HARNEYS

A copy of the

ADMINISTRATIVE COOPERATION IN THE FIELD OF TAXATION IN RELATION TO REPORTABLE CROSS-BORDER ARRANGEMENTS DECREE 2021

January 2022

Important

This is an unofficial translation of the Administrative Cooperation in the Field of Taxation in relation to Reportable Cross-Border Arrangements Decree of 2021. Whilst every effort has been made to ensure correctness, no responsibility is assumed for any errors which may appear.

Decree pursuant to Section 22G

Administrative Cooperation in the Field of Taxation in relation to Reportable Cross-Border Arrangements Decree of 2021

Based on the original published in the Official Gazette Annex III(I), No 5622, 29/10/2021, Number 438.

Administrative Cooperation in the Field of Taxation in relation to Reportable Cross-Border Arrangements Decree of 2021

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Regulatory Administrative Act 438/2021

THE ADMINISTRATIVE COOPERATION IN THE FIELD OF TAXATION (AMENDING) LAW OF 2021

Decree pursuant to Section 22G

Preamble.

WHEREAS there is an obligation to implement the provisions of Council Directive (EU) 2018/822[1] 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 and of Council Directive (EU) 2020/876[2] of 24 June 2020 amending Directive 2011/16/EU to address the urgent need to defer certain time limits for the filing and exchange of information in the field of taxation because of the COVID-19 pandemic,

The Minister of Finance, in exercise of the powers vested in him by section 22G of 205(I) of 2012 of Administrative Cooperation in the Field of Taxation Law, as amended,[3] hereby issues the following Decree:

PART I

PRELIMINARY PROVISIONS

Short title.

1. This Decree will be referred to as the 2021 Decree on Administrative Cooperation in the Tax Sector on Declarable Cross-Border Arrangements.

Definitions.

2. (1) In this Decree, unless the context otherwise requires –

"arrangement" includes all types of arrangements, transactions, payments, schemes and structures, whether or not legally enforceable;

"beneficial owner" has the meaning ascribed to such term by the Prevention and Suppression of Money Laundering Activities Law[4] as amended and replaced;

"Directive 2014/107/EU" means Council Directive 2014/107/EU[5] of 9 December 2014 amending Directive 2011/16 /EU as regards mandatory automatic exchange of information in the field of taxation as amended or replaced;

"Directive (EU) 2015/849" means Directive (EU) 2016/849[6] of the European Parliament and the Council of 20 May 2015 on the prevention of the use of the financial

1 Official EU Journal: L139, 5.6.2018, p 1.

2 Official EU Journal: L 204, 26.6.2020, p 46.

3 205 (I) of 2012 162 (I) of 2014 95 (I) of 2015 60 (I) of 2016 98 (I) of 2017 33 (I) of 2018 119 (I) of 2018 41 (I) of 2021.

4 188(I) of 2007 58(I) of 2010 80(I) of 2012 192(I) of 2012 101(I) of 2013 184(I) of 2014 18(I) of 2016 CORR. EU Annex I(I), No 4564 13(I) of 2018 158(I) of 2018 81(I) of 2019 13(I) of 2021 CORR. EU Annex I(I), No 4816 22(I) of 2021 61(I) of 2021

5 EU L 359 of 16.12.2014, p 1 to 29.

system for the purposes of money laundering or or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC as amended and replaced;

"Law" means the Assessment and Collection of Taxes Law[7] as amended or replaced;

"marketable arrangement" is defined in the Law as "a cross-border arrangement that is designed, marketed, ready for implementation or made available for implementation without a need to be substantially customised";

"participants" is defined as a person who actively participates in the cross-border arrangement and is substantially related to the arrangement;

"person" has the meaning ascribed to such term in the Law and includes a natural person or a legal entity or a non-legal entity, such as a partnership or other arrangements such as trusts;

"primary intermediary" includes the first category of intermediaries and means any person that designs, markets, organises or makes available for implementation or manages the implementation of a reportable cross-border arrangement;

"Regulation (EU) No 575/2013" means Regulation (EU) No 575/2013[8] of the European Parliament and Council of 26 June on Credit Institutions and Investment Firms and the amendment of Regulation (EU) No 648/2012 as amended or replaced;

"safe harbour intragroup pricing" includes rules adopted by a jurisdiction (whether it is a Member State or a third country) without the existence of a bilateral or multilateral agreement and concerns the exemption of certain taxpayers from certain pricing of a jurisdiction in the context of intra-group transactions;

"secondary intermediary" includes the second category of intermediaries and means any person who, taking into account all relevant facts and circumstances and based on available information and the relevant expertise and understanding required to provide such services, knows or could be reasonably be expected to know that they have undertaken to provide aid, assistance or advice with respect to designing, marketing, organising, making available for implementation or managing the implementation of a reportable cross-border arrangement and extends to any person that has undertaken to provide aid, assistance or advice.

(2) Terms not otherwise defined in this Decree shall have the meaning ascribed to them by the Directive and the Law.

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6 EU L 359 of 5.6.2013, p 73.

7 4 of 1978 23 of 1978 41 of 1979 164 of 1987 159 of 1988 196 of 1989 10 of 199157 of 1991 86(I) of 1994 104(I) of 1995 80(I) of 1999 153(I) of 1999 122(I) of 2002 146(I) of 2004 214(I) of 2004 106(I) of 2005 135(I) of 2005 72(I) of 2008 46(I) of 2009 136(I) of 2010 163(I) of 2012 197(I) of 2012 198(I) of 2012 91(I) of 2013 78(I) of 2014 79(I) of 2014 108(I) of 2015 188(I) of 2015 37(I) of 2016 97(I) of 2017 44(I) of 2018 50(I) of 2018 26(I) of 2020 77(I) of 2020 126(I) of 2020 62(I) of 2021 63(I) of 2021 64(I) of 2021.

8 EU L 176 of 27.6.2013, p 1.

It is understood that, for the purposes of this Decree, companies that are established, either by incorporation or by central management and control, in a jurisdiction that may not have the meaning of tax residence in its tax regime, or because taxation in such jurisdictions is imposed on the basis of the principle of territoriality, or because no corporate tax is imposed, then the company shall be considered a tax resident of that jurisdiction, provided that they are not tax residents in any other jurisdiction.

New arrangement.

3. (1) In case of a pre-existing arrangement, such as an arrangement of which the first step of implementation had been taken before 25 June 2018 and which is extended or renewed, this may be considered as a new arrangement within the application of the Law, provided that there is material change to the arrangement defined on a case-by-case basis.

(2) Decisions made in relation to tax compliance positions shall not be automatically render a previous/past arrangement, such as an arrangement of which the first step of implementation had been taken before June 25, 2018, as a "new" arrangement.

Marketable arrangement.

4. (1) The key feature of a marketable arrangement is that it is available for use without a need to be substantially customised.

(2) A marketable arrangement can be substantially standardised.

(3) Any type of tax planning scheme that is marketed or promoted shall not necessarily be considered a marketable arrangement.

It is understood that, if an opinion is provided on any matter relating to a cross-border arrangement, this shall be considered as being substantively customised and shall therefore not be a marketable arrangement.

(4) Additional reporting requirements apply in relation to reportable cross-border arrangements that also fall within the definition of a marketable arrangement.

(5) Marketable arrangements may fall within the scope of any of the hallmarks set out in Annex IV of the Law.

Arrangement details.

5. (1) An arrangement may include a series of arrangements or even comprise more than one step or part. A single arrangement may include, indicatively, the following steps/details:

(a) the financing of a company;

(b) the conclusion of a loan agreement;

(c) the payment of a loan;

(d) successive loan interest payments; and

(e) the repayment of the loan capital.

(2) An oral agreement may be an arrangement.

The arrangement is made available for implementation, is ready for implementation, the first step of implementation has been made.

6. (1) An arrangement shall not be made available for implementation until the design of the arrangement is final, i.e., when there are no significant factors that are subject to change during its design.

(2) An arrangement is sufficiently finalised when it is capable of implementation by the client, such as the "marketable arrangements" promoted by primary intermediaries.

(3) An arrangement shall be made available for implementation when information regarding it is communicated to relevant taxpayer.

(4) An arrangement can be ready for implementation before it is made available for implementation if a primary intermediary has finalised the design of an arrangement but decided not to promote it to potential clients until a later date.

