DAC6 Newsletter

Designing and implementing your long-term compliance program for the EU mandatory disclosure rules (MDR)

January 2020
Designing and implementing your long-term DAC6 compliance program

The obligations under the EU mandatory disclosure rules (DAC6) will not end with the initial reporting made by intermediaries and/or taxpayers. In fact, this is just the beginning of the DAC6 compliance life cycle. Taxpayers and intermediaries will need to design and implement a DAC6 compliance program that covers the end-to-end DAC6 process, including:

- Identifying, assessing and reviewing potentially reportable arrangements
- Implementing new governance policies, processes and responsibilities for collation of data, assessment, review, decision-making and reporting
- Managing intermediaries, including having input and control over the decision-making and reporting process
- Preparing and submitting the initial report for the two-year transitional period to the EU tax authorities by 31 August 2020*
- From 1 July 2020, fulfilling the ongoing reporting obligations within 30 days of a “triggering event”
- Primary responsibility to disclose rests with each intermediary; however, it is the relevant taxpayer’s responsibility to disclose if no intermediaries with EU nexus or all intermediaries with EU nexus covered by LPP
- Reconciling the DAC6 reporting to other filings made to EU and non-EU tax authorities, including annual tax returns, transfer pricing documentation, country-by-country reporting (CbCR) and responses in the context of tax audits/assessment
- Complying with the annual reporting disclosure required to be made by taxpayers in certain EU Member States
- Evidencing DAC6 compliance to the internal and external auditors
- Tracking all information that has been reported to the EU tax authorities, along with information that has been analyzed, assessed and ultimately deemed not reportable
- Preparing a support file in advance of an investigation by the tax authorities and complying with any audit information requests relating to both reported and not reported arrangements
- Automating the DAC6 compliance process as much as possible to expedite the assessment and reporting time frames and to limit the risk of errors
- Regularly “health checking” the DAC6 compliance program

*This is not the case for Poland, where the law is in effect and reporting obligations are already being triggered.
Increasing awareness and technical knowledge

It is critical to raise awareness of DAC6 with the board, management and other key stakeholders within the organization. The board and management should have a broad understanding of the new disclosure rules, as well as the potential penalties and reputational risk of noncompliance. They can also support and promote change and compliance within the organization.

The scope of taxes and hallmarks under DAC6 and the local country legislation is sufficiently broad. Insufficient technical knowledge may result in the failure to report relevant transactions or over-reporting. Internal tax teams must be familiar with the technical elements of DAC6 and the local country legislation and regulations, as well as understanding who is responsible for reporting, when the reporting will need to take place and what information will need to be reported. Training is necessary for tax teams to stay up to date with any changes in local country interpretations, so the team’s assessment of arrangements is in line with market practice in the different jurisdictions.

Identifying and assessing potentially reportable transactions

In determining the arrangements that are likely to be reportable under DAC6, taxpayers and intermediaries will need to consider all the technical elements of the legislation, including each of the 15 hallmarks and, where relevant, the main benefit test. This analysis will also require a detailed consideration of the relevant DAC6 commentary and the local country regulations, interpretation and guidance, all of which may need to be translated from the local language into English.

The 15 hallmarks in DAC6 have been set as wide-ranging as possible. This has led to different interpretations taken by the EU Member States. In some cases, the mere presence of a hallmark will make arrangements reportable. In other cases, one of the main benefits of the arrangement must be a tax benefit for the arrangement to trigger a reporting obligation. Significant care must be taken in reporting any arrangements under the hallmarks requiring satisfaction of the main benefit test, even where they are used for legitimate tax purposes as permitted under existing legislation.

While any arrangements that predate 25 June 2018 will effectively be “grandfathered” under DAC6, taxpayers will still need to track these to determine whether the arrangements will be brought within the scope of DAC6 on amendment and/or expiration.

Managing your intermediaries

Taxpayers and intermediaries will need to implement processes and controls that will underpin and govern their DAC6 relationship. These processes should involve taxpayers in the decision-making process for DAC6 reporting, especially in relation to reporting under any of the hallmarks that require the satisfaction of the main benefit test. It is recommended that taxpayers annually review and reconcile all arrangements reported by intermediaries, to confirm that the reporting is accurate, complete, timely and consistent. Taxpayers will also need to liaise with their intermediaries to obtain a copy of the reported information and the arrangement identification number, so the taxpayers have the necessary information required to comply with their annual reporting obligation in some EU Member States.

