

Germany

DAC 6 Domestic Implementation



1

General information

Territory	Germany
Tax authority	German Federal Central Tax Office (Bundeszentralamt für Steuern (BZSt))
Status of legislation	Implemented. Entry into force on 1 July 2020. The German Federal Ministry of Finance (BMF) publishes a second draft of the administrative decree on 14 July 2020. No final version has been published yet. The German Federal Central Tax Office will apply this draft for the time being.
Taxes covered	Mainly income tax / corporate income tax incl. solidarity surcharge, trade tax, real estate transfer tax, inheritance and gift tax.
Taxes excluded	VAT and harmonised excise duties and import and export duties which fall under the Customs Code of the EU.
Domestic transactions	No

2

Definitions further clarified by guidance

Relevant taxpayer	The relevant taxpayer of a cross-border tax arrangement is any individual or legal entity, partnership, association or trust to whom the cross-border tax arrangement provides for implementation, who is willing to implement the cross-border tax arrangement or who has taken the first step to implement the cross-border tax 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	A cross-border tax arrangement is marketable if it is designed, marketed, ready for implementation or made available for implementation without the need to be substantially customised.

Cross-border arrangement

A tax arrangement is cross-border if it affects either more than one EU Member State or at least an EU Member State and one or more third countries. Whether a tax arrangement is cross-border depends on the residence of the relevant taxpayer, of other parties involved in the tax arrangement and under certain circumstances of the intermediary.

Additionally, at least one of the following conditions must be 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.

If a tax arrangement comprises a series of arrangements, it is considered to be a cross-border tax arrangement if at least one step or part of the series is cross-border. In this case., the report shall cover the entire arrangement.

Purely domestic arrangements are not covered by the reporting obligation.

Intermediary

Any person who markets, designs, organizes or makes available for use by third parties a cross-border tax arrangement or manages its implementation by third parties.

An active role directly linked to the cross-border arrangement is necessary for the classification as intermediary.

A person does not qualify as an intermediary if the person is not aware of the tax relevance of its actions, for example, because it is only involved in corporate implementation issues.

Tax advantage

A tax advantage should be considered to arise if, through the arrangement, taxes are to be refunded, tax rebates granted or increased, tax claims are to be waived or reduced or the arising of tax claims is prevented or shifted to other tax periods or tax dates.

A tax advantage also exists if it is to arise outside the scope of this law.

Furthermore, an arrangement should not be subject to the reporting requirement where it only has an effect domestically and if it is, under consideration of all circumstances of the tax arrangement, legally provided for in German domestic law.

Made available for implementation

A cross-border arrangements is made available for implementation if the intermediary hands over or makes available the information or (contractual) documents to a potential relevant taxpayer that are required for the implementation. It is irrelevant whether the tax arrangement was actually implemented, much rather that the relevant taxpayer was put in a position to implement the tax arrangement. The publication of general information or pitch presentations do not qualify as making available for implementation.

Hallmark

There are two groups of hallmarks defined by law. The first group are hallmarks that require a main benefit test. The second group comprises hallmarks for which a main benefits test is not necessary.

The main benefit test is fulfilled if an informed party may reasonably expect, taking into account all material facts and circumstances, the main benefit, or one of several main benefits, o the arrangement to be a tax advantage.

3**Additional hallmarks****Additional hallmarks**

None

4**Operation of legal profesional privilege (LPP)****Operation of legal professional privilege (LPP)**

Intermediaries may also be protected by legal professional privilege (LPP), such as lawyers, tax advisors and auditors. They are also obliged to provide full information on cross-border tax arrangements. If the person protected by LPP is an intermediary, they must inform the relevant taxpayer of the cross-border tax arrangement about their obligation to maintain secrecy and about the possibility to be released from this obligation.

In the event of a release, the person subject to LPP is obliged to provide complete information.

If the person protected by LPP is not released from his obligation to secrecy after having informed accordingly, the obligation to notify the individual details is partially transferred to the relevant taxpayer of the arrangement.

The intermediary is however obliged to reported arrangement related information (ie description of the arrangement).

The reporting requirement shall only pass to the relevant taxpayer as soon as the intermediary has transmitted all other data not subject to the secrecy obligation to the Federal Central Tax Office and has forwarded to the relevant taxpayer the registration and disclosure number assigned to him for this reporting. The intermediary must provide the relevant taxpayer with the other individual data, unless the relevant taxpayer is aware of them.

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.

Note: With respect to historic arrangements or which the first implementation step takes place between 25 June 2018 and 1 July 2020, the reporting deadline is by 31 August 2020.

In the case of a marketable tax arrangement certain changes and amendments are not to be notified to the Federal Central Tax Office within 30 days of the end of the relevant event, but only by the 10th day after the end of the relevant calendar quarter.

Users (where LPP applies)

In principle, 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.

Note: With respect to historic arrangements or which the first implementation step takes place between 25 June 2018 and 1 July 2020, the reporting deadline is by 31 August 2020.

