

DAC 6 Update - Where European jurisdictions stand regarding implementation?

ATOZ

On 25 May 2018, the Economic and Financial Affairs Council adopted a sixth amendment to the Directive on Administrative Cooperation (“DAC 6”) which requires so-called tax intermediaries to report, on a mandatory basis, cross-border arrangements that contain defined characteristics or features, possibly subject to a main benefit test, and that are implemented as from 25 June 2018.

DAC 6 is to be transposed by each Member State into domestic laws by the end of 2019, and the first reporting is due on 31 August 2020 with the first quarterly exchange of information on 30 October 2020.

While DAC 6 proposes a uniform mandatory disclosure rule framework, it can be expected that national implementation will result in a non-uniform set of rules, which calls for an adequate coordination amongst involved intermediaries.

The purpose of our first DAC 6 Taxand newsletter is to give you an overview of where things stand (as at 22 November 2019) across the European jurisdictions impacted by DAC 6.

COUNTRY UPDATES

CYPRUS

The Cyprus Bill has been drafted and is currently under consultation. It is expected that the Bill provisions will mirror those of DAC 6 with minor deviations.

Cyprus expects the Bill to be enacted into law by the end of the year and following this event, the Ministry of Finance will issue official guidance to provide clarifications.

CROATIA

Croatia has, to date, only issued draft legislation to transpose DAC 6 into its domestic law.

As far as it currently stands, there should be no major departure from the Directive.

AUSTRIA

The national law has already passed the National Council of Austria. The effective date was defined as 1 July 2020.

The law almost fully corresponds to DAC 6 and notably specifies that irrespective of other

requirements, there should only be an obligation to report arrangements if they carry a risk of tax avoidance.

DENMARK

In Denmark, the proposal allows the Danish Minister of Taxation to implement administrative rules regarding DAC 6. For the time being, the preparatory work suggests that it will be aligned with DAC 6.

One key difference though is the commencement date, which is set at 29 October 2014. This approach has been taken because the OECD rule indicates that intermediaries responsible for designing arrangements that aim to circumvent the Common Reporting Standard ("CRS") should report such arrangements within 180 days after the CRS rules take effect in the jurisdiction in question. Since CRS was implemented into Danish law on 29 October 2014, this date has been designated as the commencement date.

FINLAND

On 19 June 2019, the Ministry of Finance launched a public consultation on draft legislation providing rules for the implementation of DAC 6 and the final government bill on the Finnish implementation of DAC 6 was published on 31 October 2019.

The government bill proposes the implementation of the minimum requirements set forth in DAC 6, including, inter alia, the hallmarks and the main benefit test.

According to the government bill, implementation in Finland would only cover cross-border arrangements. As such, no reporting obligation is introduced in relation to domestic transactions.

The new legislation would impose an obligation on intermediaries providing tax-planning services (e.g. tax consultants) to inform tax authorities of certain cross-border arrangements that could potentially be used for aggressive tax planning. The secondary reporting obligation would be imposed on the taxpayer itself. The reporting obligation would not be, as a general rule, enforceable if national legal professional privileges apply (such as they do to, inter alia, attorneys).

The government bill suggests that a penalty of up to EUR 15,000 could be imposed if either the intermediary or the taxpayer neglects to fulfil the reporting obligation.

FRANCE

France transposed DAC 6 by an Ordinance dated 21 October 2019.

The French text is essentially an accurate adaptation of the Directive with respect to the definition of cross-border arrangements, the reference to the hallmarks mentioned in the Directive and the reporting requirements imposed to the intermediaries.

One element of discussion, however, has been the role of tax lawyers, who are in principle, subject to legal professional privilege and confidentiality vis-à-vis their clients.

The final draft of the Ordinance states that the tax lawyer shall report cross-border arrangements with the authorisation of their client or, if such authorisation is not granted, shall notify the reporting requirement to another intermediary or, if there is no other intermediary, to the taxpayer bringing the latter the necessary information to comply with the reporting requirement.

Whether such wording complies with legal professional privilege regulations in France remains arguable.

Failure to declare or to notify another intermediary or the taxpayer entails the application of a fine of EUR 10,000 which may not exceed EUR 5,000 when the failure is the first. The amount of the fines applied to the same intermediary or the same taxpayer may not exceed EUR 100,000 for a given civil year.

GERMANY

On 9 October 2019, the German Federal Cabinet approved the draft bill on the implementation of DAC 6.

