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INTERNATIONAL BUT PERSONAL

DAC6
THE EU DIRECTIVE
ON CROSS-BORDER
TAX ARRANGEMENTS

INTRODUCTION

On 25 May 2018 the Council of the European Union adopted Directive 2018/822/EU as the sixth amendment to the Directive on Administrative Cooperation 2011/16/EU, commonly referred to as "DAC 6", which imposes extensive reporting requirements with respect to cross-border tax planning arrangements affecting at least one EU member state. DAC 6 is part of the continuing efforts of the EU Commission to clamp down on tax avoidance and evasion in the internal market by creating transparency regarding potentially aggressive cross-border tax planning schemes.

The reporting obligations under DAC 6 are very broad and do not just apply to tax lawyers and therefore create a new set of compliance issues for the legal profession, in particular for lawyers involved in cross-border M&A transactions. Since DAC 6 only provides a general framework and gives the member states significant discretion regarding the transformation into national laws, it is useful for any practitioner who can be a potential "intermediary" to have an overview over the various laws and regulations in the EU member states.

FRANCE

Bersay

1. When was DAC 6 implemented into the National Tax Law of France?

It has been implemented into French law via Ordinance n°2019-1068 of 21 October 2019.

- Have the tax authorities in your jurisdiction issued guidelines for the application and enforcement of the obligations under DAC 6?

Yes, the French tax authorities published guidelines organised in three sections. The first section relates to the scope of the reporting obligation and was published on 9 March 2020 (see. [BOI-CF-CPF-30-40-10](#)). The second section relates to the conditions of the reporting obligation and was published on 9 March 2020 (see. [BOI-CF-CPF-30-40-20](#)). The third section gives information on the hallmarks and was published on 29 April 2020 (see. [BOI-CF-CPF-30-40-30](#)).

2. What constitutes a reportable cross-border tax arrangement under the laws and regulations of your jurisdiction?

- What constitutes a "cross-border" arrangement? To what extent are national structures also covered?

Pursuant to Section 1649 AD, II of the French Tax Code, any arrangement in the form of an agreement, project or plan, whether or not legally enforceable, involving France and another state, whether or not a member of the European Union, is considered cross-border if at least one of the following conditions is met:

- at least one of the participants in the arrangement is not domiciled or resident in France for tax purposes or does not have its registered office there;
- at least one of the participants in the arrangement is domiciled, resident or has its headquarters in several states or territories simultaneously;
- at least one of the participants in the arrangement carries on business in another state or territory through a permanent establishment located in that state or territory, the arrangement

constituting part or all of the business of that permanent establishment;

- at least one of the participants in the arrangement carries on business in another state or territory without being domiciled or resident there for tax purposes or having a permanent establishment in that state or territory;
- the arrangement may have consequences for the automatic exchange of information between states or territories or for the identification of beneficial owners.

The term “arrangement” also covers the formation, acquisition or dissolution of a legal entity, or the subscription of a financial instrument.

- [How are the hallmarks and the “main benefits” test in Annex IV to DAC 6 defined and interpreted in your jurisdiction?](#)

Markers are defined by Section 1649 AH of the French Tax Code. They correspond to Annex IV to DAC 6. Administrative comments provide a number of clarifications on these markers, distinguishing general and specific markers related to the “main benefits” test and specific markers related to cross-border transactions concerning automatic exchange of information and beneficial owners as well as transfer pricing.

- [What constitutes a “tax benefit” under the legislation in your jurisdiction?](#)

A tax benefit is deemed to exist where the cross-border arrangement results in a tax allowance, tax refund, tax relief or reduction, a reduction of tax liability, a deferral of taxation or no taxation.

The existence of a tax benefit is not limited to French territory nor that of the EU (see. [BOI-CF-CPF-30-40-10-10 n°140](#)).

- [Is it required that the achievement of the “tax benefit” is the sole or the main purpose of the structure?](#)

The “tax benefit” must be the main purpose of the structure. The size of the tax benefit is determined in particular by the value of the tax benefit obtained in comparison with the value of the other benefits derived from the arrangement. The fact that the arrangement provides a “tax benefit” is not sufficient to characterise a main advantage.

- Do the laws and regulations of your jurisdiction require a connection to a potential abuse of tax structures?

Yes, since the obligation to report to the competent tax authorities cross-border arrangements that contain one or more markers is based on the fact that there is a potential risk of tax evasion and aggressive tax planning.

- Did your jurisdiction adopt a whitelist of non-reportable "standard" tax arrangements?

No whitelist seems to be available.

3. Who is subject to the reporting obligation (taxpayer, intermediary, other)?

Both taxpayers and intermediaries, as defined by Section 1649 AE of the French Tax Code, are subject to this reporting obligation.

- Do the laws and regulations of your jurisdiction address the issue of potential legal conflicts of intermediaries with professional confidentiality obligations?

