



EU Securitisation Regulation: Article 4 Notification Obligations

Current as at April 2021

What has changed?

The EU Securitisation Regulation (Regulation (EU) 2017/2402) (the **EU SR**) was amended with effect from 9 April 2021 by Regulation (EU) 2021/557.

Among other things, amendments were made to Article 4 of the EU SR so as to require an EU SR institutional investor to notify to the competent tax authorities of the Member State in which the investor is resident for tax purposes (**Relevant Tax Authority**) of an investment in securities issued by an SSPE established after 9 April 2021 in Australia (**Article 4 Notification**).

Does this apply to UK institutional investors?

No. Article 4 of the UK securitisation regulation has not been amended and is not affected by the amendments described in this note to the EU SR.

What “investment” must be notified?

Amendments to Article 4 refer to notification of an “investment in securities” but this term is not defined in the EU SR. Given that amendments to Article 4 are intended to ensure that an EU SR institutional investor consider the jurisdiction of the SSPE as part of its wider due diligence, applying the trigger for such due diligence obligations under Article 5 of the EU SR seems appropriate. That trigger is “holding of a securitisation position”. A “securitisation position” is defined as “an exposure to a securitisation” and would include exposures not only asset-backed securities but also to swaps and other facilities.

Accordingly, an investor should notify of an investment in asset-backed securities issued by an SSPE established in Australia or when acting as swap provider or facility provider to such SSPE. Importantly, only an investment in an SSPE established in Australia after 9 April 2021 must be notified.

Timing of the Article 4 Notification

No guidance is given regarding when an Article 4 Notification must be made to the Relevant Tax Authority.

A recital to the EU SR amending regulation stated that an “investor *should* notify the competent tax authorities... whenever it is *due to invest in an SSPE established, after the date of application of this Regulation...*” (emphasis added).

Given this recital, it seems that it was contemplated that an Article 4 Notification to the Relevant Tax Authority is given at some point in time before the investment is made. However, it is reasonable to assume that that point in time would only arise where there is sufficient certainty that the investor will make its investment.

Relevant Tax Authorities may, in due course, provide further guidance on the expected timing of an Article 4 Notification.

Contents of the Article 4 Notification

No prescribed format or other guidance has been given regarding the form or content of an Article 4 Notification.

Some matters which an investor may consider including in its Article 4 Notification are:

- statement that notification is being made pursuant to Article 4 of the EU SR;
- the EU jurisdiction(s) in which the relevant investor is tax resident;
- the following details in respect of the relevant investment:
 - the legal name and contact details of the relevant EU SR institutional investor;
 - name of the SSPE (and, if available, its Legal Entity Identifier (LEI)) and its jurisdiction of establishment;
 - description of the relevant investment/securitisation exposure.

Evidence of Article 4 Notification

It is recommended that evidence of the provision of an Article 4 Notification to the Relevant Tax Authority be retained to demonstrate compliance with the requirements of Article 4 of the EU SR.

Important Notice

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