The good news is that Germany will enact reporting obligations for cross-border tax arrangements only (despite some heated debates to extend to domestic arrangements as well) that are largely in line with DAC 6.

However, there are some particularities in terms of how DAC 6 will be implemented in Germany. For instance, no penalties shall apply for the reporting period 2018-2020.

The explanatory note of the German draft law includes many examples for the hallmarks. For example, a standardised structure (falling within Category A) is defined as the establishment and use of foreign financing companies, particularly in low-taxing foreign countries, if the design of the structure can be used by other taxpayers without significant changes in content or concept. Likewise, the centralisation of intra-group services in low-taxing states, e.g. a purchasing company, can also represent a standardised structure of the design in connection with this hallmark.

The draft law's definition of an intermediary does not materially differ from the definition under DAC 6.

Unlike DAC 6, however, the German draft law does not contain a reporting obligation for ‘auxiliary intermediaries’, but it does make clear that an intermediary must have played a specific role with regard to a given tax structure.

The German draft law exempts German tax advisors, lawyers and public auditors from the mandatory disclosure obligation due to legal professional privilege, although a waiver of this privilege is possible. Thus, the disclosure obligation can shift to the relevant taxpayer of the tax arrangement. However, intermediaries that claim legal professional privilege are still required (1) to inform the relevant taxpayers of such privilege and its possible waiver and (2) to submit data on the general scope of the reportable tax arrangement on a no-name basis.

Incorrect reporting or failure to comply with any disclosure obligation will be an administrative offense with a maximum penalty of EUR25,000 each time. These penalties will apply only to cross-border tax arrangements set up after 30 June 2020.

GREECE

In Greece there is no published draft bill for the transposition of DAC 6 into domestic legislation yet.

The perception on the market is that Greece will adopt the exemption of legal professional privilege. However, there is not yet any concrete information as to other features of the legislation.

HUNGARY

DAC 6 has been implemented at national level in Hungary through the related Act (XXXVII of 2013) which is already promulgated, and is going to come into force on 1 July 2020. The disclosure obligations will only apply to cross-border arrangements and will be implemented with retrospective effect from 25 June 2018 despite the first notifications will be due in August 2020.

According to the Hungarian law, VAT, excise duties and social security contributions are excluded from the scope of reporting, while all other Hungarian taxes are covered.

Lawyers may likely benefit from the waiver, while other parties like tax advisors, accountants or statutory auditors might not.

In Hungary, lawyers are highly privileged in respect of having the right to retain all data of their clients in majority of the cases. For the rest of the above mentioned professionals, the rules of “tax secret” or “business secret” may apply, but it can be expected that this would not in any case provide any exemption from the reporting obligations because “tax secret” is only defined in the relation between the tax authority and the taxpayers.

Therefore, the applicability of this rule to the relation between the intermediaries and the tax

authority is questionable considering the current status of the law. On the other hand, the general “business secret” rules are overridden by compulsory data supply rules, if they are required by the law. As the DAC 6 reporting is based on an act already officially published in Hungary, referring to ‘business secret’ reasons shall not be a barrier to reporting tax evasion by intermediaries.

IRELAND

Ireland’s Finance Bill 2019 was published on 17 October 2019 and, once enacted, will transpose DAC 6 into Irish law.

The draft legislation defines “arrangement” broadly to include:

- a) any transaction, action, course of action, course of conduct, scheme, plan or proposal,
- b) any agreement, arrangement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable or intended to be enforceable by legal proceedings, and
- c) any series of or combination of the circumstances referred to in paragraphs (a) and (b) above, whether entered into or arranged by one or two or more persons—
 - (i) whether acting in concert or not, (ii) whether or not entered into or arranged wholly or partly outside the State, or
 - (iii) whether or not entered into or arranged as part of a larger arrangement or in conjunction with any other arrangement or arrangements, but does not include an arrangement referred to in section 826 (i.e. double taxation agreements).

Other notable features are:

- Irish domestic legislation will not cover VAT, customs duties or excise duties covered by other legislation of the EU on administrative cooperation between member states, compulsory social security contributions payable to a member state, fees for documents issued by public authorities and consideration due under a contract; and
- the domestic legislation transposes the definition of “hallmark”, “marketable arrangement” and “person” directly from the Directive. The domestic legislation features a broad definition of “tax advantage”.

ITALY

On 18 October 2019, the Law No. 117 of 4 October 2019 known as the European Delegation Law 2018 was published in the Official Gazette.

