

DAC6 EU Mandatory Disclosure Requirement

Where are we now?

It is now over a year since reporting under DAC6 commenced across the EU. What have we learned from this first 15 months of mandatory disclosure reporting?

Background

The EU Mandatory Disclosure Reporting directive was implemented in 2018 and applies to all reportable cross-border arrangements implemented after 25 June 2018. The first reporting was due to commence in July 2020 but due to delays arising from the Covid-19 Pandemic, reporting was deferred in most EU Member States until January 2021.

The Directive sets out various Hallmarks defining different types of cross-border arrangements which are reportable by Intermediaries and Taxpayers to the tax authorities. Across the EU, individual tax authorities have interpreted these rules in sometimes varying ways.

Practical experiences

Poland and Portugal, for example, opted to implement the directive to include domestic arrangements and not just cross-border arrangements, which along with substantial penalties for non-filing has brought Poland to the top of the charts for numbers of disclosures.

Germany on the other hand decided against applying the Covid-19 deferral on filings, and as a result became somewhat of a test-bed for large-scale reporting, and intermediaries and

taxpayers in other Member States learned from their German experiences and reporting standards have subsequently improved in later filings elsewhere.

Some tax authorities have now started to share information on the numbers of filings and the prevalent hallmarks, and these statistics reflect the sizes of the markets and the hallmarks which in our experience, transactions are most commonly reportable under.

The following are a sample of the statistics announced to date by Member States' tax authorities:

Country	Approx. number of reports filed	Period
 Poland	16,500	Up to October 2021
 Germany	14,000	Up to October 2021
 The Netherlands	4,500	Up to March 2021
 Belgium	500	Up to March 2021
 Sweden	480	Up to June 2021
 Finland	250	Up to October 2021
 Czechia	140	Up to October 2021

Of the reports filed to date, transactions have been most commonly reported under the B2 and E hallmarks.

- Hallmark B2 captures arrangements that convert an existing stream of income into capital or another category of lower taxed income. Hallmark B2 is a conditional hallmark, that is, obtaining a tax advantage must be one of the main benefits of the arrangement in order for an arrangement to be reportable under Hallmark B2.
- Hallmark E2 captures arrangements relating to the cross-border transfer of hard-to-value intangibles between associated enterprises. *An intangible is considered to be 'hard-to-value' if no reliable comparable exists and if the projected future cash flows are highly uncertain at the time the transaction is entered into.*
- Hallmark E3 captures arrangements involving an intergroup transfer of functions and/or risks and/or assets, resulting in the projected three year earnings (EBIT) of the transferor being reduced by more than 50% compared to the EBIT of the transferor that would have arisen had the transfer not occurred.

What next?

DAC6 reporting has now been live in most EU Member States for over a year. Now that the tax authorities have had time to familiarise themselves with the practicalities of DAC6 reporting, we are starting to see queries coming from tax authorities on the reports filed.

Additionally, some tax authorities, such as Ireland, have moved to strengthen their audit powers to investigate whether intermediaries and taxpayers have systems in place appropriate to fully meet their reporting requirements under DAC6.

Consequently, with tax authorities' increasing experience of DAC6 and the ongoing exchange of information including sharing of DAC6 reports between tax authorities, it is more likely that audit activity and indeed penalties for non-compliance will become more prevalent going forward.

Furthermore, a number of non-EU countries have developed and are developing OECD mandatory reporting processes, similar to DAC6.

Therefore, it is essential for firms to manage their internal DAC6 compliance and reporting obligations, and have robust systems in place in order to remain fully compliant under the DAC6 mandatory disclosure directive.

How can Grant Thornton help?

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

- Impact assessment report
- Training and awareness
- Governance and procedures
- Ongoing compliance management and recommended software solutions
- Reporting and filing



Vikas Vasal

Global Leader – Tax
T: +91 9810 784829
E: Vikas.Vasal@gti.gt.com



Sasha Kerins

Partner – Tax
T: +353 1 6805 778
E: Sasha.Kerins@ie.gt.com



Paschal Comerford

Director
T: +353 1 4332 437
E: Paschal.Comerford@ie.gt.com



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