



DAC 6

Awareness

June 2020



AGENDA

1	DAC 6 in a nutshell
2	Concepts and definitions
3	Hallmarks
4	Potential reportable arrangements examples
5	Main impacts for your company
6	GreenLeap offer & approach
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DAC 6 in a nutshell

Purpose

Having noted the difficulty for EU states to protect their national tax base from sophisticated planning structures taking advantage of increased mobility of capital and people within the internal market, resulting in reduction in tax revenues and hindering member states from applying growth-friendly tax policies:

The council of the European Union has introduced DAC6, a directive aiming at boosting transparency to tackle what it sees as aggressive cross-border tax planning

- It represents the 6th amendment to the EU Directive on Administrative Cooperation in Directive 2011/16/EU
- It is a new EU directive aiming at countering tax avoidance and evasion that requires EU intermediaries or taxpayers involved in cross-border arrangements to make a disclosure to their tax authority if certain conditions are met

Context

The EU Council Directive 2018 / 822 (DAC 6) amends the existing Council Directive 2011/16/EU on **Administrative Cooperation in the field of taxation**

A new **disclosure requirement** for intermediaries and taxpayers in respect of certain **cross-border arrangements**

Reporting

Description and value of arrangement, identities of taxpayers, and intermediaries incl. tax residence, name, date & place of birth, TIN, applicable hallmarks, date of implementation, relevant local law, ...

Within **30 days**

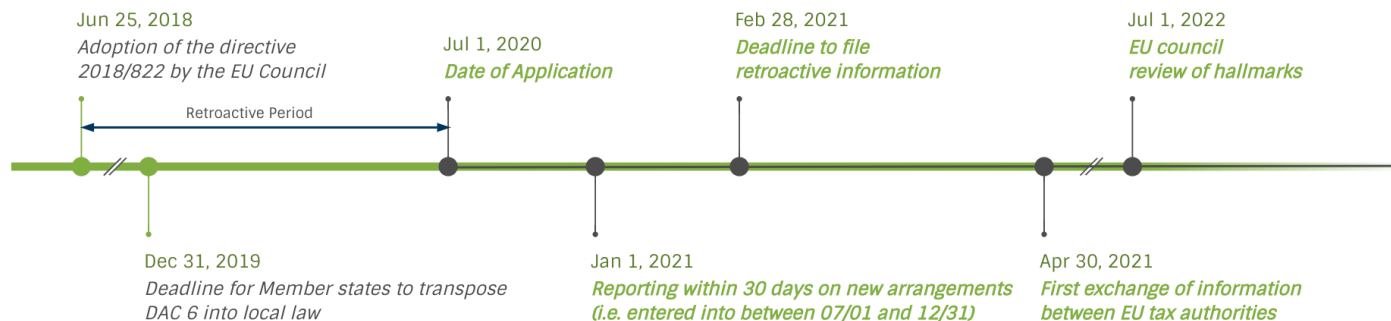
Requirements

Obligation to **disclose « potentially aggressive cross border tax planning arrangements »**

The means for **tax administrations to exchange the information**

Scope

All taxes, except VAT, custom duties, excise duties and compulsory social contributions



**EU
MANDATORY
DISCLOSURE
RULES**

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Concepts and definitions

Why ?



Tax authorities to obtain comprehensive and relevant information in order to react promptly against harmful tax practices and to close loopholes by implementing the recommendations of the OECD BEPS Action 12 on "Mandatory Disclosure Scheme" inspired in part by the existing requirements in the US, Canada, UK (DOTAS), Ireland, Portugal

What ?

Reporting to EU tax authorities of "**potentially aggressive cross-border tax arrangements**" that meet pre-defined criteria (**generic and specific hallmarks**)

Automatic exchange of reported arrangements between EU tax authorities



Who ?



Primary disclosure obligation is on the "Intermediaries" involved in the arrangement

If the intermediary is protected by legal professional privilege (LLP) or like in our sector, by banking secrecy, the obligation to disclose is transferred to another intermediary (if relevant) and ultimately to the taxpayer (see more details)

When ?

