



Romania

DAC 6 Domestic Implementation

1

General information

Territory	Romania
Tax authority	ANAF (National Agency for Fiscal Administration)
Status of legislation	Implemented. Law enters into force as at 31 January 2020. First reporting: <ul style="list-style-type: none">• 28 February 2021 for the transactions carried out between 25 June 2018 – 30 June 2020• 1 January 2021 – the start of the 30-day period for cross-border arrangements which become reportable after 30 June 2020• 30 April 2021 – the first exchange of information between EU Member States. Reporting template issued by ANAF (amendments are expected). Official guidelines (with examples) yet to be published by ANAF.
Taxes covered	Direct taxes
Taxes excluded	VAT
Domestic transactions	No

2

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.
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Associated enterprise

A person who is related to another person in at least one of the following ways:

- 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.

If the same persons/several persons participate, as provided in subpoint (i) - (iv) in the management, control, capital or profit of several persons, all the persons concerned are considered to be associated enterprises.

A natural person, their spouse and direct descendants or ascendants shall be considered as a single 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, 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 should be domiciled in an EU Member State or should operate a permanent establishment in a Member State, through which services are provided for the arrangement in question.

To be an intermediary, a person must meet at least one of the following additional conditions:

- To be resident for tax purposes in Romania;
- To have a permanent establishment on the territory of Romania through which to provide the services related to the arrangement in question
- To be constituted in Romania or to be regulated by the national legislation of Romania
- To be registered in a professional association in connection with the provision of legal, fiscal or consultancy services in Romania.

Tax advantage The current Romanian legislation does not provide for a definition of tax advantage in the context of DAC6 reporting.

Made available for implementation The current Romanian legislation does not provide for a definition for “made available for implementation” concept in the context of DAC6 reporting.

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 No additional hallmarks included in the current Romanian legislation.

4 Operation of legal professional privilege (LPP)

Operation of legal professional privilege (LPP)

Currently, no definition or guidance is provided for the concept of “legal professional privilege” by the Romanian regulations in this context.

The law as it is only states that if the intermediary is bound by legal professional privilege, the intermediary should report the cross-border transactions only based on the written approval received from the relevant taxpayer.

If there is no legal professional privilege applicable, the intermediary must notify in writing any intermediary on the reporting obligations.

The reporting obligations may be shifted to the relevant taxpayer when there are no intermediary (eg for the inhouse transactions) or if the legal professional privilege is applicable.

5 Reporting deadline

Intermediaries

The intermediary should report to the Romanian tax authorities 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

Intermediaries

- the moment when the first step in the implementation of the reportable cross-border arrangement is made, whichever occurs first.

Also, the intermediaries should report to the Romanian tax authorities information within 30 days beginning on the day after they provided, directly or indirectly, aid, assistance or advice.

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

For reporting deadlines, please refer to **section Status of legislation above**.

Users (where LPP applies)

The reporting relevant taxpayer should inform the Romanian tax authorities within 30 days from the 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.

For reporting deadlines, please refer to **section Status of legislation above**.

6

Reporting principles for intermediary

Circumstances in which intermediary is obliged to report

Intermediary is obliged to report information that is within their knowledge (or it would reasonably be expected to know), possession or control on reportable cross-border arrangements.

Obligation to inform user what data was communicated

No

Circumstances under which intermediary not required to report

In case of multiple reporting obligations, the intermediary is exempt from reporting requirements in Romania if it has and makes available to the Romanian tax authorities the proof that the same information has been reported in another Member State.

The intermediary is also exempt from the reporting obligations if a legal professional privilege is applicable and they notified the other intermediaries/ the relevant taxpayer.

6

Reporting principles for intermediary

Priority of reporting where multi member state reporting obligations exist

Where the intermediary is required to report the cross-border arrangements with the competent authorities of more than one Member State, such information will be reported 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.

What will the tax authorities provide for the notification received

No information is currently available.

7

Reporting principles for taxpayer

Circumstances in which taxpayer is obliged to report

The relevant taxpayer is required to perform the reporting in the following cases:

- for the “in-house” cross-border transactions, where 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
- the relevant taxpayer has 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 should report a cross-border arrangement with the competent authorities of more than one Member State, such information will 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

Priority of reporting where multiple taxpayers are involved

- 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

In case of multiple reporting obligations, the relevant taxpayer is exempt from reporting requirements in Romania if it has and makes available to the Romanian tax authorities the proof that the same information has been reported in another Member State.

Proof that reporting obligation is satisfied by other taxpayer

No information is currently available.

8 Reporting principles applicable to all

Language

Romanian language mainly. The main reporting elements may be reported also in another EU official language, by NAFA.

9 Penalties

Circumstances in which penalties may apply

Failure to report, report with delay and lack of notification of other intermediaries or relevant taxpayer are subject to penalties.

Amount

Failure to report or report with delay by the intermediaries or relevant taxpayer – penalties within the range of RON 20,000 – RON 100,000 (approx. EUR 4,000 – EUR 20,000).

Failure to notify other intermediary or the relevant taxpayer – penalties within the range of RON 5,000 – RON 30,000 (approx. EUR 1,000 – EUR 6,000).

10 Country specifics

Country specifics / deviation from EU

The Romanian hallmarks implemented in the domestic legislation are similar with the hallmarks provided by the Directive.



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