

DAC6 Pulse

Issue 4 – January 2020

A few more words on DAC6

According to the EU Council Directive 2018/822 (DAC6), Member States should have adopted and published, by 31 December 2019 at the latest, the laws, regulations and administrative provisions necessary to comply with the Directive. This is the reason why December was a month full of DAC6 developments, details of which can be found on the next page.

Nevertheless, the DAC6 landscape is still developing, as we gradually move towards the date of the Directive's official application on 1 July 2020. In the meantime, special attention should also be paid to Poland, where the full rules exceptionally apply from 1 January 2019.

Furthermore, given the fact that, as a transitional measure, where the first step in a reportable cross-border arrangement is implemented between 25 June 2018 and 30 June 2020, the arrangement should be reported between 1 July 2020 and 31 August 2020, affected parties should already prepare for the Directive's application.

However, in the absence of further guidance by the European Commission, many aspects of the Directive still seem to be unclear. Therefore, being on top of all DAC6 developments is crucial and for this purpose we have prepared this digital newsletter.

Implementation tracker (status as at 17 January 2020)

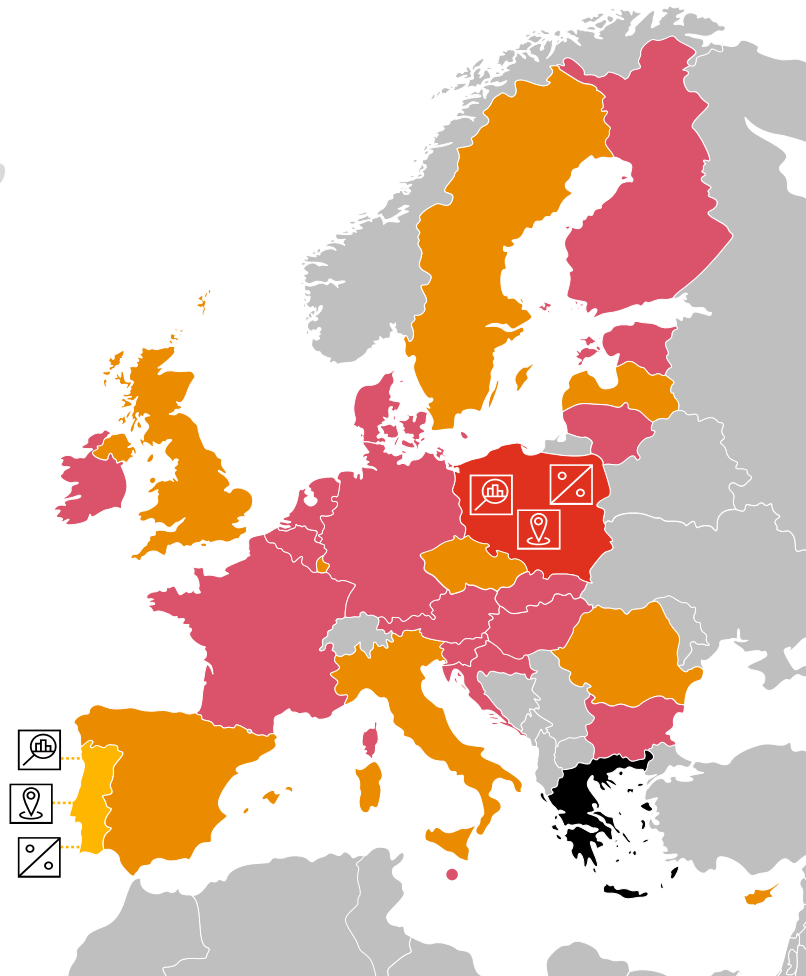
Map Key

Implementation status:

- Implemented (DAC6-conform)
- Implemented (broader scope)
- Draft (DAC6-conform)
- Draft (broader scope)
- No draft legislation yet
- Non-EU countries

Derogations applied:

- Additional hallmarks included
- Domestic transactions covered
- Other taxes (e.g. VAT) covered



Latest DAC6 developments

Belgium: Final law adopted by the Chamber of Representatives on 12 December 2019.

Bulgaria: Final law published in the State Gazette on 31 December 2019.

Denmark: Final law adopted by the Danish parliament on 19 December 2019.

Estonia: Final law adopted by the Estonian parliament on 18 December 2019.

