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DAC6
THE EU DIRECTIVE ON CROSS-BORDER TAX ARRANGEMENTS

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INTRODUCTION

On 25 May 2018 the Council of the European Union adopted Directive 2018/822/EU as the sixth amendment to the Directive on Administrative Cooperation 2011/16/EU, commonly referred to as "DAC 6", which imposes extensive reporting requirements with respect to cross-border tax planning arrangements affecting at least one EU member state. DAC 6 is part of the continuing efforts of the EU Commission to clamp down on tax avoidance and evasion in the internal market by creating transparency regarding potentially aggressive cross-border tax planning schemes.

The reporting obligations under DAC 6 are very broad and do not just apply to tax lawyers and therefore create a new set of compliance issues for the legal profession, in particular for lawyers involved in cross-border M&A transactions. Since DAC 6 only provides a general framework and gives the member states significant discretion regarding the transformation into national laws, it is useful for any practitioner who can be a potential "intermediary" to have an overview over the various laws and regulations in the EU member states.

AUSTRIA

Polak & Partners Rechtsanwälte Gmb

1. When was DAC 6 implemented into the National Tax Law of Austria?

- 22 October 2019: Directive 2018/822/EU was implemented in Austria by the passing of the EU Mandatory Reporting Act (*Bundesgesetz über den verpflichtenden automatischen Informationsaustausch über meldepflichtige grenzüberschreitende Gestaltungen im Bereich der Besteuerung [EU-Meldepflichtgesetz]).*

- 24 June 2020: Directive 2018/822/EU provides for an option to postpone the start of the reporting obligation by six months. Austria does not make use of this option.

- 01 July 2020: The EU Mandatory Reporting Act comes into force in Austria.

- 1 October 2020: Reporting of tax arrangements subject to a reporting obligation is possible via Austrian e-Government portal FinanzOnline:

  (https://finanzonline.bmf.gv.at/fon/).

- 31 October 2020: Deadline for reporting tax arrangements implemented between 25 June 2018 and 1 July 2020 ("old cases").

- 31 October 2020: Deadline for the reporting of tax arrangements that were implemented between 1 July 2020 and 1 October 2020 (“new cases”).

- 31 October 2020: first quarterly exchange between member states.

- From 31 October 2020 onwards: 30-day reporting deadline provided for in the EU Mandatory Reporting Act will apply (see Question 7).

– Have the tax authorities in your jurisdiction issued guidelines for the application and enforcement of the obligations under DAC 6?

On 7 July 2020, the Austrian Federal Ministry of Finance published a non-binding draft assessment on the interpretation and application of the EU Mandatory Reporting Act. It is currently being commented on by the relevant stakeholders. No final and binding version has been published yet.

2. What constitutes a reportable cross-border tax arrangement under the laws and regulations of your jurisdiction?

– What constitutes a cross-border arrangement?

According to Sec. 3 no. 2 EU Mandatory Reporting Act, cross-border arrangements are defined as follows:

"'cross-border arrangement' means an arrangement involving either more than one Member State or at least one Member State and at least one non-member state, where at least one of the following conditions must be met

a) Not all persons involved in the arrangement are resident for tax purposes in the same territory,

b) one or more persons involved in the arrangement are simultaneously resident for tax purposes in several territories,

c) one or more persons involved in the arrangement carry on a business activity in another territory through a permanent establishment situated there and the arrangement constitutes in whole or in part the business activity carried on by the permanent establishment,

d) one or more persons involved in the arrangement carry on an activity in another territory without being resident there for tax purposes or without establishing a permanent establishment there, or

e) such design may have implications for the automatic exchange of information on financial accounts or the identification of beneficial owners.

The term "cross-border arrangement" also covers an arrangement consisting of one or more steps, also refers to a part or parts of a cross-border arrangement or a series of cross-border arrangements."

From the Austrian Federal Ministry of Finance's draft assessment of 7 July 2020:

- The term "arrangement" according to the EU Mandatory Reporting Act can be understood as a process in which a certain structure, a certain process or a certain situation is consciously and actively brought about or changed by the user or for the user and this structure, this process or this

situation thereby acquires a fiscal significance that would otherwise not occur.

- An arrangement can include one or more steps and one or more parts or a series of transactions. In accordance with Sec. 3 no. 2 EU Mandatory Reporting Act, a structure is considered "cross-border" if it involves Austria and one or more member states or Austria and one or more non-member states, whereby at least one of the conditions listed in litera a - e (see above) must be fulfilled.

- The "person" named in Sec. 3 no. 2 (a)-(d) EU Mandatory Reporting Act is defined as either

  a) a natural person;

  b) a legal entity;

  c) an association of persons that has been granted legal capacity but does not have the legal status of a legal person; or

  d) all other legal arrangements of whatever nature and form - with or without legal personality - which own or manage assets which, including the income derived therefrom, are subject to one of the taxes covered by this federal law.

- A person is "involved" in an arrangement subject to reporting if the arrangement would not have come about without the action or acquiescence of this person.

– To what extent are national structures also covered?

Purely domestic arrangements are not covered by the EU Mandatory Reporting Act.

– How are the hallmarks and the "main benefits" test in Annex IV to DAC 6 defined and interpreted in your jurisdiction?

The "main benefits" test is fulfilled if the main benefit or one of the main benefits a person can expect to receive from the arrangement is a tax benefit.

A "hallmark" is a characteristic or feature of a cross-border arrangement entailing its mandatory reporting if met. For a distinction between hallmarks which trigger mandatory reporting without the need to satisfy the "main benefits" test and hallmarks where additionally the "main benefits" test has to be fulfilled, see below.

- Hallmarks of an arrangement which must be reported without the need to fulfill the “main benefits” test are defined in Sec. 5 EU Mandatory Reporting Act: For instance, deductible cross-border payments between associated companies where the payee has no tax residence or is tax resident in a territory which is on the EU or OECD blacklist; the depreciation of an asset or the exemption from double taxation for the same income or assets in more than one territory.

- Hallmarks of an arrangement which must be reported only if the “main benefits” test is fulfilled are defined in Sec. 6 EU Mandatory Reporting Act: For instance, confidentiality clauses which obligate the taxable person or another involved person not to inform other intermediaries assigned by the taxable person or the tax authorities how a tax benefit is accrued through the arrangement; compensation agreements with intermediaries correlating with the amount of the tax benefit accrued through the arrangement.

– What constitutes a "tax benefit" under the legislation in your jurisdiction?

The Austrian legislator has defined “tax benefit” in Sec. 3 no. 10 (a)-(c) EU Mandatory Reporting Act:

A “tax benefit” is accrued if, due to an arrangement subject to reporting,

- the accrual of the tax claim is prevented or postponed in whole or in part to another taxable period (lit. a),

- the tax base or the tax claim is reduced in whole or in part (lit. b), or

- a tax is refunded or reimbursed in whole or in part (lit. c).

– Is it required that the achievement of the "tax benefit" is the sole or the main purpose of the structure?

According to the Austrian Ministry of Finance’s draft assessment of 7 July 2020, the “main benefits” test consists of determining the main purpose or one of the main purposes of the arrangement. Pursuant to Sec. 6 EU Mandatory Reporting Act, an arrangement is subject to reporting if

- the main benefit or one of the main benefits that a person can reasonably expect from the arrangement, considering all relevant facts and circumstances, consists in obtaining a tax benefit, and

- the requirements of Sec. 4 EU Mandatory Reporting Act are fulfilled (see Question 2 (6)), and
- the arrangement consists of one of the hallmarks laid out in Sec. 6 EU Mandatory Reporting Act (see Question 2 (3)).

– Do the laws and regulations of your jurisdiction require a connection to a potential abuse of tax structures?

Austrian law (Sec. 4 EU Mandatory Reporting Act) requires

- a risk of tax avoidance, or
- a risk of circumvention of the reporting requirements of the Common Reporting Standards, or
- a risk of preventing the identification of the beneficial owner through the arrangement.

– Did your jurisdiction adopt a whitelist of non-reportable "standard" tax arrangements?

A whitelist has not been adopted in Austria yet. However, the Ministry of Finance may still do so by decree.

3. Who is subject to the reporting obligation (taxpayer, intermediary, other)?

The “intermediary”, being a person

- who conceives, markets, organises, makes available for implementation or administers the implementation of an arrangement subject to reporting (main intermediary), or
- who knows or must have known that he/she/it directly or indirectly provided assistance, support or advice with regard to the conception, marketisation, organisation, provision for implementation or administration of the implementation of an arrangement subject to reporting (auxiliary intermediary)

and who additionally fulfils one of the following conditions:

– has his/her habitual residence, its registered office or its headquarters in Austria,

- is not tax resident in another member state and renders services in connection with an arrangement subject to reporting via a permanent establishment located in Austria,

- is not tax resident in another member state and is subject to relevant professional or commercial regulations in Austria, or

- is not tax resident in another member state and is a member of an Austrian professional association for legal, tax or advisory services.

- The taxable person him/her/itself, if he/she/it drafts an arrangement subject to reporting without direct or indirect assistance, support or advice from a consultant ("in-house arrangement").

– Do the laws and regulations of your jurisdiction address the issue of potential legal conflicts of intermediaries with professional confidentiality obligations?

If an intermediary is subject to a statutory obligation of confidentiality (as Austrian lawyers, notaries and tax advisors are) and has not been released from this duty, he is exempt from his obligation to report. In this case, the reporting obligation is shifted from the intermediary to the relevant taxable person.

Information of other intermediaries/the relevant taxable person:

An intermediary exempted from the obligation to report must immediately inform another or all involved intermediary/intermediaries in Austria or abroad of his exemption.

If no other intermediary is available or if all other intermediaries are bound to confidentiality, the relevant taxable person(s) must immediately be informed of the intermediary's exemption and the transfer of the obligation to report from the intermediary to the taxable person (Sec. 11 (3) EU Mandatory Reporting Act).

In doing so, the intermediary shall inform the relevant taxable person(s) of all information known to him, in his possession or under his control concerning the relevant taxable person(s).

The intermediary does not have to provide information already known to the taxable person(s).

A prerequisite for exemption from the reporting obligation is furthermore that the relevant taxable person is informed so comprehensively about the transfer of the

reporting obligation that he can make a proper report according to the EU Mandatory Reporting Act.

4. What information must be included in a report on cross-border tax arrangements under DAC 6 in your jurisdiction and is there a specific format to be used?

According to Sec. 16 EU Mandatory Reporting Act the report must contain the following information:

1. Details of all involved intermediaries and all relevant taxable persons, including

a) information on their name, date of birth, place of birth, tax residence and tax identification number for natural persons, or

b) information on their names, registered office or business headquarters, tax residence and tax identification number in the case of legal entities or associations of persons,

2. the identification of all affiliated companies of the relevant taxable person,

3. details regarding the hallmarks of the arrangements (Sec. 5 or 6 EU Mandatory Reporting Act),

4. a summary of the content of the arrangement subject to reporting,

5. if available, a designation of the arrangement subject to reporting by which the arrangement is commonly known,

6. an abstract description of the relevant business activities, unless such description would lead to the disclosure of a trade, business or professional secret or of a commercial process or unless the disclosure of such information would infringe on public order,

7. if available, the date on which the first step towards implementing the arrangement subject to reporting has been or will be taken,

8. details regarding the provisions of national law which form the basis of the arrangement subject to reporting,

9. if available, the value of the arrangement subject to reporting,

10.naming of the member state in which the relevant taxable person(s) is/are a tax resident,

11.naming of all member states affected by the arrangement subject to reporting, and

12.information on all other persons affected or potentially affected by the arrangement subject to reporting, including the member state of their tax residence.

The above information may be provided in German or English. The information pursuant to Sec. 16 (1) nos. 3 to 6 EU Mandatory Reporting Act above shall be submitted in English.

According to Sec. 18 EU Mandatory Reporting Act, the report has the following formal requirements:

The transmission of the report must be made electronically via FinanzOnline, the online service of the Austrian Ministry of Finance. If the arrangement was already reported in another member state or by another intermediary, only the reference number of the reporting must be submitted.

5. Is there an obligation to report tax arrangements which were already implemented in the past? If yes, what is the cut-off date?

EU member states decided on 24 June 2020 to provide an option to postpone the start of the notification deadlines (DAC 6) by up to six months due to the coronavirus crisis.

Austria has decided not to take up this option. However, the Austrian Ministry of Finance's draft assessment, which concretises the EU Mandatory Reporting Act, allows for late reporting until 31 October 2020 without financial penalties.

This leads to a de facto extension of the reporting deadlines:

- Arrangements subject to reporting, implemented between 25 June 2018 and 30 June 2020 ("old cases") must be reported by 31 October 2020 instead of by 31 August 2020;

- Arrangements subject to reporting, implemented between 1 July 2020 and 1 October 2020 ("new cases") must be reported within 30 days or by 31 October 2020 at the latest;

- first periodic follow-up reports for arrangements subject to reporting conceived from 1 July 2020 must be submitted by 31 October 2020

For arrangements subject to reporting implemented from 1 October 2020 onwards, the 30-day deadlines of the EU Mandatory Reporting Act apply (see Question 7).

6. Who is the competent authority for filing a report under DAC6 in your jurisdiction?

The competent authority in Austria is the Ministry of Finance.

7. What is the deadline for filing a report?

According to Sec. 8 (1) EU Mandatory Reporting Act, the main intermediary (Sec. 3 no. 3 (a) EU Mandatory Reporting Act, see Question 3) must provide a report on an arrangement subject to reporting within 30 days from the day

1. following the day on which the arrangement subject to reporting is made available for implementation,
2. following the day on which the relevant taxable person is ready to implement the arrangement subject to reporting, or
3. on which the relevant taxable person has initiated the implementation of the arrangement subject to reporting.

The auxiliary intermediary (Sec. 3 No 3 (b) EU Mandatory Reporting Act, see Question 3) must report the information on an arrangement subject to reporting within 30 days from the day following the day on which the direct or indirect assistance, support or advice was provided.

If the above-mentioned 30-day deadline for the main or auxiliary intermediary has not yet expired, the deadline begins on the day following the day on which the intermediary has been released from his confidentiality obligation by the relevant taxable person.

According to Sec. 13 EU Mandatory Reporting Act the relevant taxable person must file a report on an arrangement subject to reporting within 30 days from the day

1. following the day on which the arrangement subject to reporting is made available for implementation,
2. following the day on which he is ready to implement the arrangement subject to reporting,
3. on which he initiated the implementation of the arrangement subject to reporting, or

4. following the day, on which he was informed by an intermediary exempted from the obligation to report of this exemption pursuant to Sec. 11 (3) Mandatory Reporting Act (see Question 3 at the end).

   – Has there been an extension of deadlines due to the COVID-19 pandemic?

   See Question 5.

8. What are the penalties and/or other legal consequences for failing to submit a DAC 6 report within the applicable deadline?

Anyone who violates the EU Mandatory Reporting Act by

- not or not fully filing the reporting,
- not fulfilling their reporting obligation within the prescribed deadline,
- reporting incorrect information, or
- not fulfilling their obligations in connection with the legal professional privilege

must settle a monetary penalty. If the obligated person did not comply with the EU Mandatory Reporting Act intentionally, the penalty will be up to €50,000 (€25,000 in case of gross negligence). There is no possibility to avoid this penalty by filing a voluntary self-disclosure.

9. Has your firm implemented specific processes regarding DAC 6 compliance? If yes, please describe.

N/A

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BULGARIA
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1. When was DAC 6 implemented into the National Tax Law of Bulgaria?

A new section has been created in the Tax and Social Insurance Procedure Code: Section VII, "Special rules for the automatic exchange of information on cross-border tax arrangements", effective as of 1 July 2020.

– Have the tax authorities in your jurisdiction issued guidelines for the application and enforcement of the obligations under DAC 6?

  An Order of the executive director of the National Revenue Agency (NRA) has been adopted.

2. What constitutes a reportable cross-border tax arrangement under the laws and regulations of your jurisdiction?

– What constitutes a "cross-border" arrangement? To what extent are national structures also covered?

  Art. 143z of the Bulgarian Tax and Social Insurance Procedure Code provides a definition of the term “cross-border tax arrangement”, being a tax consultation where there is a potential risk of tax avoidance . A cross-border tax arrangement may include an arrangement, agreement, stipulation, opinion, scheme, plan, transaction or series of those listed, and may consist of several parts or several stages of implementation. The list is not exhaustive and aims to cover some of the basic variations of tax arrangements .

  As per art. 143z of the Bulgarian Tax and Social Insurance Procedure Code, a cross-border tax arrangement is a scheme that affects more than one member state, or a member state and a third country, where at least one of the following conditions has been met:

  1. not all participants in the arrangement are local persons for tax purposes of the same jurisdiction;

  2. one or more of the participants in the arrangement are also local persons for tax purposes of more than one jurisdiction;

  3. one or more of the participants in the arrangements carry out economic activity in another jurisdiction through a place of economic activity or a certain

base and the arrangement covers part or the whole economic activity at the place of economic activity or the relevant base;

4. one or more of the participants in the arrangement carry out activity in another jurisdiction, without being local persons for tax purposes or setting up a place of economic activity or a certain base in this jurisdiction; or

5. the arrangement may have an impact on the automatic exchange of information or the determination of the beneficial owner.

– How are the hallmarks and the "main benefits" test in Annex IV to DAC 6 defined and interpreted in your jurisdiction?

