

TAX

Multinationals: taking control of your DAC6 reporting requirements

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AWARDS

Ireland Law Firm of the Year 2020
Chambers Europe Awards

Ireland Law Firm of the Year 2020
IFLR Europe Awards

Structured Finance & Securitisation Deal of the Year 2020 (Stenn trade receivables securitisation)
IFLR Europe Awards

Ireland M&A Legal Adviser of the Year 2019
Mergermarket European M&A Awards

Best Firm in Ireland 2019
Europe Women in Business Law Awards

Best National Firm for Women in Business Law 2019
Europe Women in Business Law Awards

Best National Firm Mentoring Programme 2019
Europe Women in Business Law Awards

Best National Firm for Minority Women Lawyers 2019
Europe Women in Business Law Awards

Ireland Law Firm of the Year 2019
Who's Who Legal

European Finance Deal of the Year 2019 (NTMA Green Bond Transaction)
The Lawyer Europe Awards

Most Inclusive Law Firm 2019
Managing Partners' Forum Awards

Council Directive (EU) 2018/822 ("**DAC6**") is an EU directive that imposes mandatory reporting of certain cross-border arrangements by intermediaries (and in some cases taxpayers) and is likely to be relevant to most multinationals groups ("MNES") with operations or entities in the EU.

Details of the likely postponement to the original filing deadlines for DAC6, as discussed in our previous briefing [here](#), have not yet been finalised. In any case, many intermediaries and MNEs are continuing to prepare for the implementation of the directive.

We are now within a 'two year look-back' period where transactions occurring from 25 June 2018 to 30 June 2020 need to be bulk reported to the relevant tax authorities at a date likely to be 30 November 2020, or later. DAC6 comes into force on 1 July 2020 and any transactions occurring from this date have a 30-day window in which they need to be reported, although the first reports will likely not be due until 30 October 2020, or later. Disclosures will then be shared between the tax authorities of member states on a quarterly basis.

Taxpayer Filing obligations

The primary DAC6 filing obligations will normally rest with intermediaries such as law firms, accounting firms, financial institutions etc. However, there are circumstances in which the filing obligations will fall on the taxpayer. These

include circumstances where

- There is no intermediary or the only intermediary has no EU presence.
- Legal professional privilege ("LPP") applies. If no other intermediaries are involved in the arrangement, the taxpayer should be informed of their reporting obligations. Even if LPP applies the taxpayer client may waive their privilege in order to allow the intermediary to report.
- A company within a group may be acting as an intermediary for arrangements within the group.

Co-ordinating intermediary filing

Even where an MNE does not itself have filing obligations, they may wish to co-ordinate the reports of intermediaries.

The reporting requirements under DAC6 are detailed and complex in themselves and the filing obligations are complicated by the fact that, although the obligations are based on an EU directive, certain countries have extended the reporting obligations beyond those required under DAC6. In addition, the interpretation of key aspects of DAC6 (e.g. the main benefit test) by Revenue authorities across the EU differs and the application of LPP is based on each country's LPP laws, which also differ across jurisdictions.

Thus a cross-border transaction may be reportable under the rules of one jurisdiction and not another (or even if reportable in both jurisdictions, different

reporting obligations may apply) and lawyers in different jurisdictions working on the same transaction may be dealing with different LPP rules. All of these factors make the co-ordination of filing obligations for MNEs very difficult. However, it will be important for MNEs to take control of the process by taking a role in understanding whether the transaction is reportable, challenging possible over-reporting by certain intermediaries, where appropriate, and ensuring co-ordination between intermediaries to avoid multiple (and possibly differing) reports being submitted on the same transaction.

To achieve this an MNE may wish to consider:

- Seeking (internal or external) expert advice on whether an arrangement is reportable;
- Determining whether there are external intermediaries and/or an “in-house”

intermediary and whether those intermediaries have an EU nexus;

- Agreeing on one intermediary to make the report, taking into account possibly differing reporting requirements, LPP issues including whether it would be appropriate to waive LPP, or if there are no intermediaries, identify the relevant entity to make the report;
- Collecting the reportable data and agreeing the draft report;
- Co-ordinating the provision of the identification reference to other intermediaries and/or taxpayers as proof of filing to avoid multiple reports being submitted on the same transaction; and
- Reporting the identification reference in the tax return of the taxpayer where required.

For ongoing reporting this must be done within 30 days of the trigger date (which

itself may not be clear in all cases). For look-back reporting there may be more time to consider and co-ordinate, but in many cases due to the large volume of transactions over the ‘two year look-back’ period this may still be an onerous task.

Given the complexity of the DAC6 requirements, and that many Revenue authorities, including the Irish Revenue are still working on guidance to intermediaries and taxpayers in respect of reporting obligations under DAC6, MNEs will welcome the proposed delay to the reporting deadlines. Nonetheless, MNEs will be challenged to co-ordinate the ‘two year look-back’ reporting and put processes in place for arrangements from 1 July 2020 to ensure that they take an appropriate level of control of reporting on their transactions.

For further information on this topic, please contact a member of the Arthur Cox tax team.

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