(5) An arrangement can be ready for implementation if it has been developed in-house by the relevant taxpayer and the design of the arrangement is final.

It is understood that an arrangement shall not be considered final if, during its design, important factors are subject to change.

Determining the point in time when the first step of an arrangement has been made is a question of fact and should be made on a case-by-case basis, including the following:

(i) A primary intermediary has designed an arrangement which satisfies at least one hallmark, but they are still finalising certain later steps in the transaction, while the relevant taxpayer proceeds with the incorporation of a new entity in a jurisdiction. The act of incorporating a new entity shall be considered the first step in the implementation of a reportable arrangement.

(ii) A legal entity intends to transfer assets to an overseas subsidiary, but has not yet worked out the details, since the primary intermediary still examines, not in depth, various options. During this stage of design of the arrangement, it is not yet known if the transaction will meet any of the hallmarks, since the design of the arrangement is still at an early stage. However, the relevant taxpayer decides to incorporate a subsidiary in a jurisdiction, in case they decide to proceed. The incorporation of a subsidiary shall not be considered as the first step if the design of the arrangement has not yet been agreed upon.

Incorporation of a company.

7. (1) The obligation of a natural person to file information on a reportable cross-border arrangement between that natural person and a legal entity depends on whether the involvement of the natural person, in relation to a reportable cross-border arrangement, is made on behalf of the natural person himself or on behalf of the legal entity.

(2) Where:

(a) a natural person is employed in a company and acts on behalf of that company in accordance with the terms of that employment contract, it is the company that shall be considered an intermediary and not the employee;

(b) a natural person who is a partner in a partnership and is involved in accordance with the terms of their partnership contract in certain reportable transactions, it is the partnership that shall be considered an intermediary;

(c) a natural person is seconded by his/her employer to work for another person on a full-time basis in accordance with the terms of the secondment agreement, the person who is hosting the secondee shall be considered an intermediary.

Participants in the arrangement.

8. (1) Participants shall be considered to be persons participating in a cross-border arrangement where they are substantially involved in the arrangement. Determining the participants in an arrangement is a matter of fact and degree of involvement.

(2) In the event that an arrangement is a legal contract, the participants in the arrangement will be the parties to the contract:

It is understood that the persons who sign the contract on behalf of the participants, such as the director of a company, shall not themselves be considered as participants in the arrangement.

It is further understood that the concept of an arrangement is broader than the concept of an agreement and is independent of whether there is agreement between the participants.

The participants in the arrangements do not all have their residence for tax purposes in the same jurisdiction.

9. The condition that not all of the participants in the arrangement are resident for tax purposes in the same jurisdiction also applies when at least one of the participants in an arrangement is not a resident for tax purposes in any jurisdiction.

One or more of the participants in the arrangement is simultaneously resident in more than one jurisdiction.

10. Where a legal entity has a dual tax residence in two respective jurisdictions and participates in a transaction or an arrangement by means of another legal entity who is resident for tax purposes in one of the two jurisdictions, the condition that one or more of the participants in the arrangement is a resident for tax purposes in more than one jurisdiction is met.

One or more of the participants in the arrangement carried on a business in another jurisdiction through a permanent establishment situated in that jurisdiction and the arrangement forms part or the whole of the business of the permanent establishment.

11. Where a legal entity that is resident in a Member State is granted a loan by a permanent establishment/branch of a domestic bank which is established in a jurisdiction of a third country, the condition that one or more of the participants in the arrangement carries on a business in another jurisdiction through a permanent establishment situated in that jurisdiction is met and the arrangement forms part or the whole of the business of that permanent establishment.

One or more of the participants in the arrangement carried on an activity in another jurisdiction without being resident for tax purposes or creating a permanent establishment situated in that jurisdiction.

12. Where one or more of the participants in the arrangement carried on an activity in another jurisdiction without being resident for tax purposes or creating a permanent establishment situated in that jurisdiction, the arrangement must be part or the whole of that activity carried on in that other jurisdiction to be considered a cross-border arrangement.

The arrangement has a possible impact on the automatic exchange of information or identification of the beneficial owner.

13. (1) Arrangements that may have an impact on the automatic exchange of information for tax purposes, as required by bilateral or multilateral Agreements or Directives, or on the identification of the beneficial owner, as required by relevant national law, or bilateral or multilateral Agreements shall be considered cross-border arrangements.

(2) Indicative examples of such arrangements are set out in the OECD Model Mandatory Disclosure Rules on Common Reporting Standard (CRS) Avoidance Arrangements and Opaque Offshore Structures as well as in the relevant interpretative comments.

Categories of intermediaries.

14. Any person falling within the definition of "primary intermediary" or "secondary intermediary" shall be considered an intermediary, provided that they meet at least one of the following conditions:

(a) be resident for tax purposes in a Member State;

(b) have a permanent establishment in a Member State through which the services with respect to the arrangement are provided;

(c) be incorporated in, or governed by the laws of, a Member State;

(d) be registered with a professional association related to legal, taxation or consultancy services in a Member State.

First category of intermediaries – primary intermediary.

15. (1) Primary intermediaries include persons that actively design and advise on tax planning schemes, such as professional tax advisors or persons specialising in tax-related matters.

(2) Primary intermediaries of an arrangement also include in-house departments of legal entities that design and advise other group members on reportable cross-border arrangements.

(3) A primary intermediary shall be responsible for marketing an arrangement or a scheme, if they encourage customers to implement such arrangement.

(4) A primary intermediary is expected to have a full knowledge and understanding of the details of a cross-border arrangement, having regard that in order to design and effectively advise on a scheme, they must know all the material aspects and details of the arrangement.

It is understood that a person involved in a cross-border arrangement but without knowledge of those material aspects shall not be considered a primary intermediary.

Second category of intermediaries – secondary intermediary.

16. (1) Secondary intermediaries include, but are not limited to, tax consultants, administrative service providers, lawyers, asset managers, bankers and insurance companies, provided they are not primary intermediaries.

(2) Secondary intermediaries of an arrangement also include persons that advise other group members on reportable cross-border arrangements, provided that they are not primary intermediaries and belong to in-house departments of legal entities.

(3) Aid, assistance or advisory services provided by secondary intermediaries may include the provision of tax and legal or other consulting services in relation to the design or structure of transactions, expertise or knowledge, funding, administration and trust services, professional services in the context of the implementation of a reportable cross-border arrangement.

It is understood that the provision of compliance services in relation to background information, provided they are not part of the implementation of the arrangement, such as assisting a client in filing a tax return of a client who had previously participated in a reportable cross-border arrangement, shall not mean that the person providing the service is classified as an intermediary because, although the tax compliance officer provides aid or assistance in relation to the arrangement, such action does not fall within the definition of intermediary designing, marketing, of an arrangement.

It is further understood that an auditor shall not be classified as an intermediary if during the audit of accounting records has identified reportable cross-border arrangements because, although the auditor provides aid or assistance in relation to the arrangement, such action does not fall within the definition of an intermediary designing, marketing, organising, making available for implementation or managing the implementation of the arrangement.

It is further understood that any advice provided in relation to whether a transaction is reportable shall not in itself create an obligation to report the same, since the definition of intermediary will not be satisfied. If, however, during the provision of advisory services, that person provides advice on how to best structure the transaction, then such action could render that person an intermediary for that arrangement.

It is further understood that a person who does not know or could not be reasonably expected to know that they have undertaken to provide aid, assistance or advice with respect to designing, marketing, organising, making available for implementation or managing the implementation of a reportable cross-border arrangement, and had little or no knowledge or understanding of what the arrangement really entails, shall not be considered a second intermediary.

"Knows or could reasonably be expected to know" criterion.

17. (1) The criterion of whether a person knows or could reasonably be expected to know that they have undertaken to provide aid, assistance or advice with respect to a reportable cross-border arrangement is to be determined from an objective standpoint by reference to:

(a) the relevant facts and circumstances;

(b) the available information; and

(c) the relevant expertise and understanding required to provide such services.

(2) A person is required to file information in relation to a reportable cross-border arrangement that is within their knowledge, possession or control. Otherwise, these persons are not required to include in the return information that is not within their knowledge, possession or control.

Application of "know or could reasonably be expected to know" criterion from secondary intermediaries.