As from July 2020, reporting to tax authorities within 30 days after the arrangement is made available / ready for implementation or first step in implementation has taken place

Transition period : arrangements implemented between 25/06/2018 and 30/06/2020 have to be reported by 31/08/2020



Concepts and definitions

Disclosure & Reporting party

Intermediary

- An intermediary is primarily defined as “any person that designs, markets, organizes or makes available for implementation or manages the implementation of a reportable cross-border arrangement”
- The secondary definition states : “It knows or could reasonably be expected to know” that it has undertaken to provide, directly or by means of other persons, aid, assistance or advice with respect to designing, marketing, organizing, making available for implementation or managing the implementation of a reportable cross border arrangement
- The intermediary is required to decide whether an arrangement is potentially aggressive and bears the reporting obligation



Relevant taxpayer

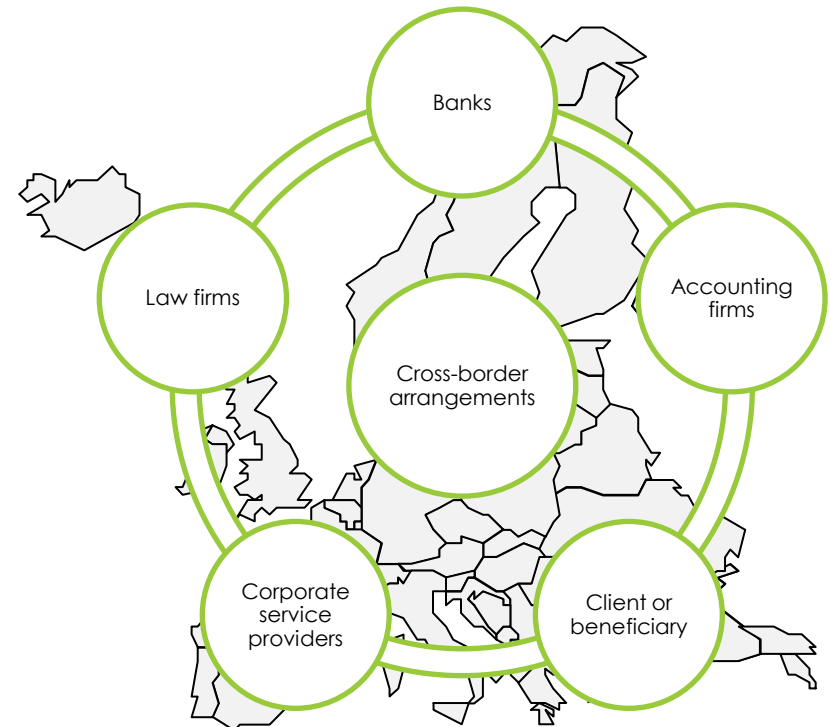
- “relevant taxpayer” means any person to whom a reportable cross-border arrangement is made available for implementation, or who is ready to implement a reportable cross-border arrangement or has implemented the first step of such an arrangement
- EU taxpayers required to report if there is no EU intermediary or if the intermediary is exempt



Intermediaries bear the primary reporting obligation except in specific cases. Generally, EU intermediaries include:

- **Banks**
- **Accounting firms**
- **Law firms**
- **Corporate service providers**
- **Others...**

If no intermediary is required to make a filing, the taxpayer may need to disclose instead.



Concepts and definitions

Arrangement characteristics

Cross-border arrangement

- An arrangement will be "cross-border" if it concerns a Member State and either another Member State or a third country. The connection with the jurisdiction is clearly established by the presence of tax resident entities or of branches but the carrying on of an activity which does not give rise to a permanent establishment is also within scope
- This does not necessarily require a cross-border transaction to take place. A domestic transaction which has tax implications for another EU Member State will fall within scope. Purely domestic arrangements which do not impact tax in another jurisdiction are not the target of this regime
- A cross-border arrangement will be reportable if it contains at least one of the hallmarks set by the directive



Hallmark

- Features and elements that are considered an indication of tax avoidance or abuse. Both generic hallmarks and specific hallmarks are listed
- Certain hallmarks can only be taken into account, if a "main benefit" test is also satisfied



