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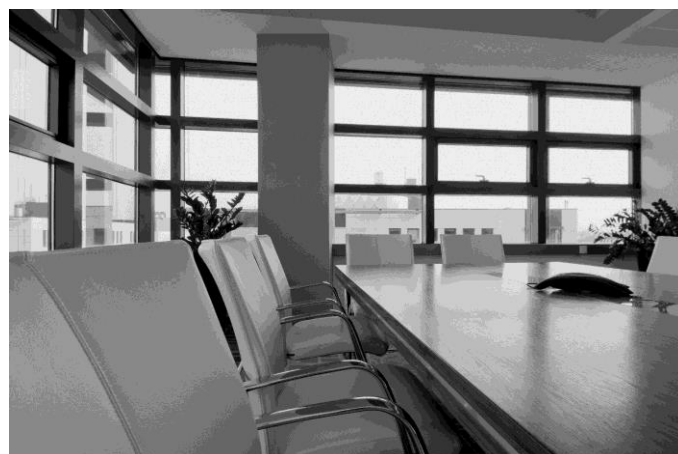
*tax advice.
legal counselling.
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Tax planning with an open book

Based on a recently announced EU directive, your name and any tax advice you have received could end up with the tax authority. From July 2020, tax advisors, or in certain cases the taxpayers themselves, will be required to inform the tax authority of the details of certain tax planning structures that are classified as aggressive under the new directive. And what's more, the disclosure obligation will apply retrospectively to all structures that taxpayers started implementing after 25 June 2018.

Recent years have seen a clear escalation of the battle against tax avoidance and aggressive tax planning. The latest gambit in these efforts is a concept that was mooted quite a long time ago, under which tax advisors will be required to inform their tax authority about the aggressive tax planning “products” that they offer or sell.

The concept was approved surprisingly quickly, and the resulting EU directive announced on 5 June imposes a reporting obligation with regard to aggressive cross-border tax structures following 1 July 2020. The regulation effectively means that the advisors who have participated in the planning of such structures – or in certain cases, the taxpayers themselves – will have to provide the local tax authority with detailed information on those structures that



have certain features specified in the directive. The taxpayer's national tax authority will send the data to a central EU database, through which all the other EU member states will have access to the details of the structure. It is important to bear in mind that the data reporting is not anonymous. In other words, the records will contain – in an identifiable manner – the details of the taxpayer and other persons involved, as well as the content and value.

Retrospective effect

Although the July 2020 date might seem a long way off, the recently published regulation will have a profound impact on tax planning practice from June 2018 onwards. This is because the reporting obligation has to be applied, retrospectively, to all tax structures that start to be put in place after 25 June of this year. In other words anyone who, in one month's time – with the assistance of a Hungarian tax advisor – implements a tax structure classified as aggressive under the directive, can expect its name to be listed in a unified EU database after July 2020. And what's more, the retrospective effect throws up countless other questions, if only because the member states only have to pass their own rules much later, by the end of 2019.

Is there any need to worry?

An important consideration is that the reporting obligation mainly applies to tax planning structures that really are aggressive, which have recently been pushed into the background in tax planning practice in Hungary anyway. For example, the reporting obligation will apply to structures intended to conceal the beneficial owners behind a chain of entities that perform no substantive activity. At the same time, structures that are not necessarily aggressive can also easily fall victim to the reporting obligation if the advisor receives a success fee in return for the tax saving, assuming that the main advantage of the structure is the tax saving itself. It could also be easier for certain transactions between related parties to become subject to the reporting obligation. Like all directives, this one also stipulates only the minimum requirements for member states. In other words, there may be member states that apply a broader definition of the range of structures that must be reported after 2020.

Like it or lump it?

It is not certain at present how the tax consulting profession will respond to the directive. The business value of tax advice is clearly uncertain if the advisor is later required to report it to the tax authority along with all the details of the taxable person concerned. Will the clients adopt such structures, or will the advice simply not be given in the first place? Another unknown is whether the consulting profession will show some kind of passive resistance to the reporting obligation. This will probably depend on the sanctions that will be imposed on advisors who fail to report the tax structures. The details of the sanction also have to be worked out though.

One thing is certain: anyone who gives or receives aggressive tax advice from now on should be aware that a copy of the tax structure used is likely to land on a desk at the local tax authority. And those who have a tax structure worked out but not yet implemented might be better off starting its implementation before 25 June.