Cross-border tax arrangements with a potential risk of tax avoidance are divided into the following categories/hallmarks:

1. an arrangement in which the taxable person or another participant undertakes to observe a condition for confidentiality, which may require them to not disclose to other consultants/intermediaries or to tax authorities the manner in which the arrangements may provide a tax advantage;

2. an arrangement under which the consultant/intermediary has the right to receive remuneration of any kind and this remuneration is determined depending on:

(a) the amount of the tax advantage resulting from the arrangement, or

(b) whether a tax advantage has been obtained as a result of the arrangement, including an arrangement for the consultant/intermediary to reimburse partially or totally the remuneration where the expected tax advantage arising from the arrangement has not been partially or fully achieved;

3. an arrangement in which there is a substantially standardised documentation and/or structure and which is accessible to more than one taxable person, without the need to be substantially changed for the purposes of application;

4. an arrangement in which a participant undertakes wilful actions for acquisition of a company which has tax losses for termination of its main activity and for use of the losses for reduction of its tax liabilities, including by transfer of these losses to another jurisdiction or by accelerating the use of these losses;

5. an arrangement which provides for a result equivalent to requalification, transformation or conversion of income into property, capital, donation or other types of income which are taxed at a lower rate or are exempt from taxation;

6. an arrangement which includes successive transactions where funds have been transferred for the purpose of their return through the participation of one or more intermediate entities that have no other economic function, or the use of transactions that are mutually compensated or invalidated or have other similar result;

7. an arrangement involving cross-border payments representing tax-deductible expenses between two or more related undertakings where at least one of the following conditions has been met:

(a) the recipient is not a resident for tax purposes of any tax jurisdiction;

(b) the recipient is a resident for tax purposes of a jurisdiction which

(aa) does not impose corporate tax or imposes corporate tax at a zero or near zero rate, or

(bb) is included in a list of third jurisdictions which have been assessed jointly by the member states or within the Organisation for Economic Cooperation and Development as non-assisting jurisdictions for tax purposes;

(c) the payment is completely exempt from taxation in the jurisdiction in which the recipient is a resident for tax purposes;

(d) the payment is subject to a preferential tax treatment in the jurisdiction in which the recipient is a resident for tax purposes;

8. an arrangement which provides for the deduction of depreciation expense on the same asset in more than one jurisdiction;

9. an arrangement which seeks to avoid double taxation in respect of the same element of income or property in more than one jurisdiction;

10. an arrangement that involves a transfer of assets and where there is a significant difference in the amounts that are considered as due consideration for the assets in the jurisdictions concerned;

11. an arrangement which may lead to a reduction or circumvention of the obligations to provide information under chapter 16, section IIIa of the Code or

similar provisions in the legislation of other member states or jurisdictions or agreements for the automatic exchange of information on financial accounts, or which takes advantage of the lack of such legislation or agreements, including through:

(a) the use of an account, product or investment which is not or is alleged not to be a financial account but which has characteristics substantially similar to those of a financial account;

(b) the transfer of financial accounts or assets to jurisdictions or the use of jurisdictions which are not required to automatically exchange financial account information with the state of which the taxable person is a resident for tax purposes;

(c) the reclassification of income or funds into products or payments that are not subject to an automatic exchange of financial account information;

(d) the transfer or transformation of a financial institution or financial account, or of the assets contained therein, into a financial institution or a financial account or assets for which no information is provided by the automatic exchange of information on financial accounts;

(e) the use of legal entities, arrangements or structures that circumvent or are considered to circumvent the provision of information on one or more account holders or controllers through the automatic exchange of information on financial accounts;

(f) circumventing or exploiting weaknesses in the comprehensive verification procedures that financial institutions apply to comply with their obligations to provide financial account information, including the use of jurisdictions with inappropriate or ineffective enforcement regimes in the area of anti-money-laundering measures in cash or with insufficient transparency requirements for legal entities or legal arrangements;

12. an arrangement involving a chain of non-transparent legal or beneficial ownership using persons, legal arrangements or structures

(a) which do not carry out significant business activities carried out with the necessary staff, equipment, assets and premises, and

(b) which are established, managed, controlled, established or resident for tax purposes in a jurisdiction other than that in which one or more of the beneficial

owners of the assets held by those persons are resident for tax purposes, legal arrangements, or structures, and

(c) whose beneficial owners within the meaning of the Anti-Money-Laundering Measures Act or a similar provision of the law of a member state cannot be established;

13. an arrangement that includes the use of unilateral rules for facilitated regimes for the purposes of transfer pricing;

14. an arrangement that includes the transfer or provision of intangible assets that are difficult to assess for the purposes of transfer pricing;

15. an arrangement that includes intra-group cross-border transfer of functions and/or risks and/or assets, if the projected annual profit before interest and taxes of the transferor or transferors in the three years after the transfer is less than 50% of the projected annual profit before interest and taxes of the same transferor or transferors, if the transfer has not been made.

When a cross-border tax arrangement falls into one of the categories under para. 4, items 1-6 or item 7(b)(aa), 7(c) or 7(d) of the Code, information shall be provided only when it can be established that the main benefit or one of the main benefits which, in view of all the relevant facts and circumstances, a taxable person may reasonably expect to achieve from the cross-border tax arrangement is to obtain a tax advantage.

– What constitutes a "tax benefit" under the legislation in your jurisdiction?

"Tax advantage/benefit" within the meaning of chapter 16, section VII of the Code is any benefit for a taxable person which may be expressed as a reduction in the tax base or tax due, avoidance or deferral of tax payment, or use of a tax relief or tax relief in excess of the amount due, as well as other benefits or advantages that could improve the tax status of the person.

– Is it required that the achievement of the "tax benefit" is the sole or the main purpose of the structure?

Some but not all of the hallmarks are only triggered if it can be established that the main benefit or one of the main benefits which a person may reasonably expect to achieve from the cross-border arrangement is to obtain a tax advantage, that is, the arrangement satisfies the “main benefits” test. Those hallmarks that are only triggered if it is established that the main purpose is

achievement of the “tax benefit” are under para. 4, items 1-6 or item 7(b)(aa), 7(c) or 7(d) as stipulated above.

– Do the laws and regulations of your jurisdiction require a connection to a potential abuse of tax structures?

The arrangement as stipulated according to DAC 6 does not have to be illegal or a criminal offense. If it falls into any of the listed criteria, it will be subject to reporting under the Bulgarian Tax and Social Insurance Procedure Code. With this in mind, the concept differs from tax avoidance, which is a crime and is prosecuted under the general criminal code.

– Did your jurisdiction adopt a whitelist of non-reportable "standard" tax arrangements?

There is not an explicit whitelist of arrangements that should not be disclosed. Instead, a comprehensive set of criteria are provided, and if a certain criterion has been met then the arrangement should be disclosed. Otherwise, if the criteria for a tax arrangement have not been met, it should not be disclosed. One of the interesting matters that managed to create some tension among the legal tax community is related to the application of the rules for disclosure of tax arrangements in the context of the legal non-disclosure rule . In this sense, the following text is provided in the Bulgarian Act: “A consultant is released from the obligation to provide information on a cross-border tax arrangement when:

....

3. by law he is obliged to keep this information as a professional secret, except when the taxable person has expressed consent for its provision.

....

Notwithstanding para. 10, item 3 and para. 12 the consultant shall notify the executive director of the National Revenue Agency of the other consultants under the tax scheme or the taxable person who should provide information, although for them the obligation to provide may arise in another Member State.”

3. Who is subject to the reporting obligation (taxpayer, intermediary, other)?

Obliged to provide information, according to the law, are mainly the consultants, and in some cases the taxpayers themselves.

– Do the laws and regulations of your jurisdiction address the issue of potential legal conflicts of intermediaries with professional confidentiality obligations?

There is an exception to the notification rules for consultants who are required by law to maintain professional secrecy. In this case, however, the obligation to notify the revenue administration lies with the taxpayer. The consultant is obliged to remind the respective person about this obligation.

4. What information must be included in a report on cross-border tax arrangements under DAC 6 in your jurisdiction and is there a specific format to be used?

The information that consultants or taxpayers provide to the executive director of the National Revenue Agency must contain the following information:

• identification data of the consultant and the taxable person,

• description of the characteristics of the arrangement,

• unique number of the tax arrangement,

• a summary of the tax arrangement, including an indication of the name under which it is known and a general description of the relevant business activities or arrangements,

• the date on which the first step in the implementation of the tax arrangement was made or is to be made,

• the national legal provisions on which the tax arrangement is based,

• value,

• the member states that are likely to be affected by the tax arrangement, and

• identification of any other person in a member state who is likely to be affected by the tax arrangement.

5. Is there an obligation to report tax arrangements which were already implemented in the past? If yes, what is the cut-off date?

The amendments in accordance with DAC 6 were implemented in the Bulgarian Tax and Social Insurance Procedure Code in 2019 and are in force since 1 July 2020. After that date, the consultants or taxable persons are obliged to perform their obligations under the said amendments. However, the consultants and respectively the taxable persons were obliged to submit information by February 2021 on each cross-border tax arrangement the first step of the implementation of which was carried out between 25 June 2018 and 30 June 2020 as per para. 6 of the transitional and final provisions of the Law for amendment and supplementation of the tax and social security procedure code.

6. Who is the competent authority for filing a report under DAC6 in your jurisdiction?

The submission of information on cross-border tax arrangements is carried out before the National Revenue Agency.

7. What is the deadline for filing a report?

The consultant should provide information on a cross-border tax arrangement that he is aware of or owns or that is under his control within 30 calendar days.

– Has there been an extension of deadlines due to the COVID-19 pandemic?

No.

8. What are the penalties and/or other legal consequences for failing to submit a DAC 6 report within the applicable deadline?

The control over the observance of the rules shall be carried out by the NRA, as a number of sanctions for violation of the new obligations are provided. Administrative sanctions for non-compliance by the consultant or participants are provided. The most serious among them is a penalty up to BGN 10,000.

9. Has your firm implemented specific processes regarding DAC 6 compliance? If yes, please describe.

No.

10. Contact details

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CYPRUS
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1. When was DAC 6 implemented into the National Tax Law of Cyprus?

DAC 6 has not been implemented into Cyprus legislation to this date. The provisions of DAC 6 are expected to be transposed into the Cyprus legislation by amending the Law on the Administrative Cooperation in the Field of Taxation of 2012 ("Administrative Cooperation Law") in the following months. Thus, the input provided is based on the draft Bill which has been circulated and announcements issued by the Tax Department, and it may be subject to revision following the implementation of the local legislative framework.

2. Have the tax authorities in your jurisdiction issued guidelines for the application and enforcement of the obligations under DAC 6?

The Cyprus Tax Department has not issued guidelines for the application and enforcement of the obligations under DAC 6; such guidelines are expected following the enactment of the implementing law.

A brief announcement of the Tax Department in this respect, issued in September 2019, urges persons with an obligation to report cross-border arrangements to gather relevant information for reportable arrangements implemented within the period of 25 June 2018 to 30 June 2020, so that they are in a position to comply with their obligations.

The said announcement further includes the following:

- The information which should be reported for each reportable cross-border arrangement includes the following, as applicable:
    - the identification of intermediaries and relevant taxpayers, including inter alia their name, date and place of birth (in the case of an individual), residence for tax purposes, TIN and, where appropriate, the persons that are associated enterprises to the relevant taxpayer,
    - details of the hallmarks that make the cross-border arrangement reportable,
    - summary of the content of the reportable cross-border arrangement, including a reference to the name by which it is commonly known, if any, and a description in abstract terms 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,

- the date on which the first step in implementing the reportable cross-border arrangement has been made or will be made,
- details of the national provisions that form the basis of the reportable cross-border arrangement,
- the value of the reportable cross-border arrangement,
- the member state of the relevant taxpayer(s) and any other member states which are likely to be concerned by the reportable cross-border arrangement,
- 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.

– What constitutes a reportable cross-border tax arrangement under the laws and regulations of your jurisdiction?

The draft Bill defines "reportable cross-border arrangement" as "any cross-border arrangement that contains at least one of the hallmarks set out in Annex IV".

– What constitutes a "cross-border" arrangement? To what extent are national structures also covered?

The draft Bill defines a "cross-border arrangement" as "an arrangement concerning either at least two member states or a member state and a third country, where at least one of the following conditions is met:

(a) not all of the participants in the arrangement are resident for tax purposes in the same jurisdiction;

(b) one or more of the participants in the arrangement is simultaneously resident for tax purposes in more than one jurisdiction;

(c) 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;

(d) 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;

(e) such arrangement has a possible impact on the automatic exchange of information or the identification of the beneficial owner.

– How are the hallmarks and the "main benefits" test in Annex IV to DAC 6 defined and interpreted in your jurisdiction?

The draft Bill mainly reflects Annex IV of DAC 6 and further provides in relation to the "main benefits" test that the 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 in respect of taxes determined under section 4 of the Administrative Cooperation Law.

Section 4 of the Administrative Cooperation Law currently includes all taxes of any kind imposed by the Republic of Cyprus or another member state, or on its behalf or its territorial or administrative subdivisions, including local authorities, and excludes VAT, customs duties, excise duties covered by other legislation on administrative cooperation between member states, compulsory social security contributions payable to the Republic of Cyprus or another member state or a subdivision thereof, or to social security public institutions.

The above provisions included in the draft Bill are currently under intensive discussions, in particular in relation to which taxes will be covered under the implementing law, thus it remains to be seen whether the above provision will be adopted in the implementing law.

– What constitutes a "tax benefit" under the legislation in your jurisdiction?

The draft Bill provides that a tax advantage for the purpose of determining the "main benefits" test includes:

(i) relief or additional relief from tax,

(ii) refund or additional refund of tax,

(iii) avoidance or reduction of imposed tax,

(iv) deferral of tax payment or acceleration of tax return, or

(v) avoidance of the obligation to withhold tax

where gaining the tax advantage cannot be reasonably considered to be consistent with the principles on which the provisions relating to the reportable cross-border arrangement are based.

– Is it required that the achievement of the "tax benefit" is the sole or the main purpose of the structure?

According to the draft Bill, the achievement of the tax benefit should be the main or one of the main benefits of the arrangement, as one may reasonably expect, if the arrangement is considered to be reportable by virtue of falling under category A, category B or category C(1)(b)(i), (c) and (d) hallmarks.

– Do the laws and regulations of your jurisdiction require a connection to a potential abuse of tax structures?

The draft Bill does not include express provisions requiring a connection to a potential abuse of tax structures.

– Did your jurisdiction adopt a whitelist of non-reportable "standard" tax arrangements?

No whitelist of non-reportable tax arrangements has been adopted in Cyprus to date.

3. Who is subject to the reporting obligation (taxpayer, intermediary, other)?

According to the draft Bill, the reporting obligation lies with an intermediary. In the event there is no intermediary involved or the intermediary notifies the relevant taxpayer or another intermediary of the application of an exemption under the relevant provisions, the obligation to file information on a reportable cross-border arrangement lies with the other notified intermediary, or, if there is no such intermediary, with the relevant taxpayer.

– Do the laws and regulations of your jurisdiction address the issue of potential legal conflicts of intermediaries with professional confidentiality obligations?

The draft Bill provides that an intermediary who is restricted in reporting relevant information due to legally recognised legal privilege is exempt from reporting, provided that he has notified, without delay, to every other intermediary or, if there is no other intermediary, to the relevant taxpayer, the obligation for reporting. For the purposes of the said exemption, the legally

recognised legal privilege applies only where the intermediary is a lawyer who practices the profession as defined under the Cyprus Advocates Law.

4. What information must be included in a report on cross-border tax arrangements under DAC 6 in your jurisdiction and is there a specific format to be used?

The information expected to be required when reporting a cross-border tax arrangement is as noted under Question 1 above. However, details on the precise information to be reported and the specific format to be used, if any, are still anticipated following the enactment of the implementing law.

5. Is there an obligation to report tax arrangements which were already implemented in the past? If yes, what is the cut-off date?

The draft Bill includes an obligation to report tax arrangements which have commenced in the period from 25 June 2018 to 30 June 2020 by 28 February 2021.

The Cyprus Tax Department issued an announcement in July 2020 indicating the following timeframes for reporting:

i. a reportable cross-border arrangement which has been carried out between 25 June 2018 and 30 June 2020 should be reported by 28 February 2021,

ii. a reportable cross-border arrangement which has been carried out between 1 July 2020 and 31 December 2020 should be reported within 30 days starting from 1 January 2021, and

iii. a reportable cross-border arrangement which has been carried out after 1 January 2021 should be reported within 30 days beginning on the day after the reportable cross-border arrangement is made available for implementation or is ready for implementation, or when the first step in its implementation has been made, whichever occurs first.

6. Who is the competent authority for filing a report under DAC6 in your jurisdiction?

The competent authority for filing a report in Cyprus will be the Cyprus Tax Department of the Ministry of Finance.

7. What is the deadline for filing a report?

The first deadline for filing a report is 28 February 2021, based on the announcement of the Tax Department. However, this is expected to be confirmed upon enactment of the implementing law.

- Has there been an extension of deadlines due to the COVID-19 pandemic?

8. What are the penalties and/or other legal consequences for failing to submit a DAC 6 report within the applicable deadline?

The draft Bill provides for the following penalties:

i. administrative fines from €10,000 to €20,000 for failure to report,

ii. administrative fines from €1,000 to €5,000 for a delay in reporting of up to 90 calendar days, and

iii. administrative fines from €5,000 to €20,000 for a delay of more than 90 calendar days.

9. Has your firm implemented specific processes regarding DAC 6 compliance? If yes, please describe.

In light of the fact that the implementing law has not yet been enacted, our firm is currently reviewing cross-border arrangements which may be considered to be reportable so as to be in a position to comply with our obligations upon implementation of the local law. Specific processes will be implemented upon enactment of such legislation.

10. Contact details

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CZECH REPUBLIC
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1. When was DAC 6 implemented into the National Tax Law of the Czech Republic?

DAC 6 was implemented into the Czech Tax Law by Act no. 343/2020 Coll., and the new provisions dealing with reporting obligation of advisors and other professionals involved in tax-planning schemes came into force on 29 August 2020.

- Have the tax authorities in your jurisdiction issued guidelines for the application and enforcement of the obligations under DAC 6?

  Czech tax authorities have not issued any guidelines concerning DAC 6 implementation yet.

2. What constitutes a reportable cross-border tax arrangement under the laws and regulations of your jurisdiction?

The Czech implementation of the DAC 6 directive copies the provisions of DAC 6. Therefore, the reportable cross-border arrangement constitutes any cross-border arrangement that contains at least one of the hallmarks.

- What constitutes a "cross-border" arrangement? To what extent are national structures also covered?

  The cross-border arrangement is constituted by any arrangement which concerns either more than one member state, or a member state and a third state, where at least one of the following conditions is 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 such 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.

The reporting requirements do not cover any national arrangements or similar structures.

– How are the hallmarks and the “main benefits” test in Annex IV to DAC 6 defined and interpreted in your jurisdiction?

The Czech implementation of DAC 6 applied the minimum requirements and copies the definitions of the hallmarks and the “main benefits” test of the aforementioned directive.

– What constitutes a "tax benefit" under the legislation in your jurisdiction?

Obtaining of a tax advantage constitutes a "tax benefit" under the Czech legislation.

– Is it required that the achievement of the "tax benefit" is the sole or the main purpose of the structure?

The achievement of the tax benefit is required to be the sole or the main purpose only in connection with certain hallmarks. Such criteria are the same as in DAC 6 since the Czech implementation copies its provisions.

– Do the laws and regulations of your jurisdiction require a connection to a potential abuse of tax structures?

No, the Czech laws only regulate the potential risk of tax avoidance covered by the hallmark.

– Did your jurisdiction adopt a whitelist of non-reportable "standard" tax arrangements?

No such list has been adopted.

3. Who is subject to the reporting obligation (taxpayer, intermediary, other)?

Usually, the intermediary is subject to the reporting obligation. The intermediary has to notify about the reportable cross-border arrangement that is within its knowledge, in its possession or controlled by it. The relevant taxpayers become subject to the reporting obligation instead of the intermediary to the extent that the intermediary is obliged to observe professional confidentiality regarding certain arrangements. The relevant taxpayer always becomes subject to the reporting obligation if there is no intermediary involved in such arrangement.

- Do the laws and regulations of your jurisdiction address the issue of potential legal conflicts of intermediaries with professional confidentiality obligations?

  Intermediaries associated in the professional chambers and providing tax, legal, notarial, or auditing services are not entitled to file information on the reportable cross-border arrangement where the reporting obligation would breach their confidentiality obligations under Czech law. Such intermediaries are only required to inform other known intermediaries of the concerned cross-border arrangement and its relevant taxpayer.

4. What information must be included in a report on cross-border tax arrangements under DAC 6 in your jurisdiction and is there a specific format to be used?

The report on cross-border tax arrangements under DAC 6 has to contain:

- identification of the intermediary and the relevant taxpayer of the arrangement (name, date and place of birth, state of tax residence, tax identification number ("DIČ") or other similar number);
- list of associated enterprises of the relevant taxpayers;
- detailed information concerning the hallmark;
- summarised content of the cross-border arrangement (identification, general description);
- day of the implementation of the first step of such arrangement;
- detailed information on laws and international treaties the arrangement is based on;
- value of the arrangement;
- the EU member state of the relevant taxpayer and all other possibly concerned EU member states;
- identification of other persons within the meaning of DAC 6 possibly concerned by the arrangement and their EU member state.