In some cases, the internal tax department itself may be classified as intermediary and have the main obligation for reporting.
Complying with your primary and secondary reporting obligations

Taxpayers will need a process to manage their reporting obligations under the local country legislation, including:

• Understanding and complying with the reporting format for each country
• Preparing templates for reporting
• Preparing and lodging reports within 30 days of a triggering event
• Securely storing the data, submitted reports, the arrangement identification number and other information required for annual reporting in some EU Member States
• Complying with the secondary annual reporting obligation in those jurisdictions where this is implemented (i.e., the obligation for each taxpayer to file information about its use of the arrangement to the tax administration in each of the years for which the taxpayer uses it)

“Health checking” your DAC6 compliance program

Taxpayers and intermediaries will need to continuously review and update their DAC6 compliance program to verify that it continues to be compliant and fit for purpose. As part of the health check of their DAC6 compliance program, taxpayers and intermediaries will need to:

• Check that processes to identify, assess and report arrangements are adequate
• Identify any inefficiencies in the existing processes
• Adjust processes and policies to reflect any changes impacting the DAC6 compliance program (in personnel, type of transactions, entities and jurisdictions)
• Adapt processes to align with changes in the DAC6 rules, including local interpretations
• Determine whether the processes in place are adequate for identifying the relevant intermediaries and achieving the right coordination among them
• Confirm that the data repository used to store the relevant DAC6 information (whether ultimately reported or not) is secure, preserved and archived
• Confirm that the information available in the data repository provides sufficient information for the annual reporting (in the jurisdictions where required)
• Cross-check their DAC6 reporting for consistency against all other documents lodged with tax authorities globally, including annual tax returns, transfer pricing documentation, CbCR and responses in context of tax audits/assessment
Under the terms of the Directive, the 28 EU Member States are required to adopt and publish national laws to comply with DAC6 by 31 December 2019. As at 8 January 2020, Austria, Belgium, Croatia, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Lithuania, Malta, the Netherlands, Poland, Slovakia and Slovenia have adopted final legislation implementing DAC6. A further 11 Member States have published draft DAC6 legislation, namely, Bulgaria, Cyprus, Czech Republic, Italy, Latvia, Luxembourg, Portugal, Romania, Spain, Sweden and the United Kingdom.

The domestic DAC6 legislation that has been enacted to date and/or made available in draft indicates there will be differences in the interpretation and application of DAC6 across the 28 EU Member States. Taxpayers and intermediaries should confirm that they have sufficient resources and tools to translate, assess and track these differences in the legislation, interpretation and reporting requirements to enable compliance with DAC6.

**MDR Web** is a web-based logging and reporting tool that provides a standardized and consistent approach to evaluate arrangements and to manage communication between taxpayers and intermediaries and submission of reportable arrangements.

Click here to register for an MDR Web demonstration.

**Key contacts**

**US-based DAC6 resources**

Jose A. (Jano) Bustos
E: joseantonio.bustos@ey.com

Gerrit Groen
E: gerrit.groen@ey.com

Serge Huysmans
E: serge.huysmans@ey.com

Nadine Redford
E: nadine.k.redford@ey.com

Max Van den Bergh
E: max.vandenbergh@ey.com

**Global DAC6 team**

Cornelia Wolff
E: cornelia.wolff@de.ey.com

Rienk Kamphuis
E: rienk.kamphuis@nl.ey.com

Claire Acard
E: claire.acard@ey-avocats.com

James Guthrie (FSO)
E: jguthrie@uk.ey.com

Global DAC6 webpage can be accessed [here](#).

About EY
EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. For more information about our organization, please visit ey.com.

Ernst & Young LLP is a client-serving member firm of Ernst & Young Global Limited operating in the US.

© 2020 Ernst & Young LLP.
All Rights Reserved.

EYG no. 000116-20Gbl
1912-3342707
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax or other professional advice. Please refer to your advisors for specific advice.

ey.com