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# DAC 6 – Mandatory disclosure rules for cross-border arrangements



Tax advisory TUK d.o.o.

## What is DAC 6 and what is its purpose?

**DAC 6** is an acronym for the Directive on administrative cooperation in the field of taxation - Council Directive (EU) 2018/822 of May 25<sup>th</sup>, 2018, amending Directive 2011/16/EU on mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements.

The DAC 6 Directive provides for **mandatory disclosure of cross-border** arrangements by **intermediaries or taxpayers** to the tax authorities and mandates the automatic exchange of information on arrangements between EU Member States.

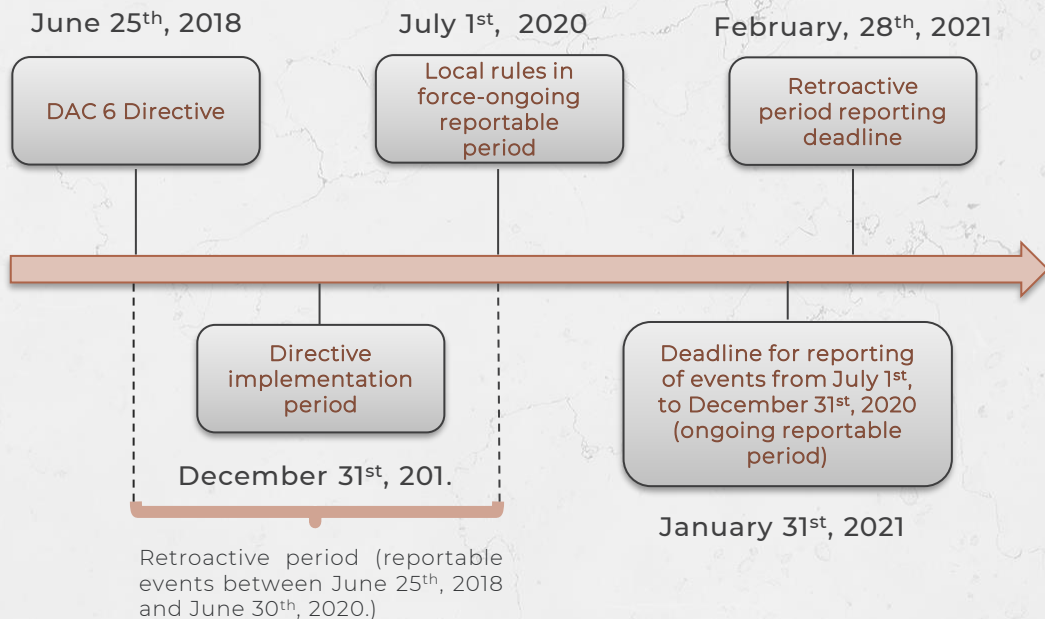
### National implementation

On January 1<sup>st</sup>, 2020, as part of the tax reform carried out by the Croatian Government, the **Law on Amendments to the Law on Administrative Cooperation in the Field of Taxation** (OG 121/19) (hereinafter "the Law") has entered into force, implementing the provisions of the DAC 6 Directive.

In addition to the Law, amendments were adopted to the **Bylaw on the automatic exchange of information in the field of taxation** (OG 1/20), which have entered into force on January 10<sup>th</sup>, 2020.



## Important dates timeline – DAC 6



## Who is liable to report?

Reporting obligation **generally rests on an intermediary**, except in special cases where the reporting obligation rests with the taxpayer.

### Definition of an intermediary:

- **Any person that designs, markets, organizes or makes available for implementation** or manages the implementation of the reportable cross border arrangement
- **Any person that based on available information and the relevant expertise and understanding** required to provide such services, **knows or could be reasonably expected to know** that they have undertaken to **provide aid, assistance or advice** with respect to designing, marketing, organizing, making available for implementation or managing the implementation of a reportable cross border arrangement
- An intermediary can be either an individual or a company (i.e. accountants, advisers, lawyers, etc.).

## What if there is no intermediary or the intermediary is not obliged to report?

The obligation to report on cross-border arrangements is transferred to the relevant taxpayer in the situation when:

- **There is no intermediary** (e.g. the taxpayer has designed the tax arrangement by himself),
- If the intermediary is **bound by a professional privilege** (e.g. the obligation to maintain the professional secrecy in accordance with the Tax Advisory Act or similar obligations arising for auditors or lawyers),
- If all of the involved intermediaries are based **outside the EU**.