Main benefit test

- That test will be satisfied if it can be established that the main benefit or one of the main benefits which, having regard to all relevant facts and circumstances, a person may reasonably expect to derive from an arrangement is the obtaining of a tax advantage
- Also referred to as MBT

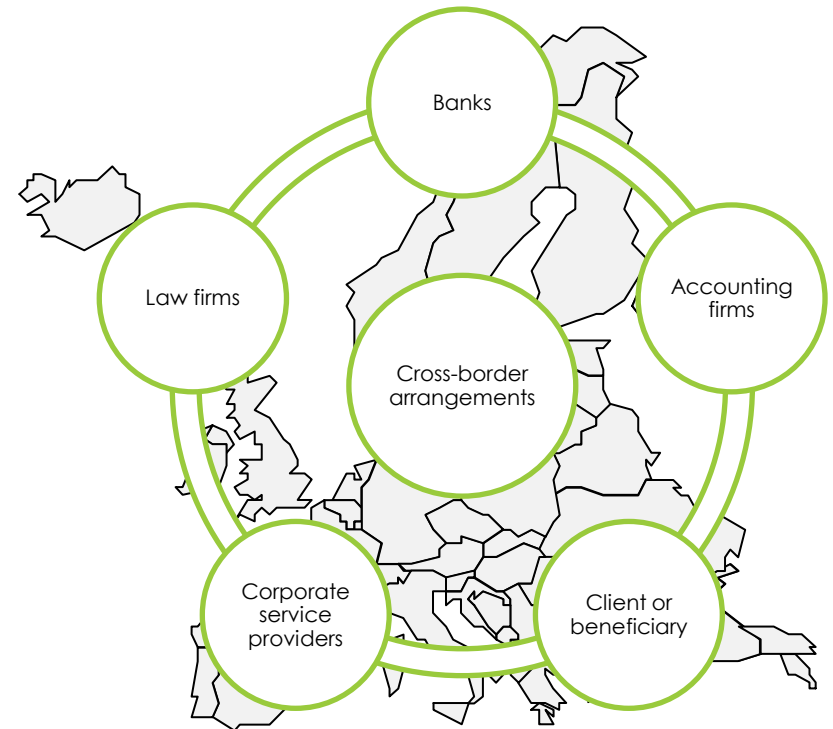


Information reported will be exchanged between EU tax authorities.

Failure to comply will result in penalties.

New arrangements must be reported within 30 days starting in July 2020.

All reportable arrangements implemented between June 25th, 2018 and June 30th, 2020 must be disclosed by August 31st, 2020.



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Hallmarks

A

Generic hallmarks

- A.1: Taxpayer or participant undertakes to comply with a condition of confidentiality
- A.2: Remuneration of intermediary related to tax advantage
- A.3: Arrangement has standardized documentation and/or structure

B

Specific hallmarks

- B.1: Acquisition of a loss-making company
- B.2: Conversion of income into lower taxed or exempt categories of income (capital, gifts, lower level taxation)
- B.3: Circular transactions

C

Specific hallmarks related to cross-border transactions

- Deductible cross-border payments made between two or more associated enterprises where:
- C.1 (a): The recipient is not resident for tax purposes in any jurisdiction
 - C.1 (b): Deductible cross-border payments between associated enterprises, and
 - (i) The recipient is tax resident in a jurisdiction whose corporate tax rate is zero or almost zero
 - (ii) The recipient is tax resident in a jurisdiction included in an EU or OECD list of non-cooperative tax jurisdiction
 - C.1 (c) The payment benefits from a full exemption from tax in the jurisdiction where the recipient is tax resident
 - C.1 (d) The payment benefits from a preferential tax regime in the jurisdiction where the recipient is tax resident
 - C.2: Deduction of the same depreciation in more than one jurisdiction
 - C.3: Relief from double taxation in respect of the same item of income or capital in more than one jurisdiction
 - C.4: Transfer of assets with materially different valuation

