

Germany

DAC 6 Domestic Implementation



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General Information

Territory	Germany
Tax authority	Bundeszentralamt für Steuern (BZSt)
Status of legislation	Implemented. Entry into force on 1 July 2020. Reportable transactions for which first implementation step took place between 25 June 2018 and 1 July 2020 need to be reported by 31 August 2020. Remark: it can be expected that the first reporting date will be postponed to the end of September 2020. However, this is yet to be confirmed formally.
Taxes covered	Mainly income tax / corporate income tax incl. solidarity surcharge, trade tax, real estate transfer tax, inheritance and gift tax
Taxes excluded	VAT and harmonized excise duties and import and export duties which fall under the Customs Code of the EU.
Domestic transactions	No

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Definitions further clarified by guidance

Relevant taxpayer	Any person to whom a reportable cross-border arrangement is made available for implementation, or who is ready to implement a reportable cross-border arrangement or has taken the first step towards implementation.
Associated enterprise	A person who is related to another person in at least one of the following ways: a) a person participates in the management of another person and is in a position to exercise significant influence over the other person; b) a person participates in the control of another person through a holding that exceeds 25 % of voting rights; c) a person participates in the capital of another person through a holding that (directly or indirectly) exceeds 25 % of the capital; d) a person is entitled to 25 % or more of the profits of another person.
Marketable arrangement	A cross-border tax arrangement is marketable if it is designed, marketed, ready for implementation or made available for implementation without the need to be substantially customized.

Cross-border arrangement

An arrangement concerning either more than one Member State or at least one Member State and one or more third country/countries and where at least one of the following conditions is met:

- a)** not all of the participants in the arrangement are resident for tax purposes in the same jurisdiction;
- b)** one or more of the participants in the arrangement is simultaneously resident for tax purposes in more than one jurisdiction;
- c)** one or more of the participants in the arrangement carries on a business in another jurisdiction through a permanent establishment situated in that jurisdiction and the arrangement forms part or the whole of the business of that permanent establishment;
- d)** one or more of the participants in the arrangement carries on an activity in another jurisdiction without being resident for tax purposes or creating a permanent establishment situated in that jurisdiction;
- e)** such arrangement has a possible impact on the automatic exchange of information or the identification of beneficial ownership.

An arrangement shall also include a series of arrangements. An arrangement may comprise more than one step or part.

Intermediary

Any person that designs, markets, organizes or makes available for implementation or manages the implementation of a reportable cross-border arrangement.

Tax advantage

A tax advantage should be considered to arise if, through the arrangement, taxes are to be refunded, tax rebates granted or increased, tax claims waived or reduced or the arising of tax claims is prevented or shifted to other tax periods or tax dates.

A tax advantage also exists if it is to arise outside the scope of this law.

Furthermore, an arrangement should not be subject to the reporting requirement where it only has an effect domestically and if it is, under consideration of all circumstances of the tax arrangement, legally provided for in German domestic law.

Made available for implementation

Cross-border arrangements are made available for implementation if the intermediary has handed over to the user the information or (contractual) documents that are required for the implementation. The actual implementation of the arrangement is not required.

Hallmark

A characteristic or feature of a cross-border arrangement that presents an indication of a potential risk of tax avoidance.

3 Additional hallmarks

Additional hallmarks None

4 Operation of legal professional privilege (lpp)

Operation of legal professional privilege (LPP)

For intermediaries that are protected by legal professional privilege (LPP) the reporting obligation with respect to certain personal data on the user of the cross-border tax arrangement shall partly shift to the user, provided that:

- 1) the intermediary has informed the user about the possibility to discharge the intermediary from its client confidentiality obligations, and
- 2) the user has not discharged the intermediary from the obligation of secrecy, and
- 3) the intermediary has immediately submitted the data they hold on the arrangement to the user of the tax arrangement.

The intermediary is required to provide the user with the above information immediately after the reporting obligation arises.

5 Reporting deadline

Intermediaries

Within 30 days following:

- a) the day after the reportable cross-border arrangement is made available for implementation; or
- b) the day after the reportable cross-border arrangement is ready for implementation; or
- c) the moment when the first step in the implementation of the reportable cross-border arrangement is made, whichever occurs first.

In addition, intermediaries are also required to file information within 30 days beginning on the day after they provided, directly or by means of other persons, aid, assistance or advice. Reportable transactions for which first implementation step took place between 25 June 2018 and 1 July 2020 need to be reported by 31 August 2020.

For marketable arrangements, the intermediary is required to file a periodic report with all new reportable cross-border arrangements every 3 months.

