

# Deferral of mandatory reporting of cross border tax arrangements under DAC6



Focus on  
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Coronavirus

In response to the disruption caused by COVID-19, the European Council has approved an optional six-month deferral period for the rules regarding the mandatory filing and exchange of information on reportable cross-border tax arrangements under DAC6.

In this update, we look at what arrangements are reportable under DAC6, and how the six-month extension alters the reporting timelines.

## The European Commission's Proposal

On 8 May 2020 the EU Commission proposed extending the DAC6 mandatory disclosure deadlines by up to three months. However in early June the EU Member State representatives on the Permanent Representative Committee ("COREPER") reached a compromise agreement for an optional six month deferral of the reporting and exchange of information deadlines under DAC6 instead. On 19 June 2020 the European Parliament voted in favour of that proposal to defer the DAC6 reporting deadlines by six months in light of the continuing disruption to business caused by the coronavirus pandemic. Subsequently on 24 June 2020 the EU Council approved the extension. While it is optional as to whether Member States choose to avail of the extension, Ireland has confirmed its intention to do so. As such the six-month deferral will operate such that:

- the commencement date of the 30-day period for reporting new cross-border arrangements occurring on or after 1 January 2021 will commence with effect from 1 January 2021
- the commencement date of the 30-day period for reporting cross-border arrangements occurring between 1 July 2020 and 31 December 2020 will commence with effect from 1 January 2021 also and

- the deadline for reporting historical cross-border arrangements (i.e. arrangements that became reportable in the period from 25 June 2018 to 30 June 2020) has been extended from 31 August 2020 to 28 February 2021.

The measures will be welcomed by taxpayers and "intermediaries" alike, offering further time to determine their reporting obligations

## Overview of DAC6

DAC6 is an EU directive requiring the mandatory disclosure to tax authorities of certain cross-border arrangements. It aims to strengthen tax transparency and prevent aggressive tax planning. Finance Act 2019 contains the Irish implementing provisions.

In short, "intermediaries" such as A&L Goodbody (ALG), and in certain instances, taxpayers will be required to report information regarding cross-border arrangements that bear certain characteristics or "hallmarks" indicating a potential risk of tax avoidance to the Revenue Commissioners. The reporting obligation applies in respect of relevant arrangements the first step in implementation of which occurred on or after 25 June 2018. Once the report has been filed with the Revenue Commissioners, they will in turn automatically share this information with the competent authorities of other EU Member States.

The mere fact that a transaction is reportable is not of itself an indication that there is any tax mischief. The purpose of the DAC6 reporting obligations is to provide tax authorities with information about potentially aggressive tax planning schemes so that Member States can then assess whether those schemes facilitate tax avoidance and take any steps necessary, including amending national legislation, to close off the particular scheme.

### What is a reportable cross-border arrangement?

A “**reportable cross-border arrangement**” is a cross-border arrangement (i.e. it concerns either more than one EU Member State, or an EU Member State and a third country where, broadly, not all the participants are tax resident in the same country) which contains one of the “hallmarks” or characteristics of potential tax avoidance.

While some of the hallmarks contain a “tax benefit” motivation requirement, others do not. Therefore the range of transactions that are caught is broader than those that had fallen within Ireland’s pre-existing domestic mandatory disclosure regime.

### Who reports?

Subject to limited exceptions an “intermediary” must make a return of “specified information” with the Revenue Commissioners in respect of a reportable cross-border arrangement.

An “**intermediary**” for this purpose is either the person that:

- i. designs, markets, organises or makes available for implementation or manages the implementation of the arrangement, or
- ii. having regard to the facts and circumstances and relevant expertise and understanding required to provide such services, knows or could be reasonably expected to know that it is providing aid, assistance or advice with respect to i. above and is tax resident in an EU Member State, registered with a professional association related to legal, taxation or consultancy services in a Member State, etc.

As such, ALG would be an intermediary for the purpose of reporting.

In the event that the advice benefited from legal professional privilege the reporting obligation would shift, upon notification, to the client taxpayer or another intermediary (if any).

Where multiple intermediaries (including ALG) are involved in the cross-border arrangement, ALG would not have a reporting obligation if another involved intermediary:

- confirms that it has made a DAC6 return to the Revenue Commissioners, and
- provides ALG with the Revenue assigned reference number. This information should be provided by the other intermediary to ALG within 5 working days of the other intermediary obtaining the reference number, or ALG becoming involved in the transaction.

### What is reported?

Broadly, an intermediary must report “specified information” in relation to a reportable cross-border arrangement.

Specified information includes, for example:

- intermediary and taxpayer (i.e. client) details relating to tax residence tax identification number (**TIN**)
- country of issuance of the TIN name and address
- associated enterprises (if any)
- details of the hallmark(s) making the transaction reportable the value of the arrangement
- the date on which the first step in implementing the arrangement has, or will be, taken details of Member States likely to be concerned by the cross-border arrangement

### When is the report made?

The deadline for reporting will depend broadly, on when the reportable cross-border arrangement occurs. In this regard, a distinction is drawn between:

- ‘historical’ cross-border arrangements, where the first step in implementation occurs on or after 25 June 2018 and before 1 July 2020 (**Historical Arrangements**)
- reportable cross-border arrangements that occur either (i) between 1 July 2020 and 31 December 2020 or (ii) on or after 1 January 2021 (together **Post-1 July 2020 Arrangements**)

Historical Arrangements are due to be reported en bloc by 28 February 2021. Post-1 July 2020 Arrangements are subject to a 30-day reporting timeframe beginning from 1 January 2021 and must be reported to the Revenue Commissioners, in the case of new cross border arrangements commencing on or after 1 January 2021 within 30 days of the earliest of the following:

- the arrangement being made available for implementation
- the arrangement being ready for implementation, or
- the first step in implementation of the arrangement being taken

In the case of Post-1 July 2020 Arrangements occurring between 1 July 2020 and 31 December 2020 reporting should occur within 30 days from 1 January 2021 notwithstanding that the arrangement may have been made available for implementation etc. before that date.

Time framework for reporting	Extended reporting deadline
<p><b>Mainstream reporting – Post-1 July 2020 Arrangements</b></p> <p>The 30-day time period for the reporting of information related to new reportable cross-border arrangements will now commence on 1 January 2021.</p> <p>For any reportable cross-border arrangements made between 1 July 2020 and 31 December 2020, the 30-day reporting period also commences on 1 January 2021.</p>	<p>The 30-day period for reporting commences on 1 January 2021</p>
<p><b>Lookback reporting period – Historical Arrangements</b></p> <p>Reportable cross-border arrangements, the first step of which was implemented between 25 June 2018 and 30 June 2020.</p>	<p>28 February 2021</p>

**What are the consequences of a DAC6 report being made?**

The mere fact that a DAC6 report is made in respect of a transaction does not indicate that there is any particular tax liability or mischief occurring.

However, the fact that transactions may be reported might deter taxpayers from entering into certain transactions and also enables tax authorities to obtain information on types of transactions that are being entered into earlier than they would have previously. In such circumstances EU Member States may be able to make appropriate changes to their laws to prevent transactions occurring that they consider undesirable.

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