D

Specific hallmarks concerning AEOI and beneficial ownership

- D.1: Arrangements which undermine CRS reporting
- D.2: Non-transparent legal or beneficial ownership chain

E

Specific hallmarks concerning transfer pricing

- E.1: Use of unilateral "safe harbor rules"
- E.2: Transfer of "hard-to-value intangibles"
- E.3: Intragroup transfers that reduce the projected annual EBIT by more than 50%

MBT*

- A.1
- A.2
- A.3

- B.1
- B.2
- B.3

- C.1 (b) (i)
- C.1 (c)
- C.1 (d)

* Main Benefit Test

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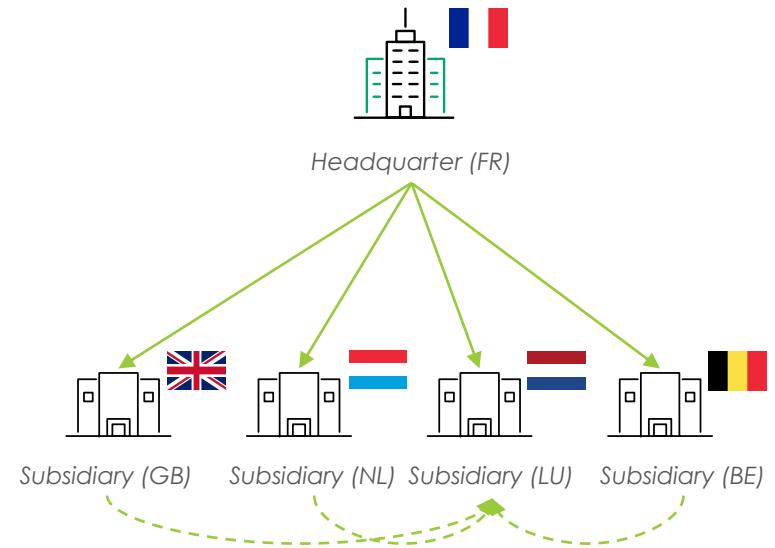
Potential reportable arrangement example

Situation

- French group with subsidiaries in the EU
- Some functions previously carried in local entities are centralized within one subsidiary (in LU in this example)

Is the arrangement captured by hallmarks?

E3: An intragroup cross-border transfer of functions and / or risks and / or assets, if the projected annual earnings before interest and taxes (EBIT) during the three-year period after the transfer, of the transferor or transferors, are less than 50% of the projected annual EBIT of such transferor or transferors if the transfer had not been made



Impact

Arrangement captured as soon as the EBIT of one of the transferors falls below 50% of the projected annual EBIT during the 3-year period after the transfer.

- Reportable to the tax authorities



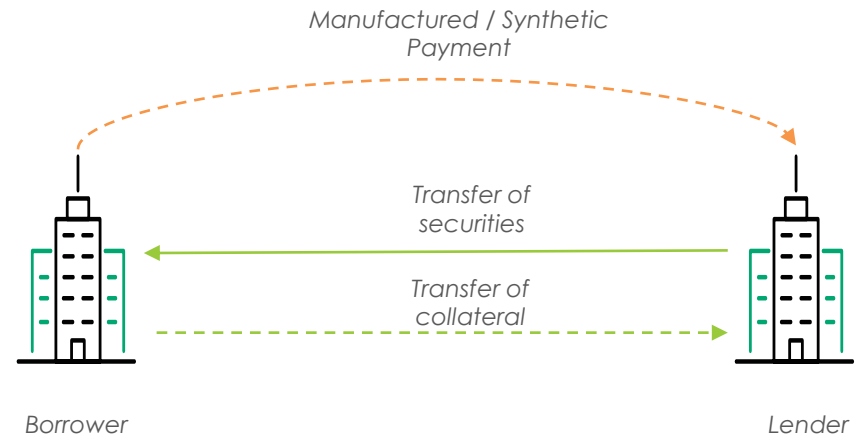
Potential reportable arrangement example

Situation

- A lender is not entitled to treaty relief when holding long position in Equities. In case of a dividend payment, the lender will be subject to a 30% withholding tax. It enters into a lending arrangement with a Borrower entitled to treaty relief.
- The Borrower holds Equity/Securities borrowed over dividend payment date, thus receiving 100% of the dividend and makes a substitute payment to the Lender equivalent to the amount it has received.
- The lender has received a synthetic dividend greater than the physical dividend it would have received.

