



Impact of DAC6 on Cyprus

The **NEW** mandatory disclosure regime for Intermediaries and their clients in Cyprus and other EU Member States

22 January 2020



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Your speakers



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Anna is a client adviser focusing on regulatory disclosure requirements. By combining a chartered certified accounting qualification with a strong technical background, she can build relationships and providing comprehensive regulatory services such as DAC6, MDR, FATCA and CRS to family offices, service providers and internationally mobile Ultra High Networth Individuals (UHNWIs) in over 80 countries. Anna is a RegTech expert and is also the Head of Regulatory at KENDRIS.



Paul Millen

Paul is a first mover and foremost thinker on the impact of the MDRs and DAC6 on the financial services industry, having spoken on the topic at prominent tax conferences in Switzerland and abroad and published detailed analyses in leading periodicals since 2018. As the founder of Millen Tax & Legal GmbH, he advises a range of clients, including banks, trust companies, fund managers and single family offices, on an array of US and cross-border tax and legal matters, most notably FATCA and CRS.



Christian Lyk

Christian has extensive experience in regulatory and compliance matters and specializes in advising Ultra High Networth Individuals (UHNWIs) on financial, tax and estate planning and family office services. As the Chief Executive Officer, Christian is responsible for the operational management of KENDRIS and is also the FATCA Responsible Officer.

