



LEGALINK

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.

SWEDEN

Hellström Advokatbyrå KB

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

DAC 6 was implemented into the National Tax Law of Sweden on 1 July 2020. It was implemented through the act Lag (2020:434) om rapporteringspliktiga arrangemang (the Act).

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

The Swedish Tax Agency has issued guidelines in Swedish for the application and enforcement of the obligations under DAC 6. These can be found at <https://www.skatteverket.se/foretag/internationellt/rapporteringspliktigaarrangemangdac6.4.7c708f0e16bed42cd054ef7.html>.

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?

"Cross-border arrangement" means an arrangement which concerns more than one member state of the European Union, or a member state and a third country, and which fulfils at least one of the following conditions:

1. Not all participants in the arrangement are domiciled in the same state or jurisdiction.
2. One or more of the participants in the arrangement is domiciled in more than one state or jurisdiction.
3. One or more of the participants in the arrangement conducts business activities in another state or jurisdiction than where they are domiciled from a permanent establishment in the other state or jurisdiction and the arrangement forms part or all of the activities at the permanent establishment.

4. One or more of the participants in the arrangement conducts business in a state or jurisdiction other than where they are domiciled or where they have a permanent establishment.
 5. The arrangement could affect the reporting obligation regarding financial accounts under Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards the mandatory automatic exchange of information on taxation, the multilateral agreement between competent authorities on automatic exchange of information on financial accounts signed on 29 October 2014, or equivalent agreement.
 6. The arrangement could complicate the identification of beneficial ownership.
- [How are the hallmarks and the "main benefits" test in Annex IV to DAC 6 defined and interpreted in your jurisdiction?](#)

The "main benefits" test consists of determining that the tax benefit is the main benefit, or one of the main benefits, that a person can reasonably expect from the cross-border arrangement. The hallmarks are listed and defined in section 13 through 25 of the Act.

- Conversion of income (Section 13 of the Act)
- Use of an acquired company's deficit (Section 14 of the Act)
- Standardised arrangements (Section 15 of the Act)
- Terms of confidentiality (Section 16 of the Act)
- Compensation to the adviser linked to the tax benefit (Section 17 of the Act)
- Circular transactions (Section 18 of the Act)
- Cross-border payments (Sections 19-20 of the Act)
- Circumvention of the rules on automatic exchange of information on financial accounts (Section 21 of the Act)
- Non-identifiable beneficial ownership etc (Section 22 of the Act)
- Transfer pricing (Sections 23-25 of the Act)

For most of the hallmarks, an arrangement is reportable if the tax benefit is the sole or main purpose of the arrangement. For certain hallmarks, the arrangement is always reportable. The hallmarks which are always reportable are:

circumventing reporting obligations (Section 21 of the Act), and
transfer pricing (Section 23-25 of the Act)

In addition to this, cross-border payments (Sections 19-20 of the Act) may be reportable without a main benefit in certain cases.

- What constitutes a "tax benefit" under the legislation in your jurisdiction?

Although there is no statutory definition of what constitutes a tax benefit, it has been established in case law what may constitute a tax benefit. Examples of tax benefits are arrangements which make taxable income tax-free, make non-deductible expenses deductible, create tax deficits, exploit the underpricing rules, exploit the group contribution rules or exploit the close company rules.

- Is it required that the achievement of the "tax benefit" is the sole or the main purpose of the structure?

It is required that the tax benefit is the main benefit, or one of the main benefits, that a person can reasonably expect from the cross-border arrangement.

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

It is required that at least one hallmark is applicable. The hallmarks indicate that there is a risk of tax evasion.

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

No.

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

It is primarily the adviser to an arrangement, but sometimes a user (usually a taxpayer).

An adviser is a person who, among other things, designs, markets, organises or provides a reportable arrangement.

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

The adviser must in each individual case assess whether the duty of confidentiality applies to the information to be provided (cf. Government Bill 2019/20:74 p. 216).

An adviser who is not restricted by confidentiality is obliged to report all information about the arrangement. An example of this is if the client consents that a lawyer or law firm reports the information. In such a case, the lawyer or law firm is thus obliged to provide the information and is responsible for ensuring that this happens (Government Bill 2019/20: 74 p. 216).

If an adviser who is obliged to provide information is prevented from doing so due to the duty of confidentiality for lawyers, the adviser shall immediately inform all other advisers of the arrangement about the obligation to provide information (Chapter 33 b, section 22, first paragraph of the Tax Procedure Act (SFL)). If there is no other adviser obliged to provide the information on the reportable arrangement or if all other advisers are prevented from providing the information due to the duty of confidentiality of lawyers or equivalent rules in another member state, the adviser shall instead inform the user of the arrangement on the user's obligation to provide information (Chapter 33 b, Section 22, second paragraph SFL).

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?

There is a specific form that can be used when reporting on cross-border tax arrangements under DAC 6. The information that must be provided is:

- identification information for all relevant advisors and users;
- a summary of the arrangement;
- the hallmarks that make the arrangement reportable;
- information on the national rules on which the arrangement is based;
- the date on which the implementation of the arrangement began, or when the arrangement is to be implemented;

- the value of the arrangement;
- the member states which are likely to be affected by the arrangement.

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

There is an obligation to report tax arrangements which were already implemented. The cut-off date is 24 June 2018, and information about these arrangements must have been received by the Swedish Tax Agency no later than 28 February 2021.

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

The competent authority for filing a report under DAC 6 in Sweden is the Swedish Tax Agency.

7. What is the deadline for filing a report?

An adviser must normally provide information about an arrangement within 30 days after the day when any of the following has occurred (Chapter 33 b, Section 19 SFL)

- the adviser made the arrangement available.
- the arrangement was ready for implementation.
- the adviser began the implementation of the arrangement.

– Has there been an extension of deadlines due to the COVID-19 pandemic?

Arrangements which commenced after 24 June 2020 and before 1 July 2020 can be reported on 28 February 2021 at the latest, instead of the regular due date of 31 August 2020. As 28 February 2021 fell on a Sunday, the due date was extended to 1 March 2021. For arrangements which commenced between 1 July and 31 December 2020, the due date was extended to 30 days from 1 January 2021.

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

If there is a failure to submit a report within the applicable deadline, a special reporting fee may be imposed (Chapter 3, Section 17 and Chapter 49 c, Section 1 SFL).

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

Although our firm has not implemented specific processes regarding DAC 6 compliance, our employees have been made aware of DAC 6 and what it entails.

10. Contact details

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