The Law entered into force on 2 November 2019 and authorises the Government to implement, through a number of legislative decrees which do not require any further approval by the parliament (so that parliamentary commissions only have a consultative function), certain EU Directives, and notably DAC 6.

With regard to the DAC 6 Decree, a draft was published in Italy in July 2018. The Ministry of Economics and Finance conducted a public consultation regarding this draft version, which was closed in September 2018.

Currently there is no news about any developments/amendments to the Draft Decree following to the public consultation or about the timing for the approval of the Draft Decree

Based on the Draft Legislative Decree, the following points are worth noting:

- Despite the broad wording of the Directive which refers to “arrangements”, the Draft Decree specifically refers to “scheme, agreement or project”, which may slightly depart from the DAC 6 definition.
- The Draft Decree defines the cross-border arrangement as a scheme, agreement or project which involves “Italy and one or more foreign jurisdiction”. Some doctrine pointed out that the wording of the Draft Decree would imply that no obligation would arise in case of arrangements involving States

other than Italy (even if, for example, the arrangement is designed by an Italian intermediary but involves two States other than Italy).

- Still, according to the Draft Decree, the hallmarks (as well as the criteria to check if the arrangement is aimed at obtaining a tax advantage) will be identified by the Italian Ministry of Economy through a specific decree to be published.
- The Draft Decree specifically provides for some exemptions from the filing obligation.

For example, an intermediary is exempted from the filing obligation if it is in charge of the legal assistance of the client in the context of a proceeding in front of a judicial authority. It is also exempted if the filing obligation could give rise to a criminal liability of the intermediary itself.

LUXEMBOURG

A draft law was submitted by the government to the Luxembourg parliament on 8 August 2019.

As expected, the wording of the draft legislation is largely aligned with the DAC 6 wording, notably in regard to the taxes covered, the hallmarks, the reporting responsibilities, or the application of the reporting to cross-border arrangements only.

In so far as legal professional privilege is concerned, lawyers subject to the law of 10 August 1991 may rely on their professional secrecy and have the right to a waiver from filing information on a reportable cross-border arrangement. In such circumstances, lawyers acting as intermediaries in the sense of the draft law must notify their waiver within 10 days to any other intermediary or, if there is no such intermediary, to the relevant taxpayer. In that case, the obligation to file information on a reportable cross-border arrangement will lie with the other notified intermediary, or, if there is no such intermediary, with the relevant taxpayer.

This being said, for situations where the intermediary is a lawyer and Luxembourg is the first reporting jurisdiction as per the draft law, notwithstanding legal professional privilege, the lawyer intermediary is required to transfer some information with regards to the reportable cross-border arrangements to the Luxembourg tax authorities.

From a tax compliance standpoint, each relevant taxpayer has to indicate in its annual tax returns, the use of any reportable cross-border arrangement for each of the years where it has been used.

Failure to comply with their reporting obligations may lead to fines of up to EUR 250,000 according to the draft law. This maximum amount is aligned with the fines that are applicable for non-compliance with FATCA, CRS and CbCR. The setting of the amount of the fines will be done on a case-by-case basis, considering the intentional nature of the offense. Based on experience, the Luxembourg tax authorities generally adopt a reasonable approach when it comes to the levy of penalties. An appeal against the fine is available to the intermediary or to the relevant taxpayer.

MALTA

Malta has finalised the Legal Notice through which DAC 6 will be implemented and it is in the process of being published. It is expected that Maltese DAC 6 law will be aligned with DAC 6.

DAC 6 will be enacted into Maltese law by year end.

NETHERLANDS

The Dutch parliamentary proceedings in lower parliament are more or less finalised with a voting to take place on 14 November, and as the senate does not have amendment rights, changes are unlikely at this stage.

It is understood that additional guidance with examples will be published early 2020.