Is the arrangement captured by hallmarks?

B2: An arrangement that has the effect of converting income into capital, gifts or other categories of revenue which are taxed at a lower level or exempt from tax.



Impact



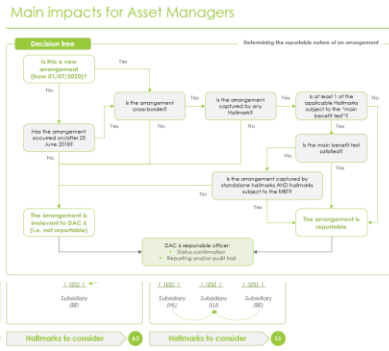
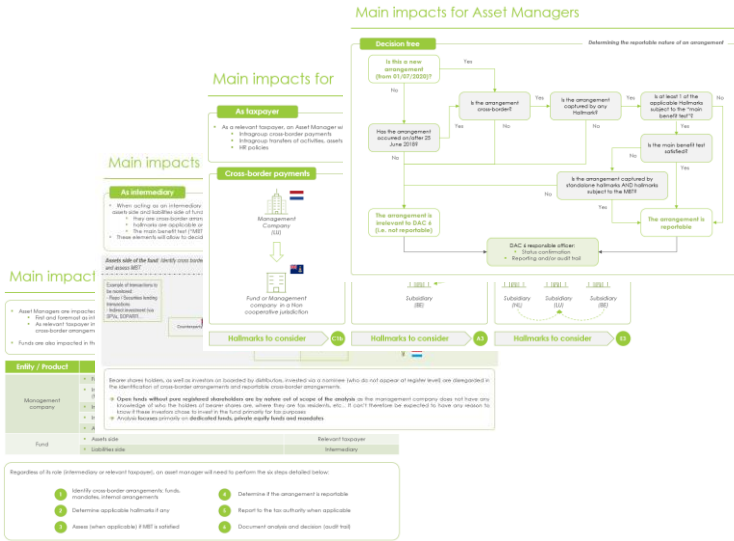
The B2 hallmark is subject to the main benefit test. The main benefit test aims to identify features and elements that are considered an indication of tax avoidance or abuse. If it is demonstrated that the main benefit or one of the main benefits of the arrangement the lender (in the above example) can reasonably expect to derive from the transaction is the obtaining of a tax advantage:

- Reportable to the tax authorities

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Main impacts for your company



Please contact us for a dedicated analysis overviewing your specific main impacts.

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GreenLeap team

Hereafter GreenLeap consultants are all experienced with regulatory project within the financial industry and did already deal with dedicated DAC 6 projects



Julian is a solid project manager with an experience of 15 years in financial environment.

He has a broad experience in coordination and management of transformation projects in Financial Services industry. Through several projects he has specifically dealt with operational follow-up resulting from activity migration or regulatory changes, including situation analysis, stakeholder's management, relationship with partners, procedures update, contracts and projects follow up.

Julian has an extensive experience of international projects, he is fluent in French and English and holds a Master degree in Finance.



Deborah is an experienced project manager (10+ years), specialized in the financial industry and IT matters.

Deborah has managed and coordinated implementation projects in securities services, asset management and trading floor contexts.

She has managed the integration of new B2Bs, the deployment of financial software, IS rationalization projects (from initial analysis to change management, processes implementation, third party relationship management, ...) She has excellent proficiency of front to back processes.

Deborah is fluent in French / English



Jialing is a junior project manager with 2 years of experience in financial environment.

She holds a Master degree of Investment Banking and Capital Markets and has a broad expertise of financial instruments, products and mechanisms.

Easy communicant and rigorous, her personality and work ability allow her to join a team and get rapidly involved. Comfortable with project organization and management, she also masteries consulting tools and computer skills.

