

# Mandatory Disclosure Rules

## Ireland enacts DAC6 transposition bill

This article provides a summary of the Irish legislation transposing mandatory disclosure rules under DAC6 into domestic law.

### Status

Finance Bill 2019 was published on October 17, 2019 and provides for the transposition of EU Directive 2018/822 on mandatory disclosure rules (DAC6) into Irish domestic law.

The bill was signed into law by the Irish President on December 22, 2019.

The provisions will come into operation on July 1, 2020.

Please note that the summary is based on information available as at January 1, 2020.

### Scope

The scope of the legislation is closely aligned with the Directive – no extension of scope proposed for VAT, customs duties or excise duties. MDR reporting will also only apply for “reportable cross-border arrangements” (i.e. domestic transactions will not be in scope). Ireland has an existing and separate regime which applies to domestic transactions.

### Hallmarks

No changes are proposed to the hallmarks set out in the Directive.

### Definitions

The MDR provisions contained in the legislation are closely aligned with the Directive.

In particular, the definitions of “associated enterprise”, “cross-border arrangement”, “marketable arrangement” and “relevant taxpayer” have the same meaning as DAC6.

The term “reportable cross-border arrangement” means any cross-border arrangement that contains at least one of the hallmarks set out in Annex IV of the Directive.

### 1) Intermediary

The term “intermediary” is closely aligned with the definition in the Directive.

### 2) Arrangement

The term “arrangement” is also defined as meaning:

- 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), 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 (This is a reference to Ireland’s double taxation agreements).

### 3) Tax Advantage

The term “tax advantage” is defined as meaning:

- a) relief or increased relief from, or a reduction, avoidance or deferral of, any assessment, charge or liability to tax, including any potential or prospective assessment, charge or liability,
- b) a refund or repayment of, or a payment of, an amount of tax, or an increase in an amount of tax refundable, repayable or otherwise payable to a person, including any potential or prospective amount so refundable, repayable or payable, or an advancement of any refund or repayment of, or payment of, an amount of tax to a person, or
- c) the avoidance of any obligation to deduct or account for tax,

arising out of or by reason of an arrangement, including an arrangement where another arrangement would not have been undertaken or arranged to achieve the results, or any part of the results, achieved or intended to be achieved by the arrangement.

#### Legal Professional Privilege

There is no requirement for an intermediary to disclose:

- i. information that is not within its knowledge, possession or control; or
- ii. information to which a claim for legal professional privilege could be maintained in legal proceedings.

If legal professional privilege applies, the intermediary should notify the other intermediary / relevant taxpayer of the reporting obligation without delay.

#### Reporting

Reporting timelines mirror the requirements of the Directive. Returns will be submitted electronically in accordance with current electronic return filing requirements (i.e. via Revenue’s Online System).

The information that is required to be disclosed by an “intermediary” or “relevant taxpayer” largely mirrors the requirements of the Directive.

The Irish Revenue Commissioners will assign a reference number to each reportable cross-border arrangement (unless a number has already been assigned by another EU Member State).

- The reference number should be provided by the intermediary to other intermediaries and each relevant taxpayer within 5 working days of the date (i) on which the number is assigned by the Revenue Commissioners, or (ii) the other intermediary or relevant taxpayer becomes involved in the arrangement.
- An intermediary will not be required to report an arrangement if it has received in writing:
  - In the case of an arrangement reported to the Irish Revenue by another intermediary (i) confirmation from another intermediary that a return has been filed with the Irish Revenue and (ii) the reference number assigned to the arrangement by the Irish Revenue.
  - In the case of an arrangement reported to the tax authority of another EU Member State by another intermediary (i) a copy of the return filed with that tax authority and (ii) the reference number assigned to the arrangement by that tax authority.
- Where there is no intermediary but multiple relevant taxpayers, the return should be made by the relevant taxpayer that:
  - i. agreed the reportable cross-border arrangement with the intermediary; or
  - ii. the relevant taxpayer that manages the implementation of the arrangement.
- That relevant taxpayer should provide the reference number received from Irish Revenue to the other relevant taxpayer(s) within 5 working days of the later of:
  - i. the date on which the number is assigned by the Revenue Commissioners, or
  - ii. the date on which other relevant taxpayer(s) becomes involved in the arrangement.

## Reporting (cont.)

- A relevant taxpayer will not be required to report an arrangement if it has received in writing:
  - In the case of an arrangement reported to the Irish Revenue by another taxpayer (i) confirmation from the other taxpayer that a return has been filed with the Irish Revenue, and (ii) the reference number assigned to the arrangement by the Irish Revenue;
  - In the case of an arrangement reported to the tax authority of another EU Member State another taxpayer (i) a copy of the return filed with that tax authority, and (ii) confirmation that a reference number has been assigned to the arrangement by that tax authority.

## Duties of the Revenue Commissioners

Failure to react to a reportable cross-border arrangement will not imply that Revenue accept the tax treatment of the arrangement.

## Penalties

### Category one penalties

A penalty not exceeding €4,000 will apply plus €100 per day for each day that the relevant failure continues. This relates to:

- Failure of a relevant taxpayer to provide the reference number assigned by Irish Revenue to other relevant taxpayers
- Failure of the taxpayer or intermediary to report arrangements entered into during the retroactive period (25 June 2018 to 30 June 2020)
- Failure of an intermediary to report a marketable arrangement within the specified time; and
- Failure of an intermediary claiming legal professional privilege to notify the relevant taxpayer and other intermediaries.

### Category two penalties

A penalty of €500 per day will apply from the date of the failure until the date on which Revenue makes an application to a relevant court (Irish District Court, Circuit Court and High Court) to determine whether the person named in the application has failed to comply with their obligations.

The €500 per day penalty will continue to apply if the failure continues after the date on which Revenue make an application to a Court. This relates to:

- Failure of a relevant taxpayer to report a cross-border arrangement entered into on or after 1 July 2020 within the specified time;
- Failure of an intermediary to report a cross-border arrangement entered into on or after 1 July 2020 within the specified time; and
- Failure of an intermediary to notify other intermediaries and relevant taxpayers of the reference number assigned by Revenue within the specified time.

### Category three penalties

- A penalty of €5,000 will apply for a failure of a relevant taxpayer to include the reference number assigned to a reportable cross-border arrangement in their tax return.

### Category four – tax / fee geared penalties

Where the Irish Revenue make an application to a Court to determine if a taxpayer or intermediary has failed in relation to any obligations as noted above, the Court can determine whether a penalty applies and the amount of the penalty having regard to the amount of fees received by an intermediary and the amount of any tax advantage gained by a taxpayer in respect of a reportable arrangement.

For more information, please refer to KPMG's [EU Mandatory Disclosure Rules page](#) or contact the following:

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