

DAC6 Compliance & Reporting



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1. General Overview



General Overview

What is DAC 6

DAC 6 is the EU Council Directive 2018/822 which was adopted by the Economic and Financial Affairs Council on 25th May 2018 in order to amend the Council Directive 2011/16/EU on administrative cooperation in the field of taxation.

DAC6 relates to the mandatory automatic exchange of information of certain cross-border arrangements and was introduced by the Council in order to improve transparency by requiring intermediaries (or taxpayers) to provide information regarding potential aggressive tax planning arrangements to EU Member States.

The 'cross border arrangements' that are considered reportable are those that meet certain criteria (i.e. Hallmarks) which indicate that aggressive tax planning may have taken place.

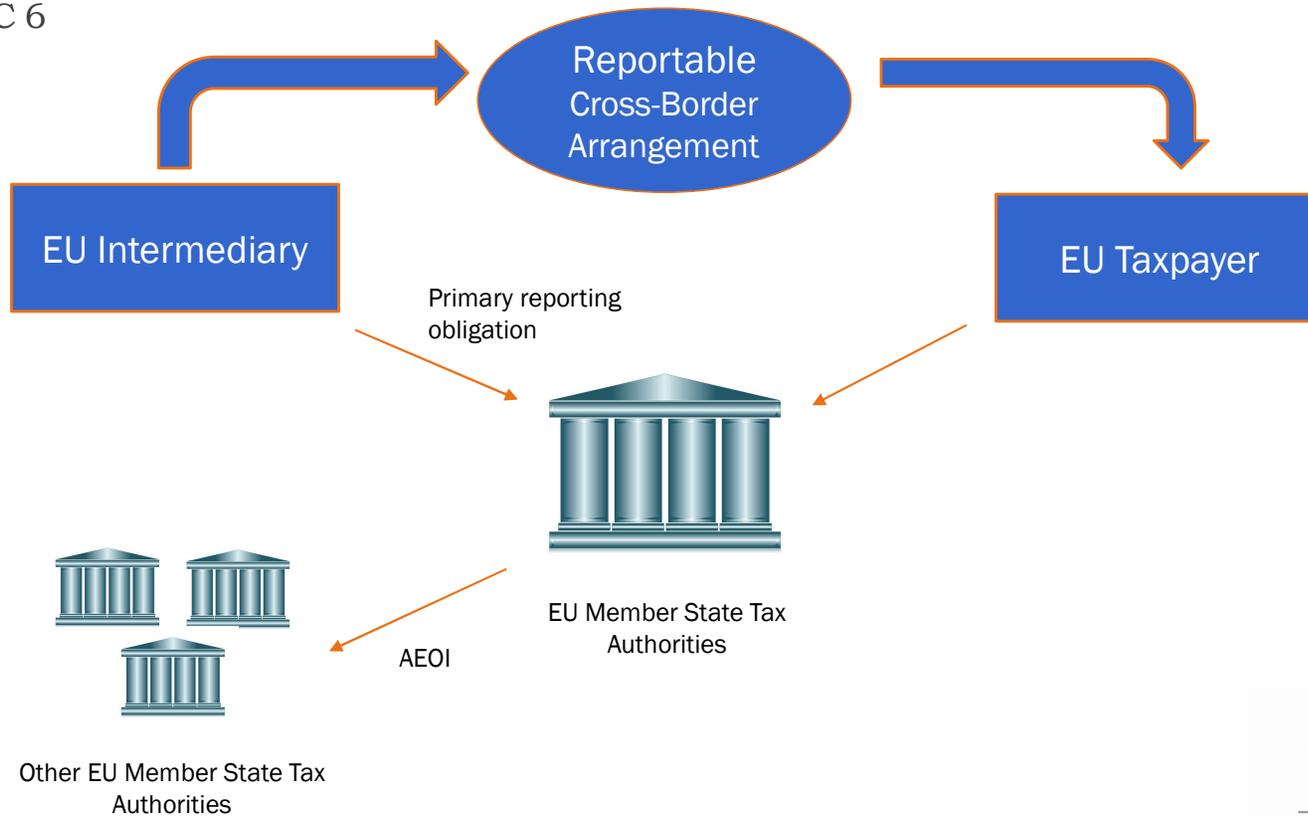
The objective of the Council is to provide to EU Member States with valuable information in regards to potential aggressive tax planning arrangements that may be followed by taxpayers, in order to undertake targeted tax audits and close potential loopholes.

