



The EU Council adopted the Directive on the automatic exchange of information on potentially aggressive cross-border arrangements ("DAC 6")

On 25 May 2018, during the ECOFIN meeting, the EU Council adopted the "Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements" (known as "DAC 6", hereinafter the "Directive"). The Directive was adopted without further discussion following the political agreement reached on 13 March 2018, during a previous ECOFIN meeting (for more information, see our [EU Tax Alert No. 6/2018](#)).

The Directive requires the intermediaries (including tax advisors, accountants and lawyers) to report to the national authorities of EU Member States tax schemes that are considered potentially aggressive cross-border arrangements. The obligation is shifted on taxpayers in case the intermediaries cannot share the information due to professional privilege or secrecy rules or in case, for instance, the cross-border scheme is developed by in-house tax consultants or lawyers.

The reporting obligation arises in case of cross-border arrangements that are considered potentially aggressive, namely arrangements that meet at least one of the "hallmarks" listed in the Directive. An "hallmark" is an element indicative of the aggressive nature of the arrangement. The information received will be collected in and automatically exchanged through a central database held by the EU Commission. This will enable new risks of tax avoidance to be determined in advance and measures to be taken to prevent harmful arrangements. Member States are required to lay down penalties against the violation of national rules that will implement the Directive.

Pursuant to the Directive, reportable information are to be filed with national authorities of EU Member States within thirty days starting from the former of the following days: i) the day following that in which the arrangement is made available or ready for implementation or ii) the day in which the first step in the implementation of the arrangement took place.

Member States are obliged to implement the Directive's rules by 31 December 2019 and shall apply the provisions of the Directive starting from 1 July 2020. Member States are also required to exchange information every three months, not later than one month after the end of the quarter in which the information was filed. Noticeably, special rules require intermediaries and taxpayers to report to the respective national authorities aggressive cross-border arrangements whose implementation started in the interim period of adoption of the Directive (from date of entry into force of the Directive to 1 July 2020). The first mandatory automatic exchange of information should be completed by 31 October 2020.

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