18. (1) The criterion "knows or could reasonably be expected to know" is met if a prudent man in the position of a secondary intermediary has the relevant level of expertise and understanding required to provide that service. This criterion also presupposes that a secondary intermediary should have sufficient knowledge and professional background that would ordinarily be expected of a person providing payment processing services based on the criteria of collecting available information as these are defined based on due diligence procedures. Secondary intermediaries are not required to have or apply a level of expertise beyond that which would reasonably be required to provide that service. What it is reasonable to expect a secondary intermediary to know will depend on the circumstances, in particular their level of involvement in with respect to a particular arrangement.

(2) A person that provides a service and can provide information with respect to the criterion of "knows or could reasonably be expected to know", is not required to file information with the Tax Department, in accordance with the provisions of the Law. A secondary intermediary may only be involved in a particular aspect of a wider arrangement, as they may not be in the position, based on the information available, to assess whether the arrangement is a cross-border arrangement or whether it falls within a hallmark.

It is understood that the criterion is not met in the case of a secondary intermediary who prepares and files tax returns in connection with a transaction, unless that person has other information that would lead to the conclusion that the transaction is part of a reportable cross-border arrangement.

(3) A secondary intermediary does not always have full knowledge of the relevant facts and circumstances of the arrangement for which they have undertaken to provide services. Such person must consider any information that is readily available to them when delivering a particular service.

(4) Readily available information includes information that is acquired during acquaintance with the client and the course of undertaking the service, in accordance with standard due diligence procedures designed for commercial or regulatory purposes, as well as any information acquired during the provision of the specific service.

(5) Secondary intermediaries are not expected to carry out any additional due diligence to establish whether the service to be provided triggers a reporting obligation. A secondary intermediary should apply due diligence as is customary for the type of transaction

and the client in question. However, if a secondary intermediary deliberately fails to perform due diligence or finds other ways to wilfully remain ignorant by not asking particular questions, the criterion may still be satisfied and they would qualify as an intermediary.

(6) A secondary intermediary may have access to information which would not have been read or considered in the ordinary course of business as such information is not required for the proper and adequate provision of the service. In such a case, a secondary intermediary is not required to carry out any additional checking of such information in to determine whether the service provided falls within a hallmark.

(7) Where in the ordinary course of his/her duties, an intermediary is required to study only part of the relevant documents, such as the summary presentation, then they are not required to carry out further reading of the documents in order to identify information indicating that the arrangement is reportable.

(8) In the case of persons who are part of an organisation where information can be disseminated between its various divisions and units, the person who has undertaken to provide a service shall not be expected to know all the knowledge held within the organisation, provided that it can be established that there is no attempt to deliberately fragment such knowledge.

Application of the main benefit test criterion.

19. (1) The main benefit test will be satisfied if it can be established that the main benefit or one of the main benefits which, having regard to all relevant facts and circumstances, a person may reasonably expect to derive from an arrangement is the obtaining of a tax advantage as defined by the Law.

It is understood that a tax advantage refers to taxes levied by or on behalf of a Member State or its territorial or administrative subdivisions (including local authorities), with the exception of value-added tax, customs duties, excise duties covered by other European legislation on administrative cooperation as well as compulsory social security contributions payable to the Republic of Cyprus or other Member State or a subdivision thereof or to social security institutions governed by public law.

(2) A tax advantage can arise when an arrangement prevents the occurrence of a tax disadvantage as is the case through an amendment to the tax legislation.

(3) The main benefit test can be carried out on the basis of qualitative and quantitative measurements taking into account the value of the expected tax advantage compared to the value of any other advantage that may arise.

(4) Another advantage is any advantage, apart from the "tax advantage", as defined in the Law, which is reasonably expected to derive from an arrangement.

(5) In determining whether an arrangement results to a tax advantage, a comparison is required between the amount of tax due, having regard to the arrangement, with the amount of tax that would be due under the same circumstances in the absence of the arrangement.

(6) The main benefit test is determined from an objective standpoint. It is not necessary to examine the specific motives or intentions of a person entering into an arrangement. it does not matter if the person was seeking a tax advantage from the arrangement, or what other reasons they might have had for entering into the arrangement, what matters is whether the arrangement is such that a tax advantage is the main benefit or one of the main benefits that the person entering into the arrangement would reasonably be expected to obtain from the arrangement.

Hallmarks category Q: Generic hallmarks linked to the main benefit test.

20. Hallmarks under category A are generic hallmarks linked to the main benefit test. Arrangements will not trigger these hallmarks unless the main benefit or one of the main benefits that a person may reasonably be expected to derive from the arrangement is the obtaining of a tax advantage relating to taxes levied on or on behalf of a Member State or its territorial or administrative subdivisions.

Hallmark A.1 - Confidentiality conditions.

21. (1) Hallmark A.1 covers confidentiality conditions that aim, inter alia:

i. to prevent the Tax Department or any other tax authority of a Member State from knowing, examining, seeking to prevent or challenge the validity or functionality of an arrangement to any degree;

ii. to prevent the Tax Department or any other tax authority of a Member State from taking legislative or other steps to interfere with the functioning of an arrangement;

iii. to maintain the ability of an intermediary not to disclose the details of an arrangement in order to protect its respective competitive advantage.

(2) For a confidentiality condition to fall within the scope of this hallmark:

i. it is not necessary to contain specific reference to a tax authority or other intermediaries or to other entities/persons;

ii. it may be written or oral;

iii. it does not matter whether or not a tax advantage will ultimately arise.

(3) It is not necessary that the confidentiality agreement refer explicitly to the limitation on disclosure. It is only necessary that it has effect of limiting disclosure of the expected tax advantage vis-à-vis other intermediaries or the Tax Department or other tax authorities of Member States.

(4) The use of confidentiality conditions will not necessarily trigger reporting, unless it is reasonable to conclude, from an objective standpoint, that the confidentiality condition in intended to secure a tax advantage vis-à-vis other intermediaries or the Tax Department or other tax authorities of Member States.

It is understood that confidentiality agreements aimed at protecting commercial and/or personal data are not covered by this hallmark.

Hallmark A.2 – Compensation related to tax advantage.

22. (1) Hallmark A.2 covers all forms of compensation that an intermediary is entitled to receive in connection to an arrangement.

It is understood that the hallmark A.2 does not necessarily include cases where there is a fee for the provision of services after the implementation of the arrangement, such as assistance to tax inquiry.

It is further understood that hallmark A.2 applies only to the intermediary who is entitled to receive the specified compensation and does not cover other intermediaries who may be involved in the arrangement.

(2) In accordance with hallmark A.2, an intermediary's fee or other form of compensation for providing a service in relation to a cross-border arrangement is linked to a tax advantage being obtained.

(3) The fee or other form of compensation may be in the form of

i. interests;

ii. charges;

iii. provision of goods or services;

iv. percentage over tax advantages;

v. reward fee.

(4) Examples of fees or other form of compensation linked to tax advantage include:

i. an agreement where the intermediary receives minimal or no upfront compensation, unless and until the taxpayer obtains or retains a tax advantage;

ii. an agreement where the intermediary receives a percentage over a tax advantage enjoyed by the taxpayer;

iii. a reward fee due to the tax advantage secured.

Hallmark A.3 – Standardised documentation and structures.

23. (1) For the purposes of hallmark A.3, the term "standardised" means:

i. the documentation and/or structures that are pre-prepared for which the characteristics of the persons to whom they are addressed/ promoted/offered are not generally taken into consideration;

ii. the documentation and/or structures that are not subject to negotiation by the interested parties;

iii. the documentation and/or structures that are easy to replicate and market as a finished product that may be put into operation without the provision of significant additional services.

(2) The term "substantially standardised documentation and/or structure", as included in the Law under hallmark A.3. indicates that the partial modification does not preclude the documentation and/or structures being considered as standardised. If the specific characteristics of the persons to whom they are addressed/promoted/offered substantially affect the design of the documentation and/or structures, it is not a "substantially standardised documentation and/or structure", whereas if these merely affect it and are of secondary importance in terms of the operation of the arrangement, then it is a "substantially standard documentation and/or structure".

(3) Such documentation and/or structures will be “substantially standardised” if they are pre-prepared and require little, if any, modification to suit an individual client and it will be a matter of fact whether such documentation and/or structures are made available to more than one person without a need to be substantially customised.

