DAC6: new EU tax disclosure rules
A practical approach to an important change

**Background**
The EU Directive 2018/22 of 25 May 2018 (“DAC6”) aims to provide Member States with information in order more rapidly to close loopholes in tax legislation and react against harmful tax practices.

This information will be created by imposing new disclosure obligations on EU intermediaries and taxpayers in relation to reportable cross-border arrangements (RCBAs). While in principle reports are only required to be made as from July 2020, the reporting requirements already apply to RCBAs the first step of which is implemented on or after 25 June 2018. The Directive needs to be implemented into domestic law by all EU Member States by 31 December 2019. Poland has already issued its DAC6 legislation; other Member States have already published draft legislation and more will do so shortly. DAC6 is closely linked to the OECD BEPS Action 12 on Mandatory Disclosure Rules. However, the scope for DAC6 is much broader.

**Requirements**
As a rule, DAC6 requires EU intermediaries to file information on RCBAs to their home tax authorities. Where no EU intermediary is involved or the intermediary asserts legal professional privilege, the obligation will fall to the EU taxpayer (including where the taxpayer designs and implements an RCBA without any outside advice or assistance). Failure to comply will result in penalties, to be determined by the Member States individually. The definition of an intermediary is broad, capturing lawyers, tax advisers and accountants, but also applies to banks, trustees, insurance companies, asset managers and other service providers. Such intermediaries will be required to report on RCBAs that involve at least one EU Member State, where certain ‘hallmarks’ are met.

These can be summarised at a high level as hallmarks:
- Linked to the main benefit test (A, B)
- Related to cross-border transactions (C)
- Concerning automatic exchange of information (D1)
- Concerning beneficial ownership (D2)
- Concerning transfer pricing (E).

Whilst the application of the hallmarks is expected to be clarified in domestic legislation and guidance, it is noteworthy that not all of the hallmarks are subject to the main benefit test (i.e. an assessment whether the main benefit or one of the main benefits which, having regard to all relevant facts and circumstances, a taxpayer may reasonably expect to derive from an arrangement is the obtaining of a tax advantage). This could significantly expand the number of reportable transactions when compared to existing tax disclosure regimes.

For RCBAs implemented between 25 June 2018 and 30 June 2020, the first reporting will be required by 31 August 2020. Thereafter, where the hallmarks are present, disclosure to the relevant tax authority should occur within 30 days. The information that needs to be reported will include, amongst others:
- Identification of the intermediary and relevant taxpayer
- Details of the relevant hallmarks
- A summary of the arrangement
- Details of the provisions forming the basis for the arrangement
- The value of the arrangement.
**How can Deloitte help?**

Deloitte is following up closely the implementation of DAC 6 across the EU. While additional clarifications will be needed in order to implement the rules, there are certain steps that businesses should be planning for now:

- **Strategy:** Mobilising your business’ response to the requirements, advising on policy, raising awareness in the C-suite and establishing a plan for efficient compliance
- **Impact assessment:** Identifying transactions or structures potentially affected by the hallmarks and considering where reporting responsibility will reside
- **Roadmap:** Planning the key activities as from today until July 2020 to lead your organization towards DAC6
- **Training:** Raising awareness within the business through eLearning modules as well as bespoke training programmes
- **Monitoring:** Tracking regulatory changes and to make the relevant source information accessible to affected intermediaries and taxpayers.

**Technology**

Providing a solution for capturing arrangements ensuring that the data aligns with local requirements, and integrating with reporting – through our MDR tool.

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**Our MDR tool is accessed through myInsight,** Deloitte’s digital platform, a secure online customisable hub which:

- Simplifies navigation between projects
- Facilitates efficient collaboration and sharing
- Visualises workflow and key information on a bespoke dashboard.
- Captures relevant information in a structured format
- Incorporates local jurisdiction knowledge
- Enables review and sign off of entries
- Integrates with reporting.

The hosted solution allows swift deployment, low setup and run costs and efficient updates as rules evolve globally.

**Secure. Flexible. Integrated.**

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We would welcome the opportunity to meet to discuss a pragmatic approach to DAC6 compliance and how we can accelerate your programme. If you would like to arrange a meeting, then please get in contact with a member of our team.

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