The Czech Ministry of Finance and Tax Administration shall specify a format to be used for reporting. The format has not been published yet since the deadlines were extended (see Question 7).

5. Is there an obligation to report tax arrangements which were already implemented in the past? If yes, what is the cut-off date?

Reports on cross-border arrangements implemented in the past have to be filed by 28 February 2021 if the first step of the arrangement was implemented between 25 June 2018 and 30 June 2020.

6. Who is the competent authority for filing a report under DAC 6 in your jurisdiction?

The competent authority for filing a report under DAC 6 is the Specialized Tax Office ("Specializovaný finanční úřad").

7. What is the deadline for filing a report?

The report on the cross-border arrangement has to be filed within 30 days from the day on which

- the arrangement was made available for implementation, or
- the arrangement was ready to implement, or
- the first step of such an arrangement was implemented.

If multiple aforementioned moments occur, the day invoking the starting point of the filing period shall be the one occurring earlier.

Due to the COVID-19 pandemic, the deadlines were extended (see below).

- Has there been an extension of deadlines due to the COVID-19 pandemic?

  The government extended the deadlines until 30 January 2021 due to COVID-19 pandemic.

8. What are the penalties and/or other legal consequences for failing to submit a DAC 6 report within the applicable deadline?

The tax authority may impose a penalty of CZK 500,000 to the subject of the reporting obligation for breaching the reporting obligation.

9. Has your firm implemented specific processes regarding DAC 6 compliance? If yes, please describe.

No such processes have been adopted.

10. Contact details

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FRANCE

Bersay

1. When was DAC 6 implemented into the National Tax Law of France?

It has been implemented into French law via Ordinance n°2019-1068 of 21 October 2019.

– Have the tax authorities in your jurisdiction issued guidelines for the application and enforcement of the obligations under DAC 6?

Yes, the French tax authorities published guidelines organised in three sections. The first section relates to the scope of the reporting obligation and was published on 9 March 2020 (see. BOI-CF-CPF-30-40-10). The second section relates to the conditions of the reporting obligation and was published on 9 March 2020 (see. BOI-CF-CPF-30-40-20). The third section gives information on the hallmarks and was published on 29 April 2020 (see. BOI-CF-CPF-30-40-30).

2. What constitutes a reportable cross-border tax arrangement under the laws and regulations of your jurisdiction?

– What constitutes a "cross-border" arrangement? To what extent are national structures also covered?

Pursuant to Section 1649 AD, II of the French Tax Code, any arrangement in the form of an agreement, project or plan, whether or not legally enforceable, involving France and another state, whether or not a member of the European Union, is considered cross-border if at least one of the following conditions is met:

- at least one of the participants in the arrangement is not domiciled or resident in France for tax purposes or does not have its registered office there;
- at least one of the participants in the arrangement is domiciled, resident or has its headquarters in several states or territories simultaneously;
- at least one of the participants in the arrangement carries on business in another state or territory through a permanent establishment located in that state or territory, the arrangement

constituting part or all of the business of that permanent establishment;

- at least one of the participants in the arrangement carries on business in another state or territory without being domiciled or resident there for tax purposes or having a permanent establishment in that state or territory;

- the arrangement may have consequences for the automatic exchange of information between states or territories or for the identification of beneficial owners.

The term “arrangement” also covers the formation, acquisition or dissolution of a legal entity, or the subscription of a financial instrument.

– How are the hallmarks and the "main benefits” test in Annex IV to DAC 6 defined and interpreted in your jurisdiction?

Markers are defined by Section 1649 AH of the French Tax Code. They correspond to Annex IV to DAC 6. Administrative comments provide a number of clarifications on these markers, distinguishing general and specific markers related to the “main benefits” test and specific markers related to cross-border transactions concerning automatic exchange of information and beneficial owners as well as transfer pricing.

– What constitutes a "tax benefit" under the legislation in your jurisdiction?

A tax benefit is deemed to exist where the cross-border arrangement results in a tax allowance, tax refund, tax relief or reduction, a reduction of tax liability, a deferral of taxation or no taxation.

The existence of a tax benefit is not limited to French territory nor that of the EU (see. BOI-CF-CPF-30-40-10-10 n°140).

– Is it required that the achievement of the "tax benefit" is the sole or the main purpose of the structure?

The “tax benefit” must be the main purpose of the structure. The size of the tax benefit is determined in particular by the value of the tax benefit obtained in comparison with the value of the other benefits derived from the arrangement. The fact that the arrangement provides a “tax benefit” is not sufficient to characterise a main advantage.

- Do the laws and regulations of your jurisdiction require a connection to a potential abuse of tax structures?

  Yes, since the obligation to report to the competent tax authorities cross-border arrangements that contain one or more markers is based on the fact that there is a potential risk of tax evasion and aggressive tax planning.

- Did your jurisdiction adopt a whitelist of non-reportable "standard" tax arrangements?

  No whitelist seems to be available.

3. Who is subject to the reporting obligation (taxpayer, intermediary, other)?

Both taxpayers and intermediaries, as defined by Section 1649 AE of the French Tax Code, are subject to this reporting obligation.

- Do the laws and regulations of your jurisdiction address the issue of potential legal conflicts of intermediaries with professional confidentiality obligations?

  Yes, an intermediary subject to a professional confidentiality obligation shall inform his client and take all steps to ensure that the client may allow him to lift the professional confidentiality obligation, at the latest on the day before the date provided for by Section 1649 AG, I-a, b or c of the French Tax Code.

  If an intermediary subject to a professional confidentiality obligation does not obtain his client's agreement to file the report, the reporting obligation falls to any other intermediary or, if there is no other intermediary, to the taxpayer concerned.

4. What information must be included in a report on cross-border tax arrangements under DAC 6 in your jurisdiction and is there a specific format to be used ?

In accordance with Section 344 G octies A of the French Tax Code, the declaration shall contain the following information:

- the identification of the intermediaries and taxpayers concerned, including their name, date and place of birth (for individuals), tax residence, tax identification number and, where applicable, persons who are related companies with the taxpayer concerned;

- detailed information on the markers listed in Section 1649 AH of the French Tax Code according to which the cross-border arrangement must be declared;

- a summary of the content of the reportable cross-border arrangement, including a reference to the name by which it is commonly known, if any, and a description of the relevant business activities or arrangements, presented in an abstract manner without giving rise to the disclosure of any trade, business or professional secret, business process or information the disclosure of which would be contrary to public policy;

- the date on which the first stage of the implementation of the reportable cross-border arrangement has been completed or will be completed;

- details of the national provisions on which the reportable cross-border arrangement is based;

- the value of the cross-border arrangement to be declared;

- the identification of the member state with which the taxpayer(s) concerned has/have a territorial link as well as any other member state likely to be concerned by the cross-border arrangement to be declared, with an indication of the member state(s) with which the taxpayer(s) has/have a territorial link;

- the identification of any other person likely to be concerned in the member states by the cross-border arrangement to be declared, with an indication of the member state(s) with which that person has a territorial connection.

As of January 2021, reports must be filed in a dematerialised format by accessing individual or professional space directly on www.impots.gouv.fr.

5. Is there an obligation to report tax arrangements which were already implemented in the past? If yes, what is the cut-off date?

No, but the reporting obligation covers any arrangement that has been implemented since 25 June 2018. However, if an arrangement was implemented prior to 25 June 2018 and undergoes substantial modifications, an analysis regarding the DAC 6 markers should be performed if the arrangement can be considered as a new arrangement.

6. Who is the competent authority for filing a report under DAC 6 in your jurisdiction?

The competent authority is the intermediary or the taxpayer.

7. What is the deadline for filing a report?

In principle, the report must be filed within 30 days of the first of the following dates: the day following the day on which the arrangement concerned is made available for

implementation; the day following the day on which the arrangement is ready to be implemented; the day on which the first stage of implementation is completed.

However, there are some exceptions. First, when the taxpayer or the intermediary receives notification of his reporting obligation from an (other) intermediary, he must complete its reporting obligation within 30 days from the day of receipt of said notification (when the intermediary is subject to a professional confidentiality obligation, he has 30 days to notify any other intermediary or, failing that, the taxpayer concerned of the obligation to file the report).

Then, when an intermediary provides services, the filing must be made within 30 days after the day on which the intermediary has provided, directly or through other persons, help, assistance or advice concerning the design, marketing or organisation of a cross-border arrangement.

Finally, regarding marketable arrangements, an intermediary who has previously filed a report of the aforementioned arrangement communicates to the French tax administration any modification of the declared information on the last day of each quarter of the year (31 March, 30 June, 30 September, 31 December).

- Has there been an extension of deadlines due to the COVID-19 pandemic?

  Yes, the declaration of cross-border arrangements for which the first stage was implemented between 25 June 2018 and 30 June 30 2020 had to be filed before 28 February 2021 (the French tax administration extended the deadline to 1 March 2021).

  Also, the 30-day reporting deadlines imposed on taxpayers and intermediaries shall run from 1 January 2021 for arrangements whose generating event occurred between 1 July 2020 and 31 December 2020. The French tax administration has announced the closure of the declaration service from 29 July until early September. In practice, the deadlines in progress on 29 July should be suspended from this date until the end of the period of closure of the service. When the service reopens, they will resume for the remaining period. Deadlines whose legal starting point is during the closure period will not begin to run until the closure period is over.

  For marketable arrangements, the first quarterly update was due by 30 April 2021.

- What are the penalties and/or other legal consequences for failing to submit a DAC 6 report within the applicable deadline?

Failure to comply leads to the application of a fine provided by Section 1729 C ter of the French Tax Code. The amount of the fine may not exceed €10,000 or €5,000 for the first infraction of the current calendar year and the three previous years.

The amount of the fine applied to a single intermediary or taxpayer concerned may not exceed €100,000 per year.

8. Has your firm implemented specific processes regarding DAC 6 compliance? If yes, please describe.

The implementation of DAC 6 into the processes of the firm is actually in progress.

9. Contact details

Bersay

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GERMANY
Rittershaus

1. When was DAC 6 implemented into the National Tax Law of Germany?

In Germany, the "Act on the Introduction of an Obligation to Notify Cross-Border Tax Arrangements" (the "DAC 6 Act"), which implements EU (Regulation) 2018/822, was passed by the German Bundestag on October 9, 2019 and came into effect on July 1, 2020.

- Have the tax authorities in your jurisdiction issued guidelines for the application and enforcement of the obligations under DAC 6?

  The Federal Ministry of Finance has published a notice on the application of the provisions on the obligation to notify cross-border tax arrangements on March 29, 2021, which contains detailed notes on the application of the DAC 6 rules (the "DAC 6 Notice").

  This notice is available (in German) at the following website: file:///C:/Users/mba/AppData/Local/Temp/dac6_bmf_schreiben.pdf%3bjsessionid=8165F0794F617D53652628258FECA919.pdf

2. What constitutes a reportable cross-border tax arrangement under the laws and regulations of your jurisdiction?

A "tax arrangement" within the meaning of the law is any structure, process or situation that is created or changed by the tax arrangement and has an effect under the applicable tax laws that would otherwise not occur. (BT-Drs. 19/14685 v. 4.11.2019, 28).

Accordingly, the tax authorities require "a deliberate creative process that changes the (factual and/or legal) circumstances with a tax impact through transactions, regulations, actions, processes, agreements, commitments, obligations or similar events". (see DAC 6 Notice)

The requirement of a conscious and active conduct also contains a subjective element, i.e. a tax arrangement within the meaning of the DAC 6 Act only exists, if the tax consequence is intended (see Jochimsen/Dietrich, ISTR 2020, 529 [530])

- What constitutes a "cross-border" arrangement? To what extent are national structures also covered?

  Pursuant to Sec. 138d para. 2, no. 2 German Tax Act (AO), a cross-border arrangement exists, if more than one jurisdiction (with at least one EU member

state) is affected by the arrangement and one of the following circumstances exists:

a) not all participants in the arrangement are resident for tax purposes in the same tax jurisdiction;

b) one or more of the participants in the arrangement are simultaneously resident for tax purposes in more than one tax jurisdiction;

(c) one or more of the participants in the arrangement have business activities in another tax jurisdiction through a permanent establishment located therein and the arrangement relates to part of or complete business of the permanent establishment;

d) one or more of the participants in the arrangement have business activities in another tax jurisdiction without being resident for tax purposes or having a permanent establishment in such tax jurisdiction;

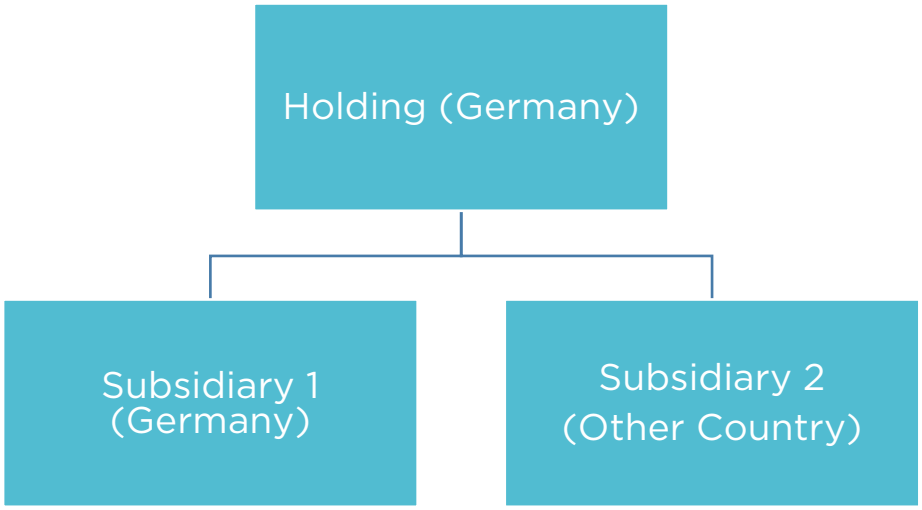
Key elements, therefore, are the connections to different tax jurisdictions created by the participants. Therefore the definition of who is considered a "participant" is key.

In Germany it is clarified that any person acting purely as an intermediary is not a participant Section 138d para. 7 German Tax Act. Primarily, participants in the tax arrangements are therefore the users, but also "other parties involved" in the tax arrangement. The term "user" is defined by Section 138d para. 5 German Tax Act as follows:

"User of a cross-border tax arrangement is any natural person, legal entity, partnership, association or estate(1) to which the cross-border tax arrangement is made available for use, (2) which is willing to implement the cross-border tax arrangement, or (3) which has taken the first step toward implementing the cross-border tax arrangement. "

In addition to the user(s), persons or entities closely associated with them within the meaning of Section 1 para. 2 of the German Foreign Tax Act (AStG) (which includes basically all persons or entities with a significant participation or some other form of control or profit rights) as well as their respective business or contractual partners, provided they are actively involved in the respective tax arrangement, are considered to be "other parties involved" in the tax arrangement.

The application of these rules are illustrated by the following example:



The holding company, which is resident for tax purposes in Germany, has two subsidiaries - one of which is also resident for tax purposes in Germany (Subsidiary 1) and one of which is resident for tax purposes abroad (Subsidiary 2). Subsidiary 1 has losses carried forward. The holding company has an interest-bearing receivable from Subsidiary 2. In order to reduce the tax burden in the group, the holding company plans to transfer the loan receivable from Subsidiary 2 to Subsidiary 1. The "user" of this possible tax arrangement would be the holding company. Subsidiary 1 would be considered an "other involved party " because the assignment requires a contract between the holding company and Subsidiary 1, however Subsidiary 1 would have no tax advantage from the arrangement, but rather increased profits and faster consumption of any losses carried forward.

If the loan agreement between the holding company and Subsidiary 2 requires consent for the change of creditor and Subsidiary 2 provides such consent, then Subsidiary 2 will probably also be regarded as an "other involved party" (but not as a user). If no such consent is required, then Subsidiary 2 is not a participant, but is probably an "other involved party" affected by the tax arrangement, sec. 138g para. 3 no. 10 German Tax Act.

– How are the hallmarks and the "main benefits" test in Annex IV to DAC 6 defined and interpreted in your jurisdiction?

a) Hallmarks

Sect. 138e German Tax Act contains an exhaustive list of hallmarks that trigger a reporting obligation. Section 138e para . 1 German Tax Act contains the conditional hallmarks to which the relevance test in Section 138d para. 2, sent. 1 no. 3 (a) German Tax Act applies. In contrast, Section 138e (2) German Tax Act contains the unconditional hallmarks which, without the requirement of a relevance test, result in a reportable tax arrangement.

aa) Hallmarks according to Section 138 e para. 1 German Tax Act (with relevance test)

Pursuant to Section 138e para. 1 German Tax Act, the following hallmarks are subject to the relevance test:

(1) Qualified confidentiality clauses prohibiting the user or another party involved in the tax arrangement from disclosing the manner in which the tax advantage created by the tax arrangement is obtained to other intermediaries who are also subject to the notification obligation or to the tax authorities (sec. 138e para. 1, no. 1 lit. a German Tax Act.

(2) The agreement for a remuneration related to the tax advantages created by the tax arrangement, if the remuneration depends on the amount of the achieved tax advantage or if the agreement contains the agreement to refund the remuneration in whole or in part if the tax advantage that was expected in connection with the tax arrangement is completely or partially not achieved (sec. 138e para.1 no. 1 lit. b German Tax Act).

(3) Standardized documentation or structures of a design that is available to more than one user without having to be substantially customized for such use (sec. 138e para. 1 no. 2 German Tax Act).

(4) Arrangements whereby a party to the arrangement deliberately takes inappropriate legal steps in order to acquire, directly or indirectly, a loss-making enterprise, in order terminate the principal business activity of that enterprise and to use its losses to reduce its own tax burden, including the transfer of the

losses to another tax jurisdiction or the use of those losses in the near future (sec. 138e para.1 no.3 lit. a German Tax Code).

(5) Arrangements for a conversion of revenue into assets, gifts or other tax exempt income or income with a lower tax rate income or non-taxable (sec. 138e para. 1, no. 3 lit. b German Tax Act),

(6) Circular transfers of assets with at least two transactions where the value of the assets concerned is returned to the original taxpayer after completion of the transactions (Section 138e para. 1 no. 3 lit. c German Tax Act).

(7) Intra group cross-border-arrangements under which the recipient of a payment which is deductible as a business expense of the party making such payment is tax resident in a tax jurisdiction that does not levy a corporate income tax at all or has a nominal corporate income tax rate of or near 0 percent (sec. 138e para. 1, no. 3 lit. d German Tax Act) or if such tax jurisdiction exempts such payment from corporate income tax or subjects it to a preferential tax treatment (sec. 138e para. 1, no. 3 lit. e German Tax Act).

bb) Hallmarks according to Section 138e para. 2 German Tax Act AO (without relevance test)

Pursuant to Section 138e para. 2 of the German Tax Act, the following hallmarks lead to a tax arrangement which is subject to reporting requirements without a further relevance test.