Finland: Final law approved by the Finnish President on 30 December 2019.

Germany: Final law approved by the German Parliament on 12 December 2019.

Ireland: Final law approved by the Irish President on 22 December 2019.

Latvia: Draft bill presented in December, now pending last reading before enactment.

Lithuania: Order of the Head of the Tax authorities published on 20 December 2019.

Malta: Final law published in the State Gazette on 17 December 2019.

Netherlands: Final law accepted by the Parliament on 17 December 2019.

Romania: Draft bill published for public consultation on 9 January 2020.

Sweden: Swedish government published the white paper for the law's implementation in December.

UK: Final Regulations laid before Parliament and public consultation responses released in January.

Special story: The Main Benefit Test (MBT)



What is the MBT?

Certain hallmarks may be taken into account for DAC6 reporting purposes **only** if they fulfil the so called “**Main Benefit Test**”. Namely, these hallmarks are:

- the generic hallmarks under category A;
- the specific hallmarks under category B, and
- the hallmarks C1 (b)(i), C1 (c) and C1 (d).

The MBT is irrelevant for the remaining hallmarks, meaning that, if one of these hallmarks is fulfilled, a reporting obligation is triggered irrespective whether the arrangement is tax driven.

The MBT is satisfied **only** 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.

According to a [summary record prepared by the Commission Services](#), the MBT has the aim of filtering down which arrangements shall be reported. Furthermore, the test does not examine subjective intentions, but rather builds a reference to objective facts and circumstances.

It is noted that the presence of conditions set out in points (b)(i), (c) or (d) of category C1 hallmarks can not alone be a reason for concluding that an arrangement satisfies the MBT.



How can a tax advantage be obtained?

The Directive does not provide for a definition of the term tax advantage and as a result, the term could be interpreted broadly.

However, some jurisdictions chose to provide for such a definition as part of their national laws. For example, for the purposes of the draft UK Regulations a “tax advantage” includes:

- (i) relief or increased relief from tax;
- (ii) repayment or increased repayment of tax;
- (iii) avoidance or reduction of a charge to tax or an assessment to tax;
- (iv) avoidance of a possible assessment to tax;
- (v) deferral of a payment of tax or advancement of a repayment of tax, and
- (vi) avoidance of an obligation to deduct or account for tax, where the obtaining of the tax advantage cannot reasonably be regarded as consistent with the principles on which the relevant provisions that are relevant to the reportable cross-border arrangement are based and the policy objectives of those provisions.

A similar definition is also included in the Irish law.



Which taxes are concerned?

With the exception of the derogating countries (see first page), the taxes to look at when examining whether there is a tax advantage seem to be those defined in Art. 2.1 and 2.2 of Directive 2011/16/EU, i.e. taxes levied by or on behalf of a Member State or its territorial or administrative subdivisions (including local authorities) with the exception of VAT, customs duties and or those excise duties covered by other Union legislation on administrative cooperation.

However, there are countries which adopted the position that the definition of “tax” is specifically extended for the purposes of the MBT, and includes any equivalent tax in a jurisdiction other than a Member State - i.e. worldwide tax advantages.



What evidence is needed to prove that the MBT is not fulfilled?

Based on the wording of the Directive, it is unclear how evidence should be brought that a tax advantage was not the main benefit of an arrangement.

Nevertheless, considering the severe penalties in the event of an infringement of the reporting obligations, the safest approach is that the taxpayer has a documented argumentation why the MBT is not fulfilled.

How is the MBT applied?



Useful links

[DAC6: The EU Directive on cross-border tax arrangements](#)

[Mandatory automatic exchange of information in the field of taxation for reportable cross-border arrangements](#)

[Time to share \(PwC UK\)](#)

[Hallmark of the month: E3](#)

[PwC's DAC6 Compare Tool](#)

How can PwC help you

Our team combines experts in tax, people, processes, data and technology. By bringing these different skill sets together, we can help you and your organization understand DAC6, and the broader tax policy context, and implement effective controls and processes to ensure all reportable cross-border arrangements are proactively identified and managed.

Furthermore, we have developed a **DAC6 Smart Reporting tool** that makes use of technology to ensure DAC6 compliance, while keeping costs under control. Find out more [here](#).

Stay tuned for
our next issue
featuring B2 as
the “Hallmark
of the month”!

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