

DAC 6: EU tax disclosure rules

August 2020

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Main features

What	» Directive 2018/882/EU, commonly referred to as “ DAC 6 ”, amends the Directive on Administrative Co-operation (2011/16/EU), provides for the mandatory disclosure of information on 'potentially aggressive tax planning arrangements' and introduces automatic exchange of disclosed information between relevant tax authorities of EU member states.
Why	» To provide tax authorities with an early warning mechanism on new risks of tax avoidance and thereby enable them to carry out audits more effectively, with the final objective of improving the functioning of the internal market by discouraging the use of aggressive cross-border tax-planning arrangements.
Who	» Any intermediary (or a taxpayer) who has a connection with the EU.
How	» The DAC 6 imposes mandatory reporting obligations by intermediaries or, in certain circumstances, taxpayers of cross border arrangements which meet certain “hallmarks”.
When	» The Directive is in force since 25 June 2018, the domestic implementation was due on 31 December 2019, and domestic regimes should be effective by 1 January 2021. » Reporting obligations are due 30 days after the arrangement is made available / is ready for implementation or first steps have been made (whichever occurs first).

What

- » DAC 6 imposes mandatory reporting by intermediaries or, in certain circumstances, taxpayers, of reportable cross-border arrangements within 30 days beginning with the day on which the arrangement is made available by the intermediary to the taxpayer.
- » The scope of DAC 6 covers all direct and indirect taxes, with the exception of VAT, customs duties, excise taxes and social security contributions.
- » The information that needs to be reported is listed in the Directive and it includes, *inter alia*:
 - ✓ Identification of all taxpayers and intermediaries involved
 - ✓ Details of the relevant applicable hallmark(s)
 - ✓ A summary of the arrangement, including a summary of relevant business activities
 - ✓ The date on which the first step in implementation was or will be made
 - ✓ Details of the relevant local law
 - ✓ The value of the cross-border reportable arrangement
 - ✓ Identification of relevant taxpayers or any other person in any Member State likely to be affected by the arrangement

Who (I)

- » Reporting obligations are generally borne by the “**intermediary**”.
- » An intermediary may be exempt from reporting if it can show that another intermediary has reported the arrangement.
- » The relevant taxpayer could be responsible to report where:
 - › no intermediary has been involved;
 - › the intermediary is protected by legal professional privilege (“LPP”); or
 - › the intermediary is resident outside the EU.

An intermediary is...

- » Anyone who designs, markets, organises or makes available, implements, or manages the implementation of a **reportable cross-border arrangement** or anyone who helps with reportable arrangements and knows or could reasonably be expected to know that they are doing so; and
- » has some connection with the EU i.e.:
 - is tax resident in, incorporated in, or governed by the laws of, the EU;
 - has a PE or branch in the EU which is connected with the provision of the relevant services; or
 - is registered with a tax, consultancy or legal professional association in the EU.

Who (II)

- » Where the intermediary is liable to report to several Member States, disclosure should be made only to the Member State that features first in the list below:
 - › For **intermediaries**:
 - Where the intermediary is resident for tax purposes;
 - Where the intermediary has a PE through which services in respect of the arrangement are provided;
 - Where the intermediary is incorporated or where it is governed; or
 - Where the intermediary is registered with a professional association relating to legal, taxation or consultancy services.
 - › For **taxpayers**:
 - Where the relevant taxpayer is tax resident;
 - Where the relevant taxpayer as a PE benefiting from the arrangement;
 - Where income is received or profits generated; or
 - Where business activity is carried out.
- » Disclosure only needs to be made ~~once~~ in respect of an arrangement. In case of a multiple reporting obligation, the relevant taxpayer shall be exempt from filing the information if he can prove, in accordance with national law, that the same information has been filed in another Member State

How (I)

What is a “reportable cross-border arrangement”?

“Cross-border”

- » An arrangement will be “cross-border” where it concerns either more than one member state or a member state and a third country where at least one of the following conditions is met:
 - not all the parties are resident for tax purposes in the same jurisdiction;
 - one or more parties is simultaneously resident in more than one jurisdiction;
 - one or more parties carries on a business in another jurisdiction through a PE and the arrangements are part of that PE's business activities; or
 - the arrangements have a tax-related impact on at least two jurisdictions.

