

An aerial photograph of a city, likely Brussels, Belgium, showing a dense urban landscape. The foreground features a mix of old brick buildings and newer, more modern structures. A prominent tall, modern skyscraper stands out in the middle ground. The sky is filled with soft, colorful clouds, suggesting a sunset or sunrise. The overall tone is warm and atmospheric.

Belgium

DAC 6 Domestic Implementation

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General information

Territory	Belgium
Tax authority	FOD Financiën
Status of legislation	Implemented In principle the legislation enters into force on 1 July 2020. However, in light of the COVID-19 pandemic, the Belgian authorities will apply an administrative tolerance and postpone the deadlines. For more information, see below.
Taxes covered	Income tax, inheritance tax, transfer tax and miscellaneous duties.
Taxes excluded	VAT
Domestic transactions	No

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Definitions further clarified by guidance

Relevant taxpayer	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.
Associated enterprise	A person who is related to another person in at least one of the following ways: <ul style="list-style-type: none">• A person participates in the management of another person and is in a position to exercise significant influence over the other person• A person participates in the control of another person through a holding that exceeds 25 % of voting rights• A person participates in the capital of another person through a holding that (directly or indirectly) exceeds 25 % of the capital• A person is entitled to 25 % or more of the profits of another person.
Marketable arrangement	Cross-border arrangement that is designed, marketed, ready for implementation or made available for implementation without a need to be substantially customised.

Cross-border arrangement

An arrangement concerning either more than one Member State or a Member State and a third country where at least one of the following conditions is met:

- Not all of the participants in the arrangement are resident for tax purposes in the same jurisdiction
- One or more of the participants in the arrangement is simultaneously resident for tax purposes in more than one jurisdiction
- One or more of the participants in the arrangement carries on a business in another jurisdiction through a permanent establishment situated in that jurisdiction and the arrangement forms part or the whole of the business of that permanent establishment
- One or more of the participants in the arrangement carries on an activity in another jurisdiction without being resident for tax purposes or creating a permanent establishment situated in that jurisdiction
- Such arrangement has a possible impact on the automatic exchange of information or the identification of beneficial ownership.

An arrangement shall also include a series of arrangements. An arrangement may comprise more than one step or part.

Intermediary

Any person that designs, markets, organizes or makes available for implementation or manages the implementation of a reportable cross-border arrangement. It also means any person that, having regard to the relevant facts and circumstances and 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, directly or by means of other persons, aid, assistance or advice with respect to designing, marketing, organising, making available for implementation or managing the implementation of a reportable cross-border arrangement.

Tax advantage

There is a difference in the tax payable for the tax payer when applying the arrangement versus in absence of the arrangement.

Following are the elements to consider when determining if there is a tax advantage (non-exhaustive list):

- Amount not included in tax base
- Claiming a deduction
- Incurring a fiscal loss
- Exemption from taxation at source
- Delay in tax being due
- Acceleration of tax refunds.

Made available for implementation

An arrangement is made available for the implementation as soon as a tax payer is – directly or indirectly – offered an arrangement whereby all important elements of the design have been determined and communicated regardless of whether the arrangement will actually be implemented.

In other words, when the tax payer has been sufficiently informed in order to decide on the arrangement

Hallmark

The hallmark is defined as a feature or characteristic of an arrangement that indicates a potential risk of tax avoidance.

3 Additional hallmarks

Additional hallmarks None

4 Operation of legal professional privilege (LPP)

Operation of legal professional privilege (LPP)

When the intermediary is bound by LPP, he is required to notify any and all other intermediaries in writing that the reporting obligation automatically rests with them. If there are no other intermediaries, he should notify the relevant taxpayer in writing that the reporting obligation rests with the taxpayer.

LPP cannot be invoked to be exempt from the periodic reporting for marketable arrangements.

5 Reporting deadline

Intermediaries

Within 30 days following:

- The day after the reportable cross-border arrangement is made available for implementation; or
- The day after the reportable cross-border arrangement is ready for implementation; or
- The moment when the first step in the implementation of the reportable cross-border arrangement is made, whichever occurs first.

In addition, intermediaries are also 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. Reportable transactions for which first implementation step took place between 25 June 2018 and 1 July 2020 need to be reported by 31 August 2020.

In view of the COVID-19 pandemic, the abovementioned 30 days periods will only be deemed to start on the 1st January 2021 for reportable transactions for which the first implementation step took place between 1 July 2020 and 31 December 2020 by virtue of an administrative tolerance.

