



Ireland

# DAC 6 Domestic Implementation

# 1

## General Information

<b>Territory</b>	Ireland
<b>Tax authority</b>	Revenue Commissioners
<b>Status of legislation</b>	Implemented.  The provisions will come into operation on 1 July 2020. Reportable transactions, the first step of which was entered into between 25 June 2018 and 30 June 2020 must be reported by 28 February 2021.  Provided for in Finance Bill 2019 signed into law by the Irish president on 22 December 2019.
<b>Taxes covered</b>	Income Tax, Corporation Tax, Capital Gains Tax, Capital Acquisitions Tax, Stamp Duty, Dividend Withholding Tax
<b>Taxes excluded</b>	VAT
<b>Domestic transactions</b>	No

# 2

## Definitions further clarified by guidance

<b>Relevant taxpayer</b>	Any person to whom a reportable crossborder 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 by being in a position to exercise a 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.

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**Intermediary**

**Any person:**

**a)** that:

- (i) designs, markets, organises or makes available for implementation or manages the implementation of a reportable cross-border arrangement, or
- (ii) 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 such person has 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,

**and**

**(b)** that meets at least one of the following conditions:

- (i) the person is resident for tax purposes in a Member State;
- (ii) the person has a permanent establishment in a Member State through which the services with respect to the arrangement are provided;
- (iii) the person is incorporated in, or governed by the laws of, a Member State;
- (iv) the person is registered with a professional association related to legal, taxation or consultancy services in a Member State.

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**Tax advantage**

**Tax advantage means:**

- a)** relief or increased relief from, or a reduction, avoidance or deferral of, any assessment, charge or liability to tax, including any potential or prospective assessment, charge or liability,

**Tax advantage continued**

- b)** a refund or repayment of, or a payment of, an amount of tax, or an increase in an amount of tax refundable, repayable or otherwise payable to a person, including any potential or prospective amount so refundable, repayable or payable, or an advancement of any refund or repayment of, or payment of, an amount of tax to a person, or
- c)** the avoidance of any obligation to deduct or account for tax, arising out of or by reason of an arrangement, including an arrangement where another arrangement would not have been undertaken or arranged to achieve the results, or any part of the results, achieved or intended to be achieved by the arrangement.

**Made available for implementation**

A scheme is to be regarded as being “made available for implementation” by another person (as opposed to being marketed) when the promoter communicates what is essentially a fully formed proposal to a client in sufficient detail that he could be expected to understand the expected tax advantages and decide whether or not to avail of, or enter the scheme,

A scheme can be “made available for implementation” by more than one person e.g. by the scheme designer or by those who provide the scheme to others under, say, a licensing agreement with the designer.

**Hallmark**

“Hallmark” has the same meaning as it has in Article 3 of Council Directive 2011/16/EU of 15 February 2011 as amended by Council Directive (EU) 2018/822 of 25 May 2018 (“the Directive”).

The Directive defines a “hallmark” as “a characteristic or feature of a cross-border arrangement that presents an indication of a potential risk of tax avoidance, as listed in Annex IV”.

**3 Additional hallmarks**

**Additional hallmarks**                      None

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

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

An intermediary is not required to disclose to the Revenue any information with respect to which a claim to legal professional privilege could be maintained by the intermediary in legal proceedings.

Where the above applies, the intermediary concerned shall, without delay, notify any other intermediary or, if there is no other intermediary, the relevant taxpayer, of the obligations imposed on such other intermediary or that relevant taxpayer, as the case may be.

# 5

## Reporting deadline

### Intermediaries

An intermediary within the meaning of section (a)(i) of the above definition of 'intermediary' shall make a return to the Revenue Commissioners of the specified information within 30 days beginning—

- a)** on the day after the reportable cross-border arrangement is made available for implementation,
- b)** on the day after the reportable cross-border arrangement is ready for implementation, or
- c)** when the first step in the implementation of the reportable crossborder arrangement was taken, whichever occurs first.

An intermediary within the meaning of section (a)(ii) of the above definition of 'intermediary' shall make a return to the Revenue Commissioners of the specified information within 30 days beginning on the day after such intermediary provided, directly or by means of other persons, aid, assistance or advice referred to in the said section (a)(ii) of the above definition.

The above reporting deadlines were due to be introduced from 1 July 2020. However, this has been deferred to 1 January 2021 due to the impact of COVID-19.

In the case of a reportable cross-border arrangement, the first step of which was implemented during the period beginning on 25 June 2018 and ending on 30 June 2020, the intermediary must make a return of the specified information shall be made to the Revenue Commissioners not later than 28 February 2021. For marketable arrangements, the intermediary is required to amend the return filed in respect of the arrangement every 3 months, providing any new relevant information available.

