



Spain

DAC 6 Domestic Implementation

PELUQUERIA
SEÑORAS

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General information

Territory	Spain
Tax authority	Agencia Estatal de Administración Tributaria
Status of legislation	Law enters into force on 31 December 2020. Law 10/2020, from 29 December (published on 30 December 2020).
Taxes covered	Income Tax, Corporate Income Tax, Trade Tax, Real Estate Transfer Tax, Inheritance and Gift Tax.
Taxes excluded	Indirect taxes (VAT and excise duties).
Domestic transactions	No

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Definitions further clarified by guidance

Relevant taxpayer	Any person or entity to whom a cross-border arrangement subject to communication of information has been made available for enforcement or which is preparing to enforce or has enforced the first stage of such arrangements provided that there is no intermediary required to submit the declaration.
Associated enterprise	<p>Direct reference to the definition set out in the article 3.23 from the Directive.</p> <p>A person who is related to another person in at least one of the following ways:</p> <ul style="list-style-type: none">• A person participates in the management of another person by being in a position to exercise a significant influence over the other person• A person participates in the control of another person through a holding that exceeds 25% of the voting rights• A person participates in the capital of another person through a right of ownership that, directly or indirectly, exceeds 25% of the capital• A person is entitled to 25% or more of the profits of another person. <p>If more than one person participates, as referred to in points (a) to (d), in the management, control, capital or profits of the same person, all persons concerned shall be regarded as associated enterprises.</p> <p>If the same persons participate, as referred to in points (a) to (d), in the management, control, capital or profits of more than one person, all persons concerned shall be regarded as associated enterprises.</p>

Associated enterprise continued

For the purposes of this point, a person who acts together with another person in respect of the voting rights or capital ownership of an entity shall be treated as holding a participation in all of the voting rights or capital ownership of that entity that are held by the other person.

In indirect participations, the fulfillment of requirements under point (c) shall be determined by multiplying the rates of holding through the successive tiers. A person holding more than 50% of the voting rights shall be deemed to hold 100%.

An individual, their spouse and their lineal ascendants or descendants shall be treated as a single person.

Marketable arrangement

Direct reference to the definition set out in the article 3.24 from the Directive.

A 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 affecting more than one Member State or a Member State and a third tax jurisdiction where any of the following conditions is met:

- Not all participants in the arrangement are tax residents in the same jurisdiction
 - One or more of the participants in the arrangement are simultaneously tax residents in more than one jurisdiction
 - One or more of the participants in the arrangement exercise an economic activity in another tax jurisdiction through a permanent establishment located in that jurisdiction, and the arrangement constitutes part or the whole of the economic activity of that establishment permanent
 - One or more of the participants in the arrangement carry out an activity in another jurisdiction without being resident for tax purposes or without setting up a permanent establishment which is situated in this jurisdiction and the arrangement constitutes a part or the whole of that activity economic
 - This arrangement has possible consequences on the automatic exchange of information or the identification of the beneficial ownership.
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Intermediary

Any person or entity that designs, markets, organises, makes available for implementation of a cross-border arrangement subject to communication of information, or which manages its execution.

Also any person or entity who knows or may reasonably be presumed to know that committed to providing directly or through others help, assistance or advice with regard to design, marketing, organisation, provision for its implementation or management of the implementation of a cross-border arrangement subject to communication of information.

Tax advantage

Any reduction in the tax base or tax liability, in terms of tax debt, including the deferral of the accrual of the same, which would have corresponded if the cross-border arrangement subject to declaration or when the taxable event is totally or partially prevented by the performance of that arrangement. Likewise, the generation of bases, quotas will be considered as a tax saving, deductions or any other tax credit that may be offset or deducted in the future.

Made available for implementation

Not yet, outstanding implementation of Directive in the Spanish Law.

Hallmark

Any of those referred to in Annex IV of Council Directive 2011/16/EU as developed in the Regulation.

3 Additional hallmarks

Additional hallmarks

None additional to Directive hallmarks.

4 Operation of legal professional privilege (LPP)

Operation of legal professional privilege (LPP)

When the intermediary is bound by LLP it is not required to file a return (unless authorised by the taxable person concerned).