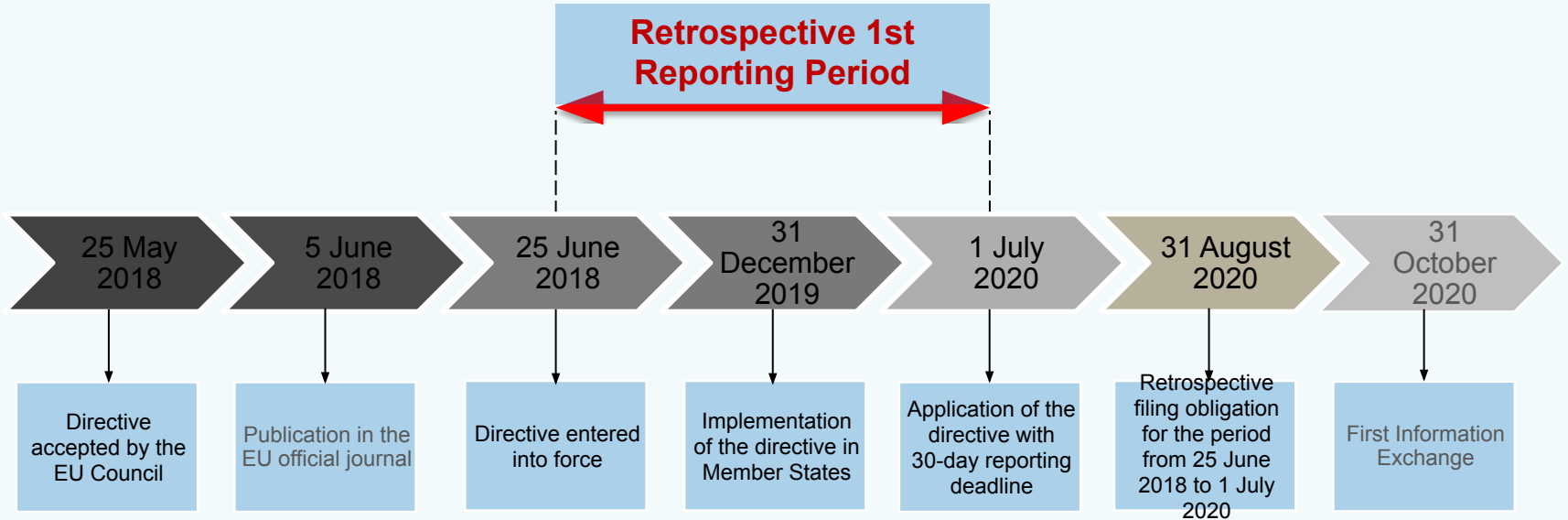
DAC6 – Background

- The Amendment to Directive 2011/16/EU on administrative cooperation in the field of taxation (known colloquially as “DAC6”) is the EU version of the OECD’s Mandatory Disclosure Requirements (“MDRs”) along with reporting on transfer pricing and other activities relevant to the OECD’s Base Erosion and Profit Shifting regime (or “BEPS”) action item 12
- DAC 6 imposes reporting of cross-border arrangements that implicate one or more “Hallmarks” and involve one or more EU member states
- These Hallmarks, along with a test of tax benefits, form the basis of the regime by listing characteristics indicative of aggressive tax planning
- All EU member states, including Cyprus, are mandated to enact DAC6 into local law for activation on 1 July 2020

DAC6 – In Cyprus

- On 21 October 2019, the Cypriot Tax Authorities (CTA) published a draft bill for public consultation (available in Greek only) with a request for comments due by 12 November
- The final legislation was initially anticipated by the EU deadline of 31 December as part of the *Administrative Cooperation in the Field of Taxation (Amendment) Law 2019*, but is expected shortly
- The draft bill hews closely to the the EU DAC6 standard, adopting few of the variations found elsewhere, such as reporting on domestic arrangements or the inclusion of indirect taxes, like VAT, in key analyses
- Industry-friendly reporting provisions appear in the draft bill, notably the good faith defense and relief from serial reporting for on-going activities

Key dates – DAC6 timeline



DAC6 – How it works

- As of 1 July 2020, DAC6 mandates that for **certain cross-border transactions or scenarios** relating generally to OECD CRS or BEPS action item 12, **qualifying EU intermediaries involved in the transaction or the taxpayers affected by it** (if no intermediary qualifies) must:
 - Disclose specified information
 - About the transaction and the parties involved in it
 - To their local competent authority
 - Within 30 days
 - For exchange on an automatic basis with other EU member states.
- **Retroactive reports** for reportable transactions executed between 25 June 2018 and 30 June 2020 are due in bulk by 31 August 2020

DAC6 – Who is impacted (1/2)

- DAC6 seeks to identify EU-based “Intermediaries”, such as tax advisors, lawyers, accountants and fiduciaries, with information about certain types of cross-border arrangements.
- Accordingly, DAC6 sets forth two types of qualifying Intermediaries:
 - **Promoters:** Any Person that “designs, markets, organizes or makes available for implementation or manages the implementation of” a reportable transaction; and
 - **Service Providers:** Any Person “who provides aid, assistance or advice” (referred to as “Relevant Services”) in connection with the design, marketing, implementation or organization of a reportable transaction.

DAC6 – Who is impacted (2/2)

- The definition of a Service Provider is so expansive that it arguably captures activities remote from tax advisory services
- Therefore, DAC6 provides Service Providers with an ignorance defense: A service provider will not qualify as an Intermediary, if, based on available information and relevant expertise, it did not or could not be reasonably expected to know that the transaction qualified as reportable.
- Further, Intermediaries operating under a legal professional privilege, such as the one for client communications under the Cyprus Law on Advocates, are relieved of the duty to report
- If no Person qualifies as an Intermediary for purposes of DAC6, however, the taxpayer/client - if an EU resident - incurs the reporting duty