Users (where LPP applies)

Within 30 days following:

- a)** the day after the reportable cross-border arrangement is made available for implementation; or
- b)** the day after the reportable cross-border arrangement is ready for implementation; or
- c)** when the first step in the implementation of the reportable cross-border arrangement has been made, whichever occurs first.

Reportable transactions for which first implementation step took place between 25 June 2018 and 1 July 2020 need to be reported by 31 August 2020.

6 Reporting principles for intermediary

Circumstances in which intermediary is obliged to report

Intermediary is obliged to report information that is within their knowledge, possession or control on reportable cross-border arrangements.

Obligation to inform user what data was communicated

Yes

Priority of reporting where multi member state reporting obligations exist

Where the intermediary is liable to file information on reportable cross-border arrangements with the competent authorities of more than one Member State, such information shall be filed only in the Member State that features first in the list below:

- a)** the Member State where the intermediary is resident for tax purposes;
- b)** the Member State where the intermediary has a permanent establishment through which the services with respect to the arrangement are provided;
- c)** the Member State which the intermediary is incorporated in or governed by the laws of;
- d)** the Member State where the intermediary is registered with a professional association related to legal, taxation or consultancy services.

Circumstances under which intermediary not required to report

In case of multiple reporting obligations, the intermediary shall be exempt from filing if it has proof, in accordance with national law, that the same information has been filed in another Member State or that the required information has been reported by another intermediary. The reference number of the arrangement issued by another Member State is considered sufficient proof.

The intermediary shall also be exempt from filing the information if he is bound by legal professional privilege and has notified the other intermediaries or in absence thereof, the relevant taxpayer.

What will the tax authorities provide for the notification received

The German tax authorities will issue a registration number (Arrangement ID) for the cross-border arrangement and a disclosure number (Disclosure ID) for the notification received (i.e. evidence of receipt). The intermediary is required to immediately provide the registration number and the disclosure number to the user.

7 Reporting principles for taxpayer

Circumstances in which taxpayer is obliged to report

The relevant taxpayer is obliged to report if:

- a) no intermediary was involved in the design, marketing, organizing or making available for implementation or managing the implementation of a reportable cross-border arrangement; or
- b) he has been notified by the intermediary that the intermediary is bound by legal professional privilege.

Priority of reporting where multiple taxpayers are involved

Where multiple users are involved, the user that is to file for all general (non-user related) information will be the one that features first in the list below:

- 1) The user that agreed the arrangement with the intermediary; or
- 2) The user that is managing the implementation of the arrangement.

Circumstances under which taxpayer not required to report

There is evidence that the arrangement has been reported by an intermediary; or

There is evidence that the arrangement has been reported by another taxable person; or

There is evidence that it reported the arrangement in another Member State.

Proof that reporting obligation is satisfied by other taxpayer

Registration number (Arrangement ID) and the disclosure number (Disclosure ID) from the other taxpayer.

8 Reporting principles applicable to all

Language

The mandatory information to be reported can be submitted in German or English. Some additional information must be provided in English in any case.

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Penalties

Circumstances in which penalties may apply

Incomplete, late - or non-filing of a cross-border tax arrangement.
 Missing reference to the crossborder arrangement in the tax return (at all / timely / completely / properly).
 Penalties will only apply with respect to cross-border tax arrangements implemented after June 30, 2020.

Amount

Fine of up to EUR 25,000.

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Country specifics

Country specifics / deviation from EU directive

None.

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Technological implementation

Electronic data transmission

The notification shall be transmitted exclusively by electronic transmission, in accordance with the officially prescribed data set to the Federal Central Tax Office (BZSt).

The following three reporting channels are available for data transmission:

- (1) Individual data transmission via the BZSt online portal (BOP)
- (2) XML Web Upload in the BOP
- (3) Electronic mass data interface (ELMA)

Content of declaration

The declaration shall contain following information:

- details of the intermediary
- details of the indicators
- summary of the design
- date of implementation
- relevant legislation of the affected member states
- information about the user*)
- information on associated companies*)
- persons concerned*)
- economic value
- states concerned

*) If the user himself reports because he has not released the intermediary from his obligation of secrecy.



Andreas Griesbach
Partner & Head of Industry
Group Real Estate
Andreas.Griesbach@bakertilly.de

Carsten Hüning
Partner, Global Leader
Transfer Pricing
carsten.huening@bakertilly.de

Ines Paucksch
Global International
Corporate Tax Leader
Ines.Paucksch@bakertilly.de

Marc Roth-Lebeau
Tax Partner Financial
Services
marc.lebeau@bakertilly.de