



INTERNATIONAL TAX SERVICES

MANAGING YOUR DAC6 OBLIGATIONS

MANDATORY DISCLOSURE UNDER DAC6

GUIDANCE BY BDO

The DAC6 Directive obliges intermediaries and taxpayers to report information on certain cross-border arrangements. As the reporting obligation is implemented differently in the EU Member States and non-compliance may result in severe penalties, it is ok for intermediaries and taxpayers to manage their reporting obligation carefully.

In this document, we discuss the main elements of the Directive and how the Directive might affect you as an intermediary or a taxpayer. After elaborating in more detail on the functioning of the Directive, we provide some tips and tricks for managing your reporting obligation.

BDO employs some of the most knowledgeable DAC6 experts in the field, who are always on top of new developments regarding DAC6 legislation, both in Belgium and in the other EU Member States, with a dedicated DAC6 team in the various BDO Member Firms. BDO can offer you a full scope of services in order to become, and stay, DAC6 compliant.



ABOUT DAC6

Background

The changes to the Directive on Administrative Cooperation (DAC6) entered into force on 25 June 2018. All arrangements that were implemented, ready for implementation, or of which the first step in the implementation has been made in the period after that date, are subject to the reporting obligations under DAC6. The requirements are set out in more detail below.

Arrangements that were put into place before 25 June 2018 in principal do not have to be reported.

Reporting obligation

A reporting obligation exists when:

- ▶ It concerns an arrangement
- ▶ Which is cross-border
- ▶ It has at least one of the 'essential characteristics' or hallmarks listed in the Directive. These are features which indicate a potential risk of tax avoidance.

Arrangement

The term 'arrangement' is not defined, and could encompass everything, from a regular transaction to an elaborate tax planning structure. It is therefore hardly conceivable that a transaction would not be reportable because it would not be an 'arrangement'.

Cross-border

An arrangement is 'cross-border' if at least two Member States or one Member State and a non-European Member State are involved. Arrangements within the same Member State or arrangements that take place entirely outside the European Union should - in principle - not be reported. This involvement in another state could be through a subsidiary, through a permanent establishment, or even without a taxable presence in the other state, by performing an activity there.

Note that, the DAC6 Directive gives Member States the freedom to extend the scope to domestic arrangements. Belgium has not made use of this option (unlike, for example, Poland and Portugal).

Hallmarks

There is only a reporting obligation in case the cross-border arrangement also meets at least one of the Hallmarks. These Hallmarks are listed in Annex IV of the DAC6 Directive.

The Hallmarks are characteristics or features of cross-border arrangements that present an indication of a potential risk of tax avoidance.

There are currently 15 Hallmarks. Some are derived from the engagement letter between the participant in an arrangement and an intermediary, such as the existence of a confidentiality clause or a success fee. Other characteristics include the use of a standardized structure, the acquisition of a loss-making company, a payment between associated companies that is deductible on the part of the payer and (almost) non-taxable on the part of the recipient, international restructurings, transfer of hard-to-value intangibles, etc.

As a general rule, an arrangement must be reported as soon as one of the aforementioned Hallmarks is fulfilled, even if the arrangement is not (or not only) set up for tax reasons.

However, some of these Hallmarks are linked to the so-called main benefit test, which means that the arrangement will be reportable in case 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.

Taxes covered

The scope of DAC6 is not limited to direct taxes. All taxes levied by local authorities (e.g. inheritance and gift tax, registration duties, various taxes) fall within the scope of DAC6. VAT, customs and excise duties and social security contributions are excluded from the scope.

Here as well, European Member States are free to extend the scope to include these taxes, but Belgium has not made use of this option (unlike, for example, Poland and Portugal).



REPORTING UNDER DAC6

Who has to report?

The primary reporting obligation lies with intermediaries. Intermediary is defined as any person that designs, markets, organizes, makes available for implementation or manages the implementation of a reportable cross-border arrangement (so-called promotor) or any person that directly or indirectly provides assistance or advice to the promotor or tax payer in the framework of one of the aforementioned activities (so-called service provider). The notion of intermediary is thus broad and covers accountants, advisors, lawyers, banks, etc.

In principle, all intermediaries involved are obliged to report an arrangement, except when the intermediary has proof that the same information has already been reported by another intermediary, the reporting obligation would breach the legal professional privilege or the intermediary in question is a non-EU intermediary. An intermediary only has to report what he knows.

In certain cases, the reporting obligation shifts from the intermediary to the relevant taxpayer. The relevant taxpayer is obliged to report information on the arrangement when no intermediary is involved (in-house arrangements), the reporting obligation would breach the intermediary's legal professional privilege, or the intermediary is a non-EU intermediary.

What should be reported?