(4) This hallmark is intended to capture arrangements that are often referred to as “mass-marketed” or “off-the-shelf” schemes, where a person buying the services is buying a finished product that requires little or no modification. Such services may primarily contain tax incentives and it is therefore very likely that the finished product promotes a relevant tax advantage.

(5) Marketable arrangements may fall under this hallmark as they have common features, including the standardised form of documents and/or the standardised structure, and the lack of customisation or the existence of only basic supervision and control on the part of the intermediary.

Hallmarks category B: Specific hallmarks linked to the main benefit test.

24. Hallmarks under category B include specific hallmarks linked to the main benefit test. Arrangements will not trigger these hallmarks, unless the main benefit or one of the main benefits that a person may reasonably be expected to derive from the arrangement is the obtaining of a tax advantage.

Hallmark B.1 – Loss buying.

25. (1) Hallmark B.1 applies to any arrangement whereby a participant takes the following contrived steps:

i. the participant acquires a loss-making company;

ii. the main activity of the loss-making company is then discontinued;

iii. the participant uses the losses of the company to reduce its tax liability;

iv. the contrived steps are pre-planned, artificial and/or complex, without any apparent commercial reason.

(2) The hallmark is met only when the acquirer discontinues the main activity of the loss-making company.

(3) The acquiring company shall not be considered a participant in that arrangement. The use of losses within the same tax territory may satisfy the hallmark, provided that the arrangement is of a cross-border nature.

(4) Intragroup acquisitions are also subject to this hallmark.

Hallmark B.2 – Conversion of income into capital.

26. (1) This hallmark is met when there is a conversion of an existing or expected income into capital, donations or any other category of income which attracts a lower rate of tax or is tax exempt.

(2) To establish whether the other category of income is taxed at a lower level or is exempt from tax, it will be necessary to compare the amount of tax that would have been payable had the conversion of income not taken place with the amount of tax that is payable, if any.

(3) Where a person is given share options as part of their remuneration package, any increase in value could be taxed as a capital gain, depending on the jurisdiction of their tax residence. Although the remuneration package could have consisted entirely of salary income, share options are a legitimate commercial choice to remunerate employees. Therefore, there is no conversion of income into capital but there has been a choice made between different options, which are widely used and have an underlying commercial rationale. The foregoing applies in cases where the share options do not exceed 25% of the remuneration package.

(4) In cases where arrangements are pre-planned or are not normal commercial practice or involve additional, artificial steps which result in making the payments not-taxable or taxable at much lower rates, then it is likely to be the case that the amounts would have to be declared as income and the arrangements have the effect of converting that income into capital.

(5) There does not have to be pre-existing right to income, in order for there to be a conversion of income into capital, although where there is a right to income, that would be taken into account in reaching a conclusion on whether the test is met.

Hallmark B.3 – Circular transactions.

27. (1) This hallmark is met when circular transactions are carried out that result in in round-tripping of funds (i.e., cash or cash equivalents) and include:

i. interposed entities without primary commercial function, or

ii. transactions that offset or cancel each other (or that have other similar features to these).

(2) An arrangement is considered to result in "round-tripping of funds" if the jurisdiction from where the funds originate is one and the same with the ultimate destination jurisdiction.

It is understood that when Financial Institutions are unable to identify whether an arrangement fall within this hallmark due to:

(a) the significant period of time that may elapse between the transfer of funds which creates practical difficulties to the intermediary to identify these transactions as "round-tripping of funds";

(b) the difficulty of identifying the arrangement as circular when the total round tripping of funds is carried out by different financial institutions and information is not available to every intermediary and the above would not be examined within their normal working conditions, it shall be considered that they do not have sufficient information to determine whether the arrangement is reportable.

(3) (a) Whether or not entities serve a primary commercial function, other than facilitating the round-tripping of funds, will depend on the facts of the case to establish whether the round-tripping of funds serves little or no commercial purpose, and has been done primarily in order to achieve beneficial tax treatment that would not otherwise be available.

(b) In cases of structures that, while they appear to meet the characteristics set out in this hallmark and could be considered to include interposed entities, may serve commercial functions and motives, such as protection of assets, access to markets and/or specialised staff, this hallmark is not met.

(4) This hallmark is not limited to transactions between associated enterprises and/or connected parties, but they may also be unrelated entities that are participating in the transaction.

Hallmarks category C: Specific hallmarks related to cross-border transactions.

28. (1) Hallmarks set out in paragraphs (b)(i) (c) and (d) of paragraph 1 of category C of Annex IV of the Law are linked to the main benefit test. Arrangements will not trigger these hallmarks unless the main benefit or one of the main benefits that a person may reasonably be expected to derive from the arrangement is the obtaining of a tax advantage. In addition, hallmarks under category C apply only to cross-border transactions.

(2) The presence of the conditions set out in subparagraphs (b)(i), (c) or (d) of paragraph 1 of Annex IV of the Law may not alone constitute a reason to conclude that the arrangement meets the main benefit test.

Hallmark C.1 - Deductible cross-border payments between associated enterprises.

29. (1) This hallmark covers only actual payments, therefore tax deductions based on imputed amounts or transfer pricing adjustments do not fall within the scope of the hallmark.

(2) An "imputed" payment between a head office and its permanent establishment or between two permanent establishments of the same entity does not fall within the scope of this hallmark, as this is a redistribution of profits/losses within the same entity.

(3) The deduction of "deemed"/"notional" interest granted to tax residents of the Republic of Cyprus in accordance with the Income Tax Law[9] and similar regimes in other jurisdictions shall not be considered a "payment" based on this hallmark.

(4) Deductible payments in this hallmark do not extend to acquisitions of depreciable assets or interest that is capitalised into the cost of an asset, such as interest used to finance the construction of a building and capitalised into the cost of the building.

(5) Where a payment is made to an entity which is tax transparent its jurisdiction of incorporation or establishment, such as a partnership, the recipient of the payment shall be considered a partner/investor.

(6) In cases where an intermediary does not know if a payment is deductible or could not reasonably be expected to know what the effect of a payment will be, there is no obligation to file information about the arrangement.

It is understood that when the intermediary is a secondary intermediary and does not know or could not reasonably be expected to know whether an arrangement is a reportable cross-border arrangement, because they do not know whether the arrangement 'concerns' multiple countries, or whether the hallmark is met, the person does not fall in the definition of intermediary and therefore there is no obligation to file a report.

(7) Where the recipient is a permanent establishment, the hallmark shall apply by examining the method of income tax both in the jurisdiction of the permanent establishment and the jurisdiction of the registered office. Any exemption of the profits of a permanent establishment abroad in the jurisdiction of the registered office does not automatically mean that one of the hallmarks of category C1 is met.

Hallmark C.1.a. - The recipient is not resident for tax purposes in any tax jurisdiction.

30. (1)[10] This hallmark covers legal persons that have no tax residence in any jurisdiction. It should not cover jurisdictions that do not have the concept of tax residence in their tax regimes, either because a territorial system of taxation is applied, or because they do not impose any corporate tax. Such cases may be covered by other subcategories of hallmark C.1.

Hallmark C.1.b.(i) - Recipient tax resident in a jurisdiction that imposes corporate tax at a rate of zero or almost zero.

31. (1) For the purposes of this hallmark, a rate of almost zero refers to a nominal corporate tax rate of less than 1% that applies generally in the country of tax residence of the recipient and not to the effective tax rate applicable to the recipient.

(2) Where the recipient of payment benefits from an exemption from tax in the jurisdiction of their tax residence, such as government investment funds, government entities, local authorities and other similar government entities, such payment do not fall within this hallmark.

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9 118(I) of 2002 230(I) of 2002 162(I) of 2003 195(I) of 2004 92(I) of 2005 113(I) of 2006 80(I) of 2007 138(I) of 2007 32(I) of 2009 45(I) of 2009 74(I) of 2009 110(I) of 2009 41(I) of 2010 133(I) of 2010 116(I) of 2011 197(I) of 2011 102(I) of 2012 188(I) of 2012 19(I) of 2013 26(I) of 2013 27(I) of 2013 17(I) of 2014 115(I) of 2014 134(I) of 2014 170(I) of 2014 116(I) of 2015 187(I) of 2015 212(I) of 2015 110(I) of 2016 135(I) of 2016 119(I) of 2017 134(I) of 2017 165(I) of 2017 51(I) of 2018 96(I) of 2018 122(I) of 2018 139(I) of 2018 27(I) of 2019 28(I) of 2019 63(I) of 2019 151(I) of 2019 152(I) of 2019 173(I) of 2019 45(I) of 2020 58(I) of 2020 66(I) of 2020 80(I) of 2020 95(I) of 2020 151(I) of 2020 179(I) of 2020 180(I) of 2020 31(I) of 2021.

