Welcome
Conor Hynes
Agenda

- Background
- Reporting
- Hallmarks and potentially reportable transactions
- Getting ready for DAC 6 reporting
Background

DAC6 is closely linked the OECD/G20 BEPS Action 12 Final Report from 2015. Compared to the OECD Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures (OECD MDR), the scope of arrangements covered by DAC6 is much broader

The goal of the implementation of DAC6 is to provide the tax authorities of EU member states with information to enable them to promptly react against harmful tax practices and to close loopholes through enacting legislation or by undertaking adequate risk assessments and carrying out tax audits

A deterrent effect shall be achieved through the disclosure of potentially aggressive cross-border tax planning at an early stage (i.e. before the disclosed arrangements are implemented)

DAC6 imposes the obligation to disclose reportable cross-border arrangements (RCBA’s\(^2\)) on EU Intermediaries

DAC6 generally applies to all kind of taxes with the exception of VAT\(^3\)

EU jurisdictions will need to implement this directive into national law by 31.12.2019

Local deviations can be expected in relation to the actual implementation

---

2) Some countries might also request disclosure of domestic arrangements
3) Some countries will require disclosure of VAT arrangements
Generally, an **Intermediary** that designs, markets, organises, makes available for implementation or manages the implementation of a **reportable cross-border arrangement** for a relevant taxpayer, has an obligation to report the arrangement to the **local tax authorities** who will exchange this data with other **EU tax authorities**.

In case **no Intermediary** is involved or is not required to perform the reporting of the **reportable cross-border arrangement**, a subsidiary reporting obligation exists for the relevant taxpayer.
Background
Potential impact for you

• An entity is in scope of DAC6 as an **Intermediary** where it acts as a promoter or service provider of an **RCBA** towards relevant EU taxpayers
• Focus on services provided
• Any entity is potentially in scope of DAC6 as an **Intermediary** where an entity in the EU implements, promotes or provides **RCBAs** to other group entities or third parties (e.g. suppliers)

• An entity is in scope of DAC6 as a **relevant EU taxpayer** where it benefits from an **RCBA**
• Focus on services received
• An entity is potentially in scope of DAC6 as a **relevant taxpayer** where it benefits from **RCBAs** promoted or provided by advisors, professional service providers and other **Intermediaries** (including other group entities)
Background
Timeline

- **29.10.2014** Retrospective date for OECD MDR
- **12.2015** BEPS Action 12 Final Report
- **21.06.2017** Publication of proposed rules
- **25.05.2018** Adoption of Directive by the EU Council
- **05.06.2018** Publication in official journal of the EU
- **25.06.2018** Date of entry into force (Note: All RCBAs implemented after that date are in scope for reporting under the DAC6)
- **31.12.2019** Deadline for EU member states to adopt and publish laws, regulations and administrative provisions
- **30.07.2020** First reporting on new arrangements
- **31.08.2020** Reporting on all retrospective arrangements
- **31.10.2020** First reporting on all marketable arrangements
- **01.07.2020** Date of application
- **01.07.2022** Review of hallmarks

**2014-17**  
**2018**  
**2019**  
**2020**  
**2021**  
**2022**
Introduction

Reportable cross-border arrangements

<table>
<thead>
<tr>
<th>Cross-border arrangement</th>
<th>RCBA</th>
<th>Contains at least one of the hallmarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>The term &quot;cross-border arrangement&quot; means an arrangement(^1) concerning either more than one EU member state or an EU member state and a third country where at least one of the following conditions is met:</td>
<td></td>
<td>A &quot;hallmark&quot; means a characteristic or feature of a cross-border arrangement that presents an indication of a potential risk of tax avoidance. An EU Intermediary must report a cross-border arrangement that contains at least one of the following:</td>
</tr>
<tr>
<td>• Not all of the participants in the arrangement are resident for tax purposes in the same jurisdiction</td>
<td></td>
<td>• Generic hallmarks linked to the main benefit test</td>
</tr>
<tr>
<td>• One or more of the participants in the arrangement is simultaneously resident for tax purposes in more than one jurisdiction</td>
<td></td>
<td>• Specific hallmarks linked to the main benefit test</td>
</tr>
<tr>
<td>• One or more of the participants in the arrangement carries on a business in another jurisdiction through a permanent establishment situated in that jurisdiction and the arrangement forms part or the whole of the business of that permanent establishment</td>
<td></td>
<td>• Specific hallmarks related to cross-border transactions</td>
</tr>
<tr>
<td>• One or more of the participants in the arrangement carries on an activity in another jurisdiction without being resident for tax purposes or creating a permanent establishment situated in that jurisdiction or</td>
<td></td>
<td>• Specific hallmarks concerning automatic exchange of information and beneficial ownership or</td>
</tr>
<tr>
<td>• Such arrangement has a possible impact on the automatic exchange of information or the identification of beneficial ownership.</td>
<td></td>
<td>• Specific hallmarks concerning transfer pricing.</td>
</tr>
</tbody>
</table>