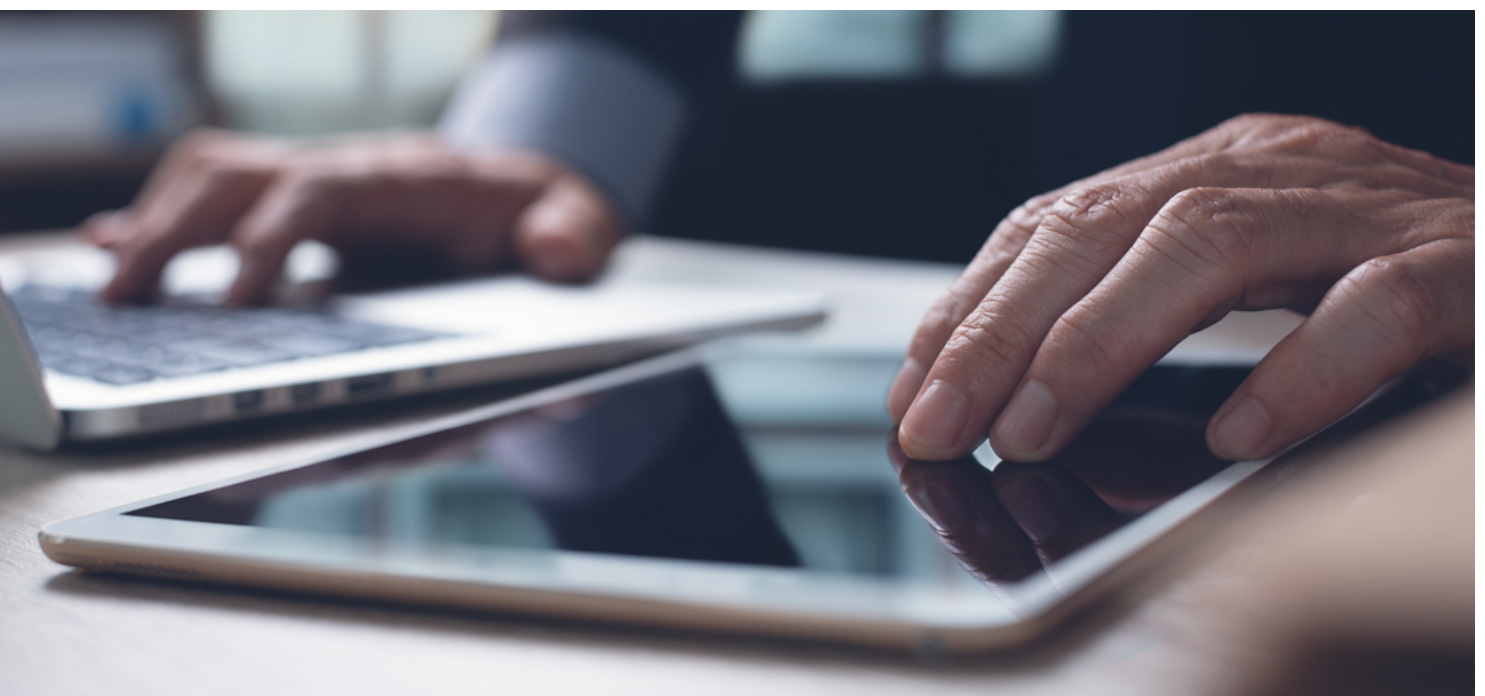
The intermediary or relevant taxpayer has to provide, amongst others, a summary of the content of the reportable cross-border arrangement, including a reference to the name by which it is commonly known, if any, and a description in abstract terms of the relevant business activities or arrangements.

When to report?

From 1 July 2020 it is possible to start reporting, both on new arrangements and arrangements that were implemented, ready for implementation, or of which the first step in implementation has been made in the period from 25 June 2018 onwards. The deadline for reporting on the arrangements in the lookback period is 31 August 2020 (in Belgium, extended to 28 February 2021 based on an administrative tolerance to consider the impact of COVID-19). For new arrangements the deadline is 30 days after the date that either the arrangement has been implemented, has been made ready for implementation or when the first step in implementation has been made. Whichever of these three events occurs first, determines the date on which the 30-day period will commence. Based on the same administrative tolerance, the reporting deadline in Belgium for reportable arrangements as from 1 July 2020 up to 1 January 2021 is set at 31 January 2021.

Compliance with DAC6

In view of the substantial fines that may be imposed by the Member States for non-reporting, it is important for intermediaries and taxpayers to be compliant with their DAC6 reporting obligations. Fines vary between Member States in the range from EUR 5,000 to EUR 5,000,000. This means that for each cross-border arrangement it is necessary to determine whether the arrangement is reportable and, if so, who is subject to the reporting obligation for that arrangement. Furthermore, for each arrangement the exact scope of the reporting obligation in the Member States concerned will have to be ascertained, as this may differ substantially from one Member State to another.



IN CONTROL WITH BDO'S DAC6 TOOL

Compliance through BDO's DAC6 tool

BDO has developed a DAC6 tool, which assists intermediaries and relevant taxpayers in identifying the DAC6 reportability of their arrangements through an intuitive questionnaire, based on Member State specific information; to keep an overview of their reporting obligations and filing statuses; and to convert tool-processed reports into actually fileable reports. BDO's DAC6 tool is fully suitable for facilitating reporting by both intermediaries and taxpayers. It has a clear interface and a comprehensive layout.

The DAC6 tool is under continuous development in light of changes in EU legislation and case-law and the reporting requirements in all Member States. New versions of the tool will be provided through updates. BDO has a dedicated DAC6 helpdesk; our substance-matter experts are available for any questions regarding the DAC6 tool that may arise.

Furthermore, upon request BDO can provide additional advice regarding reportability of certain arrangements. All reports are systematically stored, after which they can be searched, exported and shared through determined communication channels with tax authorities. Reports can be prepared in various formats (Excel, XML, etc.). Furthermore the tool guarantees security of data with a user-rights mechanism, proper Chinese wall and confidentiality measures, stored on a Dutch server.

Experience BDO's DAC6 tool

A demonstration of the DAC6 tool will allow you to experience its intuitive use. It is possible to license the standard version of the DAC6 tool for all Member States, or only for a select number of Member States. The license fee includes a tailor-made set up of the standard version based on an unlimited number of users and reportable arrangements, full access to updates of the DAC6 tool, where applicable, and helpdesk support with the functioning of the DAC6 tool. Upon request, it is possible to customize the DAC6 tool to your requirements or provide additional services around the governance of the DAC6 tool.

Interested?

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