Used to international context, she is fluent in French, English and Chinese.

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Cross-border arrangement

An arrangement is cross- border if it meets any of these criteria:

- Not all participants in the arrangement are tax resident in the same jurisdiction;
- A permanent establishment linked to any of the participants is established in a different jurisdiction and the arrangement forms part of the business of the permanent establishment;
- At least one of the participants in the arrangement carries on activities in another jurisdiction without being resident for tax purposes or creating a permanent establishment situated in that jurisdiction;
- At least one of the participants has dual residency for tax purposes;
- Such an arrangement has a possible impact on the automatic exchange of information or the identification of beneficial ownership.

Reportable cross-border arrangement

A cross- border arrangement is reportable if it meets any of the 5 Hallmark categories:

- A. Generic hallmarks linked to the main benefit test¹: arrangements that give rise to performance fees or involve mass-marketed schemes.
- B. Specific hallmarks linked to the main benefit test: this includes certain tax planning features, such as buying a loss-making company to exploit its losses in order to reduce tax liability. Another example would involve arrangements aimed at converting income into capital in order to obtain a tax benefit.
- C. Specific hallmarks related to cross-border transactions; some of these hallmarks are also subject to the main benefit test: for example, deductible cross-border payments between associated enterprises where the recipient is essentially subject to no tax, zero or almost zero tax. Another hallmark is about deductions for the same depreciation on an asset claimed in more than one jurisdiction.
- D. Specific hallmarks concerning the automatic exchange of information and beneficial ownership: an arrangement is reportable if it has the effect of undermining the rules, or the absence thereof, on beneficial ownership or Directive 2014/107/EU or any other equivalent agreement on automatic exchange of financial account information.
- E. Specific hallmarks concerning transfer pricing: these include the use of unilateral safe harbours; the transfer of hard-to-value intangible assets when no reliable comparables exist and the projection of future cash flows or income are highly uncertain.

¹ Main benefit test: this test is to see that if one of the main objectives of the arrangement is to obtain a tax advantage.

Who to declare

“**EU intermediaries** involved in **cross-border arrangements** to make a disclosure to their tax authority if certain requirements are met.”

As stated above, the intermediaries (all the intermediaries) shall have the obligation for reporting if intermediaries met the following condition. Otherwise the obligation is on the taxpayer.

Intermediary that:

1. designs, markets, organizes or makes available for implementation or manages the implementation of a reportable cross-border arrangement; or
2. provides, directly or by means of other persons, aid, assistance or advice with respect to designing, marketing, organizing, making available for implementation or managing the implementation of a reportable cross-border arrangement.
3. The intermediary is considered as EU intermediary if it :
 - Resident in a Member State; or
 - Maintains a permanent establishment in a Member State through which the services in respect of the arrangement are provided; or
 - Incorporated/governed by the laws of a Member State; or
 - Is a member of a professional association in a Member State.

Taxpayer shall have the obligation for reporting if:

1. The intermediary is a non-EU intermediary.
2. When there is no intermediary involved, i.e. an in-house arrangement.
3. When the taxpayer is notified that an intermediary has the right to a waiver due to legal professional privilege.

What to declare

The Directive did not communicate the information that needs to be disclosed yet. But it did provide the information that is automatically exchanged by member states:

1. Identification of intermediaries and relevant taxpayers (including name, date and place of birth, tax residence, tax information number and associated enterprises);
2. Details of the relevant hallmarks that make the cross-border arrangement reportable;
3. A summary of the content of the reportable cross-border arrangement;
4. The date of first step of implementation;
5. Details of the national provisions forming the basis of the reportable cross-border arrangement;
6. The value of the reportable cross-border arrangement;
7. Member States which are likely to be concerned by the reportable cross-border arrangement; and/or
8. Identification of any other person in a Member State likely to be affected by the reportable cross-border arrangement.

Those information is thus expected to be presented in the required disclosure. The final disclosure requirement could ask more than this list.

