



France

DAC 6 Domestic Implementation

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General information

Territory	France
Tax authority	French tax authorities
Status of legislation	Implemented Entry into force of texts on 1 July 2020. Reportable transactions for which first step took place between 25 June 2018 and 30 June 2020, must be reported before 28 February 2021. Reportable transactions for which first step took place after 1st July 2020, the time period of 30 days to report will begin on 1st January 2021.
Taxes covered	All taxes
Taxes excluded	VAT, customs duties, excise duties and social charges.
Domestic transactions	No

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Definitions further clarified by guidance

Relevant taxpayer	Any persons to whom a reportable cross-border arrangement is made available for implementation, or is willing to implement a reportable cross-border arrangement, or has implemented the first step of such arrangement (Article 1649 AE II of the FTC).
Associated enterprise	Any person who is related to another person by at least one of the following way : <ul style="list-style-type: none">• A person participates in the management of another person and is in a position to exercise significant influence over the other person• A person participates in the control of another person through a holding that exceeds 25% of voting rights• A person participates in the capital of another person through a holding that (directly or indirectly) exceeds 25% of the capital• A person is entitled to 25% or more of the profits of another person.
Marketable arrangement	Cross-border arrangement which is designed, commercialised, ready to implement, or made available to be implemented, without the need to be significantly adapted.

Cross-border arrangement

An arrangement which concerns more than one European member State or a member State and a third country and for which one of the following conditions are met :

- Not all of the participants in the arrangement are resident for tax purposes in the same jurisdiction
- One or more of the participants in the arrangement is simultaneously resident for tax purposes in more than one jurisdiction
- One or more of the participants in the arrangement carries 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 that permanent establishment
- One or more of the participants in the arrangement carries on an activity in another jurisdiction without being resident for tax purposes or creating a permanent establishment situated in that jurisdiction
- Such arrangement has a possible impact on the automatic exchange of information or the identification of beneficial ownership.

Intermediary

Any person (professional or not) that designs, markets, organises, or makes available for implementation or manages the implementation of the reportable cross-border arrangement.

It also means any person that, having regard to the 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 expected to know that they have undertaken to provide, directly or by means of other persons, aid, assistance or advice with respect to designing, marketing, organizing, making available for implementation or managing the implementation of a reportable cross-border arrangement.

In case the person is a partner or an associate of a structure which has juridical identity, the structure is considered as the intermediary (example for tax firm, the intermediary is the tax firm and not the partner in charge of the file).

It is not necessary that the person has the legal personality or that the person is remunerated.

Tax advantage

Must be analysed from a global and objective perspective. French administrative guidance indicates that a tax advantage is deemed to exist in case of reimbursement, relief or reduction of taxes, reduction of tax debt, deferral or absence of taxation.

Made available for implementation

No specific indication on this subject by the French tax authorities.

Hallmark

Characteristic or peculiarity of a cross-border arrangement which indicates a potential risk of tax evasion, listed at Article 1649 AH of the FTC.

Two possibilities: hallmarks and principal tax advantage or specific hallmark.

3 Additional hallmarks

Additional hallmarks

France has not implemented additional hallmarks.

4 Operation of legal professional privilege (LPP)

Operation of legal professional privilege (LPP)

When the intermediary is bound by legal professional privilege and the relevant taxpayer has not authorised the intermediary to report, he is required to notify any and all other intermediaries in writing that the reporting obligation automatically is transferred with them.

In case there is no other intermediaries, he should notify the relevant taxpayer in writing that the reporting obligation is transferred to the taxpayer.

French administrative guidelines indicates that the intermediary must inform the taxpayer in order that the taxpayer can lift the secrecy the day before the reporting deadline.

If the taxpayer lifts the secrecy after the deadline, the intermediary has 30 days to file the declaration as from this lift.

LPP cannot be argued to be exempt from the periodic reporting for marketable arrangements.

