

DAC6 Newsletter

Designing and
implementing your long-
term compliance program
for the EU mandatory
disclosure rules (MDR)

January 2020

The EY logo consists of the letters 'EY' in a bold, white, sans-serif font. Above the 'Y' is a yellow chevron shape pointing to the right.

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Overview

The Council of the European Union (EU) has adopted Directive 2018/822 (DAC6 or the Directive) on the mandatory disclosure and exchange of cross-border tax arrangements.

The Directive, which entered into force on 25 June 2018, requires intermediaries and taxpayers to report cross-border arrangements that are considered by the EU to be “potentially aggressive.” The information about the cross border reportable arrangements will be automatically exchanged between the EU Member States.

Designing and implementing your long-term DAC6 compliance program

The obligations under the EU mandatory disclosure rules (DAC6) will not end with the initial reporting made by intermediaries and/or taxpayers. In fact, this is just the beginning of the DAC6 compliance life cycle. Taxpayers and intermediaries will need to design and implement a DAC6 compliance program that covers the end-to-end DAC6 process, including:



**This is not the case for Poland, where the law is in effect and reporting obligations are already being triggered.*

1 Increasing awareness and technical knowledge

It is critical to raise awareness of DAC6 with the board, management and other key stakeholders within the organization. The board and management should have a broad understanding of the new disclosure rules, as well as the potential penalties and reputational risk of noncompliance. They can also support and promote change and compliance within the organization.

The scope of taxes and hallmarks under DAC6 and the local country legislation is sufficiently broad. Insufficient technical knowledge may result in the failure to report relevant transactions or over-reporting. Internal tax teams must be familiar with the technical elements of DAC6 and the local country legislation and regulations, as well as understanding who is responsible for reporting, when the reporting will need to take place and what information will need to be reported. Training is necessary for tax teams to stay up to date with any changes in local country interpretations, so the team's assessment of arrangements is in line with market practice in the different jurisdictions.

2 Identifying and assessing potentially reportable transactions

In determining the arrangements that are likely to be reportable under DAC6, taxpayers and intermediaries will need to consider all the technical elements of the legislation, including each of the 15 hallmarks and, where relevant, the main benefit test. This analysis will also require a detailed consideration of the relevant DAC6 commentary and the local country regulations, interpretation and guidance, all of which may need to be translated from the local language into English.

The 15 hallmarks in DAC6 have been set as wide-ranging as possible. This has led to different interpretations taken by the EU Member States. In some cases, the mere presence of a hallmark will make arrangements reportable. In other cases, one of the main benefits of the arrangement must be a tax benefit for the arrangement to trigger a reporting obligation. Significant care must be taken in reporting any arrangements under the hallmarks requiring satisfaction of the main benefit test, even where they are used for legitimate tax-purposes as permitted under existing legislation.

While any arrangements that predate 25 June 2018 will effectively be "grandfathered" under DAC6, taxpayers will still need to track these to determine whether the arrangements will be brought within the scope of DAC6 on amendment and/or expiration.

3 Managing your intermediaries

Taxpayers and intermediaries will need to implement processes and controls that will underpin and govern their DAC6 relationship. These processes should involve taxpayers in the decision-making process for DAC6 reporting, especially in relation to reporting under any of the hallmarks that require the satisfaction of the main benefit test. It is recommended that taxpayers annually review and reconcile all arrangements reported by intermediaries, to confirm that the reporting is accurate, complete, timely and consistent. Taxpayers will also need to liaise with their intermediaries to obtain a copy of the reported information and the arrangement identification number, so the taxpayers have the necessary information required to comply with their annual reporting obligation in some EU Member States.

In some cases, the internal tax department itself may be classified as intermediary and have the main obligation for reporting.

4

Complying with your primary and secondary reporting obligations

Taxpayers will need a process to manage their reporting obligations under the local country legislation, including:

- ▶ Understanding and complying with the reporting format for each country
- ▶ Preparing templates for reporting
- ▶ Preparing and lodging reports within 30 days of a triggering event
- ▶ Securely storing the data, submitted reports, the arrangement identification number and other information required for annual reporting in some EU Member States
- ▶ Complying with the secondary annual reporting obligation in those jurisdictions where this is implemented (i.e., the obligation for each taxpayer to file information about its use of the arrangement to the tax administration in each of the years for which the taxpayer uses it)

5

“Health checking” your DAC6 compliance program

Taxpayers and intermediaries will need to continuously review and update their DAC6 compliance program to verify that it continues to be compliant and fit for purpose. As part of the health check of their DAC6 compliance program, taxpayers and intermediaries will need to:

- ▶ Check that processes to identify, assess and report arrangements are adequate
- ▶ Identify any inefficiencies in the existing processes
- ▶ Adjust processes and policies to reflect any changes impacting the DAC6 compliance program (in personnel, type of transactions, entities and jurisdictions)
- ▶ Adapt processes to align with changes in the DAC6 rules, including local interpretations
- ▶ Determine whether the processes in place are adequate for identifying the relevant intermediaries and achieving the right coordination among them
- ▶ Confirm that the data repository used to store the relevant DAC6 information (whether ultimately reported or not) is secure, preserved and archived
- ▶ Confirm that the information available in the data repository provides sufficient information for the annual reporting (in the jurisdictions where required)
- ▶ Cross-check their DAC6 reporting for consistency against all other documents lodged with tax authorities globally, including annual tax returns, transfer pricing documentation, CbCR and responses in context of tax audits/assessment

DAC6 local country implementation status

Under the terms of the Directive, the 28 EU Member States are required to adopt and publish national laws to comply with DAC6 by 31 December 2019. As at 8 January 2020, Austria, Belgium, Croatia, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Lithuania, Malta, the Netherlands, Poland, Slovakia and Slovenia have adopted final legislation implementing DAC6. A further 11 Member States have published draft DAC6 legislation, namely, Bulgaria, Cyprus, Czech Republic, Italy, Latvia, Luxembourg, Portugal, Romania, Spain, Sweden and the United Kingdom.

The domestic DAC6 legislation that has been enacted to date and/or made available in draft indicates there will be differences in the interpretation and application of DAC6 across the 28 EU Member States. Taxpayers and intermediaries should confirm that they have sufficient resources and tools to translate, assess and track these differences in the legislation, interpretation and reporting requirements to enable compliance with DAC6.

MDR Web is a web-based logging and reporting tool that provides a standardized and consistent approach to evaluate arrangements and to manage communication between taxpayers and intermediaries and submission of reportable arrangements.

Click [here](#) to register for an MDR Web demonstration.



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Global DAC6 webpage can be accessed [here](#).

Global tax alerts – current and future – can be accessed at www.ey.com/taxalerts.

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