

UK

# DAC 6 Domestic Implementation



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## General Information

<b>Territory</b>	UK
<b>Tax authority</b>	Her Majesty's Revenue and Customs (HMRC)
<b>Status of legislation</b>	Implemented.  Entry into force on 1 July 2020. Reportable transactions for which first implementation step took place between 25 June 2018 and 1 July 2020 to be reported by 31 August 2020.  Further guidance will be published by HMRC before the regulations come into force on 1 July 2020.
<b>Taxes covered</b>	Income tax, capital gains tax, inheritance tax, stamp duty, stamp duty land tax.
<b>Taxes excluded</b>	VAT, Customs duties, Excise duties, compulsory Social Security Contributions.
<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>  <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 voting rights;  <b>c)</b> a person participates in the capital of another person through a holding 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.

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, organising, making available for implementation or managing the implementation of a reportable cross-border arrangement.

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**Tax advantage**

**For the purposes of DAC6 regulations, tax advantage includes:**

- a)** a relief from tax or increased relief from tax,
- b)** a repayment of tax or increased repayment of tax,
- c)** the avoidance or reduction of a charge to tax or an assessment to tax,
- d)** the avoidance of a possible assessment to tax,
- e)** deferral of a payment of tax or advancement of a repayment of tax, and
- f)** the avoidance of an obligation to deduct or account for tax,

where the obtaining of the tax advantage cannot reasonably be regarded as consistent with the principles on which the relevant provisions that are relevant to the cross-border arrangement are based and the policy objectives of those provisions.

**Made available for implementation**

The government laid the International Tax Enforcement (Disclosable Arrangements) Regulations, SI 2020/25, on 13 January 2020, with a number of changes from last year's draft version. The regulations implement the amended EU administrative cooperation directive (DAC6) into UK law, introducing new disclosure and reporting rules for intermediaries involved in designing and promoting potentially aggressive cross-border tax planning schemes with effect from 1 July 2020.

The directive came into force on 25 June 2018 and the UK is required to transpose it before ceasing to be a member of the EU and during any implementation period.

The regulations will apply to arrangements that are made available, or are ready, for implementation on or after 1 July. Affected taxpayers and their advisers will also have to make reports in respect of arrangements entered into on or after 25 June 2018. These reports will be due by 31 August 2020.

**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)**

An intermediary unable to report due to domestic legal professional privilege rules is required to inform other intermediaries of their reporting obligations. Where there is no intermediary or the intermediary is subject to legal professional privilege, the report must be made by the taxpayer.

### 5 Reporting deadline

**Intermediaries**

**The specified period is:**

- a)** in a case where the first step in the implementation of a reportable cross-border arrangement was made between 25 June 2018 and 1 July 2020, the period beginning on 1 July 2020 and ending on 31 August 2020,
- b)** in a case where the intermediary is notified of a reporting obligation affected by the legal professional privilege, the period of 30 days beginning on the date that notification is received, and



## Intermediaries

### **c) in any other case, a period of 30 days beginning on the earliest of:**

**(i)** the day after the day the reportable cross-border arrangement is made available for implementation,

**(ii)** the day after the day the reportable cross-border arrangement is ready for implementation,

**(iii)** the day the first step in the implementation of the reportable cross-border arrangement is made, and

**(iv)** in relation to a UK intermediary within the second paragraph of Article 3(21) of the DAC, the day after the day the UK intermediary provided, 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 the reportable cross-border arrangement.

If the reportable cross-border arrangement is a marketable arrangement, the UK intermediary must make a return at the end of every three month period, setting out any new reportable information which has become available in respect of the reportable cross-border arrangement.

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## Users (where LPP applies)

### **The specified period is:**

**a)** in a case where the first step in the implementation of a reportable cross-border arrangement was made between 25 June 2018 and 1 July 2020, the period beginning on 1 July 2020 and ending on 31 August 2020,

**b)** in a case where the relevant taxpayer is notified of a reporting obligation impacted by legal professional privilege, the period of 30 days beginning on the date that notification is received, and

### **c) in any other case, a period of 30 days beginning on the earliest of:**

**(i)** the day after the day the reportable cross-border arrangement is made available for implementation to the relevant taxpayer,

**(ii)** the day after the day the reportable cross-border arrangement is ready for implementation by the relevant taxpayer, and

**(iii)** the day the first step in the implementation of the reportable cross-border arrangement is made in relation to the relevant taxpayer.

