

EU DAC6 Mandatory Disclosure Regime (MDR)

Understanding the elements of
MDR compliance and how to comply

What is DAC6?

The Council of the European Union (EU) has introduced Mandatory Disclosure Rules (DAC6 or the directive) aimed at boosting transparency to tackle what it sees as aggressive cross-border tax planning. The directive, which entered into force on 25 June 2018, requires 'intermediaries' to report transactions and arrangements that are considered by the EU to be potentially aggressive. If there are no intermediaries which can report, the obligation will shift to the taxpayers. Following the reporting of the arrangements, the information about the arrangements will be automatically exchanged between Member States.

When does it apply from?

It was originally expected that all cross-border reportable arrangements, where the first step of implementation was taken from the date of entry into force of the Directive (25 June 2018), would have to be reported by 31 August 2020. While this was the case for Germany, Finland and Austria, where no official deferral was approved, the remainder of the EU and the UK opted to defer their reporting deadlines. Poland, opted for various updated deadlines depending on the type of reporting required, while the rest of the EU, opted for a six-month delay. In this case, all reportable arrangements entered into from 25 June 2018 through to 30 June 2020 should have been reported by 28 February 2021.. All new arrangements entered into from 1 July 2020 to 31 December 2020, must be reported by 30 January 2021. New arrangements entered into from 1 January 2021, will be subject to the 30-day reporting requirement. The first reports for these were due by 30 January 2021.

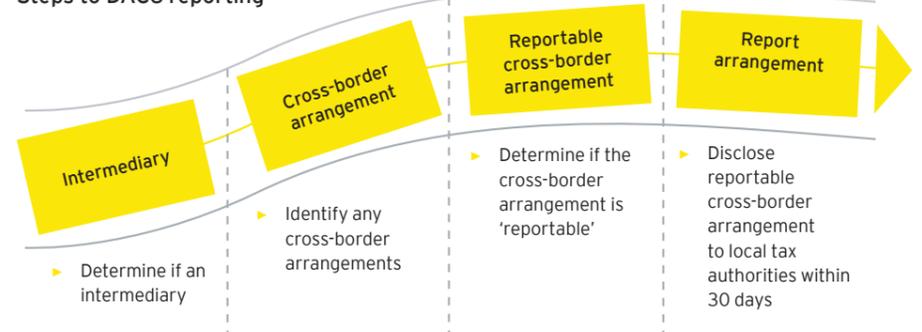
Following the end of the Brexit transition period on 31 December 2020, the United Kingdom (UK) Tax Authority, HMRC, has advised that reporting in the UK reporting in the UK will still be required for a limited time, but only for arrangements which meet hallmarks under category D. In the coming year, the UK will consult on and implement the Organisation for Economic Co-operation and Development's (OECD) Mandatory Disclosure Rules (MDR) as soon as practicable, to replace DAC6 and transition from EU to international rules.

Furthermore, 2020 has shown that more countries have taken steps to implement a similar Mandatory Disclosure Regime by following either the provisions of the BEPS Action 12 (e.g., Mexico, Argentina) or the OECD Model MDR for CRS avoidance arrangements and Opaque Offshore Structures (Channel Islands).

Who has the obligation to report?

The primary disclosure obligation is on 'intermediaries' (i.e., any person who designs, markets, organizes or makes available for implementation, or manages the implementation of the reportable cross-border arrangement who is in the EU. It also includes anyone in the EU who knowingly advises or helps with the above). If the intermediary is protected by legal professional privilege, then the obligation to disclose is transferred to another intermediary (where relevant), and if not, then to the taxpayer. The first step to DAC6 reporting is to determine whether an entity is an intermediary.

Steps to DAC6 reporting



What arrangements are reportable?