(1) Arrangements in which recipients of cross-border payments between two or more affiliated companies which are deductible as business expenses by the paying party are

(i) not resident in any tax jurisdiction because, for example, one state makes tax residency dependent solely on the place of management and a second state solely on the place of incorporation of the company, so that a so-called "ghost company" is created (sec. 138e para. 2 no. 1 lit. a) aa) German Tax Act)

(ii) resident in a tax jurisdiction that does not meet the standards adopted by the EU Member States with respect to transparency, fair tax competition or with respect to the implementation of the OECD's measures against profit shifting and retention (BEPS) (sec. 138e para. 2 no. 1 lit. a) bb) German Tax Act),

(2) Cases where amortizations can be claimed for the same assets in more than one jurisdiction (sec. 138e para. 2 no. 1 lit. b) aa) German Tax Act)

(4) Cases in which an exemption from double taxation is granted more than once for the same income or assets and the income or assets therefore remain completely or partially (sec. 138e para. 2 no. 1 lit. b) bb) German Tax Act)

(5) Arrangements for the transfer or relocation of assets taking advantage of valuation differences in two tax jurisdictions (sec. 138e para. 2 no. 1 lit. c) German Tax Act)

(6) Arrangements that may lead to an avoidance or undermining of reporting obligations pursuant to the rules for the implementation of the common reporting standards or take advantage of a lack of such regulations by exploiting insufficient implementation of the common reporting standard by tax jurisdictions or financial institutions or their delegates as well as the non-applicability of the common reporting standard (sec. 138e para. 2 no.2 German Tax Act), whereby these indicators correspond to the "Model Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures" (MDR) (OECD (2018)).

(7) Arrangements which, through the interposition of legal or beneficial owners involving different natural persons, legal agreements or structures, make it possible to conceal the identity of beneficial owners and thus install a non-transparent chain (sec. 138e para. 2 no. 3 German Tax Act),

(8) Transfer pricing arrangements that make use of a unilateral regulation that applies to a defined category of users or business transactions and that exempts eligible users from certain obligations that would otherwise have to be fulfilled due to general transfer pricing regulations of a tax jurisdiction (so-called safe harbor regulations) (sec. 138e para. 2 no. 4 lit. a) German Tax Act),

(9) Transfer pricing arrangements in which intangible assets or rights to intangible assets are transferred to an affiliated company or transferred between a company and its foreign permanent establishment, for which no sufficient comparative values are available at the time of their transfer or relocation and, at the time of the transaction, the forecasts of expected cash flows or the income expected to be derived from the intangible asset transferred or relocated or the assumptions underlying the valuation of the intangible asset or right to intangible assets are highly uncertain, making it difficult to predict the complete success at the time of the transfer or relocation (sec. 138e para. 2 no. 4 lit. b) German Tax Act)

(10) Transfer pricing arrangements under which functions, risks and assets or other benefits are transferred or relocated within a group of affiliated companies or to permanent establishments, if this has a significant negative impact on the expected annual earnings before interest and taxes (EBIT) of the transferring company, which is to be assumed if the EBIT of the transferring company over a period of three years after the transfer is less than 50 percent of the annual EBIT of the transferring company ,which would have been expected if the transfer had not taken place (sec. 138e para. 2 no. 4 lit. c) German Tax Act).

b) Main benefit test

In case of the conditional hallmarks according to sec. 138e para. 1 German Tax Act, a further requirement for the existence of a cross-border tax arrangement is that a reasonable third party, taking into account all material facts and circumstances, can reasonably expect that the main advantage or one of the main advantages of the arrangement is the obtaining of a tax advantage within the meaning of sec. 138d para. 2 German Tax Act. If this is the case, the relevance test is fulfilled.

The party which would be subject to the notification obligation can show the subordinate nature of such tax advantage by presenting considerable non-tax (in particular economic) reasons for the specific structuring of a transaction, so that the tax advantage is only a secondary effect. For this, it is sufficient to document that the tax advantage is not a main reason for the arrangement but only a reflex or a marginal effect. The appropriate documentary evidence can be provided in particular by means of corporate correspondence, memos or resolutions.

Since payments that are fully exempt from tax for the recipient as a result of an offsetting or deduction of losses or as a result of crediting foreign taxes may also be subject to notification, it can be assumed that offsetting against tax losses will also be regarded as a tax advantage. It is also not required that the tax advantage is actually achieved. Therefore, a notification obligation regarding a tax planning may also exist if a tax planning is not implemented or the tax advantage is not achieved due to factual reasons, as long as the achievement would have been theoretically possible. Thus, the main benefit test is extremely broad.

What constitutes a "tax benefit" under the legislation in your jurisdiction?

Pursuant to sec. 138d para. 3 sent. 1 German Tax Act, a tax advantage is deemed to exist if, as a result of the tax arrangement

- taxes shall be refunded,

- tax rebates shall be granted or increased,

- tax assets shall be eliminated or reduced,

- the creation of tax claims shall be prevented,

- the accrual of tax claims shall be postponed to different taxation periods or to other taxation dates.

A tax advantage according to the German regulations also exists if the tax advantage is exclusively realized in another EU member state or in a third country (sec. 138d para. 3 sent. 2 German Tax act).

– Is it required that the achievement of the "tax advantage" is the sole or the main purpose of the structure?

In this respect a distinction between the subjective and the objective perspective. Subjectively, a tax advantage must be intended because otherwise the criteria for a tax arrangement is not fulfilled. Objectively, the structure has to be evaluated according to the respective hallmarks, which are divided into two categories.

The first category in sec. 138e para. 1 German Tax Act consists of external, generic characteristics of the tax structuring but also of some specific characteristics of certain business activities which result in a tax advantage. These hallmarks only trigger a disclosure obligation if the underlying tax arrangements actually lead to a tax advantage that is also a main benefit of the tax arrangement (so-called "main benefit test").

In contrast, the hallmarks of the second category in sec. 138e para. 2 German Tax Act no actual tax benefit is required to trigger a disclosure obligation.

– Do the laws and regulations of your jurisdiction require a connection to a potential abuse of tax structures?

No. The hallmarks are only indicative in nature. They do not require any abuse within the meaning of sec. 42 German Tax Act and therefore do not indicate

whether tax arrangements falling under one of the hallmarks shall be disregarded as an abuse of tax structure.

– Did your jurisdiction adopt a white-list of non-reportable "standard" tax arrangements?

Section 138d para. 3 sent. 3 German Tax Act authorizes the Federal Ministry of Finance, in agreement with the tax authorities of the German states, to determine for certain cases that no tax advantage within the meaning of Section 138d para. 3 sent. 1 and 2 German Tax Act shall be assumed, provided that the respective tax advantage has an effect exclusively within the scope of application of the German Tax Act and is provided for by the statute, taking into account all circumstances of the tax arrangement. The authorization relates exclusively to cases within the meaning of sec. 138d para. 2 sent. 1 no. 3 lit. a) in conjunction with sec. 138e para. 1 German Tax Act. The following cases are exempted from the notification requirement under sec. 138d para. 3 sent. 3 German Tax Act by the Federal Ministry of Finance:

- Use of exemption limits and allowances

- Exercise of tax options,

- Fulfillment of the requirements for a tax exemption pursuant to sect. 5 German Corporate Income Tax Act (KStG) or sec. 3 German Trade Tax Act (GewStG),

- Transactions that are subject to the German Research and Development Tax Allowance Act (Forschungszulagengesetz - FZulG),

- Conclusion of agreements for pension schemes and basic pension contracts certified in accordance with sect. 5 and 5a of the Pension Contracts Certification Act (AltZertG),

- matrimonial property regime clauses using sect. 5 German Inheritance Tax Act (ErbStG),

- Amendment of the partnership agreement to meet the requirements of sect. 13a para. 9 German Inheritance Tax Act,

- Conclusion of pooling agreements within the meaning of sec. 13b para. 1 no. 3 of the German Inheritance Tax Act for the purpose of obtaining preferential treatment for shares in corporations,

- Pensions, compensation and benefits within the meaning of sec. 3 no. 8 and 8a German Income Tax Act,

- Company pension schemes for employees under sections 3 nos. 55, 55c, 63 and 66; sect. 4d (3) and 4e (3) and sect. 10a, 79 et seq. and 100 of the German Income Tax Act,

- Transfer of entitlements pursuant to sec. 3 nos. 55c and 55d German Income Tax Act,

- Conclusion of contracts for which the contributions can be recognized as pension expenses in accordance with sect. 10 para. 1 nos. 2, 3 or 3a the German Income Tax Act,

- Recognition of half of the difference pursuant to sec. 20 para. 1 no. 6 sent. 2 German Income Tax Act for capital-acruing life insurance policies,

- Insurance policies reported as part of the control reporting procedure pursuant to sect. 50d para. 6 in conjunction with para. 5 of the German Income Tax Act,

- Long-term increases or decreases in shareholdings aimed at triggering a different tax treatment (e.g. avoidance of sec. 8b para. 4 sent. 1 German Corporate Income Tax Act, fulfillment of the investment condition pursuant to sec. 26 no. 6 sent. 1 German Investment Tax Act) and

- Establishment of a fiscal unity for income tax purposes in accordance with sections 14 to 19 German Corporate Income Tax Act and sect. 2 para. 2 sent. 2 and sect. 7a German Trade Tax Act.

- Relocation of residence in order to claim or avoid the cross-border commuter regime under the DTAs,

- Additional (private) stay in the foreign jurisdiction in which professional activity is performed with the aim to exceed the 183-day time limit under the DTAs.

3. Who is subject to the reporting obligation (tax-payer, intermediary, other)?

– Do the laws and regulations of your jurisdiction address the issue of potential legal conflicts of intermediaries with professional confidentiality obligations?

In principle, the intermediary is responsible for reporting to the Federal Central Tax Office. This does not apply if (i) the user himself designs a cross-border tax arrangement, (ii) the intermediary has no relationship or connection to Germany or (iii) the intermediary is subject to a statutory confidentiality obligation.
In the first two cases, the reporting obligation is completely transferred to the user. For intermediaries who are subject to a statutory confidentiality obligation, the notification obligation with regard to certain personal data is partially transferred to the user if the user has not released the intermediary from the confidentiality obligation and the intermediary has provided the user with personal information, to the extent that it is not already known to the user, as well as the registration number and the disclosure number. Alternatively, in the case of intermediaries bound to professional secrecy who have not been released from their confidentiality obligation, all information can be provided by the user himself.
In any case, "another involved party" does not need report, but must only be included in the report by the user(s).

4. What information must be included in a report on cross-border tax arrangements under DAC 6 in your jurisdiction and is there a specific format to be used?

Pursuant to sect. 138f para. 3 German Tax Act the following information must be included in the data record to be transmitted to the Federal Central Tax Office (Bundeszentralamt für Steuern):

- Information on the intermediary (sect. 138f para. 3 sent. 1 no. 1 German Tax Act)
- Information on the user of the tax arrangement (sect. 138f para. 3 sent. 1 no. 2 German Tax Act)
- Information on affiliated companies (sect. 138f para. 3 sent. 1 no. 3 German Tax Act)
- Details of the hallmark triggering the notification obligation (sect. 138f para. 3 sent. 1 no. 4 German Tax Act)
- Content of cross-border tax arrangement (sect. 138f para. 3 sent. 1 no. 5 German Tax Act)
- Date of the first step of the implementation (sect. 138f para. 3 sent. 1 no. 6 German Tax Act)

- List of the applicable statutory provisions (sect. 138f para. 3 sent. 1 no. 8 German Tax Act)
- Disclosure of the economic value of the tax arrangement (sect. 138f para. 3 sent. 1 no. 8 German Tax Act)
- List of the EU Member States concerned (sect. 138f para. 3 sent. 1 no. 9 German Tax Act)
- List of the persons involved (sect. 138f para. 3 sent. 1 no. 10 German Tax Act)
- Indication of the registration number and disclosure number.
- The notification of a cross-border tax arrangement must be submitted in German to the Federal Central Tax Office.

5. Is there an obligation to report tax arrangements which were already implemented in the past? If yes, what is the cut-off date?

For the purpose of assessing whether a tax arrangement within the meaning of sect. 138d para 2 German Tax Act exists, only circumstances that occurred after June 24, 2018 shall be taken into account. Permanent facts (e.g. license and loan agreements) that came into effect before June 25, 2018 and are not itself subject to notification therefore only lead to tax structuring within the meaning of sec. 138d para. 2 German Tax Act if material changes occurred after June 24, 2018 which, on a stand-alone basis, must be regarded as a tax arrangement within the meaning of Section 138d para. 2 German Tax Act, in particular if they fulfill a hallmark of sect. 138e German Tax Act.
Acts of implementation in fulfillment of an existing contractual obligation shall not be considered a new tax arrangement.

6. Who is the competent authority for filing a report under DAC6 in your jurisdiction?

The report must be sent to the Federal Central Tax Office (BZSt) in Bonn.

7. What is the deadline for filing a report?

Sect. 138f para 2 German Tax Act provides for a 30-day deadline for the notification to the Federal Central Tax Office, irrespective whether the notification obligation exists for the intermediary or the user. The notification period starts on the day on which the first of the following "relevant events" pursuant to sect. 138f para. 2 nos. 1 to 3 German Tax Act) occurred:
1. the cross-border tax arrangement is provided for implementation
2. the user of the cross-border tax arrangement is ready to implement it, or
3. at least one user of the cross-border tax arrangement has taken the first step of implementing this tax structuring.

Sect. 138f para6 sent. 4 German Tax Act provides for a suspension of the notification period in cases where intermediaries who hold professional confidential information, are subject to a statutory confidentiality obligation and are not released from this obligation by the user of the tax arrangement. Accordingly, the 30-day notification period of the user for the notification of the information specified in sect.138f para. 3 sentence 1 nos. 2, 3 and 10 German Tax Act does not commence until the user has obtained the required information from the intermediary.

8. What are the penalties and/or other legal consequences for failing to submit a DAC 6 report within the applicable deadline?

Deliberate or reckless violations of the notification obligations constitute administrative offenses that can be punished with a fine of up to EUR 25,000 pursuant to sect. 379 paras. 2 and 7 German Tax Act.

9. Has your firm implemented specific processes regarding DAC 6 compliance? If yes, please describe.

Any transaction, which can possibly trigger DAC 6 notification obligations has to be evaluated by the responsible partner and, if a respective risk is identified, tax advice has to be obtained.

10. Contact details

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GIBRALTAR

Hassans International Law Firm

1. When was DAC 6 implemented into the National Tax Law of Gibraltar?

DAC 6 was incorporated into the Income Tax Act by the Income Tax (Amendment) Regulations 2020 ("the Regulations"), published on 30 January 2020, which can be accessed on https://www.gibraltarlaws.gov.gi/uploads/legislations/income-tax/2020=055.pdf#viewer.action=download. These Regulations had a commencement date of 1 July 2020, so were technically implemented into local law on that date.

- Have the tax authorities in your jurisdiction issued guidelines for the application and enforcement of the obligations under DAC 6?

  No, guidelines have not been issued by the tax authorities, although many professional firms have produced guidance for the application and enforcement of DAC 6.

2. What constitutes a reportable cross-border tax arrangement under the laws and regulations of your jurisdiction?

- What constitutes a "cross-border" arrangement? To what extent are national structures also covered?

  The Regulations provide the following definition:

  "10ZG.(1) 'cross-border arrangement' means an arrangement concerning either more than one Member State or a Member State and a third country where at least one of conditions in subsection (2) is met.

  (2) Those conditions are that— (a) not all of the participants in the arrangement are resident for tax purposes in the same jurisdiction; (b) one or more of the participants in the arrangement is simultaneously resident for tax purposes in more than one jurisdiction; (c) 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; (d) 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; (e) such arrangement has a possible impact on the automatic exchange of information or the identification of beneficial ownership.

(3) For the purposes of this Part, an arrangement also includes a series of arrangements.

(4) An arrangement may comprise more than one step or part."

Because the arrangement must concern either more than one member state (which for these purposes includes Gibraltar) or a member state and a third country, national structures which do not involve any transaction, ownership or interest located outside Gibraltar are not covered.

- How are the hallmarks and the "main benefits" test in Annex IV to DAC 6 defined and interpreted in your jurisdiction?

  "Main benefit" is defined as follows: that 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.

  The hallmarks largely replicate the wording in the DAC 6 Directive.

- What constitutes a "tax benefit" under the legislation in your jurisdiction?

  The term "tax advantage" has not been defined in the legislation.

- Is it required that the achievement of the "tax benefit" is the sole or the main purpose of the structure?

  No, the main purpose of the arrangement may not be tax-related, but the "main benefits" test will still be met if the main benefit or one of the main benefits is to obtain a tax advantage.

- Do the laws and regulations of your jurisdiction require a connection to a potential abuse of tax structures?

  No.

- Did your jurisdiction adopt a whitelist of non-reportable "standard" tax arrangements?

  No.

3. Who is subject to the reporting obligation (taxpayer, intermediary, other)?

The reporting obligation lies with the intermediary save where there is no intermediary, in which case it lies with the taxpayer. Also, where there is an intermediary, but that intermediary notifies another intermediary that, due to professional confidentiality rules, they cannot report, then the obligation lies with the other intermediary.

- Do the laws and regulations of your jurisdiction address the issue of potential legal conflicts of intermediaries with professional confidentiality obligations?

  Yes, section 10ZI (6) of the Income Tax Act 2010 provides:

  > "(6) Intermediaries have the right to a waiver from filing information on a reportable cross-border arrangement where the reporting obligation would breach the legal professional privilege under the law of Gibraltar; and
  >
  > (a) where this subsection applies, intermediaries must notify, without delay, any other intermediary or, if there is no such intermediary, the relevant taxpayer of their reporting obligations under section 10ZJ; and
  >
  > (b) intermediaries are only entitled to a waiver to the extent that they operate within the limits of the relevant law of Gibraltar in respect of their professions."

4. What information must be included in a report on cross-border tax arrangements under DAC 6 in your jurisdiction and is there a specific format to be used?

Intermediaries are required to file "information that is within their knowledge, possession or control on reportable cross-border arrangements" (section 10ZI(1) Income Tax Act 2010). No specific format has been provided by the Commissioner for Income Tax at this time, although it is understood that a portal will be made available online for information to be filed.

The Commissioner for Income Tax, who is responsible for communicating information to the competent authorities of member states, must communicate the following, as applicable-

> (a) the identification of intermediaries and relevant taxpayers, including their name, date and place of birth (in the case of an individual), residence for tax purposes, TIN and, where appropriate, the persons that are associated enterprises to the relevant taxpayer;

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

(c) a summary of the content of the reportable cross-border arrangement, including a reference to the name by which it is commonly known, if any, and a description in abstract terms 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;

(f) the value of the reportable cross-border arrangement;

(g) the identification of the relevant taxpayer's or taxpayers' member state, and any member states which are likely to be concerned by the reportable cross-border arrangement; and

(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.

5. Is there an obligation to report tax arrangements which were already implemented in the past? If yes, what is the cut-off date?

Yes, intermediaries must file information on reportable cross-border arrangements the first step of which was implemented between the date of entry into force and the date of application of the Cooperation Directive. The deadline for the filing of information on those reportable cross-border arrangements was originally 31 August 2020 but has been delayed to 28 February 2021.

6. Who is the competent authority for filing a report under DAC6 in your jurisdiction?

The Commissioner for Income Tax.

7. What is the deadline for filing a report?

In respect of reportable cross-border arrangements, within the period of 30 days beginning— (a) on the day after the reportable cross-border arrangement is made available for implementation; or (b) on the day after the reportable cross-border arrangement is ready for implementation; or (c) when the first step in the implementation

of the reportable cross-border arrangement has been made, whichever occurs first. (s.10ZI(1) Income Tax Act 2010).

The period of 30 days for filing information referred to above begins by 1 January 2021 where- (a) a reportable cross-border arrangement is made available for implementation or is ready for implementation, or where the first step in its implementation has been made between 1 July 2020 and 31 December 2020; or (b) intermediaries provide, directly or by means of another person, aid, assistance or advice between 1 July 2020 and 31 December 2020. (s.10ZI(1A) Income Tax Act 2010).