10 Paragraph (1) is redundant as there is no paragraph (2).

Hallmark C1(b)(ii) - Recipient tax resident in a jurisdiction included in a list of third-country

32. (1) This hallmark covers arrangements that include deductible cross-border payments between two or more associated enterprises, provided they are included in the EU list of non-cooperative jurisdictions or in the OECD list of non-cooperative jurisdictions which are subject to periodical updates.

(2) For the purposes of this hallmark, the list of non-cooperative jurisdictions for tax purposes published by OECD includes those jurisdictions which are assessed as "non-compliant" for the purpose of exchange of information upon request by the Global Forum on Transparency and Exchange of Information for Tax Purposes.

It is understood that where OECD develops other potential lists, there shall be relevant information before such lists enter into force for the purposes of the Law.

(3) Where the first step of an arrangement was implemented during the lookback period, i.e., the period from 25 June 2018 but prior to 1July 2020, and the third-country jurisdiction involved in the arrangement appears on the list of jurisdictions that have been assessed by the Member States collectively or within the framework of the OECD as being non-cooperative during the first step of implementation of the arrangement, this hallmark is not met.

(4) For the period between 1 July 2020 and onwards, the relevant list of non-cooperative jurisdictions should be examined on the date that the reporting obligation arises, i.e., on the date when the arrangement is made available for implementation or is ready for implementation or the first step of which has been taken, whichever occurs first, or, for secondary intermediaries, at the point of time when aid, assistance or advice in relation to the arrangement is provided thereby, when such point is subsequent.

Hallmark C.1. c - Recipient tax resident in a jurisdiction where the payment benefits from full exemption from tax.

33. This hallmark is based on the tax benefit of the payment and not of the recipient. The hallmark applies in those cases where specific payments made to persons that are subject to tax are exempt from the relevant tax.

Hallmark C.1.d - Recipient tax resident in a jurisdiction where the payment benefits from a preferential tax regime.

34. (1) This hallmark is based on the tax benefit of the payment and not of the recipient.

(2) For the purposes of this hallmark, "preferential" regime is defined as the regime which has been assessed by the EU Code of Conduct Group (Business Taxation) of the Economic and Financial Affairs Council or the EU State aid rules as a "harmful" tax regime.

It is understood that the notional interest deduction rules or similar rules on notional interest deduction on equity in other jurisdictions, the intellectual property and tonnage tax regimes, which have been assessed by the EU as "non-harmful" tax regimes, are not considered as "preferential" regimes for the purposes of this hallmark.

Hallmark C.2 – Deductions for the same depreciation.

35. Cases in which the same depreciation claimed in two jurisdictions is coupled with dual inclusion of income do not fall within the scope of this hallmark. Such cases include:

i. when the country of a company's tax residence taxes a permanent

establishment abroad and provides tax deduction through capital deductions;

ii. when a parent company includes in its tax base the profits of a controlled foreign company and provides a tax deduction through the method of capital deductions.

Hallmark C.3 – Relief from double taxation.

36. (1) This hallmark applies where relief from double taxation in respect of the same item of income or capital is claimed in more than one jurisdiction.

(2) Cases in which the same taxation is relieved in two jurisdictions coupled with dual inclusion of income do not fall within the scope of this hallmark. Such cases include:

i. When the country of a company's tax residence taxes a permanent establishment abroad, providing tax deduction through tax credit, which has received income from a third jurisdiction in respect of which withholding tax has been deducted, and such tax withheld is provided as relief by both the jurisdiction of the country of taxation and the jurisdiction of the permanent establishment abroad.

ii. When the country of tax residence of a parent company taxes a Foreign Controlled Company, providing double tax deduction through tax credit, which has received income from a third jurisdiction in respect of which withholding tax has been deducted, and such tax withheld is provided as relief by both the jurisdiction of the country of taxation and the jurisdiction of the permanent establishment abroad.

(3) This hallmark does not apply in cases where a dividend, exempt from tax in Cyprus, is paid to a company resident in Cyprus by a company resident in another jurisdiction, even if the dividend is paid without holding tax or with a reduced rate of withholding tax under the tax laws of that jurisdiction or due to a Double Taxation Convention or the implementation of the EU Directive on double taxation.

It is understood that the dividend income exemption based on the law in Cyprus should not be considered as double tax relief for the purposes of this hallmark.

Hallmark C.4 - Material difference in the amount treated as payable.

37. (1) This hallmark applies to arrangements involving cross-border transfer of assets where there is a material difference in the amount being treated as payable in consideration for the assets.

It is understood that whether the difference in the tax value between the jurisdictions involved is material should be examined on a case-by-case basis.

It is further understood that the transfer of tax residence does not fall within the scope of this hallmark.

(2) The amount being treated as payable in consideration for the asset being transferred is the amount treated as payable for tax purposes. Whenever an asset has no tax

value for the transferor and/or the transferee for the reason that the asset is exempt for tax purposes, this hallmark does not apply as there is no "difference". The accounting value is relevant only when it affects the tax value.

(3) Transfers of assets within a company, such as transfers between a head office and its permanent establishment, are within the scope of this hallmark but only if the asset has a tax value for both the jurisdiction of the transferor and the jurisdiction of the transferee and there is a material difference in the tax values.

(4) This hallmark also applies to transfers of assets carried out between unconnected parties.

Hallmarks category D: Specific hallmarks concerning automatic exchange of information and beneficial ownership.

38. (1) Hallmarks under category C address arrangements designed to circumvent reporting under Directive 2014/107/EE, the Law and the Decree issued pursuant to section 6(16) of the Law on the implementation of the Agreement to improve International Tax Compliance and to implement FATCA and arrangements aimed at providing beneficial owners with the shelter of non-transparent structures falling within the scope of the OECD Model Mandatory Disclosure Rules on Common Reporting Standard Avoidance Arrangements and Opaque Offshore Structures ("OECD MMDR").[11]

(2) In applying hallmark D1, the following should be taken into consideration:

(a) The relevant provisions of the EU Law on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing as in force or replaced, and in the event of:

i. lack of relevant guidance within the EU Law on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing as in force or replaced; or

ii. conflict with the EU Law pursuant to Article 1A of the Constitution of the Republic of Cyprus;

(b) the relevant provisions as set out in the OECD Model Mandatory Disclosure Rules on Common Reporting Standard Avoidance Arrangements and Opaque Offshore Structures and related commentary to the extent that the texts are aligned with the EU law.

Hallmark D.1 on the automatic exchange of information.

39. (1) An arrangement triggers hallmark D.1, as defined by the Law, where it is reasonable to conclude it has the effect of circumventing or undermining the reporting obligation under the national laws implementing Council Directive 2014/107/EU and the Common Reporting Standard ("CRS") or equivalent agreements on the automatic exchange of information on Financial Accounts, including agreements with third countries.

11 Official Gazette Annex III(I) RAD 433/2020 No 5360 18.9.2020 No 433.

(2) For the purposes of this hallmark, "reasonable to conclude" is to be determined from an objective standpoint by reference to all the facts and circumstances and without reference to the subjective intention of the parties involved.

(3) Information in relation to arrangements involving the use of such types of accounts, as defined by the Law, will not be disclosable under this hallmark, unless a reportable account has been wrapped in or converted into a non-reportable account.

(4) An arrangement involving the use of a jurisdiction that has not adopted the Council Directive 2014/107/EU as regards mandatory automatic exchange of information in the field of taxation or the provisions of the OECD Common Reporting Standard on the automatic exchange of information of financial accounts in its national laws or takes advantage of the absence of such laws or agreements will fall within the scope of hallmark D1.

(5) An arrangement involving a jurisdiction included in the EU list of non-cooperative jurisdictions for tax purposes, as amended, falls within the scope of hallmark D1.

Hallmark D.2(c) on non-disclosure of legal or beneficial ownership chains.