Yes, an intermediary subject to a professional confidentiality obligation shall inform his client and take all steps to ensure that the client may allow him to lift the professional confidentiality obligation, at the latest on the day before the date provided for by Section 1649 AG, I-a, b or c of the French Tax Code.

If an intermediary subject to a professional confidentiality obligation does not obtain his client's agreement to file the report, the reporting obligation falls to any other intermediary or, if there is no other intermediary, to the taxpayer concerned.

4. What information must be included in a report on cross-border tax arrangements under DAC 6 in your jurisdiction and is there a specific format to be used ?

In accordance with Section 344 G octies A of the French Tax Code, the declaration shall contain the following information:

- the identification of the intermediaries and taxpayers concerned, including their name, date and place of birth (for individuals), tax residence, tax identification number and, where applicable, persons who are related companies with the taxpayer concerned;
- detailed information on the markers listed in Section 1649 AH of the French Tax Code according to which the cross-border arrangement must be declared;

- a summary of the content of the reportable cross-border arrangement, including a reference to the name by which it is commonly known, if any, and a description of the relevant business activities or arrangements, presented in an abstract manner without giving rise to the disclosure of any trade, business or professional secret, business process or information the disclosure of which would be contrary to public policy;
- the date on which the first stage of the implementation of the reportable cross-border arrangement has been completed or will be completed;
- details of the national provisions on which the reportable cross-border arrangement is based;
- the value of the cross-border arrangement to be declared;
- the identification of the member state with which the taxpayer(s) concerned has/have a territorial link as well as any other member state likely to be concerned by the cross-border arrangement to be declared, with an indication of the member state(s) with which the taxpayer(s) has/have a territorial link;
- the identification of any other person likely to be concerned in the member states by the cross-border arrangement to be declared, with an indication of the member state(s) with which that person has a territorial connection.

As of January 2021, reports must be filed in a dematerialised format by accessing individual or professional space directly on www.impots.gouv.fr.

5. Is there an obligation to report tax arrangements which were already implemented in the past? If yes, what is the cut-off date?

No, but the reporting obligation covers any arrangement that has been implemented since 25 June 2018. However, if an arrangement was implemented prior to 25 June 2018 and undergoes substantial modifications, an analysis regarding the DAC 6 markers should be performed if the arrangement can be considered as a new arrangement.

6. Who is the competent authority for filing a report under DAC 6 in your jurisdiction?

The competent authority is the intermediary or the taxpayer.

7. What is the deadline for filing a report?

In principle, the report must be filed within 30 days of the first of the following dates: the day following the day on which the arrangement concerned is made available for

implementation; the day following the day on which the arrangement is ready to be implemented; the day on which the first stage of implementation is completed.

However, there are some exceptions. First, when the taxpayer or the intermediary receives notification of his reporting obligation from an (other) intermediary, he must complete its reporting obligation within 30 days from the day of receipt of said notification (when the intermediary is subject to a professional confidentiality obligation, he has 30 days to notify any other intermediary or, failing that, the taxpayer concerned of the obligation to file the report).

Then, when an intermediary provides services, the filing must be made within 30 days after the day on which the intermediary has provided, directly or through other persons, help, assistance or advice concerning the design, marketing or organisation of a cross-border arrangement.

Finally, regarding marketable arrangements, an intermediary who has previously filed a report of the aforementioned arrangement communicates to the French tax administration any modification of the declared information on the last day of each quarter of the year (31 March, 30 June, 30 September, 31 December).

– [Has there been an extension of deadlines due to the COVID-19 pandemic?](#)

Yes, the declaration of cross-border arrangements for which the first stage was implemented between 25 June 2018 and 30 June 30 2020 had to be filed before 28 February 2021 (the French tax administration extended the deadline to 1 March 2021).

Also, the 30-day reporting deadlines imposed on taxpayers and intermediaries shall run from 1 January 2021 for arrangements whose generating event occurred between 1 July 2020 and 31 December 2020. The French tax administration has announced the closure of the declaration service from 29 July until early September. In practice, the deadlines in progress on 29 July should be suspended from this date until the end of the period of closure of the service. When the service reopens, they will resume for the remaining period. Deadlines whose legal starting point is during the closure period will not begin to run until the closure period is over.

For marketable arrangements, the first quarterly update was due by 30 April 2021.

- What are the penalties and/or other legal consequences for failing to submit a DAC 6 report within the applicable deadline?

Failure to comply leads to the application of a fine provided by Section 1729 C ter of the French Tax Code. The amount of the fine may not exceed €10,000 or €5,000 for the first infraction of the current calendar year and the three previous years.

The amount of the fine applied to a single intermediary or taxpayer concerned may not exceed €100,000 per year.

8. Has your firm implemented specific processes regarding DAC 6 compliance? If yes, please describe.

The implementation of DAC 6 into the processes of the firm is actually in progress.

9. Contact details

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