- Has there been an extension of deadlines due to the COVID-19 pandemic?

  Section 10ZI(1A) above was subsequently added into the legislation in order to provide some reprieve due to the COVID-19 pandemic. As mentioned in the answer to Question 5, there has been an extension to the reporting on arrangements which have happened in the past, from 31 August 2020 to 28 February 2021. In short, the extensions are as follows:

  - the start date for the 30-day reporting period for cross-border arrangements moves from 1 July 2020 to 1 January 2021;
  - the date for the reporting of historical cross-border arrangements (those reportable between 25 June 2018 and 30 June 2020) moves from 31 August 2020 to 28 February 2021; and
  - the date for the first periodic report for marketable arrangements by intermediaries moves from 31 October 2020 to 30 April 2021.

8. What are the penalties and/or other legal consequences for failing to submit a DAC 6 report within the applicable deadline?

There is a penalty of £300 for failure to make a report. If the penalty is assessed and the failure continues after the person is notified, they are liable to a further daily penalty whilst the default persists of up to £60 per day. There is a penalty of up to £3,000 for making an inaccurate report whilst knowing of the inaccuracy, or later discovering the inaccuracy and not taking reasonable steps to inform the Commissioner of the discovery.

9. Has your firm implemented specific processes regarding DAC 6 compliance? If yes, please describe.

Yes, we have provided training to all lawyers in order for them to understand their obligations as intermediaries under the legislation. We have also conducted an exercise where each lawyer has reviewed all transactions, structures and matters since 25 July 2018 in order to identify which are reportable. We have produced an internal handbook to assist

lawyers with this process. We have done the same exercise with our associated corporate services provider, Line Group Limited. All individuals and entities who may fall within the definition of “intermediary”, such as directors and trustees, have reviewed past arrangements and received training and support in order to identify which are reportable and what the reporting obligations entail.

10. Contact details

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GREECE

Moussas & Partners

1. When was DAC 6 implemented into the National Tax Law of Greece?

Law 4714/2020 (articles 49-57) implemented DAC 6 into domestic legislation and amended the relevant provisions of Laws 4170/2013 and 4174/2013.
Further, the Greek Independent Authority of Public Revenue has issued:
1) Decision 1017/28-1-2021 defining the date and manner in which the reportable information has to be reported and providing an extension of the deadline for initial DAC 6 reporting (see Question 7).
2) Decision 1009/19-1-2021 defining the liaison departments of the Greek tax authority as well as their responsibilities.
3) Circular No. E. 2137/21-7-2020 on the procedures for the exchange of information and the reporting cases that may trigger this exchange.

2. What constitutes a reportable cross-border tax arrangement under the laws and regulations of your jurisdiction?

A cross-border arrangement is any arrangement (or series of arrangements) involving either more than one member state, or a member state and a third country, to the extent that at least one of the following conditions is met (art. 50 par. 2 of Law 4714/2020):
a) Not all of the participants in the arrangement are resident for tax purposes in the same jurisdiction;

i. One or more of the participants is simultaneously resident for tax purposes in more than one jurisdiction;

ii. One or more of the participants carries on a business in another jurisdiction through a permanent establishment, and the arrangement forms part or the whole of the business of that permanent establishment;

iii. One or more of the participants carries on an activity in another jurisdiction without being resident for tax purposes or creating a permanent establishment therein;

iv. Such arrangement has a possible impact on the automatic exchange of information or the identification of beneficial ownership.

For a cross-border arrangement to be reportable, at least one of the "hallmarks" which constitute indication of tax evasion must be met (art. 50 par. 2 of Law 4714/2020). Greek law provides a detailed list of hallmarks divided into 5 categories (A, B, C, D, E). Hallmarks under category A, B and under points (b)(i), (c) and (d) of paragraph 1 of category C may only be triggered if the "main benefits" test is satisfied. That test is 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 (art. 56 of Law 4714/2020).

The hallmarks can be summarised as follows:

Hallmarks
Category A: Generic hallmarks linked to the "main benefits" test
1. An arrangement where a condition of confidentiality arises which may require the relevant taxpayer or a participant not to disclose how the arrangement could secure a tax advantage vis-à-vis other intermediaries or the tax authorities. 2. An arrangement where the intermediary is entitled to receive a fee which is fixed by reference to the tax advantage (contingent fees/success fees). 3. An arrangement that has substantially standardised documentation and/or structure and is available to more than one relevant taxpayer without a need to be substantially customised for implementation.
Category B: Specific hallmarks linked to the "main benefits" test
1. An arrangement involving the artificial use of tax losses (purchase of a loss-making company, change of business and use of losses, inter alia, by transferring losses to another country or accelerating their use). 2. An arrangement that has the effect of converting income into capital, gifts or other categories of revenue which are taxed at a lower level or exempt from tax. 3. An arrangement which includes circular transactions resulting in the round-tripping of funds, namely through involving interposed entities without other primary commercial function or transactions that offset or cancel each other or that have other similar features.
Category C: Specific hallmarks related to cross-border transactions
1. The arrangement involves deductible cross-border payments between two or more associated enterprises, where at least one of the following conditions occurs: a) the recipient is not a tax resident (or resident for tax purposes) in any tax jurisdiction;

b) although the recipient is tax resident in a jurisdiction, that jurisdiction either does not impose any corporate tax or imposes corporate tax at the rate of zero or almost zero, or is included in a list of third-country jurisdictions which have been assessed by member states collectively or within the framework of the OECD as being non-cooperative;

c) the payment benefits from a full exemption from tax in the jurisdiction of the recipient's tax residence;

d) the payment benefits from a preferential tax regime in the jurisdiction of the recipient's tax residence.

2. Deductions for the same depreciation on the asset are claimed in more than one jurisdiction.

3. Relief from double taxation in respect of the same item of income or capital is claimed in more than one jurisdiction.

4. The arrangement involves asset transfers and there is a material difference in the amount being treated as payable in consideration for the assets in those jurisdictions involved.

Category D: Specific hallmarks concerning automatic exchange of information and beneficial ownership
1. An arrangement which may have the effect of undermining the reporting obligation under the laws implementing Union legislation or any equivalent agreements on the automatic exchange of financial account information (Common Reporting Standard). 2. An arrangement involving a non-transparent legal or beneficial ownership chain.
Category E: Specific hallmarks concerning transfer pricing
1. An arrangement which involves the use of unilateral safe harbour rules. 2. An arrangement involving the transfer of hard-to-value intangibles. 3. An arrangement involving an intra-group cross-border transfer of functions or risks or assets, if the projected annual earnings before interest and taxes (EBIT), during the three-year period after the transfer, of the transferor(s) are less than 50% of the projected annual EBIT if the transfer had not been made.

The Greek jurisdiction has not adopted a whitelist of non-reportable "standard" tax arrangements.

3. Who is subject to the reporting obligation (taxpayer, intermediary, other)?

The persons obliged to report to the Greek tax authorities are intermediaries (lawyers, banks, accountants, etc) who are tax residents, have a permanent establishment or are

incorporated or registered with a professional association in Greece. An "intermediary" is any person who designs, markets, organises or manages the implementation of a reportable cross-border arrangement, or any person who knows or could reasonably be expected to know that it has undertaken to provide, either directly or by means of other persons, aid, assistance or advice with respect to designing, organising or managing a reportable arrangement (art. 50 par. 2 of Law 4714/2020).

Professional privilege applies to Greek lawyers with respect to activities performed in their capacity as lawyers. In that case, the lawyer notifies without delay any other intermediary involved, or, if none, the relevant taxpayer about the reporting obligation. The relevant taxpayer has the reporting obligation, if one of the following conditions is met:

i. he is tax resident in Greece;
ii. he is not tax resident in any member state, but has his permanent establishment in Greece;
iii. he is not tax resident, nor has his permanent establishment in any member state, but he receives income, generates profits or carries on business in Greece.

The intermediary or the relevant taxpayer can be exempt from reporting if he can prove, by any appropriate means, that the same information has been filed by another intermediary/taxpayer in Greece or in another member state (art. 51 of Law 4714/2020).

4. What information must be included in a report on cross-border tax arrangements under DAC 6 in your jurisdiction and is there a specific format to be used?

The list of information disclosed and communicated is aligned to the provisions of the Directive (art. 51 of Law 4714/2020). In summary, the following information is reported:

- the identification of the intermediaries and the relevant taxpayers.
- details of the hallmarks.
- a summary of the content of the reportable cross-border arrangement and a description in abstract terms of the relevant business activities.
- dates of the arrangement being made available or ready for implementation.
- details of the national provisions that form the basis of the reportable cross-border arrangement.
- the value of the reportable cross-border arrangement.
- the identification of the member state of the relevant taxpayer(s) and any other member states likely to be concerned.
- the identification of any other person in a member state likely to be affected.

In Greece, the format used is the one proposed by the EU.

5. Is there an obligation to report tax arrangements which were already implemented in the past? If yes, what is the cut-off date?

There is an obligation to report tax arrangements the first step of which has been implemented between 25 June 2018 and 30 June 2020. These arrangements were to be reported by 28 February 2021 (art. 51 of Law 4714/2020).

6. Who is the competent authority for filing a report under DAC 6 in your jurisdiction?

The competent authority for filing a report under DAC 6 in the Greek jurisdiction is Department E (liaison department) of the Independent Authority of Public Revenue.

7. What is the deadline for filing a report?

The deadline for filing a report by the intermediary or the relevant taxpayer is 30 days beginning:
- on the day after the reportable cross-border arrangement is made available for implementation, or
- on the day after the reportable cross-border arrangement is ready for implementation, or
- when the first step in the implementation of the reportable cross-border arrangement has been made, whichever occurs first.

Subject to the above, intermediaries are also required to file information within 30 days beginning on the day after they provided, either directly or by means of other persons, aid, assistance or advice with respect to designing or managing the implementation of a reportable cross-border arrangement.

In the case of marketable arrangements, that is, cross-border arrangements without a need to be substantially customised, the intermediary is obliged to file a periodic report every three months providing an update which contains new reportable information that has become available since the last report was filed. The first periodic report was to be submitted by 30 April 2021.

The automatic exchange of information between member states shall take place within one month from the end of the quarter in which the information was reported.

Due to the COVID-19 pandemic, a six-month deferral was enabled and the initial deadlines changed as follows:

- The 30-day deadline provided by DAC 6, which would normally start from 1 July 2020, was moved to 1 January 2021.

- The reporting deadline for cross-border arrangements the first step of which was implemented between 25 June 2018 and 30 June 2020, which would have been 31 August 2020, was changed to 28 February 2021.

- The first automatic exchange of information between the member states, which would normally be made by 31 October 2020, was moved to 30 April 2021 (art. 51 of Law 4174/2014).

8. What are the penalties and/or other legal consequences for failing to submit a DAC 6 report within the applicable deadline?

The penalties depend on whether the person that was obliged to report the arrangement (the intermediaries, or the relevant taxpayer if there are no intermediaries or they are exempt) is required to maintain a simplified form of accounting books (book of revenues and expenses) or double-entry books.

For non-compliance, the following penalties shall apply (art. 55 of Law 4174/2020):

	Single-entry books		Double-entry books	
	Penalty per arrangement	Maximum penalty per tax audit	Penalty per arrangement	Maximum penalty per tax audit
Failure of filing the information	€5,000	€50,000	€10,000	€100,000
Filing of inaccurate or incomplete information	€2,500	€25,000	€5,000	€50,000
Failure to notify the other liable persons by an intermediary who is exempt due to professional privilege	€5,000	€50,000	€10,000	€100,000

Late filing							
Penalty per month of delay and up to 3 months		Penalty for filing after 3 months		Maximum penalty per calendar year		Maximum penalty to be imposed in a tax audit	
Single entry	Double entry	Single entry	Double entry	Single entry	Double entry	Single entry	Double entry
€250	€500	€2,500	€5,000	€5,000	€10,000	€25,000	€50,000

9. Has your firm implemented specific processes regarding DAC 6 compliance? If yes, please describe.

Our firm has not yet implemented any specific processes regarding DAC 6 compliance, but we regularly advise our clients on tax issues of a cross-border character.

10. Contact details

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ITALY
Cocuzza & Associati

1. When was DAC 6 implemented into the National Tax Law of Italy?

DAC 6 was implemented in Italy by means of Legislative Decree n. 100/2020, entered into force on 26 August 2020, followed by a Decree issued by the Ministry of Economics and Finance dated 17 November 2020.

- Have the tax authorities in your jurisdiction issued guidelines for the application and enforcement of the obligations under DAC 6?

  Yes. The Agenzia delle Entrate (Italian Revenue Agency) issued circular n. 2 on 10 February 2021 setting forth guidelines for the application and enforcement of DAC 6.

2. What constitutes a reportable cross-border tax arrangement under the laws and regulations of your jurisdiction?

- What constitutes a "cross-border" arrangement? To what extent are national structures also covered?

  A cross-border arrangement consists in a scheme, an agreement or a project that concerns Italy and one or more foreign jurisdictions, in presence of one of the following conditions:

  a) not all the participants in the arrangement are resident for tax purposes in Italy;
  b) one or more participants are simultaneously resident for tax purposes in Italy and in one or more foreign jurisdictions;
  c) one or more participants carry on their business in a foreign jurisdiction through a permanent establishment located there, and the arrangement concerns at least a part of the business of the permanent establishment;
  d) one or more participants, without being resident for tax purposes or having a permanent establishment in a foreign jurisdiction, carry on their business in such jurisdiction;
  e) the arrangement can alter the correct application of the procedures on the automatic exchange of information or on the identification of beneficial ownership.

- How are the hallmarks and the "main benefits" test in Annex IV to DAC 6 defined and interpreted in your jurisdiction?

  Hallmarks are defined as indexes of risk of tax avoidance or evasion.

  Main benefits are the result of the difference between taxes that arise from the implementation of the cross-border arrangement and taxes that would have been due in its absence. If the former are lower than the latter, a main benefit occurs, represented by a potential tax reduction (circular n. 2/2020 of Agenzia delle Entrate and art. 7 Decree of the Ministry of Economics and Finance).

- What constitutes a "tax benefit" under the legislation in your jurisdiction?

  Art. 2, par. 1, lett. (i) of Legislative Decree n. 100/2020 defines the tax benefit as one of the main benefits of a fiscal nature that are reasonably expected from the cross-border arrangement, taking into consideration facts and circumstances.

- Is it required that the achievement of the "tax benefit" is the sole or the main purpose of the structure?

  Yes, the tax benefit is one of the main benefits that are expected from the cross-border arrangement. It must be main or prevailing in comparison with benefits that are not of a fiscal nature (art. 7.2 Ministry of Economics and Finance Decree).

- Do the laws and regulations of your jurisdiction require a connection to a potential abuse of tax structures?

  Yes.

- Did your jurisdiction adopt a whitelist of non-reportable "standard" tax arrangements?

  No.

3. **Who is subject to the reporting obligation (taxpayer, intermediary, other)? Art. 3 of Legislative Decree n. 100/2020 sets forth that reporting obligations concern intermediaries and taxpayers.**

   - Do the laws and regulations of your jurisdiction address the issue of potential legal conflicts of intermediaries with professional confidentiality obligations?

Yes. Art. 3, par. 4 of Legislative Decree n. 100/2020 sets forth that an intermediary is exempted from the reporting obligation if he obtains information from or about his client due to his legal position or while carrying out activities of defence or representation of the same in a judicial proceeding.

4. What information must be included in a report on cross-border tax arrangements under DAC 6 in your jurisdiction and is there a specific format to be used?

The information that must be included in a report is the following (art. 6 of Legislative Decree n. 100/2020):

- identification of the intermediaries, taxpayers and associated companies of such taxpayers;
- hallmarks present in the cross-border arrangement that make it reportable;
- overview of the content of the reportable cross-border arrangement;
- start date of implementation of the cross-border arrangement;
- national provisions that establish the obligation to report the cross-border arrangement;
- value of the reportable cross-border arrangement that is the object of the reporting obligation;
- identification of the jurisdictions of fiscal residence of the taxpayers, as well as of other jurisdictions that are potentially affected by the cross-border arrangement that is the object of the reporting obligation, if any;
- identification of any other subject who is potentially affected by the cross-border arrangement, as well as of the jurisdictions to which the subject is attributable.

As regards formalities, there is a specific format that must be filled with required information and forwarded electronically to the Agenzia delle Entrate.

5. Is there an obligation to report tax arrangements which were already implemented in the past? If yes, what is the cut-off date?

Yes, art. 7, par. 4 of Legislative Decree n. 100/2020 sets forth that information regarding the time period between 1 July 2020 and 31 December 2020 had to be reported within 30 days from 1 January 2021, and art. 8, par. 1 of the same Decree sets forth that reports regarding cross-border arrangements the first phase of which was implemented between 25 June 2018 and 30 June 2020 had to be made no later than 28 February 2021.

6. Who is the competent authority for filing a report under DAC 6 in your jurisdiction?

The competent authority in Italy is the Agenzia delle Entrate (the Revenue Agency).

7. What is the deadline for filing a report?

The deadline is 30 days from:

- the day that follows the day when the reportable cross-border agreement is available for implementation or the day when the implementation has been started;
- the day that follows the day when assistance or consultancy has been provided, directly or by means of other people, for the purposes of the implementation of the reportable cross-border arrangement.

– Has there been an extension of deadlines due to the COVID-19 pandemic?

Yes. Deadlines indicated in point 5 above are the results of such extension.

8. What are the penalties and/or other legal consequences for failing to submit a DAC 6 report within the applicable deadline?

The penalty is an administrative fine of €3,000 to €31,500, reduced by half if the report is submitted within 15 days from the deadline, as set forth by art. 12 of Legislative Decree n. 100/2020.

9. Has your firm implemented specific processes regarding DAC 6 compliance? If yes, please describe.

We are currently reviewing and updating our internal procedures. There is a clear intersection between DAC 6 and anti-money-laundering protocols, so we are studying the interplay, even though it is clear that these are two different reporting obligations.

10. Contact details

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LUXEMBOURG
Brucher & Thieltgen

1. When was DAC 6 implemented into the National Tax Law of Luxembourg?

DAC 6 was implemented in Luxembourg by the amended law of 25 March 2020on cross-border devices subject to declaration (the "Law of 2020").

– Have the tax authorities in your jurisdiction issued guidelines for the application and enforcement of the obligations under DAC 6?

On 12 February 2021 the tax administration published clarificationsconcerning the implementation of the Law of 2020.

2. What constitutes a reportable cross-border tax arrangement under the laws and regulations of your jurisdiction?

– What constitutes a "cross-border" arrangement? To what extent are national structures also covered?

Cross-border tax arrangements are schemes which combine the following three characteristics:

(i) the scheme must involve several member states or a member state and a third country, and one of the conditions listed below must be met:

- not all participants in the scheme are resident for tax purposes in the same jurisdiction;
- one or more of the participants in the scheme are residentfor tax purposes in more than one jurisdiction simultaneously;
- one or more of the participants in the scheme carry on business in another jurisdiction through a permanent establishment in that jurisdiction, the scheme constituting part or all of the business of that permanent establishment;
- one or more of the participants in the scheme carry on business in another jurisdiction without being resident for tax purposes or establishing a permanent establishment in that jurisdiction;

- the scheme may have consequences for the automatic exchange of information or for the identification of beneficiaries.

