

EU Mandatory Disclosure Rules

Entry Into Force on 25 June 2018

Part 33-03-02

This document should be read in conjunction with Council Directive (EU) 2018/822 of 25 May 2018

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Introduction

On 5 June 2018, *Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU on administrative cooperation in the field of taxation about mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements* (commonly referred to as “DAC6”) was published in the Official Journal of the EU, having been formally adopted by the Economic and Financial Affairs Council (ECOFIN) on 25 May 2018. A Directive comes into force on the twentieth day following its publication in the Official Journal of the EU and accordingly DAC6 has effect from 25 June 2018.

DAC6 introduces an obligation on persons to disclose potentially aggressive tax planning arrangements and on tax administrations to subsequently exchange this information. DAC6 mirrors many of the concepts and principles of the domestic mandatory disclosure reporting requirements introduced by FA 2011 which are contained in Chapter 3 of Part 33 TCA. Information on the domestic mandatory disclosure regime can be found in [TDM Part 33-03-01](#).

DAC6 defines a “cross-border arrangement” as 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 carries on a business in another jurisdiction through a permanent establishment situated in that jurisdiction and the arrangement forms part of 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 other jurisdiction, or

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

An “intermediary” is defined in the Directive as any person that designs, markets, organises or makes available for implementation or manages the implementation of a reportable cross-border arrangement and includes a person with the requisite knowledge who could reasonably be expected to know that they have undertaken to provide aid, assistance or advice with respect to designing, marketing, organising, making available for implementation or managing the implementation of a reportable cross-border arrangement.

A “reportable cross-border arrangement” is defined as any cross-border arrangement that contains at least one of the hallmarks listed in Annex IV of the Directive.

The purpose of this manual is to provide some general guidance on the scope of DAC6 as well as to alert taxpayers and intermediaries that 25 June 2018 is the commencement date in relation to monitoring and recording information in relation to possible reportable arrangements.

1. Scope of DAC6

DAC6 imposes mandatory reporting requirements on EU-based tax advisors, accountants, lawyers, banks, financial advisors and other intermediaries who design, market, organise, make available for implementation or manage the implementation of potentially aggressive cross-border tax-planning schemes. It also covers persons who provide aid, assistance or advice in relation to potentially aggressive cross-border tax-planning schemes, where they can be reasonably expected to know that they have performed that function. If the intermediary is located outside the EU or is bound by legal professional privilege, the obligation to report passes to the taxpayer.

In general, the disclosure requirements concern cross-border arrangements that have certain characteristics, known as “hallmarks”, which indicate that the main purpose or one of the main purposes of the arrangement is to obtain a tax advantage. Other “hallmarks”, which will be reportable, do not require this main benefit test to be satisfied. Intermediaries will be required to report any reportable cross-border arrangements to their tax authorities. The Member State to whom the arrangements are reported must then automatically share this information with all other Member States.

The purpose of DAC6 is to strengthen tax transparency and prevent aggressive cross-border tax planning by providing tax authorities with information about potentially aggressive tax planning schemes. Member States can then assess whether those schemes facilitate tax avoidance and take any steps necessary, including amending legislation, to close off the particular scheme.

2. When do reporting obligations commence?

Under DAC6, the first reportable transactions are those where the first implementation step occurs between 25 June 2018 (the date of entry into force of the Directive) and 1 July 2020 (the date of application of the Directive). This information will be required to be reported by 31 August 2020. Therefore, even though Member States have until 31 December 2019 to adopt and publish national laws required to comply with DAC6, the scope of the Directive needs to be considered with effect from 25 June 2018.

With effect from 1 July 2020, a reportable arrangement must be reported by an intermediary within 30 days beginning on the day after the arrangement: (i) was made available for implementation, or (ii) was made ready for implementation, or (iii) when the first step in the implementation was undertaken, whichever occurs first. DAC6 will also require intermediaries who provided aid, assistance or advice to file the information with the authorities within 30 days beginning on the day after they provided such aid, assistance or advice.

3. Next steps

Taxpayers and intermediaries should start to monitor and keep a record of details concerning arrangements which may fall within the rules with effect from 25 June 2018 and which could potentially require disclosure in August 2020.

DAC6 will be transposed into national legislation by 31 December 2019. Revenue will be assessing the consequences of DAC6 and may issue further guidance as appropriate.

4. Further information

Refer to the [Directive](#).