In this case, the exempted intermediary must notify the other intermediaries involved in the arrangement and the taxpayer concerned within five days from the day after the obligation to provide information arises, by means of the communication referred to in Spanish law.

The content of the communication shall follow the model approved by Resolution of the Department of Tax Management of the State Tax Administration Agency.

The following are exempted from the obligation of information based on professional secrecy professionals who carry out "participatory advice", it means primary intermediaries who design, market, organise or manage the implementation of a cross-border tax planning arrangement, or secondary intermediaries who provide help, assistance or advice in seeking or facilitating the implementation of a tax planning arrangement.

In this respect, only those intermediaries providing "neutral advice", it means, intermediaries providing strictly legal advice aimed at determining the legal position of a given arrangements, assessing its fit with the implementing rules and the legal consequences arising from it, may be covered by the LPP.

Intermediaries

Outstanding to be approved the draft regulation for reports to be submitted, Form 234 "Reporting of cross-border arrangements in which hallmarks are carried out", Form 235 "Reporting of information for the updated data on marketable cross-border arrangements" and Form 236 "Reporting on the use of certain cross-border planning arrangements".

There are three different forms to be submitted for cross-border arrangements information. These forms would have different deadlines according to the information to be provided to tax authorities.

form 234, Reporting of cross-border arrangements in which hallmarks are carried out.

Within 30 following days from:

- When hallmark concurrence of standardised arrangement, the day after a cross-border arrangement subject to communication of information is made available for enforcement. Such availability shall be deemed to have taken place when the intermediary transfers and the taxable person concerned definitively accepts the provision of services which have determined the status of the former as an intermediary
- When arrangements that have substantially standardised documentation or structure but require a relevant modification for their implementation, the day after a cross-border arrangement subject to communication of information becomes enforceable
- When arrangements which are not in any of the cases referred to in the previous points, when the first phase of implementation of the cross-border arrangement subject to communication of information has been carried out.

form 235, Reporting of information for the updated data on marketable cross-border arrangements.

It means cross-border arrangements designed, marketed, enforceable or made available for enforcement without substantial adaptation, if they have been previously submitted.

Within next following natural month in quarterly basis in which new information for the cross-border arrangement previously informed has been received.

form 236, Reporting on the use of certain cross-border planning arrangements.

Information regarding the use in Spain of the cross-border arrangements that should have been previously declared to the Spanish tax administration or to another tax administration under Directive 2011/16/EU.

Annual, within 3 months after end of year.

The law differentiates between two periods to be subject to the transitional period: the period between 25 June 2018 and 30 June 2020, and the period between 1 July 2020 and 20 December 2020. In both cases, it states that the periods for reporting will be “the periods established by regulation”.

On 20 June 2020, the Draft Royal Decree was published, which completes the transposition of the DAC-6 in Spain and establishes in its transitional provision that the mechanisms whose duty to declare was born in the transitional period from 25 June 2018 to 30 June 2020 must be declared “in the months of July and August 2020”.

However, taking into account the expiry of that period, it would need to wait for the approval and publication of the Royal Decree in order to clarify the reporting periods for all reportable mechanisms that have taken place from 25 June 2018 to 30 December 2020.

Users (where LPP applies) No specific deadlines where LPP applies, same as previously explained.

6 Reporting principles for intermediary

Circumstances in which intermediary is obliged to report Intermediary is obliged to report information of cross-border arrangements in which are involved or participated in, respectively, when any of the hallmarks attends.

Obligation to inform user what data was communicated No

Priority of reporting where multi member state reporting obligations exist **When the person required to report is the intermediary, they must submit the declaration to the Spanish tax authorities when any of the connection criteria listed below apply according to the following order:**

- That the intermediary is a resident for tax purposes in Spain
- That the intermediary provides the intermediation services with respect to the arrangement from a permanent establishment located in Spain
- That the intermediary has been set up in Spain or is governed by Spanish law
- That the intermediary is registered in a Spanish school or professional association related to legal, tax or advisory services.

When one of the connecting criteria set out in the Directive, which determines a multiple information obligation applies in another Member State, the intermediary is exempt from submitting the return to the Spanish tax authorities provided that he has reliable proof of the submission of the cross-border arrangement information in the other Member State.