Note: The directive shall not apply to value added tax and customs duties, or to excise duties covered by other Union legislation on administrative cooperation between Member States

---

\(^1\) According to the OECD MDR, the term "arrangement" includes an agreement, schema, plan or understanding, whether or not legally enforceable, and includes all the steps and transactions that bring it into effect.
Introduction

Reporting: What & when

**When to report**

**Reporting details**

**What to report**

---

**For RCBAs where the first step is implemented between 25 June 2018 and 30 June 2020**

Promoters, service providers and relevant taxpayers: By 31 August 2020

---

**For RCBAs that are made available, are ready for implementation or where the first step is implemented after 1 July 2020**

Promoters and relevant taxpayers: Within 30 days beginning:
- On the day after the RCBA is made available for implementation
- On the day after the RCBA is ready for implementation or
- When the first step in the implementation of the RCBA has been made whichever occurs first.

Service providers: Within 30 days beginning on the day after they provided, directly or by means of other persons, aid, assistance or advice.

---

**Special rule for "marketable arrangements"**

Periodic report every three months providing an update which contains new reportable information (concerning the points marked with an asterisk in the right box) that has become available since the last report was filed.

---

The following information must be reported by an EU Intermediary or a relevant EU taxpayer (if within their knowledge, possession or control):

- The identification of Intermediaries and relevant taxpayers, including their name, date and place of birth (in the case of an individual), residence for tax purposes, TIN and, where appropriate, the persons that are associated enterprises to the relevant taxpayer*
- Details of the hallmarks that make the arrangement reportable
- A summary of the content of the RCBA, 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,
- The date on which the first step in implementing the RCBA has been made or will be made*
- Details of the national provisions that form the basis of the RCBA
- The value of the RCBA
- The identification of the EU member state of the relevant taxpayer(s) and any other EU member states which are likely to be concerned by the RCBA*
- The identification of any other person in a EU member state likely to be affected by the RCBA, indicating to which EU member states such person is linked*.

---

**2018**

- **25 June 2018** Date of entry into force
- **RCBAs the first step of which is implemented during this period must be reported by 31 August 2020**

**2019**

**2020**

- **1 July 2020** Date of application Reporting within 30 days

1) A cross-border arrangement that is designed, marketed, ready for implementation or made available for implementation without a need to be substantially customised.
Hallmarks and potentially reportable examples
Hallmarks
Introduction and overview

There are five main categories of hallmarks in the DAC6:

A. Generic hallmarks linked to the main benefit test
B. Specific hallmarks linked to the main benefit test
C. Specific hallmarks related to cross-border transactions
D. Specific hallmarks concerning automatic exchange of information and beneficial ownership
E. Specific hallmarks concerning transfer pricing
# Hallmarks
## Main benefit test relevance