Key terms and definitions - Article 3 of 2011/16/EU

<p>Reportable Cross-Border Arrangement</p> <p>means an arrangement concerning either more than one Member State or a Member State and a third country plus it must have at least one of the relevant hallmarks</p>	<p>Hallmark</p> <p>means a characteristic or feature of a cross-border arrangement that presents an indication of a potential risk of tax avoidance, as listed in Annex IV of DAC6</p>	<p>Main Benefit Test</p> <p>will be satisfied if it can be established that the main benefit or one of the main benefits which, having regard to all relevant facts and circumstances, a person may reasonably expect to derive from an arrangement is the obtaining of a tax advantage.</p> <p>Key considerations:</p> <ul style="list-style-type: none">• Does the cross-border arrangement lead to a tax benefit?• Is this tax benefit the main or one of the main benefits of the scheme?
<p>Intermediary</p> <p>is any person that designs, markets, organises or makes available for implementation or manages the implementation of a reportable cross-border arrangement. It also means any person that knows or could be reasonably expected to know that they have undertaken to provide, directly or by means of other persons, aid, assistance or advice with respect to designing, marketing, organising, making available for implementation or managing the implementation of a reportable cross-border arrangement</p>	<p>Relevant Taxpayer</p> <p>means any person to whom a reportable cross-border arrangement is made available for implementation, or who is ready to implement a reportable cross-border arrangement or has implemented the first step of such an arrangement</p>	

DAC6 - Hallmarks per Annex IV

Main Benefit Test		Cross-Border Transactions		AEOI and Beneficial Owner	
A. Generic	B. Specific	C.		D.	E.
1. Confidentiality clause included	1. Acquisition of a loss making company	1. (b) (i) Deductible cross-border payments to associated enterprises subject (when received) to a zero or almost zero tax rate	1. (a) Tax-deductible payment to an associated enterprise with no tax residency	1. Schemes which may undermine automatic exchange of information	1. Use of unilateral safe harbour rules
2. Success fee reflects tax advantage	2. Conversion of income types which are taxed at lower level or tax exempt	1.(c) Deductible cross-border payments to associated enterprises subject (when received) to a full tax exemption	1.(ii) Tax-deductible payment to AE resident in an EU/OECD-blacklisted jurisdiction		2. Transfer of hard-to value intangibles
3. Standardized documentation/ set up available to more than one taxpayer	3. Circular transactions without primarily commercial function	1. (d) Deductible cross-border payments to associated enterprises subject (when received) to a preferential tax regime	2. Depreciation on same asset in multiple jurisdictions	2. Schemes involving non-transparent legal or beneficial ownership chain	3. Restructuring resulting in significant profit shifts (50%) following the transfer of functions and/or risks and/or assets between associated enterprises
Require the Main Benefit Test to be fulfilled			3. Multiple relief from double taxation		
			4. Transfer of assets with a material difference in the price used for tax purposes		

DAC6 – When, where and how to report

- Reports must be filed:
 - **Within 30 days** of the arrangement or structure being made available for implementation
 - **By 31 August 2020**, retroactively on reportable arrangements where the first step was implemented between 25 June 2018 and 1 July 2020
- Report must be submitted **in the mandated XML format** to the CTA via their reporting portal
- By means of automatic exchange, Cyprus will annually transfer the reported information to the competent authorities of other EU Member States

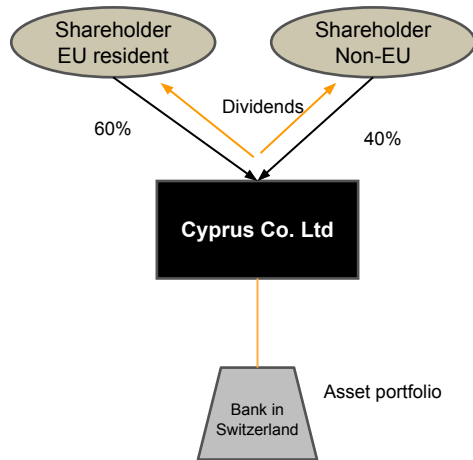
DAC6 – What is reported (1/2)

- **The identification of Intermediaries and Taxpayers**, including:
 - Name;
 - Date and place of birth (in the case of an individual);
 - Residence for tax purposes;
 - Taxpayer Identification Number (“TIN”); and
 - Any “associated enterprises” of the relevant taxpayer
- **Details of the Hallmarks** that make the cross-border arrangement reportable
- **A summary** of the content of the reportable cross-border arrangement including commonly known name (if any), description of business activities or arrangements

DAC6 – What is reported (2/2)