While the Bill does not define what an arrangement is, clarifications, including on the scope of the hallmarks, have however been given early November with regard to some definitions:

- Intermediaries and assisting intermediaries do not have an investigative duty.
- If an individual acts on behalf of an advisory firm, only the advisory firm will qualify as an intermediary.
- Intermediaries are not considered participants in the arrangement, unless they act in the capacity of a participant (e.g. bank as a service provider as opposed to participant in an arrangement).
- Intermediaries do not need to file an arrangement if another intermediary has already filed that arrangement (either in the same Member State or in another Member State). They need to keep a reference number in their administration, available upon request.
- If the services with respect to the arrangement are provided through a non-EU permanent establishment of a head office resident in the Netherlands, there is no reporting obligation (similar to a non-EU entity having no reporting obligation).
- Legal privilege is respected, informal or non-legal privilege is not respected. Derived legal privilege is also respected (e.g. lawyer obtaining assistance from tax professional). The 30-day period to report will start as soon as the lawyer/ public notary, etc. has informed the other intermediaries and/or the relevant taxpayer. The privileged party does not need to report anything.
- Penalties will in principle not be imposed for arrangement implemented up to 1 July 2020.
- Preparing and filing a tax return for a taxpayer does not qualify you as an assisting intermediary. This is also true for an 'audit of tax', a due diligence, preparing a 'tax fact book', a yearly tax assessment of an existing structure and other purely descriptive activities (i.e. without providing advice).

Such activities do not qualify as designing, marketing, organising or making available for implementation or managing the implementation of a reportable cross-border arrangement.

- The value of the cross-border arrangement should be listed by reference to the value of the cross-border arrangement and not the value of the tax benefit.
- It is not possible to prevent reporting by splitting up advice between different intermediaries, because the reporting obligation will shift to the taxpayer if all intermediaries have insufficient facts to determine whether there is a cross-border arrangement. Even if an intermediary reports a cross-border arrangement with the fewest possible facts, the facts are at least sufficient to determine whether there is a cross-border arrangement. The Dutch Tax Administration would then be able to ask follow up questions.
- Changes to cross-border arrangements implemented before 25 June 2018 are reportable if the changes results in a hallmark being triggered. Whether such changes are within the contractual terms of the arrangement is irrelevant.

POLAND

In Poland, DAC 6 provisions are already implemented into the Tax Code and are binding as of 1 January 2019. Almost one year after the law was introduced, practical assessment if a given arrangement is reportable is still quite difficult. As a result, one can observe the reporting of almost every arrangement. There is a lack of clarity as to what is and what is not a reportable arrangement. Though the Minister of Finance published so called binding clarifications, the issue is still far from being crystal clear, and the Minister is working on further guidelines.

With respect to key features of DAC 6 provisions in Poland, the following are worth highlighting:

As to the scope:

- Reporting obligations cover cross-border and domestic arrangements. The scope of domestic reportable arrangements is broad and covers arrangements that meet hallmarks specified in the DAC 6 but also certain specific hallmarks such as i.a. qualified impact of the arrangement on deferred tax asset or liability or certain abroad payments such as dividends, interest, royalties and remuneration for intangibles exceeding qualified threshold.
- For a domestic tax scheme to be reportable, a qualified relevant taxpayer criterion should be met. This criterion requires that relevant taxpayer revenues or costs (in the previous or current year) or value of its assets to exceed PLN equivalent of EUR 10m or where the value of the arrangement exceed PLN equivalent of EUR 2.5m. The criterion is also met when for an entity from the relevant taxpayer's capital group if the above thresholds are fulfilled.
- The "main benefit" criterion is defined through a "tax benefit" / "tax advantage" definition, the tax benefit being understood broadly so that it includes certain VAT.

- There are actually no limitations with respect to taxes being in scope of MDR reporting. Reportable arrangement may as well concern CIT, real estate tax, VAT or excise duty; the two latter taxes will however be reportable only for per domestic arrangements.
- Typical services such as filing of the tax return, preparation of the tax calculations in general, should not be reportable.

As to the reporting obligations:

- Tax schemes should be reported by the Intermediary or the relevant taxpayer within 30 days beginning:
 - a) on the day after the reportable arrangement is made available for implementation (which as a rule means presenting the arrangement by Intermediary to the relevant taxpayer in any form); or
 - b) on the day after the reportable arrangement is ready for implementation (which as a rule means preparing the plan of the arrangement to be implemented by the Relevant taxpayer); or
 - c) when the first step in the implementation of the reportable arrangement has been made (which means any first activity related to implementing the arrangement), whichever occurs first.
- Apart from the intermediary and the relevant taxpayer, reporting obligations may also be imposed on assisting entities which are understood as any person that has undertaken to provide aid, assistance or advice with respect to designing, marketing, organising, making available for implementation or managing the implementation of a tax arrangement (in particular, external advisors, notaries).
- Apart from standard reporting, making use of a reportable tax arrangement is also reportable by the relevant taxpayer within the deadline for submitting CIT return

As to the transitional period:

- Cross-border arrangements implemented after 25 June 2018 are reportable till 30 June (Intermediary) / 30 September 2019 (Relevant taxpayer).
- Domestic arrangements implemented after 1 November 2018 are reportable till 30 June (Intermediary) / 30 September 2019 (Relevant taxpayer).
- Changes to arrangements implemented in transitional period are reportable if the changes result in a hallmark being triggered.