In cases where the reports by intermediaries who are protected by LPP and who are not released from the secrecy obligation, the relevant taxpayer must report the individual details as soon as certain conditions are met. The relevant taxpayer's 30-day reporting obligation shall not commence until the end of the day on which the relevant taxpayer has obtained the necessary information from the intermediary.

6

Reporting principles for intermediary

Circumstances in which intermediary is obliged to report

An intermediary is only required to report a cross-border arrangement to the BZSt if it has a German nexus. This can be based on a domestic residence, habitual abode, principal place of management or registered office. In case these places are outside the EU, the German nexus may also result from the maintenance of a permanent establishment in Germany or entry in a public or professional register.

If the intermediary has no German nexus and is resident in a EU Member state it has to fulfil its reporting requirements in that jurisdiction, This will also apply if the arrangement affects a relevant taxpayer resident in Germany or German tax claims.

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

Yes (see above).

Priority of reporting where multi member state reporting obligations exist

Where the intermediary is obliged 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 cases where an intermediary is required to report cross-border tax arrangements in several EU Member States in parallel, the intermediary is exempt from this obligation with regards to the same cross-border tax arrangement if he can prove that he has already reported the cross-border tax arrangement to the competent authority in another EU Member State in accordance with the legal provisions applicable in this state. The proof can be provided by having the registration and disclosure number issued in the other EU Member State available.

There are cases where several intermediaries is required to report the same cross-border tax arrangements is conceivable. In such case, an intermediary is exempt from the obligation to report to the Federal Central Tax Office if it can prove that the required information on the same arrangement has already been reported to the Federal Central Tax Office or the competent authority of another EU Member State. The registration number and the disclosure number of the Federal Central Tax Office or the corresponding numbers of the competent foreign authority are sufficient as proof.

What will the tax authorities provide for the notification received

The German tax authorities will issue a registration number (Arrangement ID) for the cross-border arrangement and a disclosure number (Disclosure ID) for the notification received (ie evidence of receipt). The intermediary is required to immediately provide the registration number and the disclosure number to the relevant taxpayer or other intermediary.

7

Reporting principles for taxpayer

Circumstances in which taxpayer is obliged to report

The relevant taxpayer is obliged to report if:

- They have a German nexus. This is the case if the relevant tax has his domicile, his habitual abode, their principal place of management or a registered office in Germany, or, if they do not have any of these attributes in an EU Member State but has a permanent establishment in Germany where a tax advantage is created by the cross-border tax arrangement or where they generate income or carries out an economic activity, provided these are relevant for a tax which the EU Administrative Assistance Act applies
- They have designed the cross-border tax arrangement for themselves (in-house arrangement)
- An intermediary exists but has no German nexus
- They have been notified by the intermediary that the intermediary is bound by legal professional privilege and the intermediary has transmitted all other data not subject to professional secrecy to the Federal Central Tax Office and has forwarded to the relevant taxpayer the registration and disclosure number assigned
- in cases where the intermediary is subject to LPP the obligation of the intermediary to report information which is not individual has been assumed by the relevant taxpayer. Then the relevant taxpayer reports as data transmitter on behalf of the intermediary.

Priority of reporting where multiple taxpayers are involved

Where multiple users are involved, the user that is to file for all general (non-user related) information will be the one that features first in the list below:

- The user that agreed the arrangement with the intermediary
- The user that is managing the implementation of the arrangement.

Circumstances under which taxpayer not required to report

- There is evidence that the arrangement has been reported by an intermediary; or
- there is evidence that the arrangement has been reported by another relevant taxpayer; or
- the proof can be furnished by having the registration and disclosure number issued by the Federal Central Tax Office or the relevant authority in another EU Member State.

Proof that reporting obligation is satisfied by other taxpayer

Registration number (Arrangement ID) and the disclosure number (Disclosure ID) from the intermediary or other relevant taxpayer.

8

Reporting principles applicable to all

Language

The mandatory information can be submitted in German. In some cases, some additional information must be provided in English.

Furthermore, some information may be reported in English in addition to the information in German.

9

Penalties

Circumstances in which penalties may apply

Wilful and gross negligent violations of the reporting requirements constitute and administrative offence which can be punished by a fine. This includes incomplete, late, or non-filing of a cross-border tax arrangement.

Failure to provide the prescribed information on the cross-border arrangement in the relevant tax return (at all / timely / completely / properly) also constitutes an administrative offence.

Amount

Fine of up to EUR 25,000.

10 Country specifics

**Country specifics /
deviation from EU directive**

None

11 Technological implementation

Electronic data transmission The notification shall be transmitted exclusively by electronic transmission, in accordance with the officially prescribed data set to the Federal Central Tax Office (BZSt).