The provisions of DAC 6 apply to all kind of direct taxes. Indirect taxes such as VAT, customs, excise duties and social security contributions are excluded.



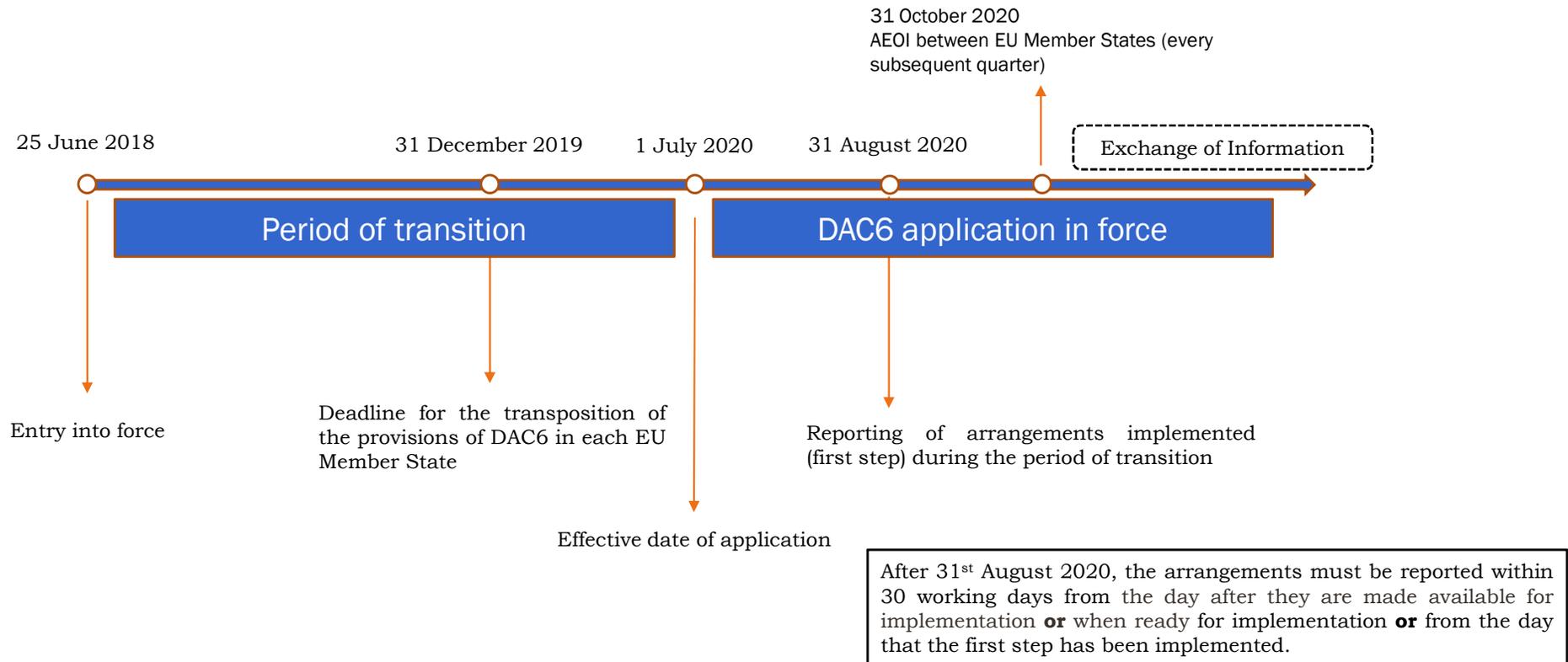
General Overview

What is DAC 6



General Overview

When is the DAC6 effective date



General Overview

Key Definitions

EU Intermediary

An "Intermediary" is:

Any person that designs, markets, organizes, makes available for implementation or manages the implementation of a "reportable cross-border arrangement" (a "promoter").

OR

Any person that knows or could be reasonably expected to know (based on facts, circumstances, available information and the relevant expertise/understanding) that they have undertaken to provide, directly or by means of other persons, aid, assistance or advice with respect to designing, marketing, organizing, making available for implementation or managing the implementation of a "reportable cross-border arrangement" (a "service provider").

The Intermediary must be linked to an EU Member State (i.e. tax resident, permanent establishment, incorporated, registered with a professional body/association).

The intermediaries can be (but are not limited to) lawyers, accountants, tax or financial advisors, banks, fiduciaries, trust companies, consultants etc.



