

EU mandatory disclosure requirement

The EU Directive, commonly known as DAC 6, requires cross-border arrangements to be disclosed to the tax authorities where certain requirements are met. Failure to comply can result in penalties. We can assist you in implementing effective processes to ensure all reportable cross-border arrangements are identified and managed.

A cross-border arrangement is an arrangement that concerns more than one member state, or that concerns a member state and a third country (i.e. purely domestic arrangements should not fall within the Directive). A cross-border arrangement is reportable only if it has certain characteristics or features, known as “hallmarks”. These hallmarks are intended to limit the application of the regime to only those transactions for which there is a potential risk of tax avoidance.

We have included two examples of transactions that may require disclosure below:

Change of business model

A group company changes its business model, e.g. from buy-sell to sales support. The buy-sell function is taken over by a group company in another jurisdiction.

Assessment of reporting likelihood: As the change in business model could qualify as a cross-border transfer of a function, the significance of the change should be considered (i.e. whether EBIT – change of more than 50% occurs). The main benefit test is not relevant in this scenario.

Debt/equity swap

An EU parent company holds 100% of the shares in an EU (or non EU) subsidiary. The subsidiary has a loan from the parent under which the subsidiary has to pay arm’s length interest. The parent waives the interest and the subsidiary subsequently distributes annual dividend payments.

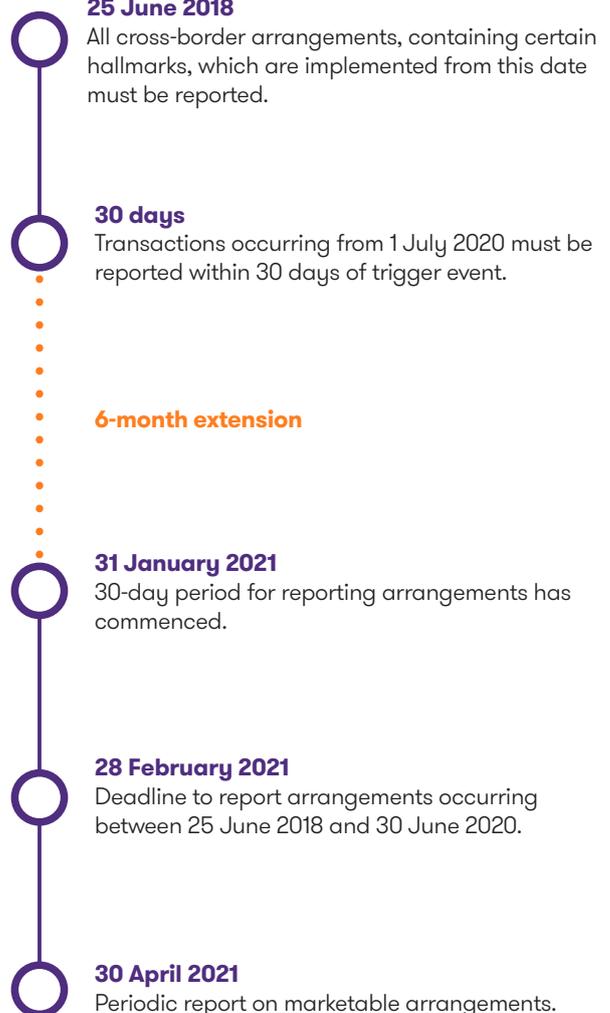
Assessment of reporting likelihood: There is a risk that the waived liability could be within scope of hallmark B2.

What are the penalties for non-compliance?

Penalties for non-compliance are substantial but vary across different jurisdictions.

Penalties in Ireland are outlined as follows:

- one-off €4,000 plus €100 for every day late for non-compliance once notified by Revenue;
- up to €500 per day where arrangement not reported within 30 days; and
- up to €5,000 for failure to include report reference number in annual tax return.



How can we help

We can assist you in implementing effective processes to ensure all reportable cross-border arrangements are identified and managed accordingly as follows:

Impact assessment

- an initial workshop to assist you in gathering relevant information on potentially reportable arrangements and review the information provided in the context of the DAC 6 reporting requirements;
- identify areas where you may have reporting obligations;
- review and validate the identified transactions from a technical perspective, based on the available legislation and interpretation of the mandatory disclosure regime rules and the Hallmarks included therein; and
- translate the knowledge gained from the impact workshop into an impact assessment report, which would provide guidance regarding:
 - arrangements that are likely to be reportable or clearly not reportable;
 - arrangements to be monitored;
 - a high-level summary of the potential applicable hallmarks;
 - who is responsible for reporting; and
 - observations for management consideration in relation to next steps for implementing a compliant approach.

Training and awareness

We can work with you to increase awareness of DAC 6 across your organisation by providing additional training as deemed appropriate.

Governance and procedures

- work with you in preparing internal procedures that identify arrangements that need assessment under the DAC 6 Hallmarks for reporting requirements;
- develop a governance model (which is particularly important to ensure that relevant transactions are reported within the 30 day reporting window); and
- we can also recommend electronic reporting platforms for monitoring and maintaining DAC 6 reporting compliance.

Reporting

- assist with the DAC 6 historic and ongoing reporting obligations ranging from full preparation to ad-hoc advice regarding the data points to be collected under the reporting requirements; and
- coordination of reporting requirements across relevant EU countries as appropriate.

Contact

For more information on DAC 6 reporting requirements, please contact a member of our team.



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