Reportable transactions for which first implementation step took place between 25 June 2018 and 30 June 2020 in principle need to be reported by 31 August 2020. However, by virtue of the administrative tolerance, this deadline has been postponed until 28 February 2021.

For marketable arrangements, the intermediary is required to file a periodic report with all new reportable cross-border arrangements every 3 months.

Users (where LPP applies)

Within 30 days following:

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

In view of the COVID-19 pandemic, the abovementioned 30 day periods will only be deemed to start on the 1st January 2021 for reportable transactions for which the first implementation step took place between 1 July 2020 and 31 December 2020 by virtue of an administrative tolerance.

Reportable transactions for which first implementation step took place between 25 June 2018 and 30 June 2020 in principle need to be reported by 31 August 2020. However, by virtue of the administrative tolerance, this deadline has been postponed until 28 February 2021.

6 Reporting principles for intermediary

Circumstances in which intermediary is obliged to report

Intermediary is obliged to report information that is within their knowledge, possession or control on reportable cross-border arrangements.

Obligation to inform user what data was communicated

No

Priority of reporting where multi member state reporting obligations exist

Where the intermediary is liable to file information on reportable cross-border arrangements with the competent authorities of more than one Member State, such information shall be filed only in the Member State that features first in the list below:

- The Member State where the intermediary is resident for tax purposes
- The Member State where the intermediary has a permanent establishment through which the services with respect to the arrangement are provided
- The Member State which the intermediary is incorporated in or governed by the laws of
- The Member State where the intermediary is registered with a professional association related to legal, taxation or consultancy services.

Circumstances under which intermediary not required to report

In case of multiple reporting obligations, the intermediary shall be exempt from filing if it has proof, in accordance with national law, that the same information has been filed in another Member State.

The intermediary shall also be exempt from filing the information if he is bound by legal professional privilege and has notified the other intermediaries or in absence thereof, the relevant taxpayer.

What will the tax authorities provide for the notification received

The tax authorities will send an acknowledgement of receipt (if applicable, including the unique reference assigned to arrangement) after submission and validation of the XML file.

If the XML file is not valid, an error report will be sent.

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Reporting principles for taxpayer

Circumstances in which taxpayer is obliged to report

The relevant taxpayer is obliged to report if:

- No intermediary was involved in the design, marketing, organizing or making available for implementation or managing the implementation of a reportable cross-border arrangement; or
- They have been notified by the intermediary that the intermediary is bound by legal professional privilege.

Priority of reporting where multiple taxpayers are involved

Where the relevant taxpayer has an obligation to file information on the reportable cross-border arrangement with the competent authorities of more than one Member State, such information shall be filed only with the competent authorities of the Member State that features first in the list below:

- The Member State where the relevant taxpayer is resident for tax purposes
- The Member State where the relevant taxpayer has a permanent establishment benefiting from the arrangement
- The Member State where the relevant taxpayer receives income or generates profits, although the relevant taxpayer is not resident for tax purposes and has no permanent establishment in any Member State
- The Member State where the relevant taxpayer carries on an activity, although the relevant taxpayer is not resident for tax purposes and has no permanent establishment in any Member State.

Circumstances under which taxpayer not required to report

Where there is a multiple reporting obligation, the relevant taxpayer shall be exempt from filing the information if it has proof, in accordance with national law, that the same information has been filed in another Member State.

Proof that reporting obligation is satisfied by other taxpayer

Evidence to be provided in writing. Currently no further practical guidance as to reporting method is provided by the Belgian authorities.

8 Reporting principles applicable to all

Language

In any one of Belgium's official languages (Dutch, French or German) and in English for certain sections of the reporting obligation.

9 Penalties

Circumstances in which penalties may apply

Incomplete, late - or non-filing.

For the reportable transactions for which first implementation step took place between 25 June 2018 and 1 July 2020 no penalties will be applied if they are reported by 31 August 2020.

Remark: it can be expected that the first reporting date will be postponed to end December 2020. However this is yet to be confirmed formally.

Amount

EUR 250 to EUR 12,500 for incomplete filing. EUR 2,500 to EUR 25,000 in case the intermediary / taxpayer acted in bad faith.

EUR 5,000 to EUR 50,000 for late or non-filing EUR

EUR 12,500 to EUR 100,000 in case the intermediary / taxpayer acted in bad faith.

10 Country specifics

Country specifics / deviation from EU directive

None



Tanja De Decker
Tax Partner
t.dedecker@bakertilly.be



Dries Van Isterdael
Tax Consultant
d.vanisterdael@bakertilly.be