

## SPECIFICATIONS OF THE GERMAN TAX AUTHORITIES REGARDING DAC6

Since 1 July 2020, certain cross-border tax arrangements must be reported to the German tax authorities (DAC6 reporting obligations). After publishing the draft of a letter of interpretation in July 2020, Germany's Federal Ministry of Finance (BMF) unveiled the final version on 29 March 2021. In the over 70-page document, the BMF provides its interpretation of the many undefined legal concepts in the statutory provisions on DAC6 and whitelists standard cases that would generally not lead to a reporting obligation.

While the BMF letter of interpretation should make it easier to comply with the reporting obligations in practice, numerous legal terms are still very much open to interpretation. Each specific case must also be analysed to determine whether or not the relevant situation has to be reported.

### LEGAL FRAMEWORK

Cross-border tax arrangements which meet specified characteristics (hallmarks) are required to be reported to the tax authorities within 30 days. Yet, the reporting obligations are by no means limited to tax avoidance strategies. Situations that are clearly within the limits

set by the legislation and do not present any indication of abuse also have to be recorded.

The situation has to be reported to the Federal Central Tax Office (Bundeszentralamt für Steuern, BZSt) by the intermediary (notably a tax advisor, lawyer, auditor). In some cases the full or part of the reporting obligation lies with the relevant taxpayer ("user" of the arrangement).

The large number of undefined legal terms in the statutory provisions makes it more difficult to determine whether a reporting obligation exists in the specific case. To explain these terms and clarify questions of

legal differentiation with relevance for actual situations, the Federal Ministry of Finance published a comprehensive letter of interpretation on 29 March 2021.

## **INSIGHTS FROM THE BMF LETTER OF INTERPRETATION**

In addition to providing detailed explanations on who is specifically required to fulfil the reporting obligations, the BMF specifically addresses the different hallmarks. Certain hallmarks only lead to a reporting obligation if one of the main benefits expected to be derived from the arrangement is the obtaining of a tax advantage (main benefit test).

As one of the topics the BMF specifies in which cases – after the main benefit test has been performed – a tax arrangement is reportable under the hallmarks of a “standardised arrangement”, “the conversion of income”, “circular transactions”, or “preferential or (virtually) tax-free intra-group payments”.

Irrespective of the main benefit test, intra-group cross-border payments that are deductible as business expenses for the payer, for example, lead to a reporting requirement if the payee is a resident in a state on the EU- or OECD-blacklist of uncooperative states. This list of states is available on the website of the Federal Central Tax Office ([www.bzst.de](http://www.bzst.de)), to which the BMF makes reference in its letter of interpretation.

The BMF also added a whitelist to its explanations setting out the standard cases that do not tend to lead to a reporting obligation in connection with the hallmarks that are subject to the main benefit test. For example, the exercise of tax options or the use of tax exemptions or allowances will in general not constitute a tax advantage qualifying as a main benefit.

## **WHAT NEEDS TO BE DONE?**

With the publication of the final version of the BMF’s letter of interpretation the official legal opinion of the tax authorities on numerous issues relating to DAC6 is now available. This provides greater clarity as to which cases require a comprehensive analysis to ensure compliance with the DAC6 reporting obligations. However, the BMF’s explanations do not provide instructions on how to proceed in each individual situation. In view of the vast number of possible tax scenarios and optimisation possibilities, the BMF letter of interpretation does not provide a conclusive list or guidelines for examining each specific case.

This gives rise to the following considerations for your company:

### **IS YOUR COMPANY REQUIRED TO FULFILL REPORTING OBLIGATIONS?**

To what extent could your company have reportable tax arrangements? Contrary to what the name suggests, ordinary group situations may also fall under the reporting obligation.

In individual workshops we will clarify with you whether your company is affected. We will jointly identify (potentially) reportable situations (impact analysis) based on specific real-life cases.

## IS EFFICIENT FULFILLMENT OF THE REPORTING OBLIGATIONS ENSURED?

Effective compliance with the reporting obligations requires clear processes that incorporate all divisions of the company related to potential DAC6 reporting obligations. Following our joint workshop or based on an analysis of your company's structure and processes, we will develop DAC6 processes for your company. Together we can summarise our findings in the form of customized DAC6 guidelines which you can make available to all relevant parties in your company. The DAC6 guidelines will reflect the typical situations in the company with the involvement of the responsible persons or departments as well as the resulting steps for action and thus increase process efficiency.

## ARE YOUR EXISTING PROCESSES UP TO DATE?

The BMF's interpretation of 29 March 2021 provides more clarity regarding a number of cases in which reporting obligations may exist. Taking these insights into account, you should consider whether your existing DAC6 processes can be adapted or improved. In a follow-up workshop we will work together with you to determine to what extent you should modify your processes.

## HOW WILL THE FINDINGS OF THE ANALYSIS BE RECORDED?

The findings of the analysis of past arrangements contain important information for handling comparable future situations and thus offer considerable potential for optimisation. To harness this potential, it is advisable to have well-structured documentation. Efficient processes can often be developed from identified reportable arrangements so that comparable future constellations can be identified in good time and reported in a timely manner. It is also helpful to docu-

ment situations for which a DAC6 report was rejected for good reason following an appropriate assessment of the individual case. This applies in particular to cases in which a reporting obligation is denied due to the main benefit test not being met.

## SUBMISSION OF REPORTS?

Different technical procedures are available for reporting such arrangements. We are able to advise you on the advantages and disadvantages of the individual procedures. In addition, we can also submit the reports on your behalf if you are unable to or do not wish to do so yourself.

## REPORTING OBLIGATIONS ABROAD?

As the reporting obligations are based on EU law, corresponding regulations are in place in the other EU member states. We clarify whether the reporting obligation originates in Germany or in other EU countries. Through our Nexia network, we receive first-hand information on the specific form the DAC6 reporting obligations take in the relevant EU country. In cooperation with our Nexia partners, we are also happy to support you in the submission of any DAC6 reports abroad as required.

## COMPLIANCE ENSURED?

The reports submitted on your behalf in Germany and abroad fulfil the corresponding reporting obligations. Furthermore, we will assist you in ensuring that the required information is included in your tax returns from 2019 so as to fulfil the statutory obligations and avoid administrative offences. To ensure this in the future as well, we support you to define processes for your company and integrate them into your existing compliance management system as required.

## QUESTIONS?



Please contact your designated advisor at Ebner Stolz, who is able to consult our team of experts at any time on issues relating to the reporting obligations for cross-border tax arrangements.

### **Publisher**

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