Circumstances under which intermediary not required to report

The report will not need to be submitted by those intermediaries who are any of the following circumstances:

Those in which operation of legal professional privilege (LPP) apply.

- In this case, the exempted intermediary must communicate this circumstance within a period of five days from the day following the date on which the obligation to inform others arises intermediaries involved in the arrangement and the taxable person concerned through an specific communication
- When there are several intermediaries and the information has been submitted by one of them. The exempted intermediary must keep reliable proof that the return has been submitted in accordance with the legally applicable rules by other obligated intermediaries.

The intermediary who has filed the return must notify the other intermediaries intervening in the arrangement within five days of the day after filing;

The content of the communication abovementioned shall conform to the form to be approved by Resolution of the Department of Tax Management of the State Agency of Tax Administration.

What will the tax authorities provide for the notification received No information at the moment

7 Reporting principles for taxpayer

Circumstances in which taxpayer is obliged to report

Any person or entity to whom a cross-border arrangement subject to communication of information has been made available for enforcement or which is preparing to enforce or has enforced the first stage of such arrangement provided that there is no intermediary required to submit the declaration.

Priority of reporting where multiple taxpayers are involved

When there is more than one taxable person involved in the obligation to submit the return, the return will be submitted by the person or entity that appears first on the following list:

- That it has agreed with the intermediary the cross-border arrangement subject to communication of information
- Which manages the execution of this arrangement.

When the person obliged to inform is the taxable person, he must submit the information to the Spanish tax authorities when any of the connection criteria listed below apply according to the following order:

- That the taxpayer is a resident for tax purposes tax resident in Spain
- That the taxpayer has a permanent establishment located in Spain to benefit from the arrangement
- That the taxpayer receives income or generates profits in Spain while arrangement related to such income or benefits
- That the interested party is obliged to carry out an activity in Spain when the arrangement included within that activity.

Where any of the connecting criteria set out in the Directive which provides for a information, the taxpayer will be exempt from submitting the declaration before the Spanish tax authorities provided that you have reliable proof of the submission of the declaration in the other Member State.

Circumstances under which taxpayer not required to report

The taxpayer who is obliged to submit the cross-border arrangement information shall be exempted from the obligation if they prove that the declaration has been submitted by another interested taxable person.

The taxpayer who has filed the return must notify the other interested taxable persons within five days from the following day to your presentation.

Proof that reporting obligation is satisfied by other taxpayer

The content of the communication shall conform to the form approved by Resolution of the Department of Tax Management of the State Administration Agency Taxation.

No further information provided by Spanish authorities about it yet.

8 Reporting principles applicable to all

Language

Spanish

9 Penalties

Circumstances in which penalties may apply

Late filing, incomplete, inaccurately, with false information or no submission of required information.

It will also apply penalties submit forms by means other than electronic and telematic means in those cases where there is an obligation to do so by such means.

Amount

The abovementioned penalties will be considered as “very serious” and the penalty will reach EUR 1,000 by data or set of data included in the form incomplete, inexact or false, with a minimum amount of EUR 3,000 and a maximum of the amount of fees (for intermediary submissions) or value of the fiscal effect derived from the arrangement (tax payer).

The penalty and the minimum and maximum limits shall be reduced by half, in case of late submissions without prior request of filing from the tax authorities.

The submission of information by means other than electronic or telematic means, where there is an obligation to do so by such means, shall be punishable by a fine EUR 250 per data or set of data to the same declaration with a minimum EUR 750 and a maximum of EUR 1,000.

With regard to the infractions related to information to other intermediaries or obligated parties, two infractions are included:

- Lack of communication (or communication in an incomplete, inaccurate or false manner), by the intermediary, to the other intermediaries and taxable persons concerned, of being exempted from informing due to professional secrecy, with a fixed pecuniary fine of EUR 600 unless the infringement is considered serious
- Lack of communication (incomplete, inaccurate or with false data), by the party obliged to declare, to the intermediaries and, if applicable, to the other taxable persons involved, of having presented the declaration so that the latter are released from the aforementioned obligation, with a fixed pecuniary fine of EUR 600.

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Country specifics

Country specifics /
deviation from EU directive

None



María Ángeles Mariñas Martínez
Tax Director
mmarinas@bakertilly.es