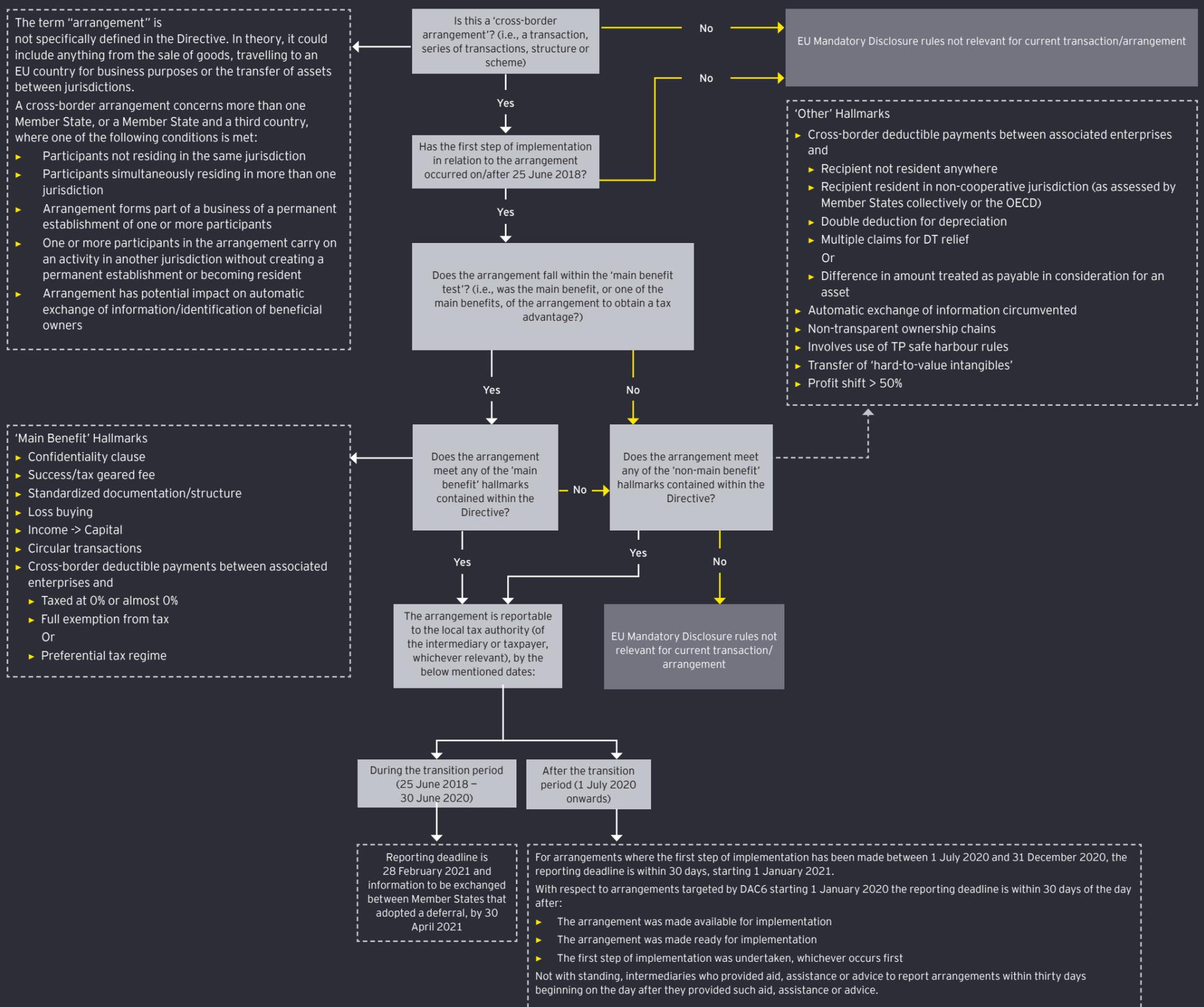
Any cross-border arrangement or series of arrangements that fulfils at least one of the hallmarks has to be reported. For the purposes of the directive, cross-border arrangements are those which concern either one or more Member State or a Member State and a third country.

The hallmarks can be divided between those for which the main benefit test must be satisfied as a gateway criterion before the hallmark will give rise to a reporting obligation, and those which by themselves will give rise to a reporting obligation.

In summary, the hallmarks can apply to the following arrangements:

To which a confidentiality clause is attached
Where the fee is fixed by reference to the amount of the tax advantage derived or whether a tax advantage is actually derived
That involve standardized documentation which does not need to be substantially customized for implementation
Where a loss-making company is acquired to use losses to reduce its tax liability
Which convert income into capital or other categories of revenue which are taxed at a lower level
Which include circular transactions resulting in the round-tripping of funds
Which include deductible cross-border payments which are, for a list of reasons, not fully taxable where received (e.g., recipient is not resident anywhere, zero or low tax rate, full or partial tax exemption, preferential tax regime, hybrid mismatch)
Where the same asset is subject to depreciation in more than one jurisdiction
Where more than one taxpayer can claim relief from double taxation in respect of the same item of income in different jurisdictions
Where there is a transfer of assets with a material difference in the amount treated as payable in consideration for those assets in the jurisdictions involved
Which circumvent EU legislation or arrangements on the automatic exchange of information (e.g., by using jurisdictions outside exchange of information arrangements, or types of income or entities not subject to exchange of information)
Which involve a non-transparent legal or beneficial ownership chain that does not carry on substantive economic activity and the beneficial owners are made unidentifiable
Which involve the use of unilateral safe harbor rules
Which involve the transfer of hard-to-value intangibles
Restructuring resulting in significant profit shifts (50%) following the transfer of functions and/or risks and/or assets between associated enterprise

This flowchart is intended to help businesses assess whether any of their arrangements fall within the scope of DAC6 and require disclosure.



How can EY teams help?

Requirement	How EY teams can support
DAC6 technical support	Provide technical support to assess and review arrangements and help determine whether they are likely disclosable and refine this assessment once local legislation and guidance comes into effect
Identify and record potentially reportable cross-border arrangements	Implement and deploy our EY MDR technology and suite of services which is an evaluation tool and repository for potentially reportable cross-border arrangements
Reporting as a service	Provide support for registration and reporting obligation using our EY suite of services professionals
Training	Work with those identified as intermediaries to identify the training needs of the business and deploy training appropriate for different groups of personnel depending on their role
DAC6 compliance health check	Review DAC6 compliance framework and identify risks
DAC6 and MDR regulatory monitoring	Assist in maintaining an up to date compliance framework through DAC6/MDR tracker subscription services (IGA Analyzer) and news alerts

To discuss the potential impact of DAC6 on your business, please speak to one of our EY tax professionals:

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