### Definition of a relevant taxpayer:

A relevant taxpayer is any person to whom a reportable cross-border arrangement is made available for implementation, or who is willing to implement a reportable cross-border arrangement, or who has carried out the first step in implementation of such an arrangement.



## What is reported?

### What are cross border arrangements?

Arrangements concerning more than one Member State or a Member State and a third country if one of the following conditions are met:

- Not all of the participants in the arrangement are residents for tax purposes in the same jurisdiction;
- One or more of the participants in the arrangement are simultaneously residents for tax purposes in more than one jurisdiction ("*dual residents*");
- One or more of the participants in the arrangement operates in another jurisdiction through the PE (Permanent establishment) located in that jurisdiction + that arrangement is part of the entire business of that PE;
- One or more of the participants in the arrangement carries his business activity in another jurisdiction without being a tax resident in that jurisdiction or having established a PE in that jurisdiction;
- Such arrangement may have the effect on the automatic exchange of information or identifying beneficial ownership.

### Which cross border arrangement s are considered reportable?

- Any cross border arrangement which contains at least one of the hallmarks set in Annex IV of the Directive and Chapter III of the Regulation on the automatic exchange of information.
- No obligation to report purely domestic tax arrangements.





## What is reported?

### What is considered under the term "hallmark"?

- Hallmark is a characteristic or a feature of a cross border arrangement which is a indication of a potential risk of tax avoidance,
- Hallmarks can be divided into five basic categories, some of which require a main benefit test in order to determine the reporting obligation.

### Main benefit test:

- is carried out in order to determine whether the arrangement is intended to achieve the tax advantage as its basic benefit, or one of the basic benefits. Some arrangements are reported only if it is determined that there is a basic benefit.

### How are arrangements reported?

- The intermediary, or in some cases the relevant taxpayer, is obliged to submit a report to the Ministry of Finance, the Tax Administration within the prescribed deadlines through the online application within the ePorezna system. The report should contain all the necessary information prescribed in **Art. 35.k of the Law**.
- For arrangements made **after January 1<sup>st</sup>, 2021**, the reporting deadline is **30 days** from the date the arrangement has been made available, ready for implementation or when the first step in the implementation of the arrangement has been made, whichever occurs first. For arrangements made earlier, **reporting deadline is 31<sup>st</sup>, 2021, and February 28<sup>th</sup>, 2021, respectively**.



## Examples of reportable arrangements

Basically, arrangements relate to cross-border transactions or structures, either with related or unrelated parties, such as:

- **Acquisitions of a loss-making company**

Transaction in which a participant makes artificial steps in order to acquire a loss-making company and use its tax losses with subsequent termination of its main activity.

- **Conversion of income into capital**

For example, debt to equity swap, where income from interest is converted into non-taxable dividend income.

- **Payments to „black-listed” jurisdictions**

Payments to related parties in jurisdictions that have been assessed as non-cooperating (so-called black-listed), for example Trinidad and Tobago, the US Virgin Islands, Panama, etc.

- **Payments benefiting from a preferential tax regime**

Payments to related parties that are subject to a preferential tax regime with the recipient (for example, IP-Box regimes in many EU Member States where intellectual property fees are taxed preferentially).





## Examples of reportable arrangements

- **Exemption from double taxation in several territories**

Transaction in which the same item of capital or income is exempt from double taxation in more than one jurisdiction, such as dividend payments to a parent company on which no withholding tax is paid in the payer's country in line with a double taxation agreement or a EU directive.

- **Use of unilateral safe-harbour rules**

Transaction which involves the use of interest rates on loans between related parties prescribed by the Ministry of Finance in accordance with Art. 14. of Corporate Income Tax Law (3.42% in 2020).

- **Cross-border relocation of functions, risks or assets**

This is, for example, a transaction involving the transfer of functions from the parent company to the subsidiary, where such transfer affects the annual EBIT of the transferor by more than 50% for a period of three years after the transfer.



## Legal penalties

The Law imposes monetary fines for non-compliance with legal provisions regarding the reporting obligation on cross-border arrangements:

- Article 66 of the Law prescribes fines ranging from HRK **2,000 to 200,000**, which will be imposed on the intermediary, or the relevant taxpayer for misdemeanors, and up to HRK **20,000** for the responsible person(s) in the legal entity.

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