(ii) the subject matter of all types of taxes levied by the state and municipalities of the Grand Duchy of Luxembourg; and

(iii) including at least one of the hallmarks listed in the annex to the Law of 2020.

– How are the hallmarks and the "main benefits" test in Annex IV to DAC 6 defined and interpreted in your jurisdiction?

The main benefit criteria are not met where the main tax advantage obtained through the scheme is consistent with the object or purpose ofthe applicable legislation and consistent with the intention of the legislature. In order to determine whether the scheme in question is consistent with that intention, all the elements constituting the device mustbe taken into consideration, so that a provision which, taken as a whole, does not comply with that intention – for example, by taking advantage of the subtleties of a tax system or the inconsistencies between two or more tax systems to reduce the tax payable – nevertheless meets the criteria of the main advantage.

– What constitutes a "tax benefit" under the legislation in your jurisdiction?

The primary benefit criteria must be met in relation to the types of taxesreferred to in Article 2 of Directive 2011/16/EU. This includes direct taxes and certain indirect taxes, such as inheritance tax. It does not include value added tax, customs duties, excise duties and compulsory social security contributions. The tax advantage does not necessarily have to be obtained in a member state but may also occur in a third country.

– Is it required that the achievement of the "tax benefit" is the sole or the main purpose of the structure?

General hallmarks under category A and specific hallmarks under category B as well as under category C, paragraph 1(b)(i), (c) and (d) canonly be taken into account when they fulfil the "primary benefit test".

– Do the laws and regulations of your jurisdiction require a connection to a potential abuse of tax structures?

"Hallmarks" means a feature or characteristic of a cross-border arrangement that indicates a potential risk of tax evasion, as identified in the annex to the Law of 2020.

– Did your jurisdiction adopt a whitelist of non-reportable "standard" tax arrangements?

No.

3. Who is subject to the reporting obligation (taxpayer, intermediary, other)?

The declaration must be made by an intermediary or, failing that, by a taxpayer concerned.

An intermediary is any person who designs, markets or organises a cross-borderdevice that is subject to declaration; or makes available such a cross-border de- vice for the purpose of implementation or manages its implementation; or knows or could reasonably be expected to know that it has undertaken to provide, directlyor through others, help, assistance or advice relating to the design, marketing or organisation of such a device; or the making available for implementation or the management of its implementation.

– Do the laws and regulations of your jurisdiction address the issue of potential legal conflicts of intermediaries with professional confidentiality obligations?

Lawyers are protected by legal client-attorney privilege. As a consequence, they benefit from a waiver of reporting obligation under the Law of 2020 (unless they act outside the limits applicable to the exercise of their profession. In this case the exemption does not apply). TheLaw of 2020 also extends this legal professional privilege to chartered accountants and auditors.

For intermediaries benefiting from professional secrecy (lawyers, chartered accountants and auditors), the no-name-basis reporting is replaced by an exemption from any kind of reporting. Instead, these intermediaries are only required to notify any other intermediary that isnot protected by professional secrecy, or the taxpayer in the absenceof such an intermediary, within 10 days. If a taxpayer is notified, the intermediary must also include any necessary

information required forreporting, in enough time for the taxpayer to meet their reporting obligation deadline and to the extent that the intermediary has this information at their disposal. Taxpayers may also appoint the intermediary to perform the reporting on their behalf.

4. What information must be included in a report on cross-border tax arrangements under DAC 6 in your jurisdiction and is there a specific format to be used?

The following information must be submitted to the tax administration by way of electronic filing on the secure state platform, MyGuichet:

a) identification of the intermediaries and taxpayers concerned, including their name, date and place of birth (for individuals), tax residence and tax identification number. In the event that an associated enterprise of the taxpayer concerned is involved in the cross-border reporting scheme, the identification shallalso include the name, date and place of birth (for natural persons), tax residence and tax identification number of that associated enterprise;

(b) details of the hallmarks listed in the Annex to the Act under which the cross-border scheme is to be reported;

(c) a summary of the contents of the reportable cross-border device, including a reference to the name by which it is commonly known, if any, and a description of the relevant business activities or devices, presented in abstract form, without giving rise to the disclosure of any trade, business or professional secret, business process or information the disclosure of which would be contrary to public policy

(d) the date on which the first stage of the implementation of the cross-border scheme to be declared has been or will be completed;

(e) details of the legal provisions of the states concerned on which the trans-boundary device to be declared is based;

(f) the value of the cross-border device to be declared;

(g) identification of the member state of the taxpayer(s) concerned and of any other member state likely to be concerned by the reportable cross-border

scheme;

(h) identification of any other person likely to be involved in the cross-border reporting scheme, indicating to which member states that person is linked.

5. Is there an obligation to report tax arrangements which were already implemented in the past? If yes, what is the cut-off date?

Intermediaries and taxpayers are required to provide information on reportable cross-border arrangements where the first stage has been implemented between25 June 2018 and 30 June 2020.

6. Who is the competent authority for filing a report under DAC6 in your jurisdiction?

The filing shall be made with the tax administration.

7. What is the deadline for filing a report?

– Has there been an extension of deadlines due to the COVID-19 pandemic?

- Reportable cross-border arrangements whose first implementation step occurred between 25 June 2018 and 30 June 2020 are to be reported as from 1 July 2020, and by 28 February 2021 (initially 31 August 2020 - postponed due to the COVID-19 pandemic)at the latest.
- Reportable cross-border arrangements whose first implementation step occurred between 1 July 2020 and 31 December 2020 are to be reported by 1 January 2021 (initially within 30 days of the “key date” - postponed due to the COVID-19 pandemic) at the latest.
- As from 1 January 2021 (initially 1 July 2020 – postponed due to the COVID-19 pandemic), the required information has to be reportedto the domestic tax authorities within 30 days of the “key date”, which will be the earliest of the following:
    - when the arrangement becomes available to the taxpayer for implementation; or
    - is ready for implementation; or
    - when the first step has been implemented.

8. What are the penalties and/or other legal consequences for failing to submit a DAC 6 report within the applicable deadline?

Luxembourg law provides for a fine amounting to a maximum of €250,000 against the intermediary or taxpayer concerned who has an obligation to transmit or notify the Grand Duchy of Luxembourg under the Law in case of failure to transmit information, late transmission or transmission of incomplete or inaccurate data, or in case of non-compliance by intermediaries with their obligations.

9. Has your firm implemented specific processes regarding DAC 6 compliance? If yes, please describe.

We indeed implemented internal processes to provide taxpayers or relevant intermediaries with the requested information to allow them to comply with their reporting obligations under DAC 6.

10. Contact details

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MALTA
DF Advocates

1. When was DAC 6 implemented into the National Tax Law of Malta?

Council Directive (EU) 2018/8222 ("DAC 6") regarding the mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements was implemented into Maltese Law by virtue of Legal Notice 342 of 2019 which amended Subsidiary Legislation 123.127, entitled the Cooperation with Other Jurisdictions on Tax Matters Regulations (the "Cooperation Regulations"), and came into effect on 1 July 2020.

- Have the tax authorities in your jurisdiction issued guidelines for the application and enforcement of the obligations under DAC 6?

  Yes, the Office of the Commissioner for Revenue (the "CFR") issued guidelines on the mandatory automatic exchange of information in relation to cross-border arrangements (the "Guidelines") on 4 January 2021. So far, there have been no amendments thereto.

2. What constitutes a reportable cross-border tax arrangement under the laws and regulations of your jurisdiction?

In terms of the Cooperation Regulations as further interpreted in the Guidelines, a reportable cross-border arrangement refers to an arrangement that includes at least one of the hallmarks listed in Annex IV of the Cooperation Regulations.

In essence, where a cross-border arrangement includes any of the hallmarks set out in the Cooperation Regulations (and satisfies the "main benefits" test where required), such arrangement is considered reportable. Having said this, a cross-border arrangement does not necessarily imply that the arrangement involves unacceptable or aggressive tax planning.

- What constitutes a "cross-border" arrangement? To what extent are national structures also covered?

  DAC 6, and consequently the Cooperation Regulations, define cross-border arrangements as arrangements concerning more than one EU member state, or an EU member state and a third country, which satisfy at least one of the following conditions:

i. participants in the arrangement are not all resident for tax purposes in the same jurisdiction;

ii. one or more of the participants in the arrangement is simultaneously resident for tax purposes in more than one jurisdiction;

iii. 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 is the whole business of that permanent establishment;

iv. 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 in that jurisdiction;

v. the arrangement has a possible impact on the automatic exchange of information or the identification of the beneficial ownership of the arrangement.

As evidenced in the aforementioned conditions, for an arrangement to qualify as a cross-border arrangement under the Cooperation Regulations, the arrangement must necessarily concern multiple jurisdictions wherein at least one is an EU member state. Moreover, the jurisdiction must be material to the arrangement for such to fall within the definition of a cross-border arrangement, taking into account all the circumstances of the arrangement.

– How are the hallmarks and the "main benefits" test in Annex IV to DAC 6 defined and interpreted in your jurisdiction?

A hallmark is defined as a characteristic or feature of a cross-border arrangement that poses an indication of a potential risk of tax avoidance. Listed in Annex IV of the Cooperation Regulations, the hallmarks replicate ad verbatim the hallmarks listed in Annex IV of DAC 6, and are grouped under the following 5 broad categories:

A. generic hallmarks linked to the main benefit test;

B. specific hallmarks linked to the main benefit test;

C. specific hallmarks related to cross-border transactions;

D. specific hallmarks concerning automatic exchange of information and beneficial ownership;

E. specific hallmarks concerning transfer pricing;

The Cooperation Regulations differentiate between hallmarks which must satisfy the main benefit test (the "MBT") so as to amount to reportable cross-border arrangement, and those which do not. In fact, hallmarks under category A, category B and sub-paragraphs (b)(i), (c) and (d) of paragraph 1 of category C may be taken into account in determining whether an arrangement is a reportable cross-border arrangement only if the main benefit test is satisfied. On the other hand, the MBT does not have to be satisfied for any of the other hallmarks to be taken into account.

In order to satisfy the MBT, it must be shown that, after taking into account all circumstances of the case, the main benefit or one of the main benefits of the arrangement is the obtainment of a tax advantage.

– What constitutes a "tax benefit" under the legislation in your jurisdiction?

Referred to as the "tax advantage", the tax benefit is broadly interpreted in the Guidelines and described as including repayment of tax, a tax relief, a reduction in the tax charge, a tax deferral or an absence of taxation. In defining same, the Guidelines refer to the Commission Recommendation of 6 December 2012 on aggressive tax planning (2012/772/EU) which states that "in determining whether an arrangement or series of arrangements has led to a tax benefit as referred to in point 4.2, national authorities are invited to compare the amount of tax due by a taxpayer, having regard to those arrangement(s), with the amount that the same taxpayer would owe under the same circumstances in the absence of the arrangement(s). In that context, it is useful to consider whether one or more of the following situations occur:

a. an amount is not included in the tax base;
b. the taxpayer benefits from a deduction;
c. a loss for tax purposes is incurred;
d. no withholding tax is due;
e. foreign tax is offset."

– Is it required that the achievement of the "tax benefit" is the sole or the main purpose of the structure?

As explained above, the MBT is met if it can be shown that the tax advantage is the main benefit or one of the main benefits that can be reasonably expected from the arrangement.

- Do the laws and regulations of your jurisdiction require a connection to a potential abuse of tax structures?

  The potential abuse element which Maltese law requires relates to the tax advantage component in the MBT.

- Did your jurisdiction adopt a whitelist of non-reportable "standard" tax arrangements?

  No, so far Malta has not adopted such a list.

3. Who is subject to the reporting obligation (taxpayer, intermediary, other)?

In terms of DAC 6, persons meeting the definition of an "intermediary" must identify and subsequently report to the local tax authorities any cross-border arrangement involving at least one EU member state where such arrangement has one or more of the hallmarks identified in Annex IV of the Cooperation Regulations.

The definition of intermediary in regulation 13(9) of the Cooperation Regulations contemplates two categories of intermediaries:

1. Primary Intermediary – in terms of the Guidelines, a primary intermediary is a person that designs, markets, organises or makes available for implementation or manages the implementation of a reportable cross-border arrangement. This type of intermediary has a full understanding of the material aspects of the arrangement, including the legislation being relied on and the conditions that need to be met to achieve the planned outcome. In the absence of such knowledge it is likely that such person would be classified as a secondary intermediary.

2. Secondary Intermediary – in terms of the Guidelines, a secondary intermediary refers to a 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, organising, making available for implementation or managing the implementation of a reportable cross-border arrangement. Therefore, this type of intermediary encompasses a wider range of persons such as lawyers and accountants.

In order for a person to be identified as a primary or secondary intermediary under the Cooperation Regulations, at least one of the following conditions must be satisfied:

- the person is resident for tax purposes in an EU member state;
- the person has a permanent establishment in an EU member state, through which it provides the services with respect to the arrangement;
- the legal person is incorporated in an EU member state or governed by the laws of an EU member state;
- the person is registered with a professional association relating to legal, taxation or consultancy services in an EU member state.

Moreover, the reporting obligation shifts onto the relevant taxpayer itself where there are no intermediaries or where the intermediary involved has waived the obligation on the basis of professional secrecy (as explained in greater detail below). Hence, in such scenarios, the law requires relevant taxpayers to provide information on reportable cross-border arrangements to EU member states' tax authorities.

The Cooperation Regulations have defined a relevant taxpayer as any person to whom a reportable cross-border arrangement is made available for implementation, or who is ready to implement a reportable cross-border arrangement or has implemented the first step of such an arrangement.

– Do the laws and regulations of your jurisdiction address the issue of potential legal conflicts of intermediaries with professional confidentiality obligations?

In recognising the importance of professional secrecy, the Cooperation Regulations granted intermediaries whose profession is regulated under the Professional Secrecy Act (Chapter 377 of the Laws of Malta), such as lawyers, the right to waive their reporting obligations where the information in question is covered by the obligation of professional secrecy.

In this respect, the reporting obligations effectively shift onto any other intermediary involved in the same arrangement, or in the absence of such the relevant taxpayer.

In such a scenario, the intermediary waiving his obligation, known as the non-disclosing intermediary, is bound to notify any other involved intermediaries or the relevant taxpayer of their reporting obligation. This must be done in writing within seven working days from when the reporting trigger point arises.

Having said that, one should note that the right to a waiver from the reporting obligation shall no longer apply where the intermediary fails to notify any other intermediary involved in the same arrangement, or the relevant taxpayer, of their reporting obligations within the prescribed deadline.

Finally, it should be noted that the waiver of the reporting obligations contemplated in regulation 13(7)(e) of the Cooperation Regulations is not applicable in case of a reportable marketable arrangement.

4. What information must be included in a report on cross-border tax arrangements under DAC 6 in your jurisdiction and is there a specific format to be used?

Reportable information shall be filed electronically via an online portal made available by the CFR following registration on the CFR website (https://cfr.gov.mt/en/inlandrevenue/itu/Pages/Reportable-Cross-Border-Arrangements.aspx).

The Cooperation Regulations set out the information which is required upon submitting a report with the CFR, namely:

- the identification information of intermediaries and relevant taxpayers, including name, date and place of birth (in the case of a natural person), residence for tax purposes, taxpayer identification number and, where appropriate, the persons that are associated enterprises to the relevant taxpayer;
- details of all applicable hallmarks set out in Annex IV that make the cross-border arrangement reportable;
- a summary of the reportable cross-border arrangement;
- the date/proposed date of the first step in the implementation of the reportable cross-border arrangement;
- details of the national tax provisions that form the basis of the reportable cross-border arrangement;
- the value of the reportable cross-border arrangement;
- the identification of the EU member state of the relevant taxpayer(s) and any other EU member states which are likely to be concerned with the reportable cross-border arrangement;

- the identification of any other person in an EU member state likely to be affected by the reportable cross-border arrangement, indicating to which EU member states such person is linked.

5. Is there an obligation to report tax arrangements which were already implemented in the past? If yes, what is the cut-off date?

The Cooperation Regulations specify that Intermediaries, and/or relevant taxpayers where applicable, were required to file information in respect of reportable cross-border arrangements the first step of which was implemented between 25 June 2018 and 30 June 2020. Such report had to be filed by 28 February 2021.

The Guidelines go on to clarify that for this period, information in respect of any arrangements the first step of which was not implemented was not reportable.

6. Who is the competent authority for filing a report under DAC6 in your jurisdiction?

The competent authority entrusted with receiving reports in terms of the Cooperation Regulations is the CFR.

7. What is the deadline for filing a report?

Reporting trigger points and time limits for filing vary depending on who is to file the report.

A. Primary Intermediary

A primary intermediary is required to file information with the CFR within 30 days commencing on the earliest of the following:

i. the day after the reportable cross-border arrangement is made available for implementation; or

ii. the day after the reportable cross-border arrangement is ready for implementation; or

iii. when the first step in the implementation of the reportable cross-border arrangement has been made.

B. Secondary Intermediary

A secondary intermediary is required to file information with the CFR within 30 days commencing on the later of:

a. the day after such intermediary provided, directly or by means of other persons, aid, assistance or advice with respect to designing, marketing, organising, making available for implementation or managing the implementation of a reportable cross-border arrangement; or

b. the earlier of the 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
  - for implementation; or
  - when the first step in the implementation of the reportable cross-border arrangement has been made.

C. Relevant Taxpayer

Where the reporting obligation lies with the relevant taxpayer, the 30-day reporting time limit commences on the earliest of the following:

i. the day after the reportable cross-border arrangement is made available for implementation to the relevant taxpayer; or

ii. the day after the reportable cross-border arrangement is ready for implementation by the relevant taxpayer; or

iii. when the first step in its implementation has been made in relation to the relevant taxpayer.

b. Has there been an extension of deadlines due to the COVID-19 pandemic?

The CFR deferred the first reporting deadlines under regulation 13 of the Cooperation Regulations by six months as a response to the impacts caused as a result of the COVID-19 pandemic. This was done through an amending legal notice L.N. 315 of 2020 following the European Council's agreement on the postponement of such deadlines and the publication of Directive 2020/876.

The deferral has the effect of postponing the reporting deadlines as follows:

- by 28 February 2021 (previously 31 August 2020) for arrangements where the first step was implemented between 25 June 2018 and 1 July 2020.
- the start date for the 30-day reporting deadline to begin as from 1 January 2021 (originally 1 July 2020). This also applied for cross-border arrangements for which the reporting trigger occurred between 1 July 2020 and 31 December 2020.
- by 30 April 2021 for the first periodic report on marketable arrangements.

8. What are the penalties and/or other legal consequences for failing to submit a DAC 6 report within the applicable deadline?

The Cooperation Regulations set out penalties imposed on intermediaries and/or relevant taxpayers where they fail to comply with the reporting obligations. The law caters for different levels of penalties with respect to the below failures:

i. intermediary/relevant taxpayer fails to retain documentation and information in the course of meeting its reporting obligations for a minimum period of five years starting from the end of the year to which the information relates;

ii. intermediary/relevant taxpayer fails to report any of the information required to be reported in terms of the Cooperation Regulations within the stipulated time frame;

iii. intermediary/relevant taxpayer fails to report the information required to be reported in a complete and accurate manner;

iv. intermediary/relevant taxpayer fails to comply with a request for information made by the CFR.

Upon receiving a default notice by the CFR due to a failure listed above, the intermediary/relevant taxpayer is given the opportunity to contest the imposition of the penalty by means of a letter of contestation submitted to the CFR within 10 days.

