



## INTRODUCTION

On 18 March 2021 the Cyprus Parliament enacted into law the relevant EU Directives in respect of reportable cross-border arrangements, commonly known as DAC6. The law was published in the Official Gazette of the Republic on 31 March 2021.

DAC 6 is an EU Directive which aims to enhance transparency on cross-border arrangements in order to tackle aggressive tax planning; hence a number of pre-determined hallmarks are set out; an arrangement is reportable if it meets at least one of the hallmarks.

The hallmarks are either generic or specific; some are linked to the Main Benefit Test. The Main Benefit Test is satisfied if it can be established that the main benefit or one of the main benefits which, having regard to all relevant facts and circumstances, a person may reasonably expect to derive from an arrangement is that of obtaining a tax advantage.

### The hallmarks are as follows:

#### A. General Hallmarks – Main Benefit Test applies

- A.1 Requirement for confidentiality on how the tax advantage is secured
- A.2 Payment of a premium fee to the intermediary by reference to the tax advantage
- A.3 Substantially standardized documentation and/or structure

#### B. Specific Hallmarks linked to the Main Benefit Test

- B.1 Acquisition of a loss-making company, discontinuation of its main activity and use of its losses.
- B.2 Converting income into capital, gifts or categories of revenue taxed at either a lower rate or are exempt from tax.
- B.3 Circular transactions resulting in the round-tripping of funds using interposed entities with no other primary commercial function or transactions that cancel each other.

#### C. Specific hallmarks related to cross border transactions, linked to the Main Benefit Test

##### C1. Deductible cross-border payments made between two or more associated enterprises where:

- C.1(b) (i) The recipient is tax resident in a jurisdiction with no, zero or almost zero corporate tax.
- C.1(c) The payment is fully tax exempt where the recipient is tax resident.
- C.1(d) The payment is subject to a preferential tax regime where the recipient is tax resident.

**Specific hallmarks related to cross border transactions, not linked to the Main Benefit Test**

**C1. Deductible cross-border payments made between two or more associated enterprises where:**

- C.1(a) The recipient is not tax resident in any jurisdiction
- C.1(b)(ii) The recipient is tax resident in a non cooperative jurisdiction
- C.2 Deduction of depreciation on the same asset is claimed in more than one jurisdiction
- C.3 Double tax relief on the same income/capital is claimed in more than one jurisdiction
- C.4 Transfer of assets where the amount payable is materially different in each jurisdiction.

**D. Specific hallmarks concerning automatic exchange of information and beneficial ownership**

- D.1 Undermining the reporting obligations on the automatic exchange of financial account information (CRS)
- D.2 Involving non-transparent legal or beneficial ownership chains using persons, legal arrangements or structures which
  - do not carry on substantive economic activity; and
  - are not in the jurisdiction of the beneficial owner; and
  - render the beneficial owner unidentifiable.

**E. Specific hallmarks concerning transfer pricing**

- E.1 Use of unilateral safe harbour rules
- E.2 Transfer of hard to value intangibles between associated enterprises
- E.3 Intra group transfer of functions, risks, or assets resulting in more than 50% decrease in the EBIT of the transferor during the three year period post the transfer.

## Reporting

**Intermediaries** are required to file information with the Cyprus Tax Authorities (CTA) within 30 days from (a) the day after the reportable cross-border arrangement is either made available or is ready for implementation; or (b) when the first step in the implementation of the reportable cross-border arrangement has been made; whichever occurs first.

An intermediary is any person that designs, markets, organizes, makes available for implementation or manages the implementation of a reportable cross-border arrangement. Where the intermediary is a lawyer prevented by the legal privilege to report, the onus for reporting is shifted onto the taxpayer.

## Reporting deadlines

On 26 February 2021, the Cyprus Tax Authorities issued an announcement stating that no penalties will be imposed for all filings effected by 30 June 2021 in respect of arrangements that occurred between 25 June 2018 and 31 May 2021. Arrangements from 1 June 2021 need to be reported within 30 days.

## How could intertaxaudit help you

If you are a business involved in a transaction that falls within any of the hallmarks, you could get in touch with us at InterTaxAudit. Our expert tax team is at your disposal to discuss how DAC6 applies in your own specific circumstances.

## KEY CONTACTS

For more information on how this development might affect you or your business, please contact:

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