As to the legal privilege:

- As a matter of principle, the law indicates that whereas reporting would infringe the legal

privilege and an intermediary is not released from the legal privilege by the relevant taxpayer, the intermediary is obliged to provide the relevant taxpayer with all necessary data required for proper filing of the MDR report. In practice, it is highly controversial for a legal or tax advisor to be exempted from maintaining legal privilege with the taxpayer.

As to the penalties:

- Qualified intermediaries are obliged to prepare and possess a relevant MDR procedure. Lack of such procedure can be subject to financial fines up to 2m PLN (c.a. 450k EUR); failure to report in connection with lack of procedure can be subject to financial fines up to 10m PLN (c.a. 2.3m EUR).
- Failure to report can be subject to fines up to 21m PLN (c.a. 5m EUR).
- Fraudulent reporting can result in imprisonment (up to 8 years).

PORTUGAL

Portugal issued draft legislation in June 2019 subsequent to which a consultation period took place and ended on 28 July 2019.

The draft legislation follows closely the DAC 6 structure and there is still no indication as to when it will be enacted though it is expected to be at the latest by 15 December 2019 as the Budget Law 2020 is scheduled to be presented on that day.

One specificity in Portugal is that mandatory disclosure rules already exist but relate to domestic transactions and the draft legislation seems to be both in existence.

ROMANIA

Romania has not yet transposed DAC 6 into its domestic tax legislation.

A draft proposal is available for the implementation of the DAC 6 Directive which, however, is not available for public consultation. The draft document has only been circulated between the Romanian Ministry of Finance and several professional associations and of the business community, and it is expected that it will be aligned with the DAC 6 structure.

One departing feature is that according to the draft document, no intermediaries would be given a right to a waiver from filing information on reportable transactions where such reporting would have interfered with the legal professional privilege.

This therefore results in Romania introducing, by way of an exception to any legal professional privilege, that all intermediaries will have to comply with the DAC 6 reporting requirements.

Currently, there is also no information available with regards to the level of fines that Romania would impose for failure to meet the DAC 6 reporting requirements. Per the discussions so far, it seems that the Romanian Ministry of Finance is awaiting implementation of Directive by other EU member states and plans to set the fines at the median value of the EU member states.

SLOVENIA

Slovenia has already implemented DAC 6 ad verbatim in its national legislation, with it being applicable as from 1 January 2020.

However, the intermediaries (or persons who are required to report the arrangements) are bound to report arrangements (that were concluded from 25 June 2018 to 1 July of 2020) by 31 August 2020.

SPAIN

On 20 June 2019, the tax authorities published draft legislation proposing to implement DAC 6 in Spain.

The draft legislation was under public consultation until 12 July 2019.

According to these publicly available drafts, the definition of “arrangement” is an objective one in that it is “any agreement, legal deal, scheme or cross-border transaction where the requirements needed for its communication concur”. It also includes a series of mechanisms and may consist of more than one phase or part. This being said, one cannot conclude that a mechanism exists for every payment derived from the formalisation of reportable mechanisms to the extent that they have no own substantivity.

This means that the current Spanish definition of “arrangement” (still subject to formal legislative approval) does not require an “intentional element”, neither from an intermediary nor (as the case may be) from the relevant taxpayer.

Spanish transposition regulations have further specified and clarified certain aspects of the hallmarks set forth in the Directive.

1) Main benefit criterion:

i. This test is deemed met when the main or one of the main effects which - having regard to all relevant facts and circumstances – a person may reasonably expect to derive from the arrangement is the obtaining of a tax advantage.

ii. A Tax Advantage is understood to refer to any decrease of the tax base or tax payable in terms of the tax debt - including the deferral of accrual - which would have arisen had it not been for the

arrangement. This includes the total or partial avoidance of realisation of the taxable event. It includes the generation of tax bases, tax payable, deductions or any other tax credit to be used in the future. If associated entities are involved, the question as to whether or not there exists a Tax Advantage is to be considered taking into account the effect on them all, irrespective of their jurisdiction.