- **The date** on which the first step in implementing the reportable cross-border arrangement has been made or will be made
- **National provisions of the tax code** that form the basis of the arrangement
- **The value** of the reportable cross-border arrangement
- **The identification of the EU Member State** of the relevant taxpayer(s) and any other Member States likely to be affected by the arrangement
- **The identification of any other person in an EU Member State** likely to be affected arrangement, including the any linked Member States
- **NB: The “good faith” provision** - unique to Cyprus thus far - protects intermediaries, who will be held liable based only on what they know, not for what they should or could have known

DAC6 - Illustrative Example of Hallmarks



Scenario

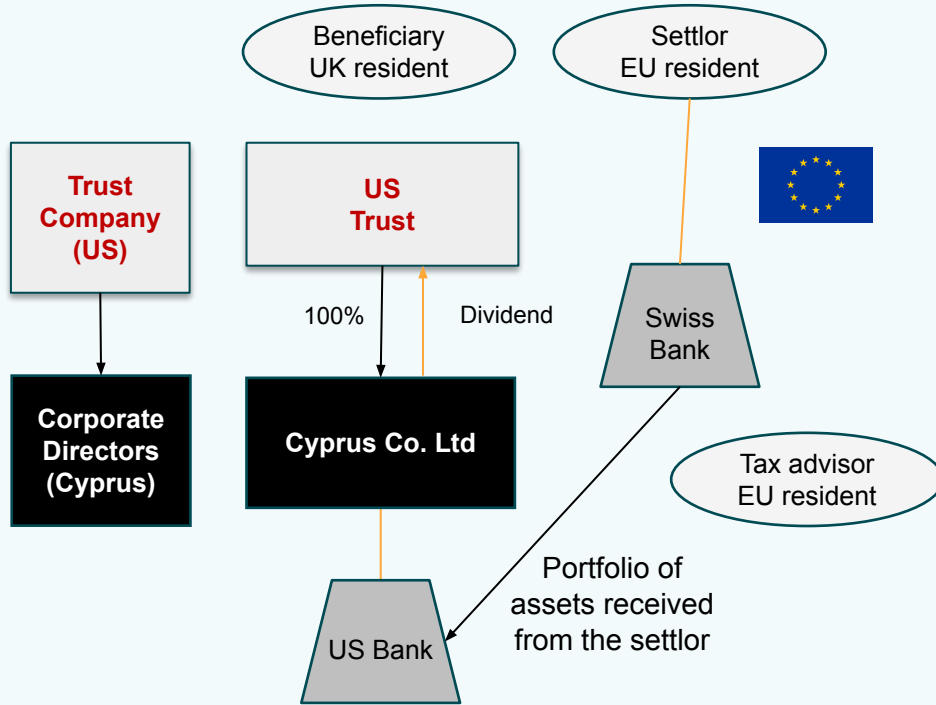
- EU-resident and non-EU resident clients set up a Cyprus Co. Ltd
- Cyprus Co. Ltd holds an investment portfolio at a bank in Switzerland funded by the two shareholders

DAC6 Analysis*

- EU cross-border participants – DAC6 relevant
- Potential benefit – tax deferral benefits?
- Hallmarks?
- Who are the intermediaries and taxpayers?
- Where does the primary reporting obligation lie?
- Does anyone has a secondary reporting obligation?

* This analysis is for discussion only and does not constitute advice

DAC6 - Illustrative example of Hallmarks



Scenario

- EU-resident client settles a trust which purchases Cyprus Co. Ltd.
- Cyprus Co. Ltd holds an investment portfolio at a bank in the US funded by the settlor with assets held in a Swiss bank
- UK-resident child is sole beneficiary

DAC6 Analysis*

- EU cross-border participants – DAC6 relevant
- Potential benefit – tax deferral for Settlor and Beneficiary – the child may avoid UK inheritance tax on trust assets
- Which Hallmarks are implicated?
 - Standardized documentation, plus MBT?
 - Income conversion, plus MBT?
 - CRS Avoidance Arrangement?
 - Opaque Off-shore Structure?
 - Other?
- Where do the primary or secondary reporting obligations land?
- What information is reported?