9. Has your firm implemented specific processes regarding DAC 6 compliance? If yes, please describe.

Besides offering our employees training with respect to DAC 6 compliance, DF Advocates has ensured that clients and prospective clients are aware of the firm's rights and obligations with respect to DAC 6.

10. Contact details

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NETHERLANDS

Ekelmans Advocaten - Insurance & Corporate

1. When was DAC 6 implemented into the National Tax Law of Netherlands?

Date: 1 July 2020

- Have the tax authorities in your jurisdiction issued guidelines for the application and enforcement of the obligations under DAC 6?

  Yes.

2. What constitutes a reportable cross-border tax arrangement under the laws and regulations of your jurisdiction?

- What constitutes a "cross-border" arrangement? To what extent are national structures also covered?

  The law directly refers to article 3 paragraph 18 of EU Directive 2011/16/EU for the definition of “cross-border arrangement”. National structures are not reportable under DAC 6.

- How are the hallmarks and the "main benefits" test in Annex IV to DAC 6 defined and interpreted in your jurisdiction?

  The law directly refers to Addendum IV EU Directive 2011/16/EU for the definition of the hallmarks. The interpretation is further clarified in the Parliamentary History (law proposal number 35 255) and an Administrative Decree of 30 June 2020, State Gazette 2020, number 34,991.

- What constitutes a "tax benefit" under the legislation in your jurisdiction?

  The Administrative Decree of 30 June 2020, State Gazette 2020, number 34,991 refers to a UK policy document for EU Directive 2018/822: “7.7 The main benefit of an arrangement, for the purposes of the Regulations, will therefore not be to obtain a tax advantage if the tax consequences of the arrangement are entirely in line with the policy intent of the legislation upon which the arrangement relies. This will mean that the use of certain products which are designed and intended to generate a certain beneficial tax outcome, such as ISAs or pensions will not inherently mean that the “main benefits” test is met. However, it is important to note that these products could be included as part of a wider arrangement designed to generate a tax outcome outside that intended by the legislation.

Such an outcome would still be a 'tax advantage' and so the "main benefits" test could still be triggered."
(assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/818842/International_Tax_Enforcement_-_disclosable_arrangements consultation_.pdf)

- Is it required that the achievement of the "tax benefit" is the sole or the main purpose of the structure?

  No. This Decree stipulates that an arrangement is reportable if the "tax benefit" is one of the most important benefits.

- Do the laws and regulations of your jurisdiction require a connection to a potential abuse of tax structures?

  No.

- Did your jurisdiction adopt a whitelist of non-reportable "standard" tax arrangements?

  No. There is, however, guidance in a kind of FAQ issued by the Dutch tax authorities.

3. Who is subject to the reporting obligation (taxpayer, intermediary, other)?

Primary: intermediary, secondary: taxpayer

- Do the laws and regulations of your jurisdiction address the issue of potential legal conflicts of intermediaries with professional confidentiality obligations?

  Yes, core client/attorney privilege is in principle respected, although there are exceptions based on the set-up of an engagement.

4. What information must be included in a report on cross-border tax arrangements under DAC 6 in your jurisdiction and is there a specific format to be used?

Dutch tax authorities have implemented an XML-based reporting portal. If needed a summary of the XML reporting structure can be sent.

5. Is there an obligation to report tax arrangements which were already implemented in the past? If yes, what is the cut-off date?

Yes. For reportable arrangements implemented (see 7) between 25 June 2018 and 1 July 2020 the cut-off date was 28 February 2021. For reportable arrangementd implemented (see 7) between 1 July 2020 – 1 January 2021, the cut-off date was 31 January 2021.

6. Who is the competent authority for filing a report under DAC 6 in your jurisdiction?

Dutch tax authorities. There are special rules for resolving reporting conflicts in multiple jurisdictions given the cross-border nature of reportable arrangements and the parties involved.

7. What is the deadline for filing a report?

Effective 1 January 2021: 30 days after a reportable arrangement is made available for implementation or is ready for implementation, or the first step in implementation has occurred.

- Has there been an extension of deadlines due to the COVID-19 pandemic?

  Yes. The final date was 28 February 2021.

8. What are the penalties and/or other legal consequences for failing to submit a DAC 6 report within the applicable deadline?

Maximum penalty €870,000 (2020 amount by reference to category 6 of penalties in the Criminal Code, which amount is changed periodically).

9. Has your firm implemented specific processes regarding DAC 6 compliance? If yes, please describe.

No structured DAC 6 compliance. DAC 6 compliance is done on a case-by-case basis.

10. Contact details (law firm, name, position, email):

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POLAND
FKA Furtek Komosa Aleksandrowicz

1. When was DAC 6 implemented into the National Tax Law of Poland?

DAC 6 was originally implemented by an Act amending the Personal Income Tax (PIT) Act, the Corporate Income Tax (CIT) Act and the Tax Ordinance which entered into force on 1 January 2019. Because of incorrect implementation the provisions had to be amended so that exchange of information with authorities from other member states is possible. The necessary amendments entered into force on 1 July 2020.

- Have the tax authorities in your jurisdiction issued guidelines for the application and enforcement of the obligations under DAC 6?

  On 31 January 2019 the Ministry of Finance issued guidelines regarding the application of regulations concerning submitting of reports regarding tax planning arrangements to the Head of National Revenue Administration.

2. What constitutes a reportable cross-border tax arrangement under the laws and regulations of your jurisdiction?

According to Polish regulations, every arrangement defined according to these regulations as a cross-border tax arrangement is reportable. The definition of a cross-border arrangement is clarified in the answer to the next question.

- What constitutes a "cross-border" arrangement? To what extent are national structures also covered?

  A cross-border arrangement is an arrangement fulfilling the so-called “cross-border test” and

  a) fulfilling the “main benefits” test and having at least one generic hallmark,

  b) having at least one specific hallmark.

  The underlined terms should be understood according to the meaning defined in Polish regulations which will be clarified in the answer to the next question.

  The cross-border test is fulfilled if at least one of the following conditions is met:

  a) not all of the participants in the arrangement are resident for tax purposes in the same jurisdiction;

b) one or more of the participants in the arrangement is simultaneously resident for tax purposes in more than one jurisdiction;

c) 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;

d) 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;

e) such arrangement has a possible impact on the automatic exchange of information or the identification of beneficial ownership.

National structures, in order to be reportable, have to fulfil the "qualified relevant taxpayer" test. The "qualified relevant taxpayer" test is fulfilled if at least one of the following conditions is met:

a) revenues, costs or assets – as defined according to accounting regulations – of a given relevant taxpayer, determined according to the accounting records, exceeded in the preceding financial year the equivalent of €10,000,000.

b) the arrangement which is implemented or made available concerns goods or rights with a market value exceeding the equivalent of €2,500,000.

c) the relevant taxpayer is a person related to a person fulfilling one of the conditions mentioned above.

– How are the hallmarks and the "main benefits" test in Annex IV to DAC 6 defined and interpreted in your jurisdiction

Generic hallmarks as defined in Polish regulations include:

a) generic hallmarks defined in DAC 6,

b) specific hallmarks related to the "main benefits" test as defined in DAC 6, and

c) specific hallmarks listed in category C paragraph 1(b)(i), 1(c) and 1(d) of Annex IV of Directive 2011/16/EU.

Specific hallmarks as defined in Polish regulation include specific hallmarks listed in category C (excluding points listed above in the definition of generic hallmark) and in categories D and E of Annex IV of Directive 2011/16/EU.

The “main benefits” test is fulfilled if, according to the circumstances and facts, it should be assumed that a person acting reasonably and guided by the aim of conforming with the law rather than achieving tax benefit could legitimately choose another way of performance with which no tax benefit reasonably expected or resulting from the arrangement is entailed, and the tax benefit is a main benefit or one of the main benefits which a person expects to achieve as a result of implementation of that arrangement.

According to the guidelines issued by the Ministry of Finance, the “main benefits” test should be analysed from the perspective of three conditions:

a) the achievement of a tax benefit,

b) the tax benefit should be the main benefit, or one of the main benefits, of the arrangement,

c) the existence of an alternative way of performance.

– What constitutes a "tax benefit" under the legislation in your jurisdiction?

  A tax benefit according to Polish regulations is:

  a) lack of incurring a tax obligation, deferral of a tax obligation or reduction of the amount of tax obligation,

  b) appearance of tax loss or overstatement thereof,

  c) appearance of overpayment or a right to tax refund or overstatement thereof,

  d) lack of obligation to collect the tax by a tax remitter if it is a result of circumstances mentioned in point a),

  e) increase of the amount of surplus of VAT input tax over VAT output tax to be transferred to the next settlement period,

  f) lack of incurring, or deferral, of the obligation to prepare and submit tax information, including preparing and submission of reports concerning tax arrangements.

- Is it required that the achievement of the "tax benefit" is the sole or the main purpose of the structure?

  It is required that tax benefit is the sole or main purpose of the structure if neither a specific hallmark nor a so-called “other specific hallmark” is present in the arrangement. If only generic hallmarks are present in the tax arrangement, the “main benefits” test also has to be fulfilled.

- Do the laws and regulations of your jurisdiction require a connection to a potential abuse of tax structures?

  No.

- Did your jurisdiction adopt a whitelist of non-reportable "standard" tax arrangements?

  There is no specific list of non-reportable tax arrangements.

3. Who is subject to the reporting obligation (taxpayer, intermediary, other)?

Polish regulations distinguish between two kinds of intermediaries:

a) a promoter, who is an intermediary mentioned in Article 1 No. 21 paragraph 1 of DAC 6,

b) a supporter, who is an intermediary mentioned in Article 1 No. 21 paragraph 2 of DAC.

In the first place it is a promoter who is obliged to report the tax arrangement. If a promoter fails to submit a report to Head of National Revenue Administration, the taxpayer and the supporter are sequentially liable for submission of the report.

- Do the laws and regulations of your jurisdiction address the issue of potential legal conflicts of intermediaries with professional confidentiality obligations?

  Yes. If a promoter is obliged to preserve professional confidentiality with regard to the arrangement and he has not been released from that obligation by the taxpayer, he is not obliged to report the tax arrangement to the Head of National Revenue Administration. In such a case he has to inform the taxpayer about the obligation to prepare and submit the report and provide him with the information necessary to prepare the report. The promoter is obliged to inform the taxpayer and other persons obliged to submit the report that he will not report the tax arrangement. In the case of a marketable arrangement, the promoter has to report the arrangement to the Head of National Revenue Administration without indicating the taxpayer’s data.

Similar obligations refer to a supporter who is obliged to preserve professional confidentiality. He has to inform the promoter and the taxpayer that a given arrangement is a reportable tax arrangement. He has to report to the Head of National Revenue Administration about such situations. In the case of a marketable arrangement the promoter has to report the arrangement to the Head of National Revenue Administration without indicating the taxpayer's data.

4. What information must be included in a report on cross-border tax arrangements under DAC 6 in your jurisdiction and is there a specific format to be used?

A report on a cross-border tax arrangement should include:

a) data identifying the information provider and the taxpayer to which the tax arrangement scheme has been made available, including information concerning a business name or name and surname, date and place of birth, tax identification number, place of residence, registered office or management office, and, in the case of a person not having a place of residence in Poland or an entity not having a registered office or management office in Poland, a number and series of a passport or other identity-proving document or other identification number, if this person does not have a tax identification number and if the arrangement concerns persons being persons or entities related to the promoter or taxpayer;

b) the legal basis for reporting tax arrangement together with an indication of the features resulting in considering a given arrangement to be a tax arrangement, including indication of a hallmark and the role of the report provider;

c) an indication of whether the provided report on the tax arrangement concerns a cross-border tax arrangement or a marketable arrangement

d) a summary of the description of the arrangement, name of the arrangement, if assigned, and description of the business to which the tax arrangement applies, without disclosing the information constituting a trade, industrial or professional secret or a secret regarding production process

e) an exhaustive description of the arrangement together with an indication of the value of the arrangement, the assumptions of the arrangement, the operations carried out as part of the arrangement and their chronology, and existing links between related subjects;

f) a description of goals which are known to the report provider, for achievement of which the tax arrangement will be used;

g) the tax law provisions applicable to the tax arrangement, according to the knowledge of the report provider;

h) an estimated value of the tax benefit or approximate value of deferred income tax, if existing and known to the report provider or possible to be estimated by him;

i) an indication of performed actions which resulted in providing a report on the tax arrangement, together with an indication of the day on which the first operation was or will be performed for implementation of this arrangement;

j) an indication of the last progress of the tax arrangement and, in particular, information on the dates on which it was made available or implemented, or the date of operations within the arrangement, according to the knowledge of the report provider;

k) data referred to in point (a) of persons or entities that participate or are to participate in the tax arrangement or whom the tax arrangement may affect, and the countries and territories in which these persons or entities have a place of residence, registered office or management office, or whom this arrangement may concern, known to the report provider;

l) other data referred to in point (a) of other persons or entities obliged to provide a report on the tax arrangement, if any, known to the report provider;

m) an electronic address to which the Tax Arrangement Number (NSP) and other correspondence regarding the tax arrangement with competent authority will be delivered;

n) any NSP assigned by another EU member state in relation to a cross-border tax arrangement, if the NSP has been assigned to this arrangement by another EU member state.

In the case of a marketable arrangement, the information included in the report does not contain data related to the taxpayer and data mentioned in points (k) and (l) if the tax arrangement is reported by a promoter or supporter who is obliged to keep professional confidentiality with regard to the tax arrangement.

The report on tax arrangement is filed electronically as an XML file which has to be electronically signed by the report provider.

5. Is there an obligation to report tax arrangements which were already implemented in the past? If yes, what is the cut-off date?

Yes. The obligation to report concerns cross-border tax arrangements for which the first action aimed to implement the arrangement was taken after 25 June 2018. For domestic structures, the obligation to report concerns structures for which the first action aimed to implement these structures was taken after 1 November 2018.

6. Who is the competent authority for filing a report under DAC 6 in your jurisdiction?

The Head of National Revenue Administration (Szef Krajowej Administracji Skarbowej) is the competent authority for filing a report under DAC 6 in the Polish jurisdiction.

7. What is the deadline for filing a report?

The deadline for filing the report is 30 days after:

a) having made the tax arrangement available, having prepared the tax arrangement for implementation or having taken the first action aimed to implement the tax arrangement – for promoter,

b) the tax arrangement has been made available to the taxpayer or the taxpayer has prepared the tax arrangement for implementation or after having taken the first action aimed to implement the tax arrangement – for taxpayer, if he has neither received information regarding the Tax Arrangement Number nor been informed by the promoter that a Tax Arrangement Number has not been assigned yet to the tax arrangement,

c) having granted assistance, support or having advised on the preparation, introduction, organising, making available for implementation or supervising of implementation of the tax arrangement – for supporter, if he has neither received information regarding Tax Arrangement Number nor been informed by the promoter or taxpayer that a Tax Arrangement Number has not been assigned yet to the tax arrangement.

- ### Has there been an extension of deadlines due to the COVID-19 pandemic?

  For domestic structures the deadline to report the tax arrangement to the Head of National Revenue Administration has been suspended since 31 March 2020 until the thirtieth day after the state of epidemic and the state of epidemic threat will have ended.

For cross-border tax arrangements the first action aimed to implement which was taken between 26 June 2018 and 30 June 2020, the deadlines to file the report fall on:

a) 31 December 2020 – for promoter,

b) 31 January 2021 – for taxpayer,

c) 28 February 2021 – for supporter.

For cross-border tax arrangements which, as of 31 December 2020:

a) will have been prepared for implementation, or

b) for which the first action aimed to implement it has been taken, or

c) for which the supporter will have granted assistance or support or will have advised on the preparation, introduction, organising, making available for implementation or supervising the implementation of the tax arrangement

- the 30-day deadline to report the cross-border tax arrangement will run from 1 January 2021.

8. What are the penalties and/or other legal consequences for failing to submit a DAC 6 report within the applicable deadline?

According to the Penal Fiscal Code, not reporting the tax arrangements to the Head of National Revenue Administration is subject to a penalty in maximum amount of ca. PLN 25 million (ca. €5.5 million). As of 1 January 2021 the penalty will amount to ca. PLN 26.9 million (ca. €6 million).

9. Has your firm implemented specific processes regarding DAC 6 compliance? If yes, please describe.

Yes, our firm introduced internal procedures regarding recognition of reportable tax arrangements among arrangements which we deal with while performing our advisory services. The procedure also describes the reporting process.

10. Contact details

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PORTUGAL
Sérvulo & Associados

1. When was DAC 6 implemented into the National Tax Law of Portugal?

Portugal implemented it through Law no. 26/2020, dated 21 July 2020, entering into force on 22 July but taking effect as from 1 July 2020.

Furthermore, Decree-Law no. 53/2020, dated 11 August 2020, entered into force on 12 August and extended the deadlines for application of Law no. 26/2020.

- Have the tax authorities in your jurisdiction issued guidelines for the application and enforcement of the obligations under DAC 6?

  No guidelines whatsoever have been issued by the Portuguese Tax and Customs Authority.

  There is an expectation such guidelines will be issued, namely in what concerns the type of arrangements covered and the procedures for complying with the reporting obligations, which currently require further specifications (as it is being the practice in other EU member states).

2. What constitutes a reportable cross-border tax arrangement under the laws and regulations of your jurisdiction?

The arrangements to be communicated include national and cross-border arrangements complying with legally foreseen key characteristics, namely those which indicate, objectively and by themselves, a potential risk of tax evasion, including bending legal obligations to report information on financial accounts or the ultimate beneficial owners' identification.

In certain cases, the verification of these characteristics is sufficient so that the reporting obligation takes place; in other situations, a "main benefits" test may take place for concluding in relation to the existence of the obligation of reporting.

The "main benefits" test is considered satisfied if it is possible to determine, without reasonable doubt, that obtaining a tax advantage, at a taxpayer's or third party's level, is the main benefit or one of the main benefits that, objectively and in light of all the relevant facts and circumstances, can reasonably be expected from the mechanism being implemented.

Nonetheless, final guidance from the Portuguese Tax and Customs Authority is still expected in order to clarify the exact types of reportable arrangements.

- What constitutes a "cross-border" arrangement? To what extent are national structures also covered?

  National legislation uses the Directive's definition, whereas a "cross-border arrangement" means an arrangement concerning either more than one member state or a member state and a third country where at least one of the following conditions is met:

  a) not all of the participants in the arrangement are resident for tax purposes in the same jurisdiction;

  b) one or more of the participants in the arrangement is simultaneously resident for tax purposes in more than one jurisdiction;

  c) 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;

  d) 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;

  e) such arrangement has a possible impact on the automatic exchange of information or the identification of beneficial ownership.

  National arrangements are also covered, being defined as those that, depending on their objective characteristics, are apt to be applied or to produce effects, totally or partially, in Portuguese territory and are not considered cross-border mechanisms.

  Naturally, these arrangements should also meet at least one of the above-mentioned key characteristics.

- How are the hallmarks and the "main benefits" test in Annex IV to DAC 6 defined and interpreted in your jurisdiction?

  The definitions at stake – both for hallmarks and the "main benefits" test – follow Directive 2018/822.

Thus, for instance, the above-mentioned test is verified whenever it is possible to determine, without any reasonable doubt, that obtaining the tax advantage, at the level of the taxpayer or of a third party, is the main benefit or one of the main benefits which, objectively and considering all relevant facts and circumstances, may be reasonably expected from the implementation of the arrangement.

