



Luxembourg

# DAC 6 Domestic Implementation

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## General information

<b>Territory</b>	Luxembourg
<b>Tax authority</b>	Administration des Contributions Directes
<b>Status of legislation</b>	Implemented. Enters into force on 1st January 2021. Reportable transactions for which first implementation step takes place between 25 June 2018 and 30 June 2020 is to be reported by 28 February 2021. Limited practical guidelines available.
<b>Taxes covered</b>	Income tax, corporate tax, capital gains tax, registration duties, local taxes, real estate taxes and wealth or inheritance taxes.
<b>Taxes excluded</b>	VAT, customs and excise duties.
<b>Domestic transactions</b>	No

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## Definitions further clarified by guidance

<b>Relevant taxpayer</b>	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.
<b>Associated enterprise</b>	<b>A person who is related to another person in at least one of the following ways:</b> <ul style="list-style-type: none"><li>• A person participates in the management of another person and is in a position to exercise significant influence over the other person</li><li>• A person participates in the control of another person through a holding that exceeds 25% of voting rights</li><li>• A person participates in the capital of another person through a holding that (directly or indirectly) exceeds 25% of the capital</li><li>• A person is entitled to 25% or more of the profits of another person.</li></ul>
<b>Marketable arrangement</b>	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.

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## **Intermediary**

Any person that designs, markets, organises 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, organizing, making available for implementation or managing the implementation of a reportable cross-border arrangement.

The intermediary has the right to prove (through facts and circumstances, available information, his expertise and knowledge) that they didn't know or could not reasonably be expected to know, that they were participating to a reportable cross-border arrangement.

**In addition, to be an intermediary, the person must meet at least one of the following additional conditions:**

- Be tax resident in a Member State
- Have a permanent establishment in a Member State through which the services related to the arrangement were provided
- Be incorporated or regulated by the law of a Member State
- Be registered to a legal, tax or advisory professional association in a Member State.

**Tax advantage** Not clarified in Luxembourg legislation.

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**Made available for implementation** Not clarified in Luxembourg legislation.

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**Hallmark** A characteristic or feature of a cross-border arrangement that presents an indication of 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)** **Lawyers, chartered accountants and auditors are covered by the legal professional privilege and will have no reporting obligations, unless they would act out of the borders of their professional exercise. However, they should notify within 10 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;

the reporting obligation to any other intermediary or to the client in case of lack of intermediary. They should provide the other intermediary / client the relevant information to fulfill his reporting obligations.

### 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.

**Intermediaries**

Reportable transactions for which first implementation step takes place between 25 June 2018 and 30 June 2020 is to be reported by 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.

Reportable transactions for which first implementation step takes place between 25 June 2018 and 30 June 2020 is to be reported by 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**

Not clarified in Luxembourg legislation, but it is already précised that the lack of reaction does not mean that the validity of the arrangement or its tax treatment has been approved by the tax authorities.

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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, organising or making available for implementation or managing the implementation of a reportable cross-border arrangement (in house planning)
- 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 that the same information has been filed in another Member State.

**Proof that reporting obligation is satisfied by other taxpayer**

Not clarified in Luxembourg legislation.

## 8 Reporting principles applicable to all

**Language**

To be confirmed by grand ducal regulation. But probably French and German (official languages). Possibly English (business language but not official language).

## 9 Penalties

**Circumstances in which penalties may apply**

Lack of transmission of information, late transmission, transmission of incomplete or inaccurate information.

In case of legal professional privilege, lack of notification of filing obligation to an other intermediary / the taxpayer.

**Amount**

EUR 250,000

## 10 Country specifics

**Country specifics / deviation from EU directive**

Wide legal professional privilege (lawyers, chartered accountants, auditors).



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