



**Austria**

# **DAC 6 Domestic Implementation**

# 1

## General Information

<b>Territory</b>	Austria
<b>Tax authority</b>	Austrian Federal Ministry of Finance
<b>Status of legislation</b>	Implemented.  The Austrian Reporting Obligation Act (EU-Meldepflichtgesetz) will enter into force on 1 July 2020. 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.  Administrative guidelines yet to be published (June 2020).
<b>Taxes covered</b>	Income tax, real estate transfer tax, miscellaneous duties
<b>Taxes excluded</b>	VAT, customs
<b>Domestic transactions</b>	No

# 2

## 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>  <b>a)</b> a person participates in the management of another person and is in a position to exercise significant influence over the other person;  <b>b)</b> a person participates in the control of another person through a holding that exceeds 25 % of the voting rights;  <b>c)</b> a person participates in the capital of another person through a right of ownership that (directly or indirectly) exceeds 25 % of the capital;  <b>d)</b> a person is entitled to 25% or more of the profits of another person.
<b>Marketable arrangement</b>	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 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:

- a)** not all of the participants in the arrangement are resident for tax purposes in the same jurisdiction;
- b)** one or more of the participants in the arrangement is simultaneously resident for tax purposes in more than one jurisdiction;
- c)** 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;
- d)** 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;
- e)** such arrangement has a possible impact on the automatic exchange of information or the identification of beneficial ownership.

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

---

## **Intermediary**

### **Any person that**

- a)** designs, markets, organises or makes available for implementation or manages the implementation of a reportable cross-border arrangement;  
or
- b)** 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.

**In order to be an intermediary in Austria, a person shall meet at least one of the following additional conditions:**

- a)** be resident for tax purposes in Austria;
- b)** no resident for tax purposes in any other Member State and
  - have a PE in Austria through which the services with respect to the arrangement are provided;
  - be incorporated in or governed by the relevant Austrian law;
  - be registered with a professional association related to legal, taxation or consultancy services in Austria.

**Tax advantage**

The term "tax advantage" is defined in Sec. 3 para. 10 of the European Reporting Obligation Act (EU-Meldepflichtgesetz) as a

- a) Prevention of the occurrence of the tax liability; or
- b) shift of the tax liability in another tax period in whole or in part; or
- c) reduction of the taxable base or the tax liability in whole or in part; or
- d) reimbursement/refund of a levy in whole or in part.

The tax advantage has to occur in Austria or in another Member State or in a third country.

---

**Made available for implementation**

Currently no guidance has been given by the Austrian Ministry of Finance on this point.

---

**Hallmark**

There is no explicit definition.

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

None

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

If the intermediary is bound by LPP and he has not been released from it, the reporting obligation is shifted to the relevant taxpayer (waiver).

In this case, the intermediary is required to notify another intermediary and also all relevant taxpayers that the reporting obligation rests with the other intermediary or relevant taxpayer. If the reporting obligation rests with the relevant taxpayer, the intermediary has to inform him about all relevant information he owns.

In case of a marketable arrangement, the LPP is not applicable to the reporting of the arrangement, because there is no communication between the intermediary and his client which has to be protected. Indeed, the periodic reporting for marketable arrangements disclosing all relevant taxpayers to which the arrangement is made available for implementation, the LPP applies and the waiver can be claimed.

# 5

## Reporting deadline

### Intermediaries

Within 30 days following:

- a) the day after the reportable cross-border arrangement is made available for implementation; or
- b) the day after the reportable cross-border arrangement is ready for implementation; or
- c) 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.

If the intermediary is released from the LPP, the reporting deadline of 30 days begins the day after he has been released.

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

Reportable transactions for which the first implementation step took place between 25 June 2018 and 1 July 2020 need to be reported by 31 August 2020.

---

### Users (where LPP applies)

Within 30 days following:

- a) the day after the reportable cross-border arrangement is made available for implementation to the relevant taxpayer; or
- b) the day after the reportable cross-border arrangement is ready for implementation by the relevant taxpayer; or
- c) the moment when the first step in the implementation of the reportable cross-border arrangement is made; or
- d) the day after he has been informed about the shift of the reporting obligation due to the waiver,

whichever occurs first.

Reportable transactions for which the first implementation step took place between 25 June 2018 and 1 July 2020 need to be reported by 31 August 2020.

## 6

## Reporting principles for intermediary

<b>Circumstances in which intermediary is obliged to report</b>	If the Intermediary is not bound by LPP, he is obliged to report information that is within his knowledge, possession or control on reportable cross-border arrangements.
<b>Obligation to inform user what data was communicated</b>	No
<b>Priority of reporting where multi member state reporting obligations exist</b>	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 of residence. There is no further priority.
<b>Circumstances under which intermediary not required to report</b>	<p>In case of multiple reporting obligations, the intermediary shall be exempt from filing if it has proof that the same information has been filed in another Member State or by another intermediary. In these cases, he is obliged to submit the reference number received from the first reporting to the Austrian Ministry of Finance.</p> <p>The intermediary shall also be exempt from filing the information if he is bound by legal professional privilege and has notified another intermediary and/or all relevant taxpayers.</p>
<b>What will the tax authorities provide for the notification received</b>	A reference number will be provided if it was the first reporting.

## 7

## Reporting principles for taxpayer

<b>Circumstances in which taxpayer is obliged to report</b>	<p>The relevant taxpayer is obliged to report if:</p> <p><b>a)</b> 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</p> <p><b>b)</b> the involved intermediary has no link to one Member State (no residence/ PE/incorporation/registration); or</p> <p><b>c)</b> he has been notified by the intermediary that the intermediary is bound by legal professional privilege.</p>
---	--

**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 of residence. If the relevant taxpayer is not resident in any Member State, the information shall be filed in

- a) the Member State where the relevant taxpayer has a permanent establishment benefiting from the arrangement; or
- b) the Member State where the relevant taxpayer receives income or generates profits or carries on an activity, although the relevant taxpayer is not resident for tax purposes or 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 or by another relevant taxpayer.

In these cases, he is obliged to submit the reference number received from the first reporting to the Austrian Ministry of Finance.

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

The reference number of the first reporting

**8 Reporting principles applicable to all**

**Language**

German or English

However, the following information have to be reported in English:

- a) details of the hallmarks;
- b) a summary of the content of the reportable cross-border arrangement;
- c) if existing, a reference to the name by which it is commonly known and
- d) a description in abstract terms of the relevant business activities, without leading to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information the disclosure of which would be contrary to public policy.

## 9

## Penalties

**Circumstances in which penalties may apply**

Late-, false-, incomplete- and non-filing as well as incomplete or no notification about the waiver

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

**Amount**

Up to EUR 50.000 for willful infringement

Up to EUR 25.000 for grossly negligent infringement

## 10

## Country specifics

**Country specifics / deviation from EU directive**

The law defines the term “reportable arrangement” as a marketable or bespoke cross-border arrangement, which fulfills one of the hallmarks and – **as an additional requirement – has a risk of tax avoidance.**

The risk of tax avoidance was added limiting the wide scope to aggressive tax planning arrangements.

It is not a deviation from EU directive, because it should be covered by Art 3 para 20 (definition of hallmark).

There is also an extension of the reporting time in cases, where the intermediary has been released from the LPP.



**Iris Burgstaller**  
International Tax Partner  
Iris.Burgstaller@tpa-group.at



**Yasmin Wagner**  
International Tax Partner  
Yasmin.Wagner@tpa-group.at