General Overview

Key Definitions

EU Taxpayer

A "Taxpayer" is 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

Who has implemented the first step of a "reportable cross-border arrangement"

The taxpayer must be linked to an EU Member State (i.e. tax resident, permanent establishment, income/profits from EU Member State).



General Overview

Obligation to report

The obligation to report lies with the Intermediary, unless any one of the following conditions are met:

The EU Intermediary is protected by professional secrecy (i.e. legal professional privilege); or,

The reportable cross-border arrangement was designed in-house; or,

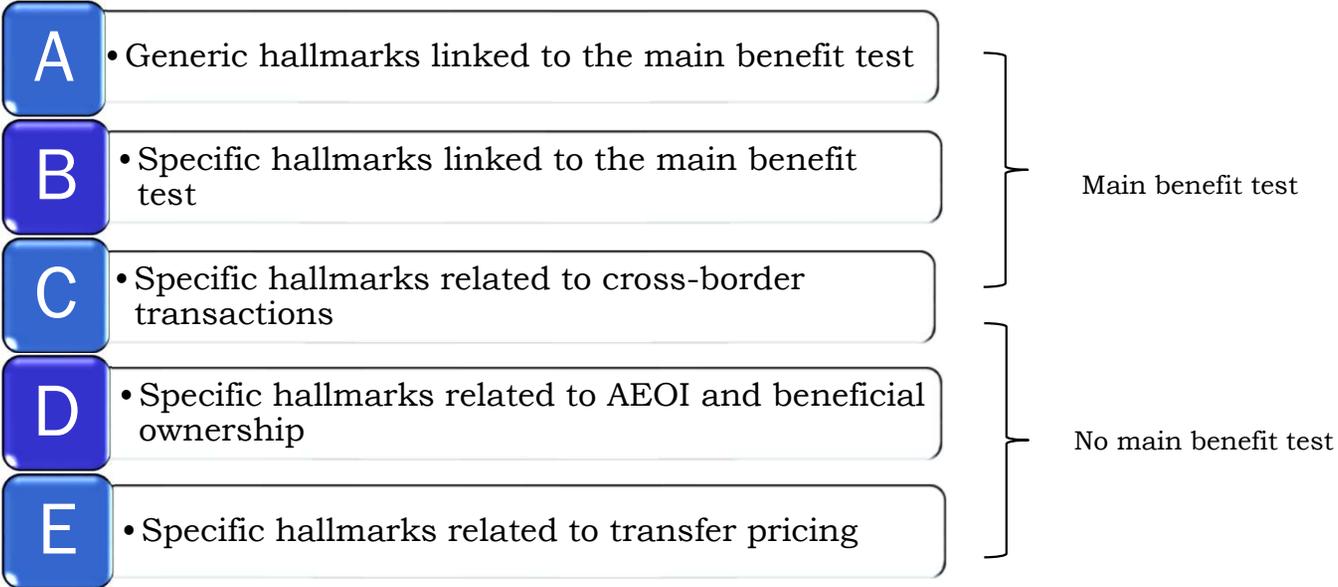
The Intermediary does not have a nexus with the EU.

If the Intermediary does not have an obligation to report, the disclosure obligation is shifted to the relevant Taxpayer.



General Overview

Obligation to report



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Information to be reported

The following information should be reported to the Tax Authorities in the cases of a "reportable cross-border arrangement":

- Identification of the intermediaries and the relevant taxpayers
- Details of the hallmarks in which the arrangement falls
- Summary of the arrangement
- Date of implementation of the first step of the arrangement
- Details of the local legislation that the arrangement is based on
- Value of the arrangement
- Identification of the EU Member States impacted by the arrangement
- Identification of any person in an EU Member State to be affected by the arrangement