The following three reporting channels are available for data transmission:

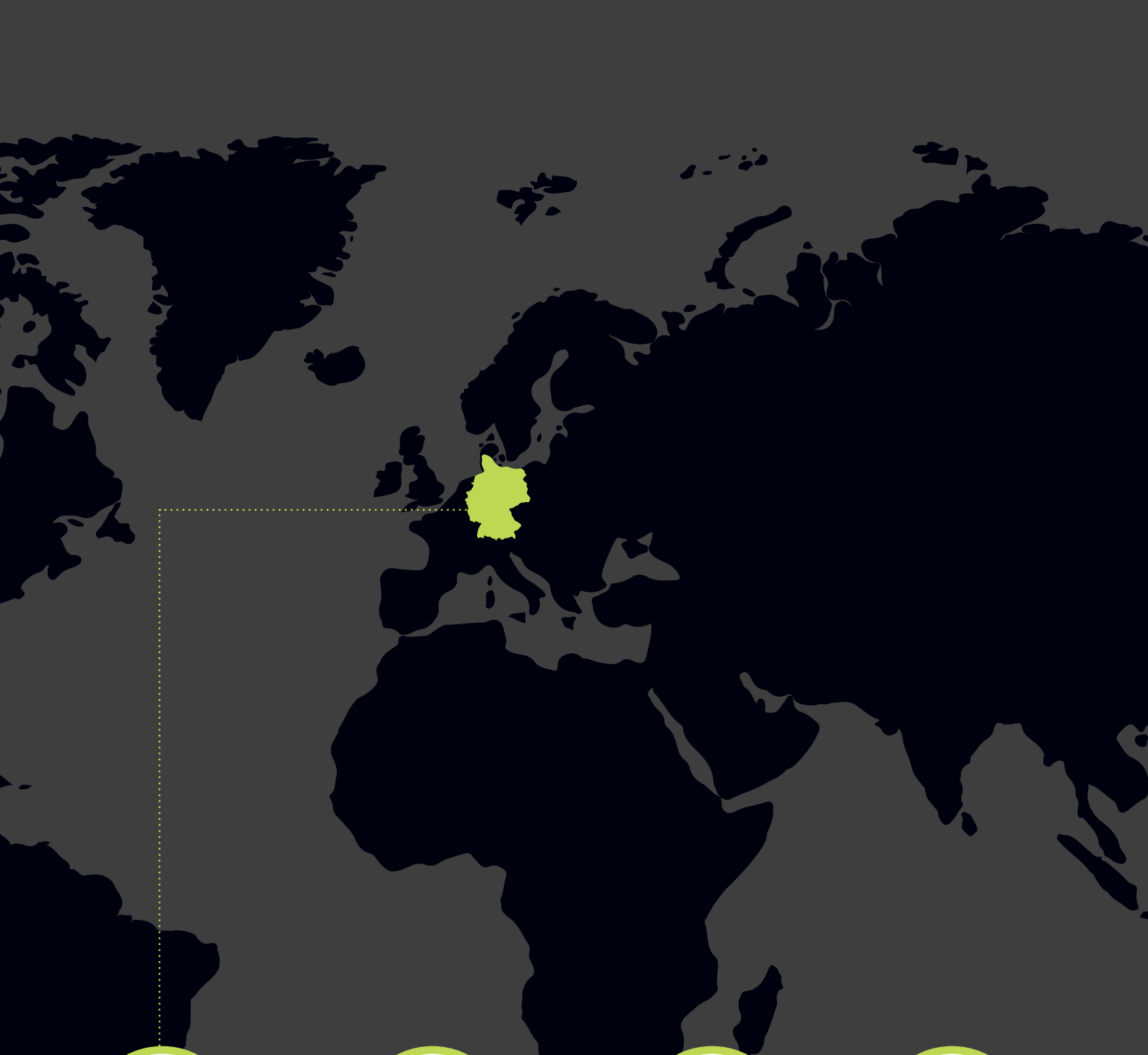
- Individual data transmission via the BZSt online portal (BOP)
- XML Web Upload in the BOP
- Electronic mass data interface (ELMA).

The German Central Tax Office has published step-by-step guidelines and video tutorials to assist with the implementation and usage of the reporting scheme.

Content of declaration

The report shall contain following information:

- Identification of the intermediary and to other intermediaries
- Details of the relevant taxpayer)
- Details of involved affiliated entities)
- Particulars of hallmarks requiring reporting
- Content of the cross-border tax arrangement
- The date on which the first step in the implementation has been taken or expected to be taken
- Details of the relevant legislation of the affected member states
- The actual or economic value of the arrangement
- The EU Member States likely to be affected
- Information of all persons who are likely to be affected by the arrangement
- If applicable the registration and disclosure number issued to the intermediary or another intermediary.



Andreas Griesbach
Partner & Head of Industry
Group Real Estate
Andreas.Griesbach@bakertilly.de

Carsten Hüning
Partner, Global Leader
Transfer Pricing
carsten.huening@bakertilly.de

Ines Paucksch
Global International
Corporate Tax Leader
Ines.Paucksch@bakertilly.de

Marc Roth-Lebeau
Tax Partner Financial
Services
marc.lebeau@bakertilly.de