“Reportable”

- » Arrangements are reportable if they fall within one of a number of “hallmarks”
- » A number of the hallmarks only apply if a threshold “main benefit” test is met.



The “Main Benefit Test” (“MBT”)

- » The test would be satisfied if it can be established that the main benefit, or one of the main benefits, which a person may reasonably expect to derive from an arrangement is the obtaining of a tax advantage.

How (II)

- » The DAC 6 defines a series of “hallmarks”, which are broad categories setting out particular characteristics identified as potentially indicative of tax avoidance or abuse.

Hallmark	Description
A) Generic hallmarks linked to the MBT	<ul style="list-style-type: none"> • Taxpayer or participant undertakes to comply with a condition of confidentiality • Arrangement where intermediary’s remuneration depends on the tax advantage • Arrangement has standardized documentation and/or structure
B) Specific hallmarks linked to the MBT	<ul style="list-style-type: none"> • Arrangement consists in loss buying • Converting income into capital, gifts or other low taxed categories of income • Circular transactions resulting in the round-tripping of funds
C) Specific hallmarks related to cross-border transactions	<ul style="list-style-type: none"> • Certain deductible cross-border payments between associated parties* • Double deductions for depreciation • Relief from double taxation in more than one jurisdiction • Transfer of assets and where there is a material difference in amount being treated in consideration for the assets in those jurisdictions involved
D) Specific hallmarks concerning automatic exchange of information and beneficial ownership	<ul style="list-style-type: none"> • Arrangements which undermine reporting obligations or involve non-transparent legal or beneficial ownership
E) Specific hallmarks concerning transfer pricing	<ul style="list-style-type: none"> • Transfer pricing: Use of unilateral safe harbour rules or hard-to-value intangibles or base erasive transfers of functions

MBT applies

* The MBT threshold may apply in certain cases

How (III)

Reporting

- » The tax arrangement has to be disclosed 30 days after, whichever occurs first: (i) the arrangement is made available, (ii) the arrangement is ready for implementation or (iii) first steps have been made. Relevant deadlines:
 - › For retroactive arrangements: until 30 August 2020
 - › For ongoing arrangements: starting 1 July 2020 (i.e. first reporting deadline would be 31 July 2020)

Exchange

- » The reports have to be exchanged by the tax authorities within one month of the end of the quarter in which the information was filed. First exchange is due by 31 October 2020.

Updates

- » Periodic report on *marketable arrangements* ("update of the client list") is to be made every three months.

A "*marketable arrangement*" is a cross-arrangement that is designed, marketed, ready for implementation or made available for implementation without a need to be substantially customised.

Use (*optional*)

- » Each relevant taxpayer files information about use of arrangement in each of the years for which they use it.