DAC6 – Key takeaways (1/2)

□ Intense impacts

The technical analysis is both novel and exacting and the timeline for reporting is extremely tight, with reports due within 30 days after a reportable transaction is executed

□ Objective standards

An objective test (“reasonable to conclude”) and the absence of an intent element (“has the effect of”) drain the standard of subjectivity and motive, revoking the Intermediaries’ discretion to distinguish between abusive and non-abusive activities

□ Broad implications

The scope of reportable transactions is vast and the definition of Intermediaries with reporting duties is broad, demanding heightened care to avoid unintentional non-compliance

DAC6 – Key takeaways (2/2)

□ **Strict liabilities**

Parties with reporting duties are liable for the accurate* and timely fulfilment of their DAC6 reporting obligations unless another Intermediary duly submits the necessary report

□ **Retroactive effects**

Retroactive reports for reportable transactions executed between 25 June 2018 and 30 June 2020 are due in bulk by 31 August 2020

□ **Reporting solutions**

While a range of DAC6 consulting options are available, BlueBridge is the only DAC6 analysis and reporting service to offer you freedom from all your DAC6 compliance concerns, including potential liability relief



The BlueBridge Solution

Expert relief for EU DAC6 and OECD
MDR reporting obligations

22 January 2020



BlueBridge – Introduction

- BlueBridge Limited is a **Cyprus company** established in 2019 as a joint venture between KENDRIS AG and Millen Tax & Legal GmbH, two **leading tax and legal advisory firms based in Zurich, Switzerland**
- BlueBridge is **dedicated solely to reporting services for submissions due under** the Amendment to Directive 2011/16/EU on administrative cooperation in the field of taxation (known colloquially as “**DAC6**”) and the OECD’s Mandatory Disclosure Requirements (“**MDRs**”)
- By uniting **tax technical expertise with operational reporting excellence**, we can offer Cypriot and other EU Intermediaries **an integrated DAC6 reporting solution featuring liability relief**

BlueBridge – Our services

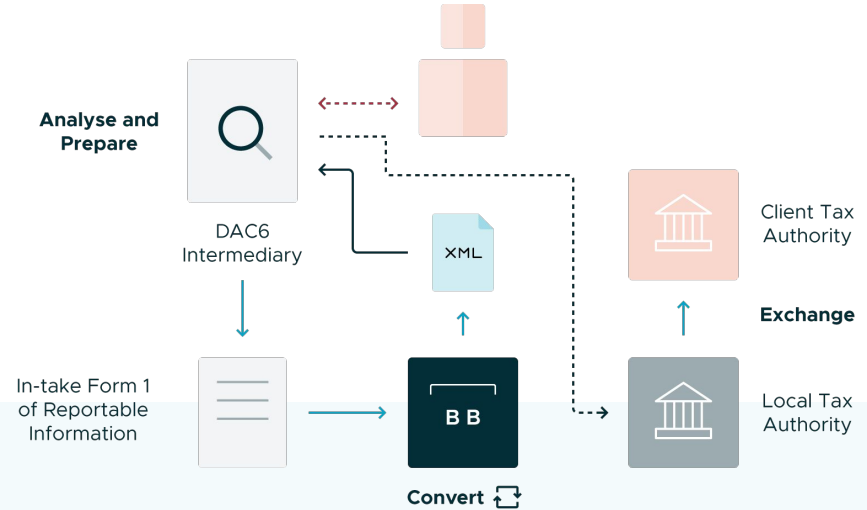
- **BlueBridge** offers three DAC6 reporting services:
 1. Report Production
 2. Reportability Analysis
 3. Report Submission and Liability Relief
- Each services features one or more of the following **value elements**, **allowing you to determine your own level of involvement with DAC6**:
 - XML template conversion
 - Reportability analysis
 - Reportable data preparation
 - Report submission
 - Liability relief

BlueBridge Service 1 – Report Production

1

Report Production

By filling out our user-friendly In-take Form 1, you send us the relevant information for a reportable arrangement. We will convert it to the jurisdictionally correct XML format and send it back to you via a secure data transfer so you can submit the report.



