg@gsk.de

FRANKFURT / M.
Taunusanlage 21
60325 Frankfurt am Main
T +49 69 710003-0
F +49 69 710003-144
frankfurt@gsk.de

MUNICH
Karl-Scharnagl-Ring 8
80539 Munich
T +49 89 288174-0
F +49 89 288174-44
muenchen@gsk.de

HAMBURG
Neuer Wall 69
20354 Hamburg
T +49 40 369703-0
F +49 40 369703-44
hamburg@gsk.de

LUXEMBOURG
GSK Stockmann SA
44, Avenue John F. Kennedy
L-1855 Luxembourg
T +352 271802-00
F +352 271802-11
luxembourg@gsk-lux.com