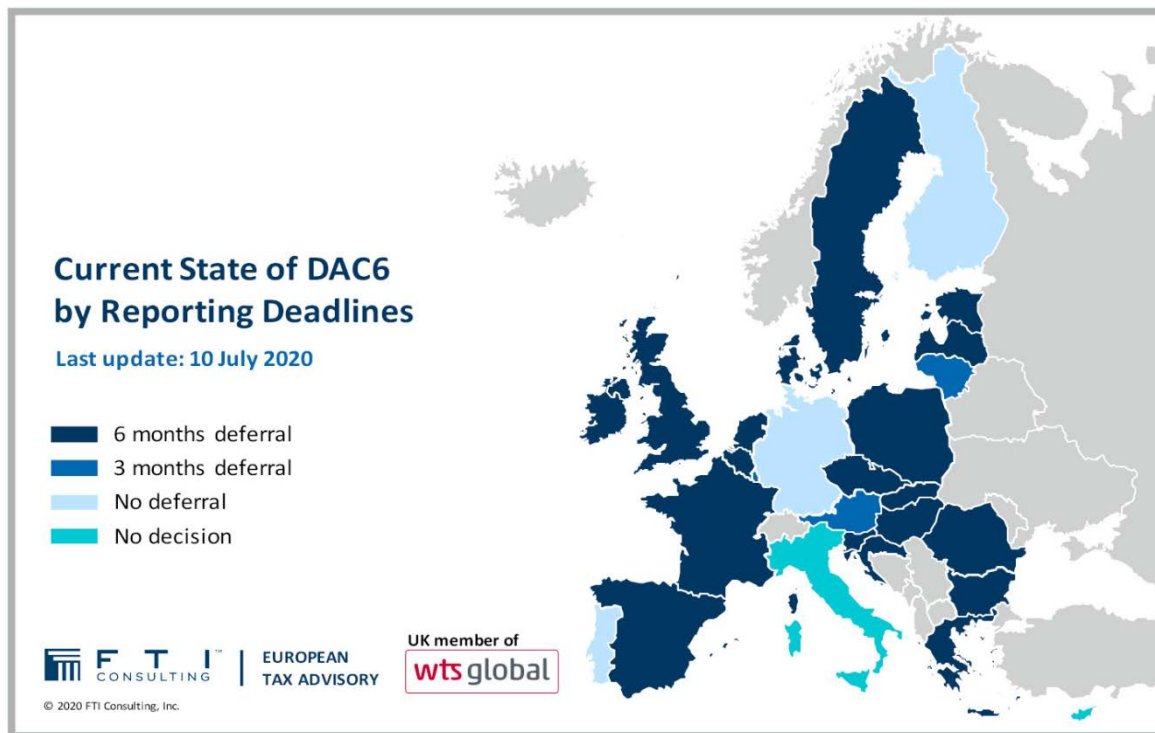
When



Certain time limits for filing and exchanging information on reportable cross-border arrangements have been extended following Decree no. 100 of 30 July 2020, which entails a six-month deferral due to the COVID-19 pandemic according to Directive (EU) 2020/874 of 24 June 2020.



When (II)



Additional considerations

- » National laws will provide for penalties for non-compliance, which according to the Directive should be scoped in a way that is effective, proportionate and dissuasive.
- » The scope of the Directive is very wide and the detail is left to local implementing law and guidance.
- » According to the currently available legislation in several Member States, including public and non-public consultation drafts, it is expected that the implementation of the DAC 6 by certain local jurisdictions will go beyond the original text (e.g. Poland has included VAT to the reporting obligation and adopted certain domestic hallmarks)
- » Despite Brexit, UK will implement DAC 6 legislation.



Short introduction to the WTS DAC6manager

February 2020

wts

Short introduction to the WTS DAC6manager

- » WTS provides together with AMANA the **WTS DAC6manager** that supports clients in fulfilling their regulatory obligations under EU DAC6 with a "guided questionnaire"
- » The **WTS DAC6manager** includes specific "guided questions" for domestic laws implementing EU DAC6 customized to your needs

Key features



- Automated interfaces to upload arrangements, questionnaires & master data



- Dynamic questionnaire guides user



- Automated reporting deadline tracking
- Support of the review and compliance process



- Automated evaluation of transactions based on decision tree
- Request for user interaction for complex cases



- Dashboard functionalities
- Evaluation of DAC6 champions based on transactions



- Part of the Amana tool suite
- Synergy with shared master data usage and further connections with other Amana tools



- Tracking and timestamps on all activities/changes



- Submission to the authorities via interface (Elster in Germany) or output as csv as long as interface standard is not defined

Advantages

- » Automated evaluation of transaction with regard to the reporting duty
- » Meet the processual challenges by a process focused software
- » Realization of the compliance process via the tool
- » Well-established software developer ensuring long-time support and availability

Tool insights – create, evaluate, review, report and document (automatically) (I)