Detailed hallmarks

A. Generic hallmarks linked to the main benefit test:

1. An arrangement where the relevant taxpayer or a participant in the arrangement undertakes to comply with a condition of confidentiality which may require them not to disclose how the arrangement could secure a tax advantage vis-à-vis other intermediaries or the tax authorities.
2. An arrangement where the intermediary is entitled to receive a fee (or interest, remuneration for finance costs and other charges) for the arrangement and that fee is fixed by reference to:
 - a) the amount of the tax advantage derived from the arrangement; or
 - b) whether or not a tax advantage is actually derived from the arrangement. This would include an obligation on the intermediary to partially or fully refund the fees where the intended tax advantage derived from the arrangement was not partially or fully achieved.
3. An arrangement that has substantially standardised documentation and/or structure and is available to more than one relevant taxpayer without a need to be substantially customised for implementation.

B. Specific hallmarks linked to the main benefit test:

1. An arrangement whereby a participant in the arrangement takes contrived steps which consist in acquiring a loss-making company, discontinuing the main activity of such company and using its losses in order to reduce its tax liability, including through a transfer of those losses to another jurisdiction or by the acceleration of the use of those losses.
2. An arrangement that has the effect of converting income into capital, gifts or other categories of revenue which are taxed at a lower level or exempt from tax.
3. An arrangement which includes circular transactions resulting in the round-tripping of funds, namely through involving interposed entities without other primary commercial function or transactions that offset or cancel each other or that have other similar features.

Detailed hallmarks

C. Specific hallmarks related to cross-border transactions

1. An arrangement that involves deductible cross-border payments made between two or more associated enterprises where at least one of the following conditions occurs:
 - a) the recipient is not resident for tax purposes in any tax jurisdiction;
 - b) although the recipient is resident for tax purposes in a jurisdiction, that jurisdiction either:
 - I. does not impose any corporate tax or imposes corporate tax at the rate of zero or almost zero; or
 - II. is included in a list of third-country jurisdictions which have been assessed by Member States collectively or within the framework of the OECD as being non-cooperative;
 - c) the payment benefits from a full exemption from tax in the jurisdiction where the recipient is resident for tax purposes;
 - d) the payment benefits from a preferential tax regime in the jurisdiction where the recipient is resident for tax purposes;
2. Deductions for the same depreciation on the asset are claimed in more than one jurisdiction.
3. Relief from double taxation in respect of the same item of income or capital is claimed in more than one jurisdiction.
4. There is an arrangement that includes transfers of assets and where there is a material difference in the amount being treated as payable in consideration for the assets in those jurisdictions involved.

Detailed hallmarks

D. Specific hallmarks concerning automatic exchange of information and beneficial ownership:

1. An arrangement which may have the effect of undermining the reporting obligation under the laws implementing Union legislation or any equivalent agreements on the automatic exchange of Financial Account information, including agreements with third countries, or which takes advantage of the absence of such legislation or agreements. Such arrangements include at least the following:
 - a) the use of an account, product or investment that is not, or purports not to be, a Financial Account, but has features that are substantially similar to those of a Financial Account;
 - b) the transfer of Financial Accounts or assets to, or the use of jurisdictions that are not bound by the automatic exchange of Financial Account information with the State of residence of the relevant taxpayer;
 - c) the reclassification of income and capital into products or payments that are not subject to the automatic exchange of Financial Account information;
 - d) the transfer or conversion of a Financial Institution or a Financial Account or the assets therein into a Financial Institution or a Financial Account or assets not subject to reporting under the automatic exchange of Financial Account information;
 - e) the use of legal entities, arrangements or structures that eliminate or purport to eliminate reporting of one or more Account Holders or Controlling Persons under the automatic exchange of Financial Account information;
 - f) arrangements that undermine, or exploit weaknesses in, the due diligence procedures used by Financial Institutions to comply with their obligations to report Financial Account information, including the use of jurisdictions with inadequate or weak regimes of enforcement of anti-money-laundering legislation or with weak transparency requirements for legal persons or legal arrangements.