5 Reporting deadline

Intermediaries

For intermediaries which are viewed as designers, the deadline is within 30 days following:

- the day after the reportable cross-border arrangement is made available for implementation; or
- the day after the reportable cross-border arrangement is ready to be implemented; or
- the day when the first step in the implementation of the reportable cross-border arrangement is made.

The moment whichever occurs first must be taken into account.

For intermediaries which are viewed as suppliers of services, the deadline is within 30 days beginning on the day after they provided, directly or by means of other persons, aid, assistance or advice.

Reportable transactions for which first implementation step took place between 25 June 2018 and 1 July 2020 need to be reported by 28 February 2021.

**Users
(where LPP applies)**

The same deadline, 30 days, applies. In case the intermediaries notify another intermediaries or the relevant tax payer, the later has 30 days to report arrangement.

For all intermediaries, the period of time to report cross-borders arrangements cannot exceed 90 days, after the first notification.

6 Reporting principles for intermediary

Circumstances in which intermediary is obliged to report

Intermediary is obliged to report information that is within their knowledge, possession or control on reportable cross-border arrangements.

Any person can prove by any ways that he does not know the existence of the cross-border arrangement, in case this person is obliged to report.

When the intermediary is bound by professional secrecy and has required and obtained the authorisation by the client to lift the professional secrecy, the intermediary is obliged to report.

Obligation to inform user what data was communicated

No

Priority of reporting where multi member state reporting obligations exist

The intermediary must report in the member state where :

- The intermediary is resident for tax purposes
- The intermediary has a permanent establishment through which the services with respect to the arrangement are provided
- The intermediary is incorporated in or governed by the laws of
- The intermediary is registered with a professional association related to legal, taxation or consultancy services.

Circumstances under which intermediary not required to report

The intermediary is not required to report when the report declaration is made by another intermediary. In this hypothesis, the intermediary must have proofs, in accordance with national law, that the same information has been filed in another Member State.

Or when the intermediary is bound by professional secrecy (legal professional privilege). The intermediary must notify another intermediary or the relevant taxpayer.

What will the tax authorities provide for the notification received

When the declaration is filed in France, references are provided by the French tax authorities: one reference for the arrangement and one reference for the declaration filed.

7 Reporting principles for taxpayer

Circumstances in which taxpayer is obliged to report

The relevant taxpayer is obliged to report if:

- no intermediary was involved in the design, marketing, organising or making available for implementation or managing the implementation of a reportable cross-border arrangement; or
- they have been notified by the intermediary, in France, that the intermediary is bound by legal professional privilege (no authorisation by the relevant taxpayer to report and no other intermediary).;
- Absence of territorial link for the intermediary (in France or an European Member State).

Priority of reporting where multiple taxpayers are involved

Where the relevant taxpayer has an obligation to file information on the reportable cross-border arrangement with the competent authorities of more than one Member State, such information shall be filed only with the competent authorities of the Member State that features first in the list below:

- The Member State where the relevant taxpayer is resident for tax purposes
- The Member State where the relevant taxpayer has a permanent establishment benefiting from the arrangement
- The Member State where 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
- The Member State where 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.

Circumstances under which taxpayer not required to report

Where there is a multiple reporting obligation, the relevant taxpayer shall be exempt from filing the information if it has proof, in accordance with national law, that the same information has been filed in another Member State.

Proof that reporting obligation is satisfied by other taxpayer

French administrative guidelines indicate that the proof can be made by any means. However no practical examples have been provided yet.

