



DAC6 Health Check

Anticipate DAC6 audits and remediate before it is too late

Given the complexity of the DAC6, and the fact that the laws transposing the DAC6 are different throughout the EU, many groups have been (and are still) struggling with its implementation. Consequently, there is a risk of implementation gaps and/or compliance deficiencies.

It is important to identify possible areas of DAC6 non-compliance in order to execute a remediation plan before tax authorities conduct an audit and impose significant penalties.

A Health Check is an ideal tool for managing the risk of poor or non-compliance with the DAC6 requirements.

The EU Directive 2018/822 (DAC6)¹ introduced mandatory disclosure rules aiming to detect and report (potential) cases of aggressive tax planning and avoidance of automatic exchange of information. The DAC6 was implemented throughout the EU and in the UK in 2020.

¹ Council Directive (EU) 2018/822 amending Directive 2011/16/EU on administrative cooperation in the field of taxation with the aim to establish mandatory disclosure rules for intermediaries or relevant taxpayers in regard to qualified cross-border arrangements

Given the Covid situation, the EU introduced a possibility for the Member States to postpone the initial 2020 reporting deadlines. While most countries postponed these deadlines to early 2021 (generally, to end of January 2021 in respect of the period from 1 July 2020 to 31 December 2020, and to end of February 2021 in respect of the “retroactivity period” from 25 June 2018 to 30 June 2020), some Member States such as Germany did not postpone these, and reports already needed to be filed in 2020. Regardless the postponement of these initial reporting deadlines, the DAC6 reporting is in any case “live” in all EU Member States and in the UK, with, in addition, ongoing stringent reporting (or notification) deadlines regarding new arrangements.

Whilst the UK is no longer subject to EU Directives from 1 January 2021, DAC6 had already been incorporated into UK legislation before that date. The UK tax authorities have subsequently limited their reporting requirements to cover Hallmark D only, although cross-border transactions meeting other hallmarks that involve the UK and an EU Member State may still need to be reported in the other jurisdiction. Where we refer to EU Member States, our services offered also cover potentially reportable transactions involving the UK.

Why a Health Check?

Complexity leads to possible poor compliance or non-compliance

To start with, determining whether an entity has direct obligations or not is not always straight forward. A broad spectrum of persons could qualify as DAC6 intermediaries, with direct reporting or notification obligations:

- Not only banks, insurers, funds and their service providers, tax advisers, consultants and auditors could qualify as intermediaries, but also e.g. non-supervised investment entities and even purely commercial entities.
- The exact obligations of intermediaries additionally depend on whether they fall into the category of “primary” or “secondary” intermediaries on the one hand, and on the question whether the Intermediary concerned is covered under legal professional privilege (“LPP”) or not.

Certain entities may qualify themselves wrongly as intermediaries (while they are not), or even worse, considered they do not qualify as intermediaries (while they are).

Those entities qualifying as intermediaries need to implement sufficiently detailed procedures, processes and ideally a compliance program to ensure ongoing compliance with the DAC6 requirements, with the right departments involved at the right time, for the right task. Such procedures, processes and programs may be incomplete, or insufficient, and typically would be the very first documents authorities are expected to review.

In addition, concrete DAC6 verifications to be made by intermediaries are complex. Intermediaries need to screen arrangements based on a long list of hallmarks, which often give rise to interpretation and application difficulties. Certain cases may have been wrongly identified as reportable, other cases may have been missed as reportable. Reported data may be incomplete, or reporting/notification deadlines may have been missed.

Given the complexities of the DAC6, (significant) non-compliance may arise, and DAC6 audits will follow!

It is expected that tax authorities across the EU will conduct DAC6 audits. In case of non-compliance, poor compliance, late or

incomplete reporting, and/or not meeting notification obligations for those intermediaries covered under LPP, significant penalties may be imposed (for example, up to EUR 830.000 in the Netherlands). Possibly, these audits could be part of a “regular” corporate tax audit, and/or combined with a FATCA/CRS audit.

In addition, tax authorities from several EU Member States may conduct joint audits under the upcoming DAC7 (planned to be implemented by the end of 2022).

Remediate non-compliance before it is too late

Conducting a Health Check now allows to identify and remediate potential implementation gaps, poor compliance or non-compliance and to improve certain implementation aspects and procedures and processes. Consequently, such Health Check allows to mitigate the risk of penalties upon audit by the authorities, but also the risk of reputational damage. And thus, to sleep on both ears.

Mazars EU-wide DAC6 health check

Within the Mazars network, we have capabilities to conduct cross-border Health Checks throughout the EU, with highly specialized teams as to the industry to be covered, and the technical country-specific application aspects of the DAC6. We collaborate seamlessly across borders as one team with one aim: provide a truly valuable Health Check.

A Health Check tailored to your organization and your needs

We are entirely flexible to determine together with you the scope of the Health Check: limited, very extensive, or anything in

between. And to determine together with you what are the most relevant and critical areas to be checked, and how, in function of your organization. We adapt to your organization, and staff the teams with the most appropriate resources for the job.

Typically, the Health Check modules can cover, amongst others, the following:

- Review of written procedures, processes and compliance programs
- Review of training material used
- Concrete testing of the operating effectiveness of the procedures and processes in place
- Review of IT specifications covering the IT system specifications
- Concrete sample testing of conducted arrangement assessments, data capture and reports (or notifications)
- Assessment of required knowledge of key personnel through interviews and/or concrete test cases

A comprehensive deliverable

As a result of the Health Check, we provide a thorough and comprehensive issues and recommendations report. No long theoretical considerations, but:

- qualification and quantification of issues and risks identified; and
- action plan containing the recommended concrete steps to remediate non-compliance, and/or achieve full compliance.

Where required, we can ensure assistance to efficiently execute the proposed remediation actions.

Feel free to be in touch with our country specialists of whom you will find the contact details below.

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Mazars is an internationally integrated partnership, specialising in audit, accountancy, advisory, tax and legal services*. Operating in over 90 countries and territories around the world, we draw on the expertise of 40,400 professionals – 24,400 in Mazars' integrated partnership and 16,000 via the Mazars North America Alliance – to assist clients of all sizes at every stage in their development.

*where permitted under applicable country laws.

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