

# DAC6 clarifications by tax administrations

## DAC6 rules in the light of the recent administrative instructions:

Germany (2 March 2020), Luxembourg (19 August 2020), UK (HMRC guidance 13 August 2020), Belgium (FAQ 15 June 2020), France (administrative commentary 29 April 2020),

### Denis-Emmanuel Philippe,

Partner, lawyer at the Brussels and Luxembourg Bars, Bloom Law, Brussels, Affiliate Professor at the University of Liège

#### The new sources of interpretation of DAC6

- **Germany:** Anwendung der Vorschriften über die Pflicht zur Mitteilung grenzüberschreitender Steuergestaltungen, 2 March 2020.
- **UK:** UK HMRC guidance on Mandatory Disclosure Regime regulations, 13 August 2020
- **Luxembourg:** Precisions concerning the implementation of the law 25 March 2020 relative to the reportable arrangements, 19 Aug. 2020.
- **Belgium:** FAQ: DAC 6 – Reporting of cross border arrangements – article 326/1 à 326/10 of the Belgian Income Tax Code, 15 June 2020.
- **France:** Administrative Commentary, 29 April 2020

#### Main benefit test

- What is a tax advantage: an expense deduction? An income tax exemption? A withholding tax exemption? A tax credit?
- What is the tax regime of reference? Is a relatively minor/nominal tax saving compared to the normal tax regime sufficient?
- What if the fiscal advantage is obtained in another EU member state / outside of the EU or is explicitly contained in the fiscal law?

#### The category A general hallmarks

##### • The hallmark linked to a condition of confidentiality (A1)

- What about a condition which excludes the communication of information to tax authorities?
- What about a condition which protects a commercial secrecy?

##### • The hallmark linked to a success fee (A2)

- What if the fees are linked to the quality or the speed of service?

##### • The hallmark linked to a standardised arrangement (A3)

- What should be understood by «arrangement whose documentation and/or the structure are normalised for the greatest part»: what about the act of constitution of a company, the use of a service provider company / financing company lowly taxed, loan contracts, life insurance contracts, use of offshore companies / foundations / trust ?
- How to interpret the terms « without needing to be adapted in an important manner to be implemented»? What is an arrangement «which is available for more than one given taxpayer»?

#### The category B specific hallmarks

##### • Acquisition of a loss-making company (B1)

- 3 cumulative conditions: acquisition of a losing company, termination of the activity and use of the losses in order to reduce the tax basis

##### • The conversion of income belonging to a category into another category of income which is less taxed or not taxed at all (B2)

- Obligation to have a pre-existing situation
- The reduction of capital for the benefit of a foreign shareholder

##### • Circular transactions (B3)

- Round-tripping of funds without any valid commercial purpose?
- Is the sale and lease back targeted by this hallmark?

#### The category C specific hallmarks

##### • Deductible cross-border payments which are lowly taxed or tax exempt at the level of the beneficiary (C1)

- What if the payment is not deductible (because of national anti abuse rules)? What if there is no effective payment (but there is still a tax deduction of the expense)?

- Payment to a beneficiary who does not reside for tax reasons in any jurisdiction: what about payments to a partnership? Does the tax residency of the shareholders matter?
- Payment to a beneficiary who resides in a jurisdiction which does not levy corporate tax or which levies an almost null corporate tax: what is an almost null tax: 0 to 1%? 0% to 4%?
- Payment to a beneficiary in a list of third party non cooperative jurisdictions: which black list must be taken into account?
- The payment benefits of a total fiscal exemption in the jurisdiction of the beneficiary: the subtle distinction between a «subjective exemption» and an «objective exemption»; the payment of interest to a Luxembourg SICAR
- The payment benefits of a preferential tax regime: payment of royalties to a company which benefits from an IP regime, payment of interests to an investment fund

#### The category D specific hallmarks

#### The category E specific hallmarks

- Transfer of hard-to-value intangible assets between affiliated companies: how to determine if an intangible asset is difficult to evaluate?
- Intragroup transfer of business / of assets and functions: what about an intragroup corporate restructuring motivated by non tax reasons (organisational, economic and financial reasons)? What about a simple intragroup transfer of shares?

#### The intermediaries

- The condition of territoriality to be an intermediary
- The loophole for those who know or are reasonably supposed to know: what if the intermediary can demonstrate a reasonable diligence?
- Absence of a proactive investigation obligation
- What about the request for a second opinion?
- What about the employees of a legal person?
- Case studies: a person who:
  - a) processes an invoice only for accountancy reasons, without involving himself further into the reportable cross-border arrangement ;
  - b) provides an advice including general considerations (eg : what are the tax consequences ?);
  - c) performs a risk analysis such as, for example, the simple execution of a due diligence for a redemption, and when he notices a preexisting arrangement;
  - d) prepares and submits a tax return;
  - e) assists the taxpayer during a tax audit;
  - f) simply updates a transfer pricing reference;
  - g) drafts the transfer pricing documentation for existing structures
- Who must declare when several intermediaries are involved? How does it work in practice?

#### The information which must be communicated to the tax authorities

#### Deadlines for reporting

- General deadline
- When is an arrangement made available for implementation ?
- When is an arrangement ready for implementation ?
- When is the first step of implementation realised?
- The obligation to report after 1st January 2021

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## PRACTICAL INFORMATION

**Venue**  
Four Seasons Hotel, Limassol

**How to register**  
by phone: +41 (0) 22 849 01 11  
by fax: +41 (0) 22 849 01 10  
by e-mail: info@academyfinance.ch  
by post: Academy & Finance SA  
PO Box 6069, CH-1211 Geneva 6  
www.academyfinance.ch

**Fees**  
390 euros  
Additional registrations from the same company: - 50%

**Registration and payment**  
Payment is made by bank transfer or by credit card. Credit card payments will be debited immediately upon receipt of card details. In any case, we will send you an invoice by email.

**Substitution & cancellation policy**  
Substitutions from the same company are accepted at any time. Cancellation requests must be received in writing, by fax or by post up to the following dates end of business :

- 16 October 2020 refund of 100%
- 30 October 2020 refund 30%
- after 30 October no refund will be made for cancellation.

## REGISTRATION FORM

I register for the seminar «DAC6 clarifications by tax administrations» in Limassol on Friday 13 November 2020.

I am member of the association: .....

### FIRST PARTICIPANT

Full name.....  
Position.....  
E-mail.....

### SECOND PARTICIPANT (-50%)

Full name.....  
Position.....  
E-mail.....  
Company.....  
Address.....  
Postcode..... City.....  
Tel ..... Fax.....

### Person to which the invoice must be sent for payment:

Name..... Email.....  
Bank transfer  Mastercard  VISA  AMEX   
Credit card No : \_\_\_\_/\_\_\_\_/\_\_\_\_/\_\_\_\_ Expiry date : \_\_\_\_/\_\_\_\_  
Cardholder.....  
Address of AMEX cardholder .....  
Date ..... Signature.....

The organisers reserve the right to amend the programme if, despite their best efforts, circumstances oblige them to do so.

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