8 Reporting principles applicable to all

Language

French

9 Penalties

Circumstances in which penalties may apply

Non filing

Amount

EUR 10,000

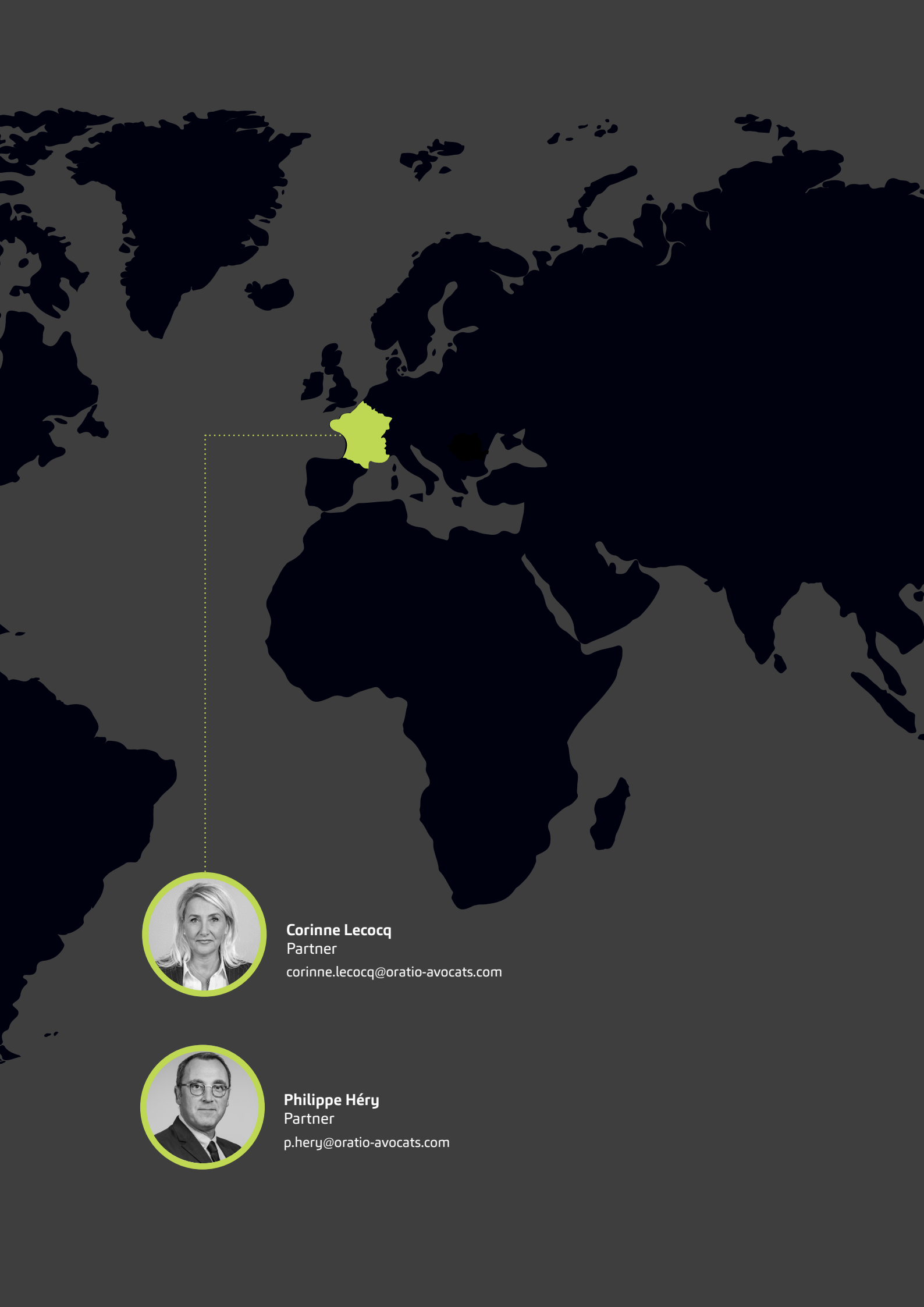
Penalty could be EUR 5,000 if it is the first failure on the taxable year and the three last years.

A limit of the penalty to EUR 100,000 per civil year exists per intermediary or relevant tax payer.

10 Country specifics

Country specifics / deviation from EU directive

None



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