

TAX INFORMATION 1/2021

1. Directive on Administrative Cooperation 6 (DAC6)

DAC6 refers to the mandatory automatic exchange of information on potentially aggressive tax planning, cross border arrangements. It is expected to be enacted in Cyprus within the following months and the main purpose is to eliminate tax avoidance.

2. Basic provisions of DAC6


- Considers only **cross border arrangements**, i.e., arrangements between companies/permanent establishments in two EU member states or a company/permanent establishment in an EU member state and a company/permanent establishment in a third country.
- Obligation to report falls into five broad categories of **Hallmarks**. Some of the hallmarks are subject to the Main Benefit Test, in order to decide whether an arrangement must be disclosed to the Tax authorities.
- The Main Benefit Test generally considers whether an arrangement has real commercial substance or if the reason for entering into such arrangement is obtaining tax advantage. In case the latter is decided, the arrangement is reportable.
- Failure to comply bears significant risk of sanctions for legal entities and physical persons.
- Reporting will be done to Cyprus Tax Authorities by **Intermediaries** or by the **Taxpayer**.

3. Who is an Intermediary?

An intermediary is:

- any person that designs, markets, organizes, or makes available for implementation or manages the implementation of a reportable cross-border arrangement, or
- a person that, based on the information in his possession and his relevant expertise and understanding required to provide such services, knows, or could be expected to know, that such persons have undertaken aid or advice with regards to the above.

An intermediary must be one of the following:

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- resident for tax purposes in an EU Member State
- have a permanent establishment in an EU Member State through which the services with respect to the arrangement are provided
- be incorporated in, or governed by the laws of an EU Member State
- be registered with a professional association related to legal, taxation or consultancy services in an EU Member State.

Exceptions:

- Intermediaries covered by Legal Professional Privilege (LPP) – Must inform other intermediaries and, if no other intermediaries exist, the relevant taxpayer regarding the obligation to report.
- Intermediaries which possess evidence that an arrangement has been reported by another intermediary.

4. The Hallmarks

The five categories are as follows:

Category A

A.1 Confidentiality clause in an arrangement

A.2 Remuneration of the intermediaries related to the tax advantage created

A.3 Use of standardised documentation/structures

Category B

B.1 Acquisition of loss-making entities, to discontinue their operations and use their tax losses to reduce tax liability

B.2 Conversion of income into capital, e.g., interest or employment revenue, so that tax is eliminated. Transaction has no commercial substance.

B.3 Circular transactions, e.g., round tipping of funds, or transactions which cancel one another.

Category C – Cross border payments

C.1 Deductible cross border payments to associated enterprises. This applies only to actual amounts charged & paid and used as tax deductible expenses (not NID or transfer pricing adjustments)

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C1.a Recipient of the payment is not a resident for tax purposes in any jurisdiction – “stateless companies”. For jurisdictions that do not have the concept of tax residency, then the place of incorporation/management and control is considered as the tax residency.

C.1.b.i. Recipient of the payment is a tax resident in a jurisdiction that imposes zero or almost zero corporate tax.

C.1.b.ii Recipient of the payment is a tax resident in a blacklisted jurisdiction as per the lists of EU and OECD, which are regularly updated.

C.1.c Recipient is a tax resident in a jurisdiction where the payment benefits from full tax exemption (e.g., the jurisdiction of a head-office exempts all income of a foreign permanent establishment).

C.1.d Recipient is a tax resident in a jurisdiction where the payment benefits from a preferential tax regime.

C.2 Deductions for the same depreciation/amortization on the asset are claimed in more than one jurisdiction. Not subject to this hallmark if dual inclusion of income also exists.

C.3 Relief from double taxation in respect of the same income or capital is claimed in more than one jurisdiction. Not applicable if double inclusion of income also exists. Does not apply to dividends paid to a Cyprus company.

C.4 Arrangements which include the transfer of assets with a material difference in the price used for tax purposes. Materiality is considered on a case-by-case basis. Applies on intragroup and Head Office/Permanent Establishment transactions, as well as transactions with third parties. The “price used for tax purposes” is the amount indicated as the payable consideration for the asset.

Category D - Specific Hallmarks concerning the automatic exchange of information and beneficial ownership

D.1 Circumvention of EU legislation or any equivalent agreements on the automatic exchange of information, e.g., transfer funds to a custodial account in a non-CRS participating jurisdiction. Any attempt to circumvent reporting under the CRS must be reported.

D.2 Obscuring Beneficial Ownership chains. UBO’s can be reasonably identified by the relevant tax authorities, the entities must have an economic substance and all related disclosures should be made.

E.1 Arrangements involving the use of unilateral safe harbor rules, in our case the 2% minimum margin after tax (2,286% before tax) on intra-group back-to-back financing transactions.

E.2 Arrangements involving the transfer of hard-to-value intangibles, i.e., no comparable exists at the time of the transfer or there is difficulty in predicting future cash flows/income expected, or a degree of uncertainty exists in valuing the intangible asset. Includes patents, trade names & brands, goodwill, trademarks etc.

E.3 Arrangements involving a significant intra-group cross border transfer of functions and/or risks and/or assets, e.g., in the case where the EBIT is materially reduced. Dividends are not part of the EBIT for this hallmark.

Note: Hallmarks in Categories A and B, as well as C1, C.1.b.i, C.1.c and C.1.d are subject to the Main Benefit Test. For the remaining hallmarks, the Main Benefit Test is not considered.

5. Information to be disclosed

The reporting will be done via Government Gateway Portal Ariadni, using a standard prescribed format that will include the following information:

- Identification of the Intermediaries and Relevant Taxpayers involved (names, place of birth (for individuals), tax residency jurisdictions and Tax Identification numbers, associated enterprises (for relevant taxpayers, where appropriate)
- Details of the hallmarks met
- Description of the arrangement (content)
- Date of implementation of the first step of the arrangement
- Value of the cross-border arrangement
- National / local laws / provisions that constitute the basis of an arrangement
- Member State of the taxpayer and other Member States involved
- Persons likely to be affected by the arrangement and their corresponding Member States
- Reference number of the reportable cross-border arrangement



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6. Deadlines

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The deadline for filing information without penalties has been extended to **30th June 2021**, for the following cases:

- Reportable cross-border arrangements carried out between 25 June 2018 and 30 June 2020 (initial deadline 28.2.2021)
- Reportable cross-border arrangements carried out between 1 July 2020 and 31 December 2020 (initial deadline 31.1.2021)
- Reportable cross-border arrangements carried out between 1 January 2021 and 31 May 2021 (initial deadline within 30 days from the date that the arrangement has been made available for implementation, or was/is ready for implementation or the first step was/is implemented)

Further to the above, a primary or secondary intermediary or the taxpayer, must report an arrangement within 30 days from the date:

- It is made available
- It is ready for implementation
- Its first step is implemented

whichever comes first. Also, an intermediary providing aid, assistance, or advice to the taxpayer for a reportable cross-border arrangement, should report within 30 days of providing such service.

Information to the Tax authorities should be made available within 14 days from the date of the receipt of a written request.

PEK LTD

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