<table>
<thead>
<tr>
<th>A. Generic hallmarks linked to the main benefit test</th>
<th>B. Specific hallmarks linked to the main benefit test</th>
<th>C. Specific hallmarks related to cross-border transactions</th>
<th>D. Specific hallmarks concerning automatic exchange of information and beneficial ownership</th>
<th>E. Specific hallmarks concerning transfer pricing</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Confidentiality:</strong> From a tax authority or other promoters.</td>
<td><strong>Losses:</strong> Offset to reduce taxable profits, including through transfer of those losses to another jurisdiction or by acceleration of the use of those losses.</td>
<td><strong>Certain deductible cross-border payments (MBT):</strong> Hybrids or recipient stateless, low/preferentially taxed or exempt.</td>
<td>An arrangement or series of arrangements which circumvent EU Legislation (e.g. DAC) or agreements on automatic exchange of information, including agreements with non-EU countries, and have the effect of avoiding the reporting of income to the state of tax residence of the tax payer.</td>
<td>Arrangements involving the use of unilateral safe harbour rules OR Arrangements involving the transfer of hard to value intangibles OR Arrangements involving an intra-group cross-border transfer of functions and/or risks and/or assets if the projected EBIT during the three year period after the transfer, of the transferor(s) are less than 50% of the projected annual EBIT of such transferor(s) if the transfer had not been made.</td>
</tr>
<tr>
<td><strong>Contingent Fee:</strong> By reference to whether a tax advantage is obtained (or its size)</td>
<td><strong>Conversion:</strong> Income into capital, gifts or other categories of revenue which are taxed at a lower level.</td>
<td><strong>Assets subject to depreciation in more than one country:</strong> Double dip</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Standardised documentation:</strong> involves the use of standardised documentation, including standard forms.</td>
<td><strong>Circularity:</strong> Transactions resulting in round-tripping of funds, namely through involving interposed entities without other primary commercial function.</td>
<td><strong>Claiming double taxation relief more than once:</strong> More than one person can claim relief from double taxation in respect of the same item of income in different jurisdictions.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Transfer of assets:</strong> Where material difference in amounts being treated as payable in consideration for the assets in the jurisdictions involved.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Hybrids or recipient stateless, low/preferentially taxed or exempt.**

**Double dip:**

**More than one person can claim relief from double taxation in respect of the same item of income in different jurisdictions.**

**An arrangement trying to hide beneficial owners.**

**Arrangements involving the use of unilateral safe harbour rules OR Arrangements involving the transfer of hard to value intangibles OR Arrangements involving an intra-group cross-border transfer of functions and/or risks and/or assets if the projected EBIT during the three year period after the transfer, of the transferor(s) are less than 50% of the projected annual EBIT of such transferor(s) if the transfer had not been made.**
Illustrative example: Corporate Banking

**Situation**
- Bank Co provides a credit facility/loan to a Treasury Co.
- Treasury Co utilises the monies received from the credit facility/loan within its group as it sees fit i.e. the monies are loaned to Associate Co 1 and Associate Co 2.
- Associate Co 1 and Associate Co 2 will pay interest to the Treasury Co.

**Potential Impact/Points for consideration**

### Loan agreement between Bank Co and Treasury Co:
- Standardised documentation
- Confidentiality
- FATCA/CRS Reporting
- Should Bank Co be reasonably be expected to know whether the client’s internal financing arrangements may have a main benefit or one of the main of obtaining tax advantage?

### Internal client arrangements:
- Losses
- Circularity
- Payments between associates
- Transfer pricing of intra-group loan agreements
Illustrative example:
**FATCA/CRS – Moving accounts**

<table>
<thead>
<tr>
<th>Situation sketch</th>
<th>Situation</th>
<th>Potential Impact/Points for consideration</th>
</tr>
</thead>
</table>
| ![Diagram](image) | - Austrian client holds a deposit account in Ireland  
- Funds are moved to deposit account in the USA  
- A CRS exchange agreement exists between Ireland and Austria  
- No CRS exchange agreement exists between Austria and the USA  
- A FATCA Model 2 IGA is in place between Austria and the USA. | - Captured by hallmark, as new jurisdiction (US) does not have an exchange agreement with the tax residence of the account holder (Austria) and the original jurisdiction (Ireland) has an agreement  
- No reporting requirement by the U.S. FI or the EU taxpayer  
- Reporting required by Irish bank |
Illustrative example:
Group Restructuring – Transfer of Branches (Brexit)

Situation sketch

**Pre-Brexit:** UK Co is regulated by Financial Conduct Authority in the UK. UK Co distributes its products/services in other EU Member States/EEA through local branches under EU regulatory passporting regime.

**Post-Brexit:** UK Co being regulated by the Financial Conduct Authority in the UK is no longer regulated by a EU/EEA regulator. Therefore, it can no longer distribute its products/services in other EU Member States/EEA through local branches under EU regulatory passporting regime.

