

Mandatory Disclosure Rules, DAC 6

What is DAC 6?

DAC 6 refers to the EU Directive 2018/822 amending the EU Directive 2011/16. In Luxembourg, the Directive has been transposed into local law on 25 March 2020 (the “DAC 6 Law”).

DAC 6 regulates the mandatory disclosure of certain types of cross-border arrangements which may be regarded as aggressive tax planning. Said reporting shall be done by an “EU intermediary” or, where applicable, by the “relevant taxpayer”.

The aim of DAC 6 is to enhance transparency, reduce uncertainty over beneficial ownership and dissuade intermediaries from designing, marketing and implementing harmful tax structures.

How does it impact the Bank?

Under DAC 6, DNB Luxembourg (“the Bank”) may qualify as an “intermediary” thus have a legal obligation to disclose to the Luxembourg tax authorities, on a case-by-case basis, information on reportable cross-border arrangements that fall within the scope of the regulation. That is to say that the arrangement includes an EU nexus, covers EU taxes and meets at least one criteria (so-called “hallmark”) listed in the DAC 6 Law. Where necessary, a “main benefit test” will also be conducted to assess whether the arrangement is reportable.

What is exactly reported to the local tax authorities?

In accordance with the DAC 6 Law, the Bank may report the following information to the Luxembourg tax authorities:

- Identification of intermediaries and relevant taxpayers, including their names, date and place of birth, tax residence, tax identification number and where applicable, enterprises associated to the relevant taxpayer;
- Details of the hallmark(s) that make the cross-border arrangement reportable;
- Summary of the arrangement, including the name by which it is known, if any, and an adequate description of the relevant business activities;
- Date on which the first step in implementing the reportable cross-border arrangement has been made or will be made;
- Details of the national provisions of the concerned states that form the basis of the arrangement; Value of the reportable cross-border arrangement; Identification of the EU member state of the relevant taxpayer(s) and any other EU member state(s) likely to be concerned by the arrangement;
- Identification of any other person likely to be affected by the cross-border arrangement to be declared by indicating to which member states that person is linked.

In return, the Luxembourg tax authorities will allocate to the Bank a reference number to the reported arrangement for DAC 6.

The Luxembourg tax authorities may exchange collected information with the tax authorities of other EU member states through a common centralised database, as relevant to the arrangement.

The Bank will also be required to report cross-border arrangements where the first step was implemented between 25 June 2018 and 1 July 2020. Thus the disclosure for these arrangements will be made retrospectively.

How does it impact you as a Client?

If you are a taxpayer concerned by a reportable cross-border arrangement for which DNB Luxembourg has acted as an intermediary (within the meaning of the DAC 6 law), the Bank will send to the Luxembourg tax authorities a description of the referred transaction as well as information relating to your identity.

Depending on the tax legislation of your country of tax residence, as a “relevant taxpayer” of a cross-border arrangement which was reported by the Bank, you may be required to indicate in your own tax returns the reference number(s) allocated by the Luxembourg tax authorities to the Bank.

A cross-border arrangement disclosed according to the DAC 6 Law neither qualifies as such as a taxable event nor as a sign of illegal behaviour. For further information related to the disclosure requirements, please contact your Account Manager.