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## Reporting principles for intermediary

### **Circumstances in which intermediary is obliged to report**

Obligated to file information that is within their knowledge, possession or control on reportable cross-border arrangements with the competent authorities.

**Obligation to inform user what data was communicated**

No

**Priority of reporting where multi member state reporting obligations exist**

**Information shall be filed only in the Member State that features first in the list below:**

- a) the Member State where the intermediary is resident for tax purposes;
- b) the Member State where the intermediary has a permanent establishment through which the services with respect to the arrangement are provided;
- c) the Member State which the intermediary is incorporated in or governed by the laws of;
- d) 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**

Where there is a multiple reporting obligation, the intermediary shall be exempt from filing the information if it has proof, in accordance with national law, that the same information has been filed in another Member State.

Where the reporting obligation would breach the legal professional privilege under the national law of that Member State - in such circumstances, each Member State shall take the necessary measures to require intermediaries to notify, without delay, any other intermediary or, if there is no such intermediary, the relevant taxpayer of their reporting obligations.

**What will the tax authorities provide for the notification received**

**Where a person complies, or purports to comply, in relation to any reportable cross-border arrangement, HMRC must:**

- a) allocate a reference number to the reportable cross-border arrangement, and
- b) notify that number to that person.

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### Reporting principles for taxpayer

**Circumstances in which taxpayer is obliged to report**

**The UK relevant taxpayer must make a return within the specified period setting out the reportable information in relation to the reportable cross-border arrangement, where:**

- a) a UK relevant taxpayer participates in a reportable cross-border arrangement, and
- b) no intermediary is required to file the reportable information in relation to the reportable cross-border arrangement.

**Priority of reporting where multiple taxpayers are involved**

**The relevant taxpayer that is to file information should be, in order of priority:**

- a) the relevant taxpayer that agreed the reportable cross-border arrangement with the intermediary;
- b) the relevant taxpayer that manages the implementation of the arrangement.

Any relevant taxpayer shall only be exempt from filing the information to the extent that it has proof, in accordance with national law, that the same information has already been filed by another relevant taxpayer.

**Circumstances under which taxpayer not required to report**

**The relevant taxpayer is not required to report to HMRC if:**

- (a) a UK relevant taxpayer is liable to file information in relation to the reportable cross-border arrangement with the competent authorities of another member State which features before the United Kingdom, or
- b) another relevant taxpayer:
  - (i) agreed the reportable cross-border arrangement with the intermediary, or
  - (ii) if there has been no such agreement, manages the implementation of the reportable cross-border arrangement, and

The UK relevant taxpayer has evidence that the reportable information in relation to the reportable cross-border arrangement has been filed or returned.

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

**Evidence that reportable information has been filed or returned must comprise the following:**

- a) the arrangement reference number or equivalent reference number issued by the competent authority of another member State, and
- b) such other information which demonstrates to the satisfaction of an officer of Revenue and Customs that the intermediary or relevant taxpayer, as the case maybe, does not have knowledge, possession or control of any other reportable information in relation to the reportable cross-border arrangement.

## 8 Reporting principles applicable to all

Language

English

## 9 Penalties

**Circumstances in which penalties may apply**

**The provisions are:**

- a) regulation 3(1) - UK intermediary's obligation to make a return of reportable information,
- b) regulation 3(4) - UK intermediary's obligation to make a return of new reportable information,

**Circumstances in which penalties may apply**

- c) regulation 4(1) - UK relevant taxpayer's obligation to make a return of reportable information,
- d) regulation 7(2) - UK intermediary's obligation to notify where legal professional privilege exclusion applies,
- e) regulation 8(2) - intermediary's obligation to notify arrangement reference number,
- f) regulation 11 - requirement to provide information.

**Amount**

In respect of each reportable cross-border arrangement to which the failure relates:

**£5,000 for a first offence**

**£7,500 if one previous failure during preceding 36 months**

**£10,000 if two or more failures in preceding 36 months**

If these amounts appear to an officer of Revenue and Customs to be inappropriately low after taking in to account all relevant considerations, the penalty is to be of such amount not exceeding £1 million as appears appropriate having regard for those considerations.

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**Country specifics**

**Country specifics / deviation from EU directive**

None.



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