2. An arrangement involving a non-transparent legal or beneficial ownership chain with the use of persons, legal arrangements or structures:
 - a) that do not carry on a substantive economic activity supported by adequate staff, equipment, assets and premises; and
 - b) that are incorporated, managed, resident, controlled or established in any jurisdiction other than the jurisdiction of residence of one or more of the beneficial owners of the assets held by such persons, legal arrangements or structures; and
 - c) where the beneficial owners of such persons, legal arrangements or structures, as defined in Directive (EU) 2015/849, are made unidentifiable.

Detailed hallmarks

E. Specific hallmarks concerning transfer pricing:

1. An arrangement which involves the use of unilateral safe harbour rules.
2. An arrangement involving the transfer of hard-to-value intangibles. The term "hard-to-value intangibles" covers intangibles or rights in intangibles for which, at the time of their transfer between associated enterprises:
 - a) no reliable comparables exist; and
 - b) at the time the transaction was entered into, the projections of future cash flows or income expected to be derived from the transferred intangible, or the assumptions used in valuing the intangible are highly uncertain, making it difficult to predict the level of ultimate success of the intangible at the time of the transfer.
3. An arrangement involving an intragroup cross-border transfer of functions and/or risks and/or assets, if the projected annual earnings before interest and taxes (EBIT), during the three-year period after the transfer, of the transferor or transferors, are less than 50 % of the projected annual EBIT of such transferor or transferors if the transfer had not been made.

Reporting time

DAC 6 - types of reporting and exchange

Types	Provision	Time framework for reporting / exchange
Mainstream reporting (post July 2020 schemes)	Art. 8ab(1)	Within earliest of 30 days beginning on the day after scheme is "made available" for implementation; is "ready" for implementation, when "first step" in the implementation has been made.
Exchange	Art. 8ab(18)	Within one month of the end of the quarter in which the information was filed. (first exchange by 31 October 2020)
Periodic report on marketable arrangements ("update of the client list")	Art. 8ab(2)	Every 3 months
One-off reporting of arrangements the first step of which was implemented between 25 June 2018 & 30 June 2020.*	Art. 8ab(12)	Between entry into force and date of application of this Directive
Use of the arrangement (optional)	Art. 8ab(11)	Each relevant taxpayer files information about use of arrangement in each of the years for which they use it

Reporting time explanation

Art. 8ab(1) Mainstream reporting (post July 2020 schemes):

Each Member State shall take the necessary measures to require intermediaries to file information that is within their knowledge, possession or control on reportable cross-border arrangements with the competent authorities within 30 days beginning:

1. On the day after the reportable cross-border arrangement is made available for implementation; or
2. On the day after the reportable cross-border arrangement is ready for implementation; or
3. When the first step in the implementation of the reportable cross-border arrangement has been made, whichever occurs first.

Notwithstanding the first subparagraph, intermediaries referred to in the second paragraph of point 21 of Article 3 shall also be required to file information within 30 days beginning on the day after they provided, directly or by means of other persons, aid, assistance or advice.

Art. 8ab(2) Periodic report on marketable arrangements ("update of the client list"):

In the case of marketable arrangements, Member States shall take the necessary measures to require that a periodic report be made by the intermediary every 3 months providing an update which contains new reportable information as referred to in points (a), (d), (g) and (h) of paragraph 14 that has become available since the last report was filed.

Art. 8ab(12) One-off reporting of arrangements the first step of which was implemented between 25 June 2018 & 30 June 2020.* :

Each Member State shall take the necessary measures to require intermediaries and relevant taxpayers to file information on reportable cross-border arrangements the first step of which was implemented between the date of entry into force and the date of application of this Directive. Intermediaries and relevant taxpayers, as appropriate, shall file information on those reportable cross-border arrangements by 31 August 2020.

Art. 8ab(11) Use of the arrangement (optional):

Each Member State may take the necessary measures to require that each relevant taxpayer file information about their use of the arrangement to the tax administration in each of the years for which they use it.

Art. 8ab(18) Exchange:

The automatic exchange of information shall take place within one month of the end of the quarter in which the information was filed. The first information shall be communicated by 31 October 2020.



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