40. (1) The hallmark referred to in paragraph 2(c) of category D of Annex IV of the Law involves the reasonable identification by tax authorities of Member States of the beneficial owners when they have been made unidentifiable.

(2) Cases in which beneficial owners are unidentifiable through arrangements are the following:

i. When they are made unidentifiable through the use of nominee shareholders or the exercise of indirect control and not through direct ownership; and

ii. when the arrangements involve jurisdictions where there is no requirement to keep information on actual ownership or where there is no mechanism for acquiring such information or where there no obligations or mechanism for disclosing the details of the beneficial owners of the shares held by the nominee shareholders or for notifying the competent authority of any changes in the ownership or control of an entity or its shares.

It is understood that when beneficial owners are identified in accordance with Directive (EU) 2015/849, the cross-border arrangement involving those owners does not fall within this hallmark.

(3) The structures involving institutional investors and entities wholly owned by one or more institutional investors do not fall within the scope of this hallmark as they are not considered to conceal beneficial ownership.

(4) The actively traded shares held by brokers and custodians in the name of a nominee shareholder do not trigger this hallmark.

(5) Where the beneficial owner is not identified because their ownership interest is below the required ownership limit, this hallmark does not apply.

It is understood that where a beneficial owner is found to be deliberately retaining ownership just below the ownership limit to avoid identification, this hallmark is met.

(6) With regard to trusts, where beneficial owners are named or identified and such disclosure or identification is in line with the provisions of the Prevention and Suppression of Money Laundering Activities Law, this hallmark is not met.

Hallmarks category E: Specific hallmarks concerning transfer pricing.

41. (1) Hallmarks under category E apply to intragroup pricing and transactions between associated enterprises, as defined in the Law, and not transactions between unconnected parties, and should be construed in accordance with the OECD Transfer Pricing Guidelines of 2017, as amended.

(2) Hallmark E.1 involves arrangements between associated enterprises and transactions within the same legal entity, i.e., arrangements between the company's tax residence and its permanent establishment, whereas hallmarks E.2 and E.3 involve only arrangements between associated enterprises.

Hallmark E.1 – Arrangement which involves the use of unilateral safe harbour rules.

42. (1) Bilateral or multilateral advance pricing agreements concluded between tax authorities do not fall within the scope of hallmark E1.

(2) For the purposes of this hallmark, the use of "unilateral safe harbour rules" that are available to taxpayers under tax laws or practices in another Member State or third country should always take place within cross-border intragroup transactions.

(3) The following types of arrangements do not fall within the scope of this hallmark as they are not considered to involve the use of unilateral safe harbour rules:

i. Arrangements involving:

(a) the use of administrative simplification measures that do not directly involve the determination of arm's length prices, such as exemption from or simplified documentation requirements;

(b) advance intragroup pricing agreements that include procedures according to which a tax authority and a taxpayer agree on intragroup pricing of controlled transactions;

(c) tax provisions, rules or agreement governing low capitalisation of companies,

ii. Arrangements that adopt the simplified pricing approach to low value intra-group services, provided that this approach is in line with the OECD Transfer Pricing Guidelines of 2017, as amended;

iii. Arrangements involving the use of national provisions that exclude certain

categories of taxpayers or transactions from the scope of transfer pricing rules, such as the exclusion of companies from the scope of domestic transfer pricing prices due to their size or other specific characteristics or when the transactions involve companies which fall outside the scope of domestic transfer pricing rules due to the application of specific rules determining income tax.

(4) The following types of arrangements fall within the scope of this hallmark as they are considered to involve the use of unilateral safe harbour rules:

i. the use of simplification measure with a minimum return of 2% after deduction of taxes (margin 2.29% before taxes) in intra-group financing transactions with back-to-back operations by financial companies having their tax residence in the Republic of Cyprus;

ii. the use of return on equity of 10% after deduction of taxes, when entities exercise activities similar to those of regulated financial institutions or other parties engaged in credit extension subject to Directive (EU) 575/2013.

Hallmark E.2 – Arrangement which involves the transfer of hard-to-value intangibles.

43. (1) This hallmark takes into account the published actions 8-10 of the OECD Final Report on Base Erosion and Profit Shifting of 2015 the application of hard-to-value intangibles.

(2) For the purposes of this hallmark, intangibles include, inter alia, patent rights, know-how, trade secrets, trademarks, tradenames and brands as well as the reputation, customer base and value of the operating business.

(3) For the purposes of hallmark E.2, transfer of rights in intangibles, such as a license or a contractual right to use the intangible asset, fall within the definition of "intangibles".

(4) Cross-border transactions involving the transfer of hard-to-value intangibles have specific characteristics, including, but not limited to, the following:

i. an intangible has been developed only in part at the time of the transfer;

ii. it is not expected to be commercially exploited for several years after the transaction;

iii. it is expected to be exploited in an original/novel manner at the time of transfer.

It is understood that a cross-border transfer of hard-to-value intangibles is usually carried out by a change of ownership in the intangible assets/rights in the intangible assets concluded between at least two parties that are associated enterprises. Therefore, a transaction involving only one person (e.g., transfer of tax transfer) should not be considered a transfer for the purposes of hallmark E.2.

It is further understood that in "cross-border" transfers of intangible assets/rights in intangible assets between associated enterprises, the intangible assets/rights in intangible assets may be transferred from one Member State to another or from on Member State to a third country (or vice versa).

(5) In order to establish the existence of reliable and comparable data, comparability is determined on a case-by-case basis by reference to specific comparability factors, such as exclusivity, geographical scope, stage of development and the expected future benefit of the intangible asset. The assessment of whether an intangible asset is hard to value should be made at the time when the obligation to file information arises.

Hallmark E.3 applies only to associated enterprises as defined by the Law and does not apply for transactions within one legal entity, such as transactions between a company and its branch, including transactions that involve distribution of profits between the company and its permanent establishment abroad.

44. (1) Hallmark E.3 applies only to associated enterprises as defined by the Law and does not apply for transactions within one legal entity, such as transactions between a company and its branch, including transactions that involve distribution of profits between the company and its permanent establishment abroad.

(2) This hallmark applies in cases where the functions, risks or assets are being transferred across a border between at least two parties that are associated enterprises.

It is understood that the transfer of tax residence is not considered a "transfer" for the purposes of hallmark E.3.

It is further understood that in "cross-border" transfers of functions, risks or assets between associated enterprises, the functions, risks and asset may be transferred from one State Member to another or from one State Member to a third country (or vice versa).

It is further understood that mergers between tax residents of the same jurisdiction do not equate to "cross-border" transfers for the purposes of this hallmark, even if the entire arrangement includes participants who are not tax residents in the same jurisdiction as with companies participating in the merger.

It is further understood that to the extent that the functions, risks or assets remain in a permanent establishment in the jurisdiction of the tax residence of the transferring company in a cross-border restructure, these are not considered that are being transferred for the purposes of this hallmark.

(3) For the purposes of this hallmark, a cross-border transfer is deemed to have taken place when the restructuring and change of ownership of assets, functions and risks (by transfer of legal title, contract or otherwise) is being examined, as well as any changes in functions or the distribution of risks arising from simple changes in the activities or in the manner of operation within the multinational group.

(4) A transfer may include changes based on contractual arrangements as well as changes in the activities or in the manner of operation.

(5) This hallmark applies if a cross-border transfer is predicted to result in a reduction in the projected earning of the transferors of more than 50% of the projected annual earnings before interest and taxes during the three-year period after the transfer.

It is understood that for the purposes of this hallmark "earnings before interest and taxes" refer to earnings for financial/accounting purposes and not to taxable earnings.

Intermediaries: Time limits for filing information with the Tax Department.

45. (1) As of 31 October 2021, the primary intermediary having its residence for tax purposes in Cyprus has an obligation to file information with the Tax Department within 30 days beginning:

i. the day after the arrangement is made available for implementation; or

ii. the day after the arrangement is ready for implementation; or

iii. when the first step in the implementation of the arrangement has been made,

whichever occurs first.

(2) If the first step in the implementation of the arrangement took place during the period between 25 June 2018 and 30 October 2021, the primary intermediary in Cyprus has an obligation to file information with the Tax Department until 30 November 2021.

Information filed by secondary intermediaries.