1. Detail analysis of Hallmarks



General Overview

Detailed analysis of hallmarks

Main benefit test - i.e. 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

A – GENERIC HALLMARKS	B – SPECIFIC HALLMARKS	C – SPECIFIC HALLMARKS RELATED TO CROSS-BORDER TRANSACTIONS
<ol style="list-style-type: none">1. Confidentiality: Relevant taxpayer undertakes to comply with a condition of confidentiality (i.e. not to disclose how the arrangement could secure a tax advantage with other intermediaries or the tax authorities)2. Success fee: Intermediary is entitled to a fixed percentage fee by reference to the tax advantage3. Standardized documentation: Structure is available to more than one taxpayer without a need to be substantially customized for implementation	<ol style="list-style-type: none">1. Acquisition of loss-making company, discontinuing its main activity and using its losses in order to reduce tax liability2. Conversion of income into capital, gifts, or other types of revenue which are taxed at a lower level or exempt from tax3. Circular transactions resulting in the round-tripping of funds, using entities without any other primary commercial activity or transactions that offset/cancel each other	<ol style="list-style-type: none">1. Deductible cross-border payments between associated enterprises in the cases where:<ol style="list-style-type: none">a. The tax jurisdiction of the recipient does not impose any tax (or tax rate is almost zero); or,b. The payment benefits from a full exemption from tax in the jurisdiction of the recipient; or,c. The payment benefits from a preferential tax regime in the jurisdiction of the recipient

General Overview

Detailed analysis of hallmarks

Not linked to the main benefit test

D – SPECIFIC HALLMARKS RELATED TO CROSS-BORDER TRANSACTIONS

1. Deductible cross-border payments between associated enterprises in the cases where:
 - a. The recipient is not tax resident in any jurisdiction
 - b. The jurisdiction of the recipient is included in a list of third-country jurisdictions which have been assessed as non-cooperative (by EU or OECD)
2. Deductions for the same depreciation on an asset claimed in more than one jurisdiction
3. Relief from double taxation for the same item of income/capital claimed in more than one jurisdiction
4. Transfer of assets where there is a material difference in the amount being treated as payable for the assets in the jurisdictions involved

D – SPECIFIC HALLMARKS RELATED TO CROSS-BORDER TRANSACTIONS

1. An arrangement which involves the use of unilateral safe harbor rules.
2. An arrangement involving the transfer of hard-to-value intangibles for which no reliable comparable exists and for which the projection of future cash flows or income expected to be derived from the transaction or the assumptions used are highly uncertain.
3. An arrangement involving an intra-group cross-border transfer of functions, risks or assets, in the cases where the projected annual EBIT of the transferor during the 3 years after the transfer are less than 50% of the projected annual EBIT of such transferor if the transfer had not been made.

General Overview

Detailed analysis of hallmarks

Not linked to the main benefit test

F – SPECIFIC HALLMARKS RELATED TO AEOI AND BENEFICIAL OWNERSHIP

1. An arrangement undermining the reporting obligation on the automatic exchange of financial account information (i.e. CRS) with:
 - a. The use of an account, product or investment that is not a financial account but has similar features (i.e. certain derivatives)
 - b. The transfer of financial accounts or assets to (or the use of) jurisdictions that are not bound by the AEOI with the jurisdiction of residency of the relevant taxpayer
 - c. The reclassification of income/capital into products/payments that are not subject to AEOI
 - d. The transfer or conversion of a financial account/institution/assets to a financial institution/account/assets not subject to AEOI (i.e. splitting up of accounts to remain under the CRS threshold)
 - e. The use of legal entities, arrangements or structures that eliminate the reporting of account holders or controlling persons under CRS (i.e. not informing the financial institution about changes in the beneficiaries of a trust)
 - f. The use of arrangements that undermine or exploit weaknesses in the due diligence procedures used by financial institutions in order to comply with their obligations to report financial account information, including the use of jurisdictions with weak AML regimes or transparency requirements (i.e. citizenship/residence by investment schemes)
2. An arrangement involving a non-transparent legal/beneficial ownership chain with the use of persons, legal arrangements or structures:
 - a. That do not carry a substantive economic activity or substance; and
 - b. Are incorporated/managed/resident/controlled/established in a jurisdiction other than the jurisdiction of residence of the beneficial owners; and
 - c. Their beneficial owners are unidentifiable

How can EPW be of assistance

Our team is at your disposal for an assistance with **DAC 6 reporting** to the tax authorities and to discuss in more detail, **the implications that DAC 6 may have on your business.**





Auditors | Accountants | Consultants

Contact details

GEORGE THEOCHAROUS

MANAGING DIRECTOR

Email: gtheocharous@epw.com.cy

ELENA CHRYSOSTOMOU

HEAD OF TAX

Email: echrysostomou@epw.com.cy

ADDRESS

16 EKATERINIS KORNARO STR., 2015

VICTORY ATHALASSAS BUILDING, 3RD
FLOOR

NICOSIA, CYPRUS

T: +357-22866060/ F: +357-22314113

www.epw.com.cy