» Manage your arrangements and the workflow steps easily

☰ DAC 6 All arrangements 👤

Tax arrangements > All arrangements > Overview - List

📄 Export to Excel 📄 Export to PDF

Drag a column header and drop it here to group by that column

ID	Name	Description	Type	Status	Creator	Creation date	Start date	Client
1	Loan		Standard	Review not yet completed for all participants	wts	2019-11-19	2019-11-01	
2	Forderungseinlage		Standard	Review not yet completed for all participants	wts	2019-11-20	2019-11-01	
3	Test GR	Provision of Loan	Loan	In progress	wts	2019-11-20	2019-11-14	
4	Test		Loan	In progress	wts	2019-11-20	2019-11-15	
5	ItalianCo		Standard	In progress	wts	2019-11-20	2019-11-19	
6	Test Arr.		Loan	Review not yet completed for all participants	wts	2019-11-20	2019-11-18	
7	IrishFinCo	Establishment of IrishFinCo; Granting loan via standardized loan agreement	Standard	In progress	wts	2019-11-20	2019-11-13	
8	Irish2	Loan Agreement	Loan	In progress	wts	2019-11-20	2019-11-12	
9	Contribution of loan	Contribution of loan by DE HQ into PL subsidiary against issuance of new shares	Standard	In progress	wts	2019-11-20	2019-11-15	
10	Contribution of receivable (PL)	Contribution of receivable by DE HQ into Polish Subsidiary against issuance of new shares	Standard	Review not yet completed for all participants	wts	2019-11-21	2019-11-14	
11	Gründung FinCo	Gründung einer Finanzierungsgesellschaft; Vergabe von Darlehen	Standard	In progress	wts	2019-11-25	2019-11-12	
12	Darlehen	Vergabe von Darlehen	Loan	Review not yet completed for all participants	wts	2019-11-25	2019-11-22	
13	Contribution of receivable	contribution of receivable into a PL subsidiary against issuance of new shares	Standard	In progress	wts	2019-11-25	2019-11-21	

Tool insights – create, evaluate, review, report and document (automatically) (II)

» Identify reporting obligations using country and arrangement type specific questionnaires

☰ DAC 6
Details arrangement ▶

Tax arrangements ▶ Evaluation ▶ Contribution of receivable ▶ 1 - Group Holding (Germany) ▶ Questionnaire ▶ Edit ▶

Back

Questionnaire

① Sec. 138d para. 2 no. 1 FC: Does the tax arrangement affect a tax to which the so-called German implementation law of the Directive on administrative cooperation ("EU-Amtshilfegesetz") applies?
Yes ▼

Intermediate result

A tax to which the so called German implementation law of the Directive of administration cooperative applies, is affected.

① **Sec. 138d para. 2 no. 2 sent. 1 FC: ** Does the tax arrangement affect at least one member state of the European Union and either
1. another member state of the European Union or
2. any other state?
Yes ▼

① Sec. 138d para. 2 no. 2 lit. a FC: Are all the participants in the tax arrangement tax resident in the same jurisdictions?
No ▼

Intermediate result

The Cross-Border-Criterion is met.

Sec. 138d para. 3 no. 1-3 FC: Does the tax arrangement result in

- a tax refund,
- a tax credit,
- an increase of a tax credit,
- a reduction of a tax liability,
- a loss of a tax liability,
- a prevention of a tax liability or
- the postponement of a tax liability into another taxation period or a different tax relevant point in time?

①
Yes ▼

Intermediate result

The arrangement results in a tax benefit. Go further.

① Sec. 138d para. 2 no. 3 lit. a FC: Can a third party - under consideration of all material facts and circumstances - reasonably expect that the main benefit or one of the main benefits is the mere achievement of a tax advantage?
... ▼

Help
Comments
File attachments

Examples of taxes to which the Directive on administrative cooperation ("EU-Amtshilfegesetz") applies:

- Income Tax including Wage Tax
- Corporate Income Tax
- Trade Tax
- Real Estate Transfer Tax
- Inheritance and Gift Tax
- Aviation Tax
- Vehicle Tax
- Non harmonized excise duties like the German Coffee Tax

Examples of taxes to which the Directive on administrative cooperation ("EU-Amtshilfegesetz") does not apply:

- Value Added Tax including Import Sales Tax
- Customs Duty
- Harmonized excise duties, that are explicitly mentioned in the Directive on administrative cooperation are taxes on:
 1. energy products and electricity (in Germany: Energy Tax, Electricity Tax),
 2. alcohol and alcoholic beverages (in Germany: Alcohol Tax, Beer Tax, Sparkling Wine Tax), and
 3. manufactured tobacco (in Germany: Tobacco Tax).