EU Co is set up and all activities of the UK Co’s EU branches are transferred to EU Co

**Potential Impact/Points for consideration**

- Transfer of assets where there is material difference in the amount being treated as payable in consideration (e.g. UK values on the basis of cost to replicate and EU jurisdiction values on discounted cash flow basis)
- Transfer of hard to value intangibles (no comparable exits and projected future cash flow derived from the transferred intangible is uncertain)
- Cross border transfer of functions/risk/assets and projected EBIT expected to fall by more than 50% in UK Co
Illustrative example:
Total return swap and securities lending

**Situation sketch**

**Total return swap**
- IE Co
- TRS
- Client
- Hedge (Equities)

**Securities Lending**
- Borrower
- Manufactured Payments
- Transfer of Securities
- Transfer of Collateral
- Lender
- Equities
- Return of Collateral
- Collateral

**Situation**
- The Client/Lender is not entitled to treaty relief when holding long position in Equities. Therefore, it enters into a TRS with the IE Co or a lending arrangement with the Borrower. The IE Co and the Borrower are entitled to treaty relief.
- The IE Co/Borrower hold Equity/Securities borrowed over dividend declaration/payment date and make substitute payment to the Client/Lender.
- Query whether return/fees paid by the IE Co/Borrower to the Client/Lender reflects or incorporates any element of a fee related to a tax benefit?
- Query whether TRS or Securities Lending arrangement triggers standardised documentation hallmark?

**Potential Impact/Points for consideration**
This is a fairly standard arrangement and is intended to demonstrate the potential reach of this hallmark which could have extensive scope.

Where tax advice was sought and recommended by an advisor, the advisor, fund manager and fund (depending on jurisdiction) may have reporting obligation in respect of the arrangement as an intermediaries.

- Confidentiality?
- Standardised documentation?
- Contingent fees?
- Circularity?
- Hybrids?
- Claiming double taxation relief in more than one jurisdiction?
- Circumvent FATCA/CRS?
**Situation sketch**

**Intra-group transfer of risk**

- **Insurer**
- **Reinsurer**

1. **€ Premium**
2. **Risk Transfer**

---

**Situation**

- Due to commercial/regulatory/financial reasons, the group decides to transfer the insurance risk to a reinsurance company.
- Irish insurer enters into reinsurance arrangement with low tax jurisdiction.

---

**Potential Impact/Points for consideration**

- Arrangements involving cross-border payments and transfers (including to third party reinsurers) may require disclosure under Category C and/or Category E hallmarks.
Illustrative example:
Cross-border leasing transactions

Situation sketch

Cross-border leasing transactions

- Banks
- Lessor
- Lessee

Situation

- Lessor leases an asset to an overseas lessee

Potential Impact/Points for consideration

- Arrangements under which depreciation is claimed in relation to the same asset in different jurisdictions?
- Cross-border payment to a low tax jurisdiction would also need consideration.
- Arrangements involving entities without substance or substantive economic activity (regardless of main purpose test).
Legislating for DAC6
Legislating for DAC 6
An overview

- DAC6 is based on an EU Directive, which needs to be implemented into local law
- Based on the currently available local legislation, including public and non-public consultation drafts, it is already clear that jurisdictions will locally deviate, for example by including domestic arrangements, expanding the scope to also cover VAT or extending the retroactive element of DAC6
- A Deloitte pan-European DAC6 expert group ensures close alignment and direct lines of communication between all EU countries and allows us to involve our local colleagues when and where necessary to obtain relevant advice or support
- Due to our network we further have direct access to DAC6 related resources and material in all relevant jurisdictions
- We are represented in most countries’ consultation groups and can provide informal updates
- Leveraging our pan-European network and DAC6 expert group, we are offering bespoke monitoring services of laws, regulations and other pieces of guidance across the EU member states and provide country summaries (see below).

<table>
<thead>
<tr>
<th>Country Overview</th>
<th>Law</th>
<th>Regulations</th>
<th>Guidance</th>
<th>Comments</th>
</tr>
</thead>
</table>
| Germany         | Consultation draft | n/a | n/a | • Consultation draft law to implement DAC6 under discussion with "working group"
• Potential deviations on definition of Intermediary. An arrangement number will be issued by the tax authority.
• Penalties up to 25k EUR
• Certain domestic arrangements appear to be in scope, apparently only to hallmarks meeting main benefit test |
| Italy           | Draft | n/a | n/a | • Consultation on draft ended end of 2018
• Italian FIs for CRS purposes will be Intermediaries
• Reporting will partially be retroactive back to 29 October 2014 (in analogy with OECD MDR)
• It appears that arrangements where the tax advantage is outside the EU are also in scope |
| Luxembourg      | n/a | n/a | n/a | • Currently no implementation timeline available |
| Spain           | n/a | n/a | n/a | • Consultation with limited stakeholders ongoing
• Appear willing to extend reporting to domestic arrangements |
| UK              | n/a | n/a | n/a | • UK will fully implement DAC6 alongside DOTAS / Not impacted by BREXIT
• Consultation on draft law expected early 2019 / Government working group has been established
• Publication of «good» or non-reportable arrangements expected next summer following the consultation period |
Getting ready for DAC6
EU Mandatory Disclosure Rules (also known as “DAC6”)
Getting ready for DAC6 reporting (1)