2) Hallmarks

i. Cross-border payments between associated entities (C1): this includes expenses, even when they have not been paid or where they are paid through interposed persons. An indirect recipient is considered the recipient if the payments have been imputed or attributed for tax purposes under tax transparency regimes, income allocation regimes or equivalent rules.

ii. Payments to companies which are not subject to taxation or are taxed at a rate of zero or almost zero (C1.b.iv): corporate income tax is understood to mean any tax identical or similar to the Spanish tax. An effective rate of less than 1% is considered to be a rate of zero or almost zero.

iii. Payments to non-cooperative jurisdictions (C1.b.ii): this refers to the countries, territories and regimes listed in Additional Provision 1 of Law 36/2006.

iv. Use of preferential tax regimes (C1.d): this will not apply to those authorised by the European Union.

v. Transfers of assets with differences in value between jurisdictions (C4): a difference of more than 25% is required.

vi. This refers exclusively to differences in value for tax purposes, not for accounting purposes.

vii. With regards to hallmarks relating to the automatic exchange of information and beneficial ownership: these are to be interpreted in accordance with the Model mandatory disclosure rules for CRS avoidance arrangements and opaque offshore structures and the corresponding OECD commentary. Hallmark D1 is present in any arrangement, which includes any of the characteristics referred to in hallmark D1, which is intended to circumvent the obligation to report information on financial accounts

(Additional Provision 22 of the General Taxation Law, Royal Decree 1021/2015, or in other agreements on the exchange of information with EU states or with third countries), or which takes advantage of the absence of legislation or of agreements of this type. Characteristic e) (use of entities or instruments which make it possible not to communicate the identity of the holders of accounts or controlling persons) refers to the avoidance of disclosure of information to be reported through automatic exchange in respect of financial accounts. Chains of non-transparent formal or beneficial ownership (D2): the three characteristics required by the Directive must be

present for these to be reportable arrangements (absence of a substantive economic activity, location in a third jurisdiction and nonidentification of the beneficial owners).

viii. None of the hallmarks pertaining to Category E are present when the values used in the arrangement have been determined through an APA.

ix. Transfer of functions, risks and assets between companies of the same group: this is understood to refer to associated entities within the meaning of this Directive.

SWEDEN

Sweden has not yet published any draft legislation in so far as DAC 6 is concerned. However, draft legislation is expected by the end of November.

UK

The UK will be implementing DAC 6 despite Brexit. The UK tax authority, Her Majesty's Revenue & Customs ("HMRC") has reiterated that leaving the EU will not reduce the UK's resolve to tackle international tax avoidance and evasion. The UK is committed to tax transparency and will continue to apply international standards aimed at tackling avoidance and evasion.

HMRC published a consultation on the implementation of DAC 6 on 22 July 2019 which ran until 11 October 2019. In addition, draft legislation (The International Tax Enforcement (Disclosable Arrangements) Regulations 2019) has also been published which is proposed to come into force on 1 July 2020. HMRC is currently analysing the responses received to the consultation and aim to publish final legislation together with guidance on its implementation by 31 December 2019.

Broadly, the draft legislation is in line with the key requirements of the DAC 6 Directive and the legislation refers directly to the Directive on a number of aspects e.g. who should report, the types of transactions caught by the Directive and key definitions such as "intermediary", "reportable cross- border arrangement", "relevant taxpayer", etc.

The UK has had a disclosure regime for tax avoidance schemes ("DOTAS") since 2004 which should provide some experience in analysing the respective hallmarks. In fact, for Category "A" hallmarks, HMRC has stated that it intends to take a similar approach to interpretation as it does for DOTAS and refers to the DOTAS guidance.

In terms of reporting structure, this will be similar to DOTAS and HMRC anticipate a reporting template which will be submitted electronically. HMRC will issue an arrangement reference number ("ARN") which will be used to identify the DAC 6 report on the taxpayer tax returns and also shared with other intermediaries so that they can evidence whether their reporting obligations have been met.

The draft legislation sets out penalties for failure to meet its requirements. Penalties for failure to

report start at GBP 600 per day, failure to notify an ARN, up to GBP 5,000 and also allows the First Tier Tribunal to impose penalties up to GBP 1m.

The consultation document provides some insight into how DAC 6 is to be implemented and HMRC's proposed approach. We will continue to monitor relevant developments and provide further commentary once final legislation is published.