https://ec.europa.eu/taxation_customs/business/tax-cooperation-control/administrative-cooperation/enhanced-administrative-cooperation-field-direct-taxation_en

Council Directive 2018/822/EU of 25 May 2018

Who needs to report?

Under Council Directive 2018/822/EU any person that designs, markets, organises or makes available for implementation or manages the implementation of a reportable cross-border arrangement is an intermediary. An intermediary can be either an individual or a company (i.e. accountants, advisers, lawyers, banks, etc.). Intermediaries, who sell reportable cross-border tax arrangements to their clients, should report information on the arrangement to the tax authorities of their home Member State.

An intermediary is also any person that provides, 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.

However, in the following situations, the obligation to report the arrangement shifts to the **Relevant Taxpayer**:

1. When an intermediary is a **non-EU intermediary**. An intermediary is considered non-EU when it is neither:

- Resident in a Member State; nor
- Maintains a permanent establishment in a Member State through which the services in respect of the arrangement are provided; nor
- Incorporated/governed by the laws of a Member State; nor
- A member of a professional association in a Member State.

2. When there is no intermediary involved, i.e. an **in-house arrangement**,

3. When the taxpayer is notified that an intermediary has the right to a waiver due **to legal professional privilege**.

Multiple reporting

Where there is more than one Intermediary, the obligation to report lies with all intermediaries involved in the arrangement. An Intermediary shall be exempt from filing information to the extent that it has proof that this information has already been filed by another intermediary. Where there is more than one Relevant Taxpayer, the Directive puts the primary obligation onto the Relevant Taxpayer who agreed the arrangement and then, on to the one who manages the implementation.

Why report cross-border tax arrangements?

The main aim of the Directive is to provide tax authorities with an early warning mechanism on new risks of tax avoidance and thereby enable them to carry our audits more effectively. Prior to the Directive, such cross-border arrangements did not need be reported under EU legislation.

What is a cross-border arrangement?

An arrangement is cross- border if it meets any of these criteria:

- Not all participants in the arrangement are tax resident in the same jurisdiction;
- A permanent establishment linked to any of the participants is established in a different jurisdiction and the arrangement forms part of the business of the permanent establishment;
- At least one of the participants in the arrangement carries on activities in another jurisdiction without being resident for tax purposes or creating a permanent establishment situated in that jurisdiction;
- At least one of the participants has dual residency for tax purposes;
- Such an arrangement has a possible impact on the automatic exchange of information or the identification of beneficial ownership.

Cross-border tax planning arrangements may concern all taxpayers, including natural persons, legal persons (i.e. companies), and legal arrangements (i.e. trusts and foundations).

What is a reportable arrangement?

An arrangement will be reportable if it meets at least one of the Hallmarks. For Hallmark categories A, B and certain elements of category C, an arrangement will only be reportable if it is also captured by the so-called 'Main Benefit' test. This test means that one of the main objectives of the arrangement is to obtain a tax advantage.

The five Hallmark categories are the following:

Category A – Generic hallmarks linked to the main benefit test: arrangements that give rise to performance fees or involve mass-marketed schemes.

Category B – Specific hallmarks linked to the main benefit test: this includes certain tax planning features, such as buying a loss-making company to exploit its losses in order to reduce tax liability. Another example would involve arrangements aimed at converting income into capital in order to obtain a tax benefit.

Category C – Specific hallmarks related to cross-border transactions; some of these hallmarks are also subject to the main benefit test: for example, deductible cross-border payments between associated enterprises where the recipient is essentially subject to no tax, zero or almost zero tax. Another hallmark is about deductions for the same depreciation on an asset claimed in more than one jurisdiction.

Category D – Specific hallmarks concerning the automatic exchange of information and beneficial ownership: an arrangement is reportable if it has the effect of undermining the rules, or the absence thereof, on beneficial ownership or Directive 2014/107/EU or any other equivalent agreement on automatic exchange of financial account information.

Category E – Specific hallmarks concerning transfer pricing: these include the use of unilateral safe harbours; the transfer of hard-to-value intangible assets when no reliable comparables exist and the projection of future cash flows or income are highly uncertain.

When?

DAC 6 – dates and tasks			
Dates (deadlines)	**Provisions**	**Tasks / Milestones**	**Who**
21/06/2017		Commission proposal (COM (2017)335 final)	EC
13/03/2018		Political agreement	Ecofin
25/05/2018		Legal adoption	Ecofin
05/06/2018		Publication in the *Official Journal of the EU*	
25/06/2018	Art. 3	Entry into force	
30/06/2019	Art. 20(5)	Standard forms and linguistic arrangements	EC
31/12/2019	Art. 2(1)	Transposition measure (MS laws, regulations etc.)	MS
31/12/2019	Art. 21(5)	Central directory on administrative cooperation	EC
01/07/2020	Art. 2(1)	Application starts	MS
31/08/2020	Art. 8ab(12)	One-off reporting (25 June 2018 – 30 June 2020) Exchange (implicit) within a month of the end of quarter – latest 31 October 2020	MS
31/10/2020	Art. 8ab(18)	First automatic exchange of information	MS
Every 2 years after 01/07/2020	Art. 27(2)	Evaluation of relevance of Annex IV (Hallmarks)	EC

DAC 6 - types of reporting and exchange		
Types	**Provision**	**Time framework for reporting / exchange**
Mainstream reporting (post July 2020 schemes)	Art. 8ab(1)	Within earliest of 30 days beginning on the day after scheme is "made available" for implementation; is "ready" for implementation, when "first step" in the implementation has been made.
Exchange	Art. 8ab(18)	Within one month of the end of the quarter in which the information was filed. (first exchange by 31 October 2020)

Periodic report on marketable arrangements ("update of the client list")	Art. 8ab(2)	Every 3 months
One-off reporting of arrangements the first step of which was implemented between 25 June 2018 & 30 June 2020**.***	Art. 8ab(12)	*Between entry into force and date of application of this Directive**.**
Use of the arrangement (optional)	Art. 8ab(11)	Each relevant taxpayer files information about use of arrangement in **each of the years** for which they use it