

# DAC6 Mandatory Disclosure Rules



**Getting ready for the 1<sup>st</sup> of July deadline while working remotely**

DAC6, setting out new Mandatory Disclosure Rules (MDR) of certain cross-border tax arrangements, enters into force on 1<sup>st</sup> of July 2020. We offer an approach to ensure operational readiness and compliance with these new rules within the next three months, adapted to the exceptional circumstances we are currently facing.

Whilst most organisations are having to deal with many tax and non-tax issues in the wake of the COVID-19 pandemic, DAC6 is still set to apply from 1st of July 2020. With virtually all employees working from home and in-person meetings forbidden for an unknown amount of time, companies need to adopt a new approach to become DAC6 compliant and ready to report relevant arrangements in just a couple of months.

In response, we have adapted our implementation project model, going for a leaner, scaled-down approach, focused on the essentials for delivering a compliant DAC6 process, without relying on in-person workshops.

Additionally, we stand ready to support companies with the assessment of their identified arrangements, preparation of DAC6 reports and analysis of complex transactions. We have a team of specialists that draws on an EU wide network of DAC6/MDR experts to support companies with ad-hoc solutions to remain compliant with the mandatory disclosure rules.

## A lean and tailored implementation project approach

Our approach follows three steps which, depending on the exposure and complexity of its corporate structure, will require only a limited time commitment from the organisation.

We bring a well established approach and tried and tested tools to facilitate the introduction of solid processes.



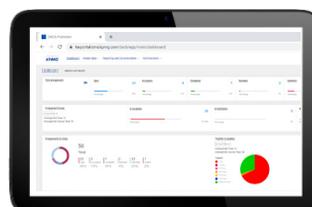
### 1. DAC6 exposure questionnaire:

Understanding of the structure and exposure of the company.



### 2. Impact analysis heat map:

Identification of the reportable activities for each corporate entity.



### 3. MDR controls process:

Tailored processes and procedures for the identification of reportable activities

## Enforcement of DAC6 and result of non-compliance

Failure to report arrangements can lead to penalties and fines for each individual missed report, late filing and erroneous report. Maximum fines vary wildly from jurisdiction to jurisdiction, going from maximum penalties no higher than €30,000 (in France, Germany, Italy, Spain) to more than €1 million (UK) and even up to €5 million (Poland).

## Typical arrangements leading to reporting obligations

Many activities can trigger reporting obligations, and a single project may trigger different reporting obligations across different hallmarks, that all need to be assessed.

### 1. Payment of interest, dividends and royalty

Arrangements where the cross-border payment of interest, dividend or royalty is part of a circular transaction or leads to lower or non-taxation of income might be reportable.

For example, the following arrangements may trigger a reporting obligation:

- Following a contribution of cash, receivables or other assets to subsidiary, a parent company receives dividend payments instead of interest or rental income;
- A subsidiary receives a cash contribution from its parent company, and subsequently gives out a loan to its parent company;
- Structures to achieve relief from double taxation of the same income in more than one jurisdiction.

### 2. Mergers & Acquisitions (M&A)

From the initial steps of an M&A process, to the post-acquisition integration, many activities can trigger an MDR reporting obligation.

For instance, the following M&A-related activities may trigger a reporting obligation:

- Non-disclosure agreements between the parties, and advisory agreements with confidentiality conditions;
- Post-acquisition integration of the acquired company.

### 3. Changes to the Transfer Pricing (TP) model

TP models, and any changes to them, are another area exposed to reporting obligations.

Examples of TP-related activities that may trigger a reporting obligation:

- Use of a licence or patent box, or other preferential tax regimes;
- Transfer of risks, business or assets, or hard-to-value intangibles;
- Use of unilateral safe harbour rules, or any TP approach deviating from the arm's length principle.

### 4. Companies in low-tax jurisdictions

Any type of deductible payment to a related party resident in a no or almost no tax jurisdiction might be reportable. Additionally, deductible payments to related parties that are not tax resident in any jurisdiction, or resident in EU-blacklisted countries, are reportable.

## Contact:

### Mads Nørgaard Sørensen

Partner  
+45 5077 0946  
mads.sorensen@kpmg.com

### Michael Fonsmark

Senior Manager  
+45 5077 0921  
michael.fonsmark@kpmg.com

### Simon Tornø Olesen

Manager  
+45 5077 0955  
simon.olesen@kpmg.com

### Francois Marlier

Senior Consultant  
+45 5374 7051  
francois.marlier@kpmg.com