



DAC6

All you need to know

Make sure you understand what DAC6 means for you and be prepared.

Based on the new EU Mandatory Disclosure Rules, effective as of 25 June 2018, certain cross-border transactions need to be reported to the tax authorities.

Transitional rules will apply from 25 June 2018. This is a retroactive time point for reporting in 2020. Reportable cross-border arrangements implemented between that date and 30 June 2020 will need to be disclosed, either by an intermediary or by the relevant taxpayer.

Failure to comply with DAC6 requirements could mean facing significant sanctions under local law in EU countries and reputational risks for businesses, individuals and intermediaries.

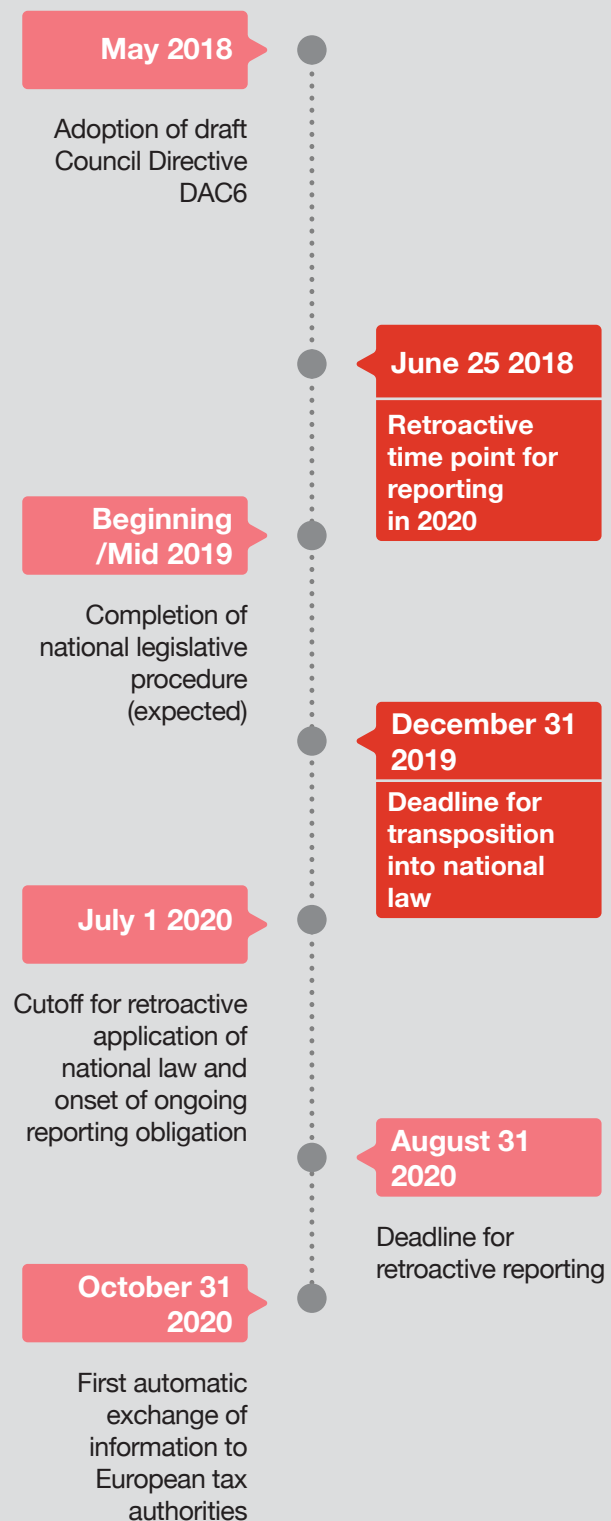
Summary

- The mandatory disclosure rules require disclosure to tax authorities of cross-border arrangements entered into by taxpayers, which fall within certain hallmarks.
A cross-border arrangement is an arrangement either involving more than one Member States or concerning a Member State and a third country.
- These hallmarks are very broadly-defined and many commercial transactions will be within the scope of the rules.
- Relevant reportable cross-border arrangements involving an EU territory will need to be disclosed to the relevant national tax authority within the required timeframe. The obligation falls to the taxpayer where there is no intermediary at all, where there is no EU intermediary or where legal and professional privilege applies.
- The disclosures are shared between the tax authorities of all Member States quarterly. Transitional rules will apply from 25 June 2018.