46. (1) As of 31 October, the secondary intermediary in Cyprus has an obligation to file information within 30 days from the day after they have provided aid, assistance or advice.

(2) In cases where the secondary intermediary provides aid, assistance or advice by means of other persons and knows that such aid, assistance or advice is provided before the arrangement "is made available for implementation" or "is ready for implementation" or "the first step of implementation has been taken" by the other person/relevant taxpayer, the secondary intermediary has the obligation to file information within the same time limits as the primary intermediary/relevant taxpayer (where applicable) or within 30 days from the date on which that other person made the arrangement available for implementation or at a later date if the aid, assistance or advice has been provided at a later stage, such as during the implementation stage.

It is understood that if the secondary intermediary knows when an arrangement has been "made available for implementation" or "is ready for implementation" or "the first of implementation has been taken" by that other person/relevant taxpayer, the period of 30 days will commence from the day on which aid, assistance or advice was provided.

(3) Where the first step in the implementation of the arrangement took place during the period between 25 June 2018 and 30 October 2021, the secondary intermediary in Cyprus has the obligation to file information with the Tax Department until 30 November 2021.

Obligations of intermediaries to file information with the Tax Department.

47. (1) To fall within the definition of intermediary (whether primary or secondary) required to file information on reportable cross-border arrangements with the Tax Department a person must meet one of the following conditions:

i. be resident for tax purposes in Cyprus;

ii. have a permanent establishment in Cyprus through which the services with respect to the arrangement are provided;

iii. be incorporated in Cyprus or governed by the laws of Cyprus; or

iv. be incorporated in Cyprus or governed by the laws of Cyprus; or

It is understood that for the purposes of this Decree, an intermediary who meets any of the conditions set out in subparagraphs of i-iv of paragraph (1) shall be referred to as intermediary in Cyprus (whether primary or secondary). Only intermediaries in Cyprus are required to file information in accordance with section 7D of the Law.

(2) Where the intermediary in Cyprus has the obligation file the information specified in paragraph (13) of section 7D of the Law on reportable cross-border arrangements with the tax authorities of more than one Member State, such information shall be filed only in the Member State that features first in the list below:

i. the Member State where the intermediary is resident for tax purposes;

ii. the Member State where the intermediary has a permanent establishment through which the services with respect to the arrangement are provided;

iii. the Member State where the intermediary is incorporated in or governed by the laws of;

iv. the Member State where the intermediary is registered with a professional association related to legal, taxation or consultancy services.

It is understood that for the purposes of subparagraph (2) of the present paragraph of the present article, where Cyprus is in the same level of hierarchy with another Member State, the intermediary has no obligation to file information in Cyprus if such information is filed in another Member State based on the respective law of that other Member State, provided that the information filed is the same with the information that would have been filed in Cyprus based on the Law, and the intermediary has proof.

(3) If an intermediary in Cyprus is exempt from filing information with the Tax Department on the condition that another intermediary or relevant taxpayer has filed the same information that would have been filed by that intermediary in Cyprus based on the Law or in another Member State based on the respective law of that other Member State, provided that the information filed is the same with the information that would have been filed in Cyprus based on the Law, and the intermediary in Cyprus has proof.

(4) The proof that the intermediary in Cyprus must have in order to be exempt from the obligation to file information with the Tax Department is:

(a) a copy of the information filed with the Tax Department or the competent authorities of the other Member State; and

(b) a written confirmation of the unique reference number (Arrangement Reference Number) assigned to the arrangement by the Tax Department or the competent authority of the other Member State.

(5) For the purposes of subparagraph (4) point (a) of the present article, an intermediary/relevant taxpayer shall have no obligation to provide evidence to other intermediaries, in which case the exemption from filing information shall not be available if the intermediary does not have the necessary proof.

(6) Where information is communicated by an intermediary in Cyprus to the Tax Department with respect to a marketable arrangement, such information should indicate that it concerns a marketable arrangement.

(7) Where an arrangement is a marketable arrangement and the intermediary in Cyprus files relevant information proving it, that intermediary has the obligation to make a periodic report every 3 months providing new reportable information as set out in points (a), (d), (g) and (h) of subparagraph (1) of article 50 of the present Decree.

(8) The first periodic report on marketable arrangements must be made by the intermediary in Cyprus until 30 April 2021.

Relevant taxpayers: Obligations to file information in Cyprus.

48. (1) The relevant taxpayer is required to file information with the Tax Department if:

(a) there is no intermediary because the arrangement was developed in-house without the assistance of an intermediary; or

(b) there is an intermediary but is not subject to the provisions of the 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; or

(c) there is an intermediary or more than one relevant taxpayer, but the information filed thereby with respect to the arrangement does not correspond to the information that would have been filed by the relevant taxpayer in Cyprus based on the Law or, even if it does, the relevant taxpayer does not have proof. The proof that the interested payer must have in order to be exempt from the obligation to file information with the Tax Department is:

(a) a copy of the information filed with the Tax Department or the competent authorities of the other Member State; and

(b) a written confirmation of the unique reference number (Arrangement Reference Number) assigned to the arrangement by the Tax Department or the competent authority of the other Member State.

(d) the intermediary is exempt from filing information due to legal confidentiality and has informed the relevant taxpayer thereof.

It is understood that for the purposes of subparagraphs (c) and (d) of paragraph 1 of the present article, the obligation to file information is transferred to the relevant taxpayer to the extent that there is no other intermediary or there is an intermediary but the information filed thereby with respect to the arrangement does not correspond to the information that would have been filed by the relevant taxpayer in Cyprus based on the Law or, even if it does, the relevant taxpayer does not have the proof set out in paragraph (c).

(2) The relevant taxpayer has an obligation to file information with the Tax Department if the arrangement concerns Cyprus, for example, where the relevant taxpayer is a resident for tax purposes in Cyprus or an entity with a permanent establishment in Cyprus participating in the arrangement. Such relevant taxpayer in Cyprus, liable to file information with the Tax Department, is referred to in the present Decree as liable relevant taxpayer.

It is understood that the liable relevant taxpayer may be located in Cyprus or any place abroad.

(3) Where the liable relevant taxpayer has an obligation to file information in more than one Member State, such information shall be filed only with the Tax Department if Cyprus features first in the list below as a Member State where:

(a) the relevant taxpayer is resident for tax purposes;

(b) the relevant taxpayer has a permanent establishment benefiting from the arrangement;

(c) the relevant taxpayer receives income or generates profits, although the relevant taxpayer is not resident for tax purposes and has no permanent establishment in any Member State;

(d) the relevant taxpayer carries on an activity, although the relevant taxpayer is not resident for tax purposes and has no permanent establishment in any Member State.

It is understood that for the purposes of subparagraph 3 of the present paragraph, when Cyprus is in the same level of hierarchy with another Member State, the liable relevant taxpayer has no obligation to file information in Cyprus if such information is filed in another Member State based on the respective law of that other Member State, provided that the information filed is the same with the information that would have been filed in Cyprus based on the Law, and the liable relevant taxpayer has proof.

(4) Where there is more than one relevant taxpayer with respect to the reportable arrangement, the obligation to file information lies with the relevant taxpayer that agreed the arrangement with an intermediary, if there is any, or if there is no such agreement, with the relevant taxpayer that manages the implementation of the arrangement.

(5) The liable relevant taxpayer in Cyprus shall be exempt from the obligation to file information with the Tax Department, provided that the other relevant taxpayer or intermediary has filed the same information that would have been filed by the said liable relevant taxpayer in Cyprus based on the Law or in another Member State based on the respective law of that other Member State, provided that the information filed is the same with the information that would have been filed in Cyprus based on the Law, and the relevant taxpayer in Cyprus has proof.

(6) The proof that the liable relevant taxpayer in Cyprus must have in order to be exempt from the obligation to file information with the Tax Department is:

(a) a copy of the information filed with the Tax Department or the competent authorities of the other Member State; and

(b) a written confirmation of the unique reference number (Arrangement Reference Number) assigned to the arrangement by the competent authority of the other Member State/Foreign Tax Identification Number. For the purposes of this exemption, a relevant taxpayer shall have no obligation to provide evidence to other relevant taxpayers, in which case the exemption from filing information shall not be available if the intermediary does not have the necessary proof.

