



# EU Transparency Directive – DAC6

## 1 Starting Position

In order to expose cross-border potentially aggressive tax planning models, the EU has introduced a new Tax Transparency Directive ("DAC6"), which can have far-reaching consequences for companies or individuals resident outside the EU.

**From 1 July 2020, intermediaries resident in the EU (or in certain cases EU taxpayers themselves) will have to disclose information on reportable cross-border arrangements to the tax authorities.**

The DAC6 rules are designed to make the disclosure of EU cross-border tax models mandatory if one of the main benefits of the model is a lower tax burden ("main benefit") or if other criteria defined in the Directive (so-called "hallmarks") are met. Thus, it is irrelevant whether a financial institution or a consultant is involved in structuring the model. The Directive applies not only to tax consultants, trustees, banks and similar professional groups, but also to companies and private individuals.

As a non-EU-member state, the Principality of Liechtenstein does not transpose the DAC6 Directive into national law.

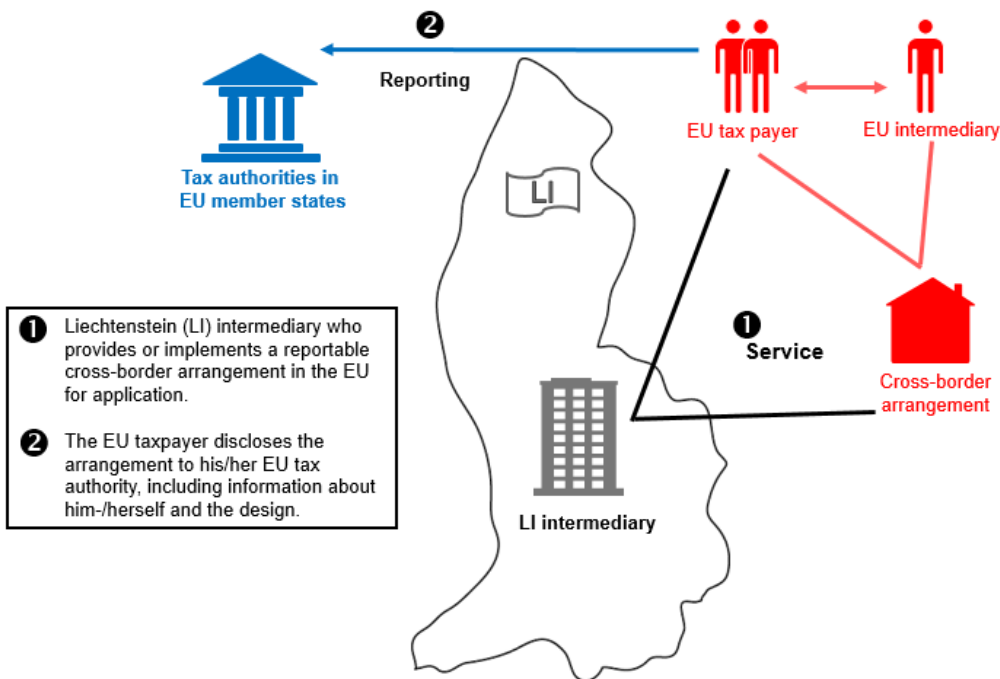
## 2 Functioning of DAC6

**At what point in time are the legal provisions on DAC6 to be applied?**

From 1 July 2020, the new provisions of Directive 2018/822 of 25 May 2018, "DAC6", which amends EU Directive 2011/16 on the mandatory automatic exchange of information in the field of taxation on reportable cross-border arrangements, will apply.

This obligation also includes arrangements implemented from 25 June 2018 onwards (retroactive effect). Corresponding subsequent notifications must occur by 31 August 2020.

Graphic «DAC6 flow chart for Liechtenstein», LBV, 03/2020.



### Who is affected by the requirements of the Tax Transparency Directive "DAC6"?

Although it is an EU Directive, DAC6 also affects persons resident in other EU countries who provide, implement or use a reportable cross-border arrangement in the EU. A Liechtenstein financial institution may therefore also be indirectly affected by DAC6.

