



# The Implementation of DAC 6 in Germany

January 14th, 2021

# Characteristics of the German DAC 6 implementation

## Status of implementation and application of new rules

- **The final implementation of DAC 6 into German law was enacted on December 21, 2019.**
- **First draft of additional guidance by the tax administration was published in March 2019 and further amended in July 2020 just after the start of application of the new rules. This “discussion draft” has not been finally agreed upon between Federal Government and Länder.**
- **The new rules regarding the mandatory disclosure regime were applicable as of July 1, 2020. Cross-border arrangements where the first step of implementation was made between June 25, 2018 and June 30, 2020 must be reported between July 1, 2020 and August 31, 2020.**

**In contrast to most other Member States, Germany did not exercise the option to defer by 6 months the deadlines/dates for first time reporting/exchange of information provided by EU Council Directive 2020/876. As a consequence, DAC 6 reporting has already started.**

# Implementation of DAC 6 – What is special about the German implementation?

## Cross-border arrangements

- Taxes and hallmarks (mainly) are in line with DAC6
- Additional hallmarks not intended
- Interpretations are subject to ongoing discussion

## Intermediaries / relevant taxpayers

- The “expanded” intermediary concept (Art. 1 (1) (b) Pt. 21 para.2 of the Directive) has not been implemented
- Only partial waiver of professional privilege

## No extension of scope to domestic arrangements

## DAC 6 Disclosure



## Main benefit test (MBT)

- Application of MBT in line with DAC6 w.r.t to hallmarks
- Main benefit or one of the main benefits of the tax arrangements has to be a tax advantage (broad meaning)
- White list (draft circular)

## Reporting

- By default split reporting (abstract & personal information)
- Upon reporting to the BZSt a disclosure and a registration number is received.
- Registration number has to be included in relevant tax returns

## Penalties

- Up to 25k EUR per instance for “new” arrangements
- Extended to reporting obligation in tax return

# Practical Experiences during the first months of DAC 6 reporting in Germany

## Practical Experiences

- No official statistics available; estimated ca. 4.000 reports for the transition period
- Altogether conservative application of the new legal regime perceived
- Technical problems during data transfer prevail; single data transfer preferred by users as compared to data interface
- Additional guidance by the Federal Ministry of Finance is still draft, no further exchange ongoing
- No penalties enacted yet

## Frequent Hallmarks

1 C.1 Cross-border payments between associated enterprises

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2 A.3 Standardized documentation / structure

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3 E.3 Intra-group cross-border transfers of functions/risks/assets

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4 B.2 Conversion of income into lower-taxed or exempt revenue

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5 B.3 Circular transactions resulting in round-tripping

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6 C.4 Transfer of assets with substantially different valuations in the participating tax jurisdictions

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7 E.2 Transfer of hard-to-value intangibles

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**Questions &  
Answers?**

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