Establish a House approach and policy
- Identify responsible individuals
- Consider establishment of Steering Committee
- Determine timeline for ‘impact assessment’
- Consider approach for policy regarding ‘reportable transactions’
- Approach regarding intermediaries
- Approach to reporting and disclosure to counterparties/clients

Quantify the scale of the potential compliance burden
- Identify potentially reportable transactions
- Identify situations where reporting obligation falls on the business
- Identify advisors and process for gathering information
- Identify existing controls / processes

Engage with stakeholders
- Intermediaries (lawyers, accountants etc.)
- Business stakeholders
- Counterparties and clients
The myInsight – DAC6 module will include a set of decision trees that will guide you through the process to determine whether you participate in a reportable cross-border arrangement under DAC6 and, if yes, whether it needs to be reported by you or a third party.

Most steps of the decision tree on the left side comprise of a set of more detailed questions, which are reflected in separate decision trees as indicated below.
# Our offering

## Overview of a DAC6 project

## Phases of a DAC6 implementation project

<table>
<thead>
<tr>
<th>Phases</th>
<th>Goals</th>
</tr>
</thead>
</table>
| **Initiation workshop**          | • Understand DAC6  
• Define Stakeholders                                                    |
| **Impact assessment**            | • Identify and document impacted products, entities and services (PSE) |
| **Gap analysis**                 | • Compare legal requirements to existing processes  
• Define process & IT change requirements  
• Determine required «clean-up» exercises and populations             |
| **Monitoring**                   | • Identify local laws and guidance  
• Log changes to legislation  
• Define impact on current project and previous assessment             |
| **Implementation**               | • Run «clean-up» exercises for relevant populations  
• Implement new procedures and systems  
• Training and communication                                             |
| **Timeline**                     | ![Timeline Chart]                                                     |

### Workshop

- In-scope products, entities & services

![Impact assessment Diagram]

![Gap analysis Diagram]

![Implementation Diagram]
Other services and products

Deloitte’s myInsight platform

**Workflow management:**
Define and track compliance and consulting tasks

**Knowledge management:**
Capture, organize, store, and share vital information

**Connectivity:**
Workspaces for borderless collaboration with colleagues and Deloitte teams

**Real-time notifications:**
Timely messages and new content alerts

**Customizable experience:**
Tailorable interface to your specific preferences and usage

**Data visualization:**
Flexible filtering by jurisdiction, process, and year
Closing remarks
Important notice

At Deloitte, we make an impact that matters for our clients, our people, our profession, and in the wider society by delivering the solutions and insights they need to address their most complex business challenges. As the largest global professional services and consulting network, with approximately 286,000 professionals in more than 150 countries, we bring world-class capabilities and high-quality services to our clients. In Ireland, Deloitte has nearly 3,000 people providing audit, tax, consulting, and corporate finance services to public and private clients spanning multiple industries. Our people have the leadership capabilities, experience and insight to collaborate with clients so they can move forward with confidence.

This document has been prepared by Deloitte Ireland LLP for the sole purpose of enabling the parties to whom it is addressed to evaluate the capabilities of Deloitte Ireland LLP to supply the proposed services.

This document is not an offer and is not intended to be contractually binding. Should this proposal be acceptable to you, and following the conclusion of our internal acceptance procedures, we would be pleased to discuss terms and conditions with you prior to our appointment and no reliance may be placed for any purposes whatsoever on the contents of this document.

Deloitte Ireland LLP is a limited liability partnership registered in Northern Ireland with registered number NC1499 and its registered office at 19 Bedford Street, Belfast BT2 7EJ, Northern Ireland.

Deloitte Ireland LLP is the Ireland affiliate of Deloitte NWE LLP, a member firm of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (“DTTL”). DTTL and each of its member firms are legally separate and independent entities. DTTL and Deloitte NWE LLP do not provide services to clients. Please see www.deloitte.com/about to learn more about our global network of member firms.

© 2019 Deloitte Ireland LLP. All rights reserved.