Nonetheless, guidance is expected from the Portuguese tax authorities in relation to the application of this test, as well as to the interpretation of said test, as well as the hallmarks.

- What constitutes a "tax benefit" under the legislation in your jurisdiction?

  Under Law no. 26/2020, a tax benefit implies the reduction, elimination or temporary deferral of tax, including the use of tax losses, to obtain a tax benefit which would not be obtained otherwise, either fully or partially, without implementing the arrangement.

- Is it required that the achievement of the "tax benefit" is the sole or the main purpose of the structure?

  As a rule, yes. However, in certain situations, the simple verification of the above-mentioned key characteristics is sufficient so that the reporting obligation takes place even without applying the “main benefits” test.

- Do the laws and regulations of your jurisdiction require a connection to a potential abuse of tax structures?

  Yes.

- Did your jurisdiction adopt a whitelist of non-reportable "standard" tax arrangements?

  Yes. The following information is not subject to being reported: strictly descriptive information of existing tax regimes, including tax benefits; advice in relation to already existing situations; and the exercise of mandates under administrative tax proceedings, tax appeals, tax criminal processes or tax offenses.

3. Who is subject to the reporting obligation (taxpayer, intermediary, other)?

As a rule, all taxpayers are subject to the new reporting obligations. The obligation of reporting applies to the taxpayers involved in the arrangements (deemed as the “relevant

taxpayer", but also to the intermediaries involved in the covered arrangements, such as consultants, auditors, lawyers and accountants.

Depending on the existence of legal or contractual privilege, the primary reporting obligation may fall upon the relevant taxpayer or the intermediaries.

- Do the laws and regulations of your jurisdiction address the issue of potential legal conflicts of intermediaries with professional confidentiality obligations?

  Yes. Under Portuguese law, certain intermediaries, such as lawyers, are bound by legal privilege, whereas others, such as consultants, may agree on the existence of contractual privilege.

  Nonetheless, compliance with the reporting obligations under Law no. 26/2020, if applicable, prevails over any professional confidentiality obligations, either legal or contractual. As a result, Law no. 26/2020 foresees that the intermediaries cannot be liable to responsibility arising from non-compliance with the applicable privilege rules.

4. What information must be included in a report on cross-border tax arrangements under DAC 6 in your jurisdiction and is there a specific format to be used?

According to Law no. 26/2929, the information to be reported should include, if applicable, the following elements:

a) the identification of intermediaries and relevant taxpayers, including their names, dates and places of birth, in the case of natural persons, residences for tax purposes, tax identification numbers and, if applicable, persons who are associated companies of the relevant taxpayer;

b) the details of the key-characteristic(s) that shape the mechanism as a reportable mechanism;

c) a summary of the content of the reportable mechanism, including the name reference by which it is commonly known, if any, and a description, in abstract terms, of the relevant business or regulatory provisions, unless that description leads to the disclosure of a commercial, industrial or professional secret or a business process, or of information whose disclosure is contrary to public policy;

d) the date on which the first step in the application of the reportable mechanism was or will be carried out;

e) details of the regulatory provisions that form the basis of the reportable mechanism (depending on the mechanism, such provisions may belong to more than one jurisdiction);

f) the value of the transactions that compose the reportable mechanism, regardless of the tax advantage expected from the mechanism;

g) the identification of the member state of the relevant taxpayers and any other member state susceptible to be related to the reportable mechanism;

h) the identification of any other person or entity without legal personality in a member state likely to be covered by the reportable mechanism, indicating the member states to which that person or entity is linked.

Specific guidance concerning the format to be used for the reporting and procedure for its presentation before the Portuguese tax authorities is still expected.

5. Is there an obligation to report tax arrangements which were already implemented in the past? If yes, what is the cut-off date?

Yes. Cross-border arrangements where the first step was implemented between 25 June 2018 and 30 June 2020, must be reported.

6. Who is the competent authority for filing a report under DAC6 in your jurisdiction?

The Portuguese Tax and Customs Authority (Autoridade Tributária e Aduaneira).

7. What is the deadline for filing a report?

Initially, since Law no. 26/2020, dated 21 July 2020, took effect as from 1 July 2020, the communications were supposed to take place by 31 August 2020.

On the other hand, the first communication of the reported information by the Portuguese Tax and Customs Authority to the competent authorities of the remaining member states was supposed to take place by 31 October 2020.

- Has there been an extension of deadlines due to the COVID-19 pandemic?

  Decree-Law no. 53/2020 postponed the deadlines for reporting domestic and cross-border arrangements, initially foreseen under Law 26/2020, as follows:

  - Information on reportable cross-border arrangements where the first step was implemented between 25 June 2018 and 30 June 2020 to be filed by 28 February 2021;

- Reportable domestic or cross-border arrangements made available for implementation or ready for implementation, or where the first step in its implementation was made, between 1 July 2020 and 31 December 2020 (also applicable to intermediaries who provided, directly or by means of other persons, assistance or advice concerning a reportable mechanism) – the 30-day reporting period begins on 1 January 2021;

- Situations covered by legal or contractual privilege involving the reporting of information on reportable domestic or cross-border arrangements made available for implementation or ready for implementation, or where the first step in its implementation was made, between 1 July 2020 and 31 December 2020 – the five-day reporting period begins on 1 January 2021;

- Domestic and cross-border marketable arrangements – first periodic report to be filed by the intermediary by 30 April 2021.

8. What are the penalties and/or other legal consequences for failing to submit a DAC 6 report within the applicable deadline?

The lack of filing or late filing of the above-mentioned information, as well as of any required clarifications and complementary information required by the Portuguese Tax and Customs Authority, is subject to penalties varying between €6,000 and €80,000.

There are also penalties of significant amounts for omissions and inaccuracies in the filings made, as well as the lack of presentation or late presentation of evidence or of any required clarifications requested by the Portuguese Tax and Customs Authority.

9. Has your firm implemented specific processes regarding DAC 6 compliance? If yes, please describe.

Sérvulo has created an internal compliance team which is responsible for determining the applicable procedures for DAC 6 purposes. This team includes members from all practice areas which are more likely to be involved in potentially reportable arrangements such as tax, corporate and real estate.

Until the Portuguese Tax and Customs Authority issue hallmarks, this team is currently defining the criteria to be used internally to determine if an operation should be considered reportable.

10. Contact details

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SLOVAK REPUBLIC
PAUL Q

1. When was DAC 6 implemented into the National Tax Law of Slovak Republic?

DAC 6 was implemented into Slovak tax law by amendment of Act no. 442/2012 Coll. on International Assistance and Cooperation in Tax Administration. The amendment was published in the Slovak Collection of Laws on 15 October 2019 under the number 305/2019 Coll. The Amendment came into force as of 1 January 2020, but the vast majority of provisions, including the obligation to report cross-border reportable arrangements, became effective as of 1 July 2020.

- Have the tax authorities in your jurisdiction issued guidelines for the application and enforcement of the obligations under DAC 6?

  Only the guidelines on filing the reports issued by the Financial Administration of the Slovak Republic are available, and only in Slovakian (https://www.financnasprava.sk/_img/pfsedit/Dokumenty_PFS/Infoservis/AVI/2020/2020.06.26_DAC6_XML_schema.pdf).

2. What constitutes a reportable cross-border tax arrangement under the laws and regulations of your jurisdiction?

- What constitutes a "cross-border" arrangement? To what extent are national structures also covered?

  The definition of "reportable cross-border arrangement" under the amendment corresponds with the definition of such arrangement under DAC 6.

  The amendment defines a "cross-border arrangement" as an arrangement or arrangements (that might involve various elements) concerning either at least two member states or a member state and a third country where at least one of the following conditions is met:

  (i) at least one natural person or entity participating in the cross-border arrangement is not a resident for tax purposes in the same jurisdiction as the other natural persons or entities participating in the cross-border arrangement;

(ii) at least one natural person or entity participating in the cross-border arrangement is simultaneously resident for tax purposes in more than one jurisdiction;

(iii) at least one natural person or entity participating in the cross-border arrangement carries on a business in another jurisdiction through a permanent establishment and the arrangement forms part or the whole of the business of that permanent establishment;

(iv) at least one natural person or entity participating in the cross-border arrangement carries on an activity in another jurisdiction without being resident for tax purposes or creating a permanent establishment situated in that jurisdiction;

(v) such arrangement has a possible impact on the automatic exchange of information or the identification of beneficial ownership.

The "cross-border arrangement" is reportable if it meets at least one of the hallmarks.

– How are the hallmarks and the "main benefits" test in Annex IV to DAC 6 defined and interpreted in your jurisdiction?

The definitions of “hallmarks" and “main benefits" test under the amendment are practically identical to the definitions of those terms under DAC 6. Neither the amendment nor its explanatory report provides for a special interpretation of those terms. This means that, the “hallmarks” and “main benefits” test included in the EU Directive equally apply in Slovakia as well.

An arrangement meets the “main benefits” test where 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.

– What constitutes a "tax benefit" under the legislation in your jurisdiction?

The Slovak tax laws do not provide for a specific definition of the "tax benefit".

– Is it required that the achievement of the "tax benefit" is the sole or the main purpose of the structure?

Not all hallmarks are linked to and require the “main benefits” test. Therefore, in order for such cross-border arrangements to become reportable, it is not necessary that achievement of tax advantage is the main benefit or one of the main benefits of the structure.

– Do the laws and regulations of your jurisdiction require a connection to a potential abuse of tax structures?

Each hallmark is in general defined as characteristics or features of cross-border arrangements that present an indication of a potential risk of tax avoidance.

– Did your jurisdiction adopt a whitelist of non-reportable "standard" tax arrangements?

There is no whitelist of non-reportable "standard" tax arrangements adopted in Slovak Republic.

3. Who is subject to the reporting obligation (taxpayer, intermediary, other)?

The primary reporting obligation lies with the intermediary. If no intermediary is involved, or if all intermediaries benefit from a legal professional privilege, the reporting obligation falls on the relevant taxpayer.

The definitions of both “intermediary” and “taxpayer” follow the definitions of those terms included in the DAC 6.

– Do the laws and regulations of your jurisdiction address the issue of potential legal conflicts of intermediaries with professional confidentiality obligations?

Intermediaries such as lawyers or tax advisers are exempted from reporting obligation where the Slovak professional confidentiality obligations apply.

4. What information must be included in a report on cross-border tax arrangements under DAC 6 in your jurisdiction and is there a specific format to be used?

Beyond the information required under DAC 6, the amendment requires also further information on intermediaries, users and the notified measure (it is envisaged that this information will be further specified by the implementing regulations to DAC 6).

The information should be reported electronically in a form published on the website of the Financial Administration of the Slovak Republic.

5. Is there an obligation to report tax arrangements which were already implemented in the past? If yes, what is the cut-off date?

Arrangements where the first step was implemented between 25 June 2018 and 30 June 2020 were to be reported no later than 28 February 2021 (the original deadline of 31 August 2020 was extended due to the COVID-19 pandemic).

6. Who is the competent authority for filing a report under DAC 6 in your jurisdiction?

The reports should be filed with the Financial Administration of the Slovak Republic.

7. What is the deadline for filing a report?

Both intermediaries and taxpayers should file a report within 30 days following the day the reportable arrangement is made available for implementation, is ready for implementation, or has been made.

- Has there been an extension of deadlines due to the COVID-19 pandemic?

  The deadlines for reporting were extended due to the COVID-19 pandemic by 6 months as follows:

  (i) reportable arrangements shall be reported no sooner than 1 January 2021 and no later than 31 January 2021;

  (ii) arrangements where the first step is implemented between 25 June 2018 and 30 June 2020 shall be reported no later than 28 February 2021.

8. What are the penalties and/or other legal consequences for failing to submit a DAC 6 report within the applicable deadline?

A penalty of up to €30,000 may be imposed (even repeatedly) for failure to report the required information on reportable cross-border arrangements within the deadlines.

9. Has your firm implemented specific processes regarding DAC 6 compliance? If yes, please describe.

Our firm has not implemented any specific processes regarding the DAC 6 compliance so far.

10. Contact details

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SWEDEN
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1. When was DAC 6 implemented into the National Tax Law of Sweden?

DAC 6 was implemented into the National Tax Law of Sweden on 1 July 2020. It was implemented through the act Lag (2020:434) om rapporteringspliktiga arrangemang (the Act).

- Have the tax authorities in your jurisdiction issued guidelines for the application and enforcement of the obligations under DAC 6?

  The Swedish Tax Agency has issued guidelines in Swedish for the application and enforcement of the obligations under DAC 6. These can be found at https://www.skatteverket.se/foretag/internationellt/rapporteringspliktigaarrangemangdac6.4.7c708f0e16bed42cd054ef7.html.

2. What constitutes a reportable cross-border tax arrangement under the laws and regulations of your jurisdiction?

- What constitutes a "cross-border" arrangement? To what extent are national structures also covered?

  “Cross-border arrangement” means an arrangement which concerns more than one member state of the European Union, or a member state and a third country, and which fulfils at least one of the following conditions:

  1. Not all participants in the arrangement are domiciled in the same state or jurisdiction.

  2. One or more of the participants in the arrangement is domiciled in more than one state or jurisdiction.

  3. One or more of the participants in the arrangement conducts business activities in another state or jurisdiction than where they are domiciled from a permanent establishment in the other state or jurisdiction and the arrangement forms part or all of the activities at the permanent establishment.

4. One or more of the participants in the arrangement conducts business in a state or jurisdiction other than where they are domiciled or where they have a permanent establishment.

5. The arrangement could affect the reporting obligation regarding financial accounts under Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards the mandatory automatic exchange of information on taxation, the multilateral agreement between competent authorities on automatic exchange of information on financial accounts signed on 29 October 2014, or equivalent agreement.

6. The arrangement could complicate the identification of beneficial ownership.

– How are the hallmarks and the "main benefits" test in Annex IV to DAC 6 defined and interpreted in your jurisdiction?

The “main benefits” test consists of determining that the tax benefit is the main benefit, or one of the main benefits, that a person can reasonably expect from the cross-border arrangement. The hallmarks are listed and defined in section 13 through 25 of the Act.

- Conversion of income (Section 13 of the Act)
- Use of an acquired company’s deficit (Section 14 of the Act)
- Standardised arrangements (Section 15 of the Act)
- Terms of confidentiality (Section 16 of the Act)
- Compensation to the adviser linked to the tax benefit (Section 17 of the Act)
- Circular transactions (Section 18 of the Act)
- Cross-border payments (Sections 19-20 of the Act)
- Circumvention of the rules on automatic exchange of information on financial accounts (Section 21 of the Act)
- Non-identifiable beneficial ownership etc (Section 22 of the Act)
- Transfer pricing (Sections 23-25 of the Act)

For most of the hallmarks, an arrangement is reportable if the tax benefit is the sole or main purpose of the arrangement. For certain hallmarks, the arrangement is always reportable. The hallmarks which are always reportable are:

circumventing reporting obligations (Section 21 of the Act), and

transfer pricing (Section 23-25 of the Act)

In addition to this, cross-border payments (Sections 19-20 of the Act) may be reportable without a main benefit in certain cases.

- What constitutes a "tax benefit" under the legislation in your jurisdiction?

  Although there is no statutory definition of what constitutes a tax benefit, it has been established in case law what may constitute a tax benefit. Examples of tax benefits are arrangements which make taxable income tax-free, make non-deductible expenses deductible, create tax deficits, exploit the underpricing rules, exploit the group contribution rules or exploit the close company rules.

- Is it required that the achievement of the "tax benefit" is the sole or the main purpose of the structure?

  It is required that the tax benefit is the main benefit, or one of the main benefits, that a person can reasonably expect from the cross-border arrangement.

- Do the laws and regulations of your jurisdiction require a connection to a potential abuse of tax structures?

  It is required that at least one hallmark is applicable. The hallmarks indicate that there is a risk of tax evasion.

- Did your jurisdiction adopt a whitelist of non-reportable "standard" tax arrangements?

  No.

3. Who is subject to the reporting obligation (taxpayer, intermediary, other)?

It is primarily the adviser to an arrangement, but sometimes a user (usually a taxpayer).

An adviser is a person who, among other things, designs, markets, organises or provides a reportable arrangement.

– Do the laws and regulations of your jurisdiction address the issue of potential legal conflicts of intermediaries with professional confidentiality obligations?

The adviser must in each individual case assess whether the duty of confidentiality applies to the information to be provided (cf. Government Bill 2019/20:74 p. 216).

An adviser who is not restricted by confidentiality is obliged to report all information about the arrangement. An example of this is if the client consents that a lawyer or law firm reports the information. In such a case, the lawyer or law firm is thus obliged to provide the information and is responsible for ensuring that this happens (Government Bill 2019/20: 74 p. 216).

If an adviser who is obliged to provide information is prevented from doing so due to the duty of confidentiality for lawyers, the adviser shall immediately inform all other advisers of the arrangement about the obligation to provide information (Chapter 33 b, section 22, first paragraph of the Tax Procedure Act (SFL)). If there is no other adviser obliged to provide the information on the reportable arrangement or if all other advisers are prevented from providing the information due to the duty of confidentiality of lawyers or equivalent rules in another member state, the adviser shall instead inform the user of the arrangement on the user's obligation to provide information (Chapter 33 b, Section 22, second paragraph SFL).

4. What information must be included in a report on cross-border tax arrangements under DAC 6 in your jurisdiction and is there a specific format to be used?

There is a specific form that can be used when reporting on cross-border tax arrangements under DAC 6. The information that must be provided is:

- identification information for all relevant advisors and users;
- a summary of the arrangement;
- the hallmarks that make the arrangement reportable;
- information on the national rules on which the arrangement is based;
- the date on which the implementation of the arrangement began, or when the arrangement is to be implemented;

- the value of the arrangement;
- the member states which are likely to be affected by the arrangement.

5. Is there an obligation to report tax arrangements which were already implemented in the past? If yes, what is the cut-off date?

There is an obligation to report tax arrangements which were already implemented. The cut-off date is 24 June 2018, and information about these arrangements must have been received by the Swedish Tax Agency no later than 28 February 2021.

6. Who is the competent authority for filing a report under DAC 6 in your jurisdiction?

The competent authority for filing a report under DAC 6 in Sweden is the Swedish Tax Agency.

7. What is the deadline for filing a report?

An adviser must normally provide information about an arrangement within 30 days after the day when any of the following has occurred (Chapter 33 b, Section 19 SFL)

- the adviser made the arrangement available.
- the arrangement was ready for implementation.
- the adviser began the implementation of the arrangement.

– Has there been an extension of deadlines due to the COVID-19 pandemic?

Arrangements which commenced after 24 June 2020 and before 1 July 2020 can be reported on 28 February 2021 at the latest, instead of the regular due date of 31 August 2020. As 28 February 2021 fell on a Sunday, the due date was extended to 1 March 2021. For arrangements which commenced between 1 July and 31 December 2020, the due date was extended to 30 days from 1 January 2021.

8. What are the penalties and/or other legal consequences for failing to submit a DAC 6 report within the applicable deadline?

If there is a failure to submit a report within the applicable deadline, a special reporting fee may be imposed (Chapter 3, Section 17 and Chapter 49 c, Section 1 SFL).

9. Has your firm implemented specific processes regarding DAC 6 compliance? If yes, please describe.

Although our firm has not implemented specific processes regarding DAC 6 compliance, our employees have been made aware of DAC 6 and what it entails.

10. Contact details

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