### Which "arrangements" are covered by the DAC6 reporting obligation?

The following conditions must be met for reporting under DAC6:

- ↗ It is a cross-border arrangement where the relevant persons are resident in different EU Member States or in one Member State and a third country; and
- ↗ one of the main advantages of the arrangement is the low tax burden ("main-benefit test"); and/or
- ↗ one of the DAC6 specific characteristics (so-called "Hallmarks") is fulfilled.

### Who must report?

Under DAC6, the primary disclosure requirement lies with the EU intermediary, being any person with EU-nexus that designs, markets, organises or makes available for implementation or manages the implementation of a reportable cross-border arrangement or knows or could be reasonably expected to know that they provide, directly or by means of other persons, aid, assistance or advice with respect to such activities.



The EU intermediary must disclose the facts to the relevant tax authority in the EU within 30 days of the date on which the agreement is made available for implementation, is ready for implementation or is actually implemented. The reporting period depends on which of these dates occurs earlier. If several intermediaries are involved in a reportable cross-border arrangement, the reporting obligation is incumbent on each of them. An intermediary is only exempt from the reporting obligation if it can be proven that the reporting obligation has been fulfilled by another intermediary or that the matter has already been reported in another EU country.

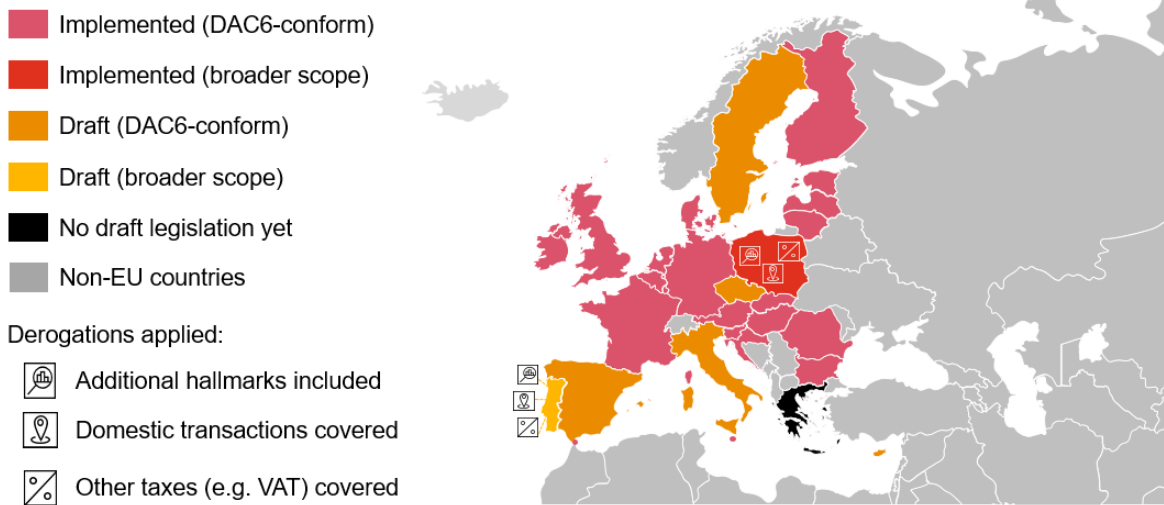
If no EU intermediary is involved in the arrangement or if the EU intermediary is subject to a duty of confidentiality under the law of the respective member state, then the taxpayer resident in the EU is subject to a subsidiary reporting obligation. Intermediaries domiciled in Liechtenstein are not subject to any reporting obligations, so this reporting obligation is basically incumbent on the client, i.e. the taxpayer in the EU.

### 3 Additional Information

#### **What is the status of transposition in the EU Member States?**

While all EU Member States are required to implement the EU Directive, some countries even go beyond the scope of the Directive and, for example, require reporting of domestic transactions. The range of possible consequences of non-compliance with the reporting obligation is wide, with all EU countries imposing penalties.

Graphic «DAC6 Implementation Tracker», PWC Switzerland, 30/3/2020.



The Liechtenstein Bankers Association and its member banks recommend that for further information on the DAC6 provisions and the associated reporting obligations a qualified legal/tax advisor in the respective EU member state should be consulted.

#### 4 Useful external links

[COUNCIL DIRECTIVE \(EU\) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements](#)

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