

Directive on Administrative Cooperation (DAC 6)

On 25 June 2018, the EU Council Directive 2018/822 (commonly referred to as “DAC6”) was published in the Official Journal of the EU.

DAC6 amends EU Council Directive 2011/16/EU on administrative cooperation in the field of taxation as regards mandatory exchange of information in relation to reportable cross-border arrangements.

Intermediaries and in some cases, taxpayers have an obligation to disclose cross border arrangements if they fall within a set of rules the so called "Hallmarks". An intermediary is a person who devises, offers, sets up or makes available for implementation or manages the implementation of a reportable cross-border arrangement.

A 'cross-border arrangement' is an arrangement that concerns more than one Member State of the European Union (EU Member State) or an EU Member State and a third country.

All taxes (except for VAT, custom duties and Social Insurance) are covered within the scope of the DAC 6

The five categories of hallmarks are listed in Part II of Annex IV to Directive 2011/16 / EU. It concerns successively:

- A. general hallmarks associated with the main benefit test;
- B. specific hallmarks associated with the main benefit test;
- C. specific hallmarks related to cross-border transactions;
- D. specific hallmarks related to automatic exchange of information and ultimate interest;
- E. specific features associated with transfer pricing.

For hallmarks A and B, the main benefit test should be first met. The main benefit test is met if it can be demonstrated that the most important benefit or one of the most important benefits from a cross border arrangement is to obtain a tax benefit.

Reportable cross border arrangements examples:

- Acquisition of a loss-making company.
- Tax deductible payments/expenses to jurisdictions that impose no tax or almost zero tax (or they have a preferential tax regime).

- Tax deductible payments/expenses to non-cooperative jurisdictions.
- Double deduction of expenses.
- Arrangements that undermine the automatic exchange of information of financial accounts (CRS).
- Arrangements involving non-transparent legal/Beneficial owner chains.
- Arrangements involving transfer of "Hard to Value" intangibles (i.e. IP).
- Intra-group transfer of functions, risks and or/assets where pre and post transfer of assets, resulting in a difference in EBIT of more than 50%.

Failure of compliance to the reporting requirements entails to heavy penalties, depending on the reasoning for such failure. Fines may come up to **€ 20.000**.

Reporting framework

- For reportable cross border arrangements (RCBA) that took place from 1/7/2020 - 31/12/2020 the deadline is 31/1/2021.
- For reportable cross border arrangements (RCBA) that took place from 25/6/2018 - 30/6/2020 the deadline is 28/2/2021.
- As from 1/1/2021 any reportable cross border arrangement should be reported within 30 days of implementation.

Further guidelines and clarifications are expected to be issued by the Cypriot Tax Authorities as to the practical implementation of the directive.