Key Features

- **DAC6** Intermediary evaluates reportability of transaction and prepares Reportable Information using BlueBridge's In-take Form 1
- BlueBridge converts In-take Form 1 to applicable XML format and Intermediary reports
- Liability retained by DAC6 Intermediary for any reporting defects

BlueBridge Service 1 – Report an illustrative example

BlueBridge In-Take Form 1 for DAC6 Reporting								
A red triangle in the top right corner of a cell indicates that there is an explanatory Note relevant to the topic that is accessible by hovering over the cell								
Red font in column heading indicates a drop-down menu. Wherever available, please select correct information from the drop-down menu								
Blue font in column heading indicates information that must be inputted in a mandatory format (e.g. TINs, birthday dates). See explanatory note for applicable format.								
Green font in column heading indicates information that is mandatory in some but not all DAC6 jurisdictions; an accompanying Note explains which jurisdictions.								
Reporting Intermediary Information								Other
Reporting Intermediary company name or last name (if an individual)	Reporting Intermediary first name (if an individual)	Reporting Intermediary Address	Reporting Intermediary jurisdiction of tax residence	Relevant EU jurisdiction (if different from jurisdiction of tax residence)	Reporting Intermediary tax ID number (TIN)	Reporting Intermediary date of birth (individuals only)	Names of Associated Enterprises of the Reporting Intermediary (if any)	Other
Corporate Directors		123 Fake Street, Larnaca, 1024	Cyprus		123-45-6789		Trust Company	

BlueBridge Service 1 – Report an illustrative example

A Relevant Taxpayer is defined as: "Any Person to whom a reportable cross-border arrangement is made available for implementation, or who is ready to implement a reportable cross-border arrangement or has implemented the first step of such an arrangement."
 Generally, therefore,^a Relevant Taxpayer is either a direct client of one or more of the Intermediaries or any other Person that benefitted from the arrangement in question. Any Relevant Taxpayer with respect to the reportable arrangement known to Reporting Intermediary must be included in the Report.

Relevant Taxpayer Information

Relevant Taxpayer last name	Relevant Taxpayer first name	Relevant Taxpayer Address	Relevant Taxpayer jurisdiction of residence	Relevant Taxpayer tax ID number (TIN)	Relevant Taxpayer date of birth (individuals only)	Names of Associated Enterprises of the Relevant Taxpayer (if any)
Settlor	EU-resident	123 Fake Street, Paris, 8001	France	1-22-3333	1960-06-30	
Beneficiary	UK-resident	123 Fake Street, London, SW1801	United Kingdom*	1-22-3333	1990-06-30	

BlueBridge Service 1 – Report an illustrative example

A "hallmark" is defined as "a characteristic or feature of a cross-border arrangement that presents an indication of a potential risk of tax avoidance."

"A summary of the content of the reportable cross-border arrangement, including a reference to the name by which it is commonly known, if any, and a description in abstract terms of the relevant business activities or arrangements, without leading to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information the disclosure of which would be contrary to public policy"

Reportable Arrangement Information

Arrangement hallmark(s)	Arrangement description	Arrangement description (only if selected "Other" from drop-down list in previous column)	Date of the reportable arrangement
A.3. Substantially standardised documentation and/or structure underlie the Arrangement, making it available to multiple Relevant Taxpayers without substantial customisation (Main Benefit Test must also be met)	Establishment of trust structure using pre-drafted trust deeds		2020-07-01
B.2 Conversion of income into capital, gifts or other categories of revenue taxed at a lower level or exempt from tax (Main Benefit Test must also be met)	Establishment of trust structure with underlying company defers receipt and thus taxation of income from securities		
D.1(b) For purposes of CRS, a transfer of reportable assets to a jurisdiction that will not report them to the jurisdiction of tax residence of their beneficial owner	Assets that would have been reportable under CRS transferred to a new account where no longer reportable		
D.2(c) A non-transparent legal or beneficial ownership chain with the use of persons, legal arrangements or structures that conceal the identities of one or more of the beneficial owners of the	Use of trust set up subject to US law conceals beneficial owners of assets		