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### Users (where LPP applies)

Where there is no intermediary, or the relevant taxpayer has been notified by an intermediary, the relevant taxpayer shall make a return to the Revenue Commissioners of the specified information within 30 days beginning—

- a)** on the day after the reportable cross-border arrangement is made available for implementation to the relevant taxpayer,
- b)** on the day after the reportable cross-border arrangement is ready for implementation by the relevant taxpayer, or
- c)** when the first step in the implementation of a reportable cross-border arrangement was taken in relation to the relevant taxpayer, whichever occurs first.

The above reporting deadlines were due to be introduced from 1 July 2020. However, this has been deferred to 1 January 2021 due to the impact of COVID-19. In the case of a reportable cross-border arrangement, the first step of which was implemented during the period beginning on 25 June 2018 and ending on 30 June 2020, the relevant taxpayer must make a return of the specified information shall be made to the Revenue Commissioners not later than 28 February 2021.

## 6

## Reporting principles for intermediary

<b>Circumstances in which intermediary is obliged to report</b>	An intermediary is required to report information that is within their knowledge, possession or control on reportable cross-border transactions.
<b>Obligation to inform user what data was communicated</b>	No
<b>Priority of reporting where multi member state reporting obligations exist</b>	<p>Where an intermediary is required to provide the specified information on a reportable cross-border arrangement to the competent authority of more than one Member State, such information shall be provided only to the competent authority of the Member State referred to in whichever of the following paragraphs first applies:</p> <ul style="list-style-type: none"> <li><b>a)</b> the competent authority of the Member State where the intermediary is resident for tax purposes;</li> <li><b>b)</b> the competent authority of the Member State where the intermediary has a permanent establishment through which the services with respect to the arrangement are provided;</li> <li><b>c)</b> the competent authority of the Member State which the intermediary is incorporated in or governed by the laws of;</li> <li><b>d)</b> the competent authority of the Member State where the intermediary is registered with a professional association related to legal, taxation or consultancy services.</li> </ul>
<b>Circumstances under which intermediary not required to report</b>	<p>In the case of multiple reporting obligations, an intermediary shall be exempt from making a return if the intermediary has:</p> <ul style="list-style-type: none"> <li><b>a)</b> a copy of the specified information provided to the competent authority of another Member State, and</li> <li><b>b)</b> confirmation, in writing, provided to the intermediary by the competent authority of another Member State that a reference number has been assigned to the arrangement by that competent authority</li> </ul> <p>An intermediary will also be exempt from reporting information with respect to which a claim to legal professional privilege could be maintained by the intermediary in legal proceedings and the intermediary has, without delay, notified any other intermediary or, if there is no other intermediary, the relevant taxpayer of the obligations imposed on them to report the information.</p>
<b>What will the tax authorities provide for the notification received</b>	Where a return is made to the Revenue Commissioners they will assign a reference number to the reportable cross-border arrangement if no such number has already been assigned to it by the competent authority of another Member State.

## 7

### Reporting principles for taxpayer

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

A taxpayer is required to report information that is within their knowledge, possession or control on reportable cross-border transactions where there is no intermediary, or the relevant taxpayer has been notified by an intermediary of the obligations imposed on them under the legislation.

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

**Where a relevant taxpayer is required to make a return under this section and there is more than one relevant taxpayer involved in the same reportable cross-border arrangement, the return shall be made by the relevant taxpayer referred to in whichever of the following paragraphs first applies:**

- 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.

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

**A relevant taxpayer shall be exempt from making a return to the Revenue Commissioners if the relevant taxpayer has received, in writing, from any other relevant taxpayer involved in the same reportable cross-border arrangement:**

- a) confirmation that such other relevant taxpayer has provided the specified information to the Revenue Commissioners in a return made under this section, and
- b) the reference number assigned to the arrangement by the Revenue Commissioners.

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

The taxpayer must receive confirmation, in writing, from the other taxpayer.

## 8

### Reporting principles applicable to all

Language

English

## 9

### Penalties

#### Circumstances in which penalties may apply

1. An intermediary or a taxpayer fails to discharge their reporting obligations, meaning late or incomplete reporting of a reportable cross-border arrangement or failing to report same from 1 July 2020.

2. For certain specified "lesser" failures, for example, an intermediary asserting LPP failing to inform the taxpayer that the reporting obligation to disclose rests with them or failure to report transactions during transitional period to 30 June 2020.
3. Failing to include the unique transaction number issued by the Revenue Commissioners in respect of a reportable cross-border arrangement on a return of income.

**Amount**

1. In these cases, there is a flexible initial penalty of up to €500 per day during an "initial period", and where the failure continues after that penalty is imposed, a further penalty of €500 per day applies for every day that the failure continues.
2. For the certain specified "lesser" failures, there is an initial civil penalty of up to €4,000. If the failure continues after the initial penalty is imposed, a further fixed daily penalty of €100 per day applies.
3. Failing to include the unique transaction number on a return of income results in a penalty of up to

## 10 Country specifics

**Country specifics / deviation from EU directive**      None.



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