Tool insights – create, evaluate, review, report and document (automatically) (III)

» Review the evaluation results and decide on next steps

☰ DAC 6

Save Back to Evaluation Back

Questionnaire Result

Questionnaire Results

CrossBorder Result _____

Main Benefit Test Result _____

Hallmark Result _____

Reporter Result _____

Derived result _____ No Obligation To Report

Editor Results

Do you agree with the Questionnaire Result? Yes

Obligation To Report No

Remark _____

CrossBorder Result _____

Main Benefit Test Result _____

Hallmark Result _____

Reporter Result _____

Derived result _____ No Obligation To Report

Change date _____

Editor wts

Reviewer

Do you agree with the Result? Yes No

Remark _____

Tool insights – create, evaluate, review, report and document (automatically) (IV)

» Keep track of your tasks and deadlines

Home

Tax arrangements > Home

My deadlines

Export to PDF Today January 2020

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
30	31	01	02	03	04	05
06	07	08	09	10 contribution of receivable info	11	12
13	14 FinCo: Group Holding	15 Contribution of receivable	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31	01	02
03	04	05	06	07	08	09

My tasks

- Review: Forderungsentgelt
Please review the questionnaire for 01 - Group Holding
- Evaluation: Test GR
Please fill in the questionnaire for 01 - Group Holding
- Evaluation: Test GR
Please fill in the questionnaire for 04 - Sales
- Evaluation: ItalianCo
Please fill in the questionnaire for 01 - Group Holding
- Evaluation: ItalianCo
Please fill in the questionnaire for 1002 - ItalianCo
- Evaluation: Test An.
Please fill in the questionnaire for 01 - Group Holding
- Evaluation: Test An.
Please fill in the questionnaire for 1002 - ItalianCo
- Evaluation: IrishFinCo
Please fill in the questionnaire for 01 - Group Holding
- Evaluation: IrishFinCo
Please fill in the questionnaire for 1000 - IrishFinCo

WTS Global

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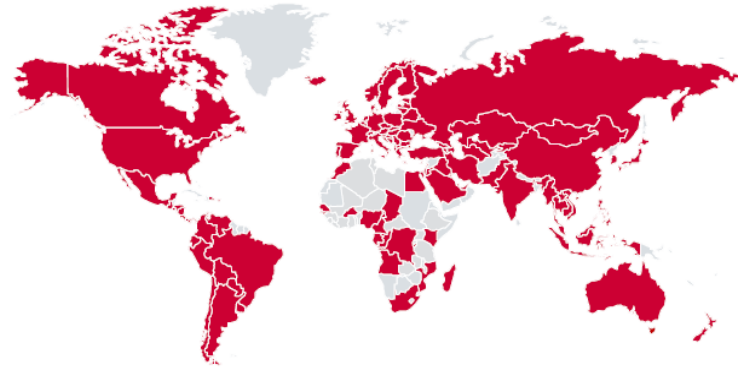
About WTS Global

With representation in over 100 countries, WTS Global has already grown to a leadership position as a global tax practice offering the full range of tax services and aspires to become the preeminent non-audit tax practice worldwide. WTS Global deliberately refrains from conducting annual audits in order to avoid any conflicts of interest and to be the long-term trusted advisor for its international clients. Clients of WTS Global include multinational companies, international mid-size companies as well as private clients and family offices.

The member firms of WTS Global are carefully selected through stringent quality reviews. They are strong local players in their home market who are united by the ambition of building a truly global practice that develops the tax leaders of the future and anticipates the new digital tax world.

WTS Global effectively combines senior tax expertise from different cultures and backgrounds and offers world-class skills in advisory, in-house, regulatory and digital, coupled with the ability to think like experienced business people in a constantly changing world.

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