BlueBridge Service 1 – Report an illustrative example

			Other Affected Person's Information				
Currency for reporting the value	Relevant provisions of domestic law	EU Member States affected by the reportable arrangement	Other Affected Person's last name	Other Affected Person's first name	Other Affected Person's EU Member State	Marketable Arrangement?	
Euro		United Kingdom*					

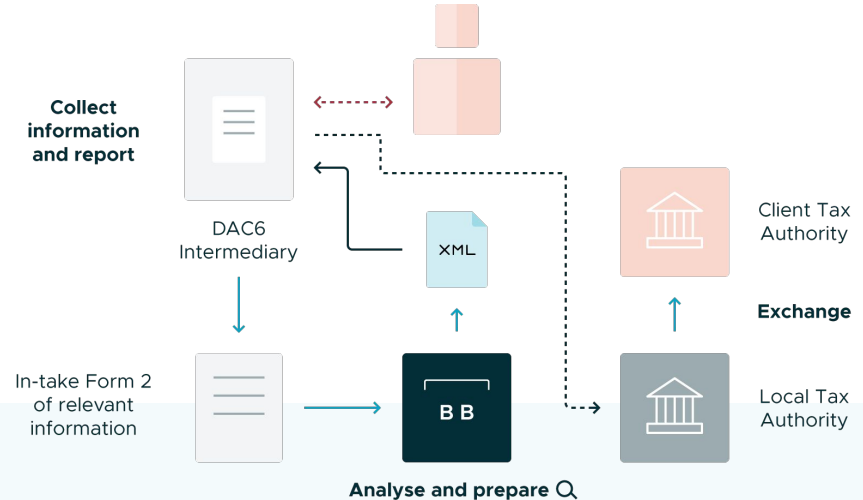
A "marketable arrangement" for implementation or made without a need to be substantiated. Any Reportable Arrangement "is subject to pre-approval" therefore the Reporting Inter reports on the same Reportable

BlueBridge Service 2 – Reportability Analysis

2

Reportability Analysis

You send us the relevant information for a potential reportable arrangement by filling out our user-friendly In-take Form 2. We will analyse it for reportability, and, if reportable, we will prepare a report in the jurisdictionally correct XML format. We'll then send it to you via a secure data transfer, so you can submit the report.



Key Features

- **Post-transaction.** DAC6 Intermediary shares relevant information with BlueBridge via In-take Form 2
- BlueBridge evaluates reportability of transaction, prepares Reportable Information in applicable XML format and Intermediary reports
- Liability retained by DAC6 Intermediary for any reporting defects