(7) In the event that a step in a series of arrangements involves money being channelled through a main bank account of the primary intermediary, thus rendering the intermediary a relevant taxpayer implementing the first step or being ready for the implementation of the arrangement, that primary intermediary shall be expected by the Tax Department to file information as an intermediary and not as a relevant taxpayer.

An intermediary may also be a relevant taxpayer, as in the case of a group cash management company acting as the principal intermediary on behalf of other companies in the group, but also assumes the role of an active participant as a relevant taxpayer.

It is understood that where all the relevant information is filed and no attempt to delay or avoid the filing is established, the Tax Department shall not impose an administrative fine when a person in this particular position files information as an intermediary and not as a relevant taxpayer or vice versa. For this to take effect, updates to the information required under the “marketable arrangements” shall be required, even if the relevant taxpayer has filed information as a relevant taxpayer.

Legal professional privilege.

49. (1) Pursuant to the Law, lawyers acting as intermediaries shall not be exempt from the obligation to file information with the Tax Department, unless they are covered by legal professional privilege.

It is understood that the client may choose to waive their right to legal professional privilege, provided that such privilege belongs to the client and not the lawyer and to the extent allowed to the lawyer to disclose information to the Tax Department.

(2) For the purposes of this exemption from filing information to the Tax Department, the term "legal professional privilege" shall be construed in accordance with the relevant provisions of the Advocates Law[12] and the relevant Regulations issued pursuant thereto.

(3) Legal professional privilege shall apply only in cases of lawyers who practice the profession and to law firms as defined in the Advocates Law.

(4) An intermediary who is exempt by the legal professional privilege as recognised by the Law to file information on a reportable cross-border arrangement has the obligation to communicate to any other intermediary participating in the same arrangement or, if there is no other intermediary, to the relevant taxpayer the reporting obligations that lie with the relevant taxpayer pursuant to paragraph 6 of section 7D of the Law. These reporting obligations must be communicated within a period of 10 calendar days from the day on which the obligation to file information would arise had the intermediary not been covered by legal professional privilege.

Information to file with the Tax Department.

50. (1)[13] The information to be communicated to the Tax Department for every reportable cross-border arrangement shall contain the following, as applicable:

(a) information on the identity of the intermediaries and relevant taxpayers involved, namely:

i. name;

ii. date and place of birth (in the case of natural persons);

iii. residence for tax purposes;

iv. Tax Identification Number (TIN) assigned by the tax authorities of their country of residence. In case of relevant taxpayers in Cyprus and intermediaries in Cyprus, the tax identification number shall be the number of the Taxpayer Identification Code (TIC);

v. address, where the tax identification number or the country of residence for tax purposes is unknown;

vi. the persons that are associated enterprises to the relevant taxpayer, where appropriate.

(b) details of the hallmarks that make the cross-border arrangement reportable;

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12 Cap. 2. 42 of 1961 20 of 1963 46 of 1970 40 of 1975 55 of 1978 71 of 1981 92 of 1983 98 of 1984 17 of 1985 52 of 1985 9 of 1989 175 of 1991 212 of 1991 9(I) of 1993 56(I) of 1993 83(I) of 1994 76(I) of 1995 ANNCMENT. 307 103(I) of 1996 79(I) of 2000 31(I) of 2001 41(I) of 2002 180(I) of 2002 117(I) of 2003 130(I) of 2003 199(I) of 2004 264(I) of 2004 21(I) of 2005 65(I) of 2005 124(I) of 2005 158(I) of 2005 175(I) of 2006 117(I) of 2007 103(I) of 2008 109(I) of 2008 11(I) of 2009 130(I) of 2009 4(I) of 2010 65(I) of 2010 14(I) of 2011 144(I) of 2011 116(I) of 2012 18(I) of 2013 84(I) of 2014 92(I) of 2017 107(I) of 2018 6(I) of 2020 41(I) of 2020 83(I) of 2020 139(I) of 2020 200(I) of 2020 8(I) of 2021

13 Paragraph (1) is redundant as there is no paragraph (2).

(c) a summary of the content of the reportable cross-border arrangement, including

i. a reference to the name by which it is commonly known, if any;

ii. a description of the relevant business activities or arrangements, without leading to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information the disclosure of which would be contrary to public policy;

(d) the date on which the first step in implementing the reportable cross-border arrangement has been made or will be made;

(e) details of the national provisions that form the basis of the reportable cross-border arrangement. These shall include the tax legislation of the jurisdictions that form the basis of the arrangement. No reference is required where the arrangement is not related to a specific tax legislation;

(f) the value of the reportable cross-border arrangement, depending on the type of arrangement;

(g) the Member State of the relevant taxpayer(s) and any other Member States which are likely to be affected by the reportable cross-border arrangement;

(h) the identification of any other person in a Member State likely to be affected by the reportable cross-border arrangement, indicating to which Member States such person is linked. The purpose of this information is to facilitate the collection of information in relation to the participants in the arrangement that do not fall within the definition of relevant taxpayer but are related to a Member State, including cases of Member States from which income from investments related to tax advantage have derived.

(i) the unique reference number assigned to the arrangement, where applicable

Arrangement ID.

51. (1) To ensure that the mandatory automatic exchange of information with respect to the reportable cross-border arrangements is effective, especially when more than one intermediary or relevant taxpayer has the obligation to file information, an additional field of information has been included which will contain the arrangement identification number. The Arrangement ID is a reference number which is unique to the reportable cross-border arrangement, in order to facilitate the standardisation of the filing procedure, which shall be notified among the Member States.

(2) The Tax Department will issue an Arrangement ID for the cross-border arrangement and a disclosure identification number (Disclosure ID) as soon as the information has been filed. The Disclosure ID constitutes proof for filing the cross-border arrangement for the intermediary or the relevant taxpayer.

(3) Where there are multiple intermediaries for the same arrangement, the following shall apply:

(a) The first person to file information on the arrangement shall be given the Arrangement ID and the Disclosure ID.

(b) The Arrangement ID should be used by other intermediaries or relevant taxpayers to file in turn their information, where available.

(c) The Disclosure ID will be received when the relevant information has been filed.

(4) Where more than one intermediary or relevant taxpayer has the obligation to file information, the Arrangement ID may be displayed on all information submissions of the same arrangement so that they can be linked to a single arrangement in the main register.

(5) The issuance of an Arrangement ID shall in no way mean that the Tax Department accepts or agrees with or approves the tax handling or the tax consequences of the arrangement as described upon filing information.

Format and method of operation of the electronic filing of information.

52. The format and method of electronic filing shall be determined in announcements/circulars issued by the Tax Department from time to time.

Application to the court.

53. (1) An intermediary or a relevant taxpayer may appeal against the enforceable decision of the Tax Department, which must be in writing, reasoned and notified to the affected intermediary or relevant taxpayer, on the imposition of an administrative fine, in two ways:

(a) By hierarchical appeal to the Commission Council within thirty (30) days from the date on which the decision of the Tax Department was communicated formally to the intermediate or interested taxpayer. The burden of proof lies with the intermediary or relevant taxpayer who appeals against the administrative fine,

(b) By administrative appeal to the Administrative Court, within seventy-five (75) days from the date on which the decision of the Tax Department was officially notified to the intermediate or relevant taxpayer, based on the provisions of Article 146 of the Constitution of the Republic of Cyprus and the Law on the Establishment and Functioning of an Administrative Court.

(2) For the purposes of examining the hierarchical appeal by the Commission Council, the provisions of paragraphs (3), (4), (5) and (6) of section 20A of the Law on Assessment and Collection of Taxes, as amended and replaced.[14]

[14] 4 of 1978 23 of 1978 41 of 1979 164 of 1978 159 of 1988 196 of 1989 10 of 1991 57 of 1991 86(I) of 1994 104(I) of 1995 80(I) of 1999 153(I) of 1999 122(I) of 2002 146(I) of 2004 214(I) of 2004 106(I) of 2005 135(I) of 2005 72(I) of 2008 46(I) of 2009 136(I) of 2010 163(I) of 2012 197(I) of 2012 198(I) of 2012 91(I) of 2013 78(I) of 2014 79(I) of 2014 108(I) of 2015 188(I) of 2015 37(I) of 2016 97(I) of 2017 44(I) of 2018 50(I) of 2018 26(I) of 2020 77(I) of 2020 126(I) of 2020 62(I) of 2021 63(I) of 2021 64(I) of 2021.

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