Why are these rules important

- Information about the transaction, the taxpayer, the values and associated parties will need to be disclosed to tax authorities.
- The disclosable information required by the Directive includes:
 - Taxpayer names, place and date of birth (for individuals), residence
 - Taxpayer identification numbers
 - Details of relevant associated persons
 - A description of the arrangements
 - The date on which the first step was or will be made
 - The value of the transaction
- The transitional rules will apply to transactions where a first step is taken after 25 June 2018, so taxpayers and advisers will need to keep records from that date to support disclosures.
- The hallmarks are very broad, and many commercial transactions could fall within them. Taxpayers and their advisers will need to decide whether the hallmarks apply whenever they are involved with a cross-border transaction.
- In many cases, the obligation to disclose falls directly on the taxpayer.
- There is the risk of penalties for non-compliance with the rules; yet the level of penalties has not been confirmed.

Timeframe for disclosure



How PwC can help?

Our team involves a team of experts in tax, people, processes, data and technology.

By bringing together these different skill sets, our dedicated staff can:

- perform impact assessment underpinned by a tried and tested methodology to help you assess key risk areas and readiness to comply;
- assist you in fulfilling any compliance obligations set by relevant legislative framework;
- provide on-site training to qualified staff to identify potential transactions on an ongoing basis.

Key facts

What arrangements are reportable?

A hallmark has to be met for the cross-border arrangement to be reportable. There are five broad categories of hallmarks covering different types of arrangements.

What are the hallmarks?

The hallmarks are set out in the box opposite. Some only apply where the “tax main benefit test” is met meaning that there must be a connection between the arrangement and obtaining a tax advantage. However, some have no such requirement and so are potentially much broader in application.

Who needs to make the disclosure?

- When there is an intermediary (such as an adviser or service provider) based in an EU Member State, that intermediary will be required to make the disclosure.
- Where there is more than one intermediary involved in the arrangement, all intermediaries are required to report the arrangement - unless they have proof that the required information has already been filed.
- Where an intermediary is subject to legal professional privilege under the law of their Member State, the reporting obligation passes to other intermediaries, or to the relevant taxpayer.
- If no intermediary is required to report the transaction, the obligation passes to the taxpayer. This is likely to apply if arrangements are implemented without taking external advice, where advice is taken outside the EU, or when advisers are subject to legal professional privilege.

The hallmarks

Hallmarks which are subject to the tax main benefit test

- **Generic hallmarks**

These are confidentiality, premium fee and standardized tax arrangement hallmarks.

- **Specific hallmarks with a tax main benefit**

These include acquiring a loss making company, converting taxable income into capital gains or exempt income, and circular or offsetting transactions.

- **Specific hallmarks related to cross-border transactions**

Deductible cross-border payments, where the recipient is resident in a state whose corporate tax rate is zero or “almost zero” (not defined), or the receipt is exempt or the payment benefits from a preferential tax regime.

Hallmarks not subject to the tax main benefit test

- **Specific hallmarks related to cross-border transactions**

Deductible cross-border payments, where the recipient is resident nowhere, or is a resident in a State which is included in an EU or OECD list of uncooperative tax jurisdictions; deductions for depreciation on the same asset are claimed in more than one jurisdiction; double tax relief is claimed in more than one jurisdiction; or there is a transfer of assets and there is a material difference between the consideration on the two jurisdictions.

- **Specific hallmarks concerning automatic exchange of information and beneficial ownership**

These apply even if a tax advantage is not the main benefit, and include structures involving holding companies and trusts, whereby the identity of the beneficial owners are made “unidentifiable”.

- **Specific hallmarks concerning transfer pricing**

There are three hallmarks: a. arrangements involving unilateral safe harbor rules; b. Arrangements involving the transfer of hard-to-value intangibles; and c. Cross-border transfer of functions / risks / assets which result in the EBIT of the transferor to fall to less than 50% of what it would have been if the transfer had not been made.



Our team

Mary Psylla

Partner, Tax and Legal Leader

+30 210 6874543
mary.psylla@pwc.com

Fredy Yatracou

Tax Partner

+30 210 6874017
fredy.yatracou@pwc.com

Antonia Zahaki

Tax Manager

+30 210 6874749
antonia.zahaki@pwc.com