BlueBridge Service 3 – Report Submission & Liability Relief

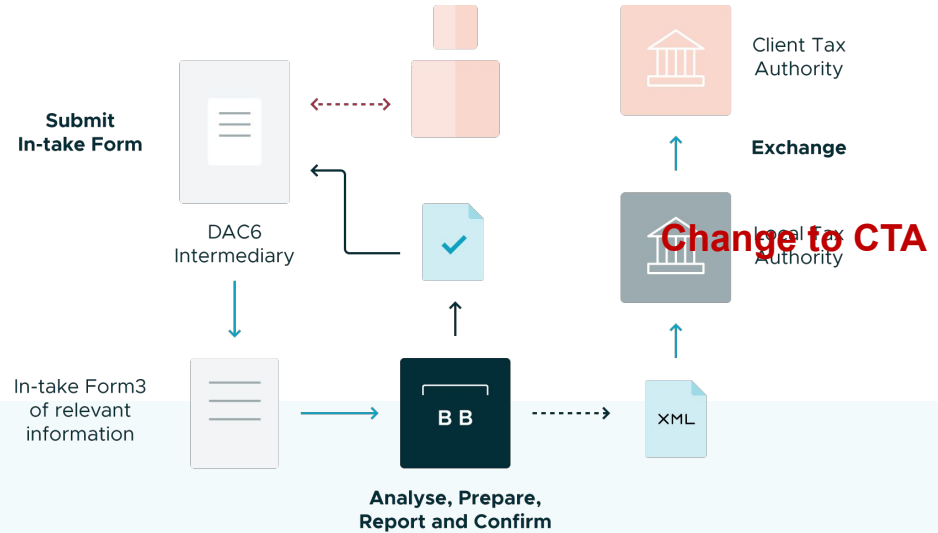
3

Report Submission and Liability Relief

Before you execute any prospective transaction, you send us the information relevant to the transaction by completing our user-friendly In-take Form 3. We will analyse it for reportability, and if reportable, we will prepare and submit the report under our own name, sending a confirmation certificate to you for your audit file, and relieving you from both any responsibility to report and, most critically, from any resulting liability. Liability relief is, however, dependent on the provision of complete and accurate information.

Key Features

- Pre-transaction, DAC6 Intermediary shares relevant information with BlueBridge via In-take Form 3
- BlueBridge evaluates reportability of transaction, prepares Reportable Information in XML format and reports
- BlueBridge sends Confirmation Email to DAC6 Intermediary, relieving it from liability for any reporting defects



BlueBridge Service 3 – Report an illustrative example

**PM to insert copy of
formatted confirmation
email with info specific to
the Illustrative Example**

BlueBridge – Our value elements per service

	1 Report Production	2 Reportability Analysis	3 Report Submission and Liability Relief
XML template conversion	✓	✓	✓
Reportability analysis	✗	✓	✓
Reportable data preparation	✗	✓	✓
Report submission	✗	✗	✓
Liability relief	✗	✗	✓

Why BlueBridge

Complete and integrated solution

At BlueBridge, we merge tax technical skills with operational expertise in order to cope with a demanding reporting regime and its extremely short, rolling reporting period.

Reliable reporting

We offer dependable reporting operations to ensure your reports are submitted correctly and on time.

Risk reduction

Thanks to our tax and IT expertise, risks of non-compliance are inherently low with us and, via BlueBridge Service 3, we even assume your potential liabilities for non-compliance and data protection.

Swiss quality

We provide Swiss quality, precision and reliability, throughout all stages of reporting, which is further enhanced by our Swiss commitment to data security.

Peace of mind

Let BlueBridge assume your full DAC6 disclosure burden so that you can focus your team's resources on core business matters with complete peace of mind.

Thank you

Appendix

DAC6 - Background

DAC	DAC1	DAC2	DAC3	DAC4	DAC5	DAC6
<i>Directive 2011/16</i>	<i>2011/16 Art. 8</i>	<i>Directive 2014/107</i>	<i>Directive 2015/2376</i>	<i>Directive 2016/881</i>	<i>Directive 2016/2258</i>	<i>Directive 2018/822</i>
Established the legal basis for administrative cooperation in the field of direct taxation in Europe	Automatic exchange of Information on 5 non-financial categories <ul style="list-style-type: none"> Income from employment Director's fee Pensions Life Insurance Immovable property 	Common Reporting Standard <p>Automatic exchange of information on financial account information</p>	Automatic exchange of tax rulings <ul style="list-style-type: none"> Advance cross-border rulings Advance pricing arrangements 	Country-by-country reporting on certain financial information <ul style="list-style-type: none"> Revenues Profits Taxes paid and accrued Accumulated earnings Number of employees Certain assets 	Exchange of beneficial ownership <p>Access by tax authorities to beneficial ownership information as collected under AML rules.</p>	Mandatory Disclosure Regime <ul style="list-style-type: none"> Mandatory disclosure rules for intermediaries Automatic exchange of information on tax planning cross-border arrangements

Source:

https://ec.europa.eu/taxation_customs/business/tax-cooperation-control/administrative-cooperation/enhanced-administrative-cooperation-field-direct-taxation_en

Disclaimer

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