

EU MDR/DAC6


September 2020



MAKING AN
IMPACT THAT
MATTERS
since 1845


The requirements

The EU Directive imposes mandatory disclosure rules for a range of transactions with first reports due from Summer 2020 for the majority of jurisdictions



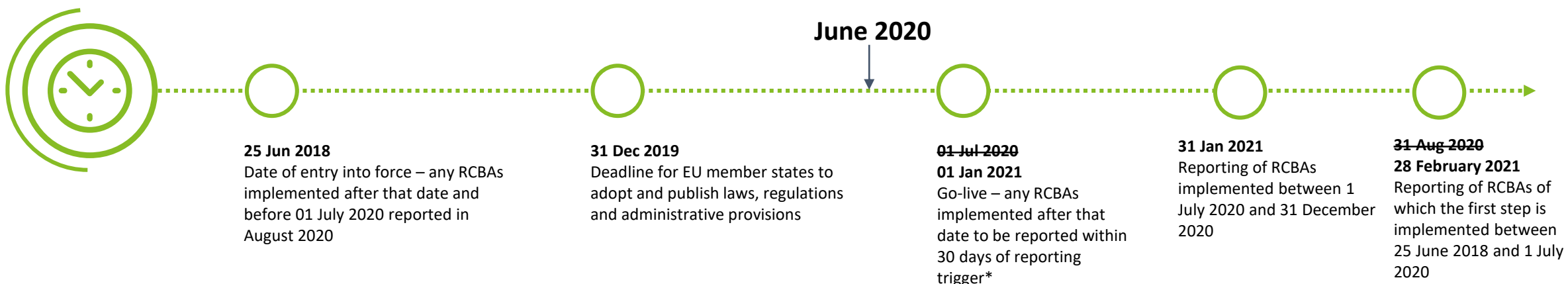
Regulations

- The 6th version of the EU Directive on administrative cooperation (DAC6) aims to provide Member States tax authorities with additional information in order to assist them to more rapidly close perceived loopholes in tax legislation and harmful tax practices
- This information will be gathered by requiring new disclosure obligations of EU intermediaries and taxpayers in relation to reportable cross-border arrangements (RCBA).
- While the first actual reports are not required to be made until early 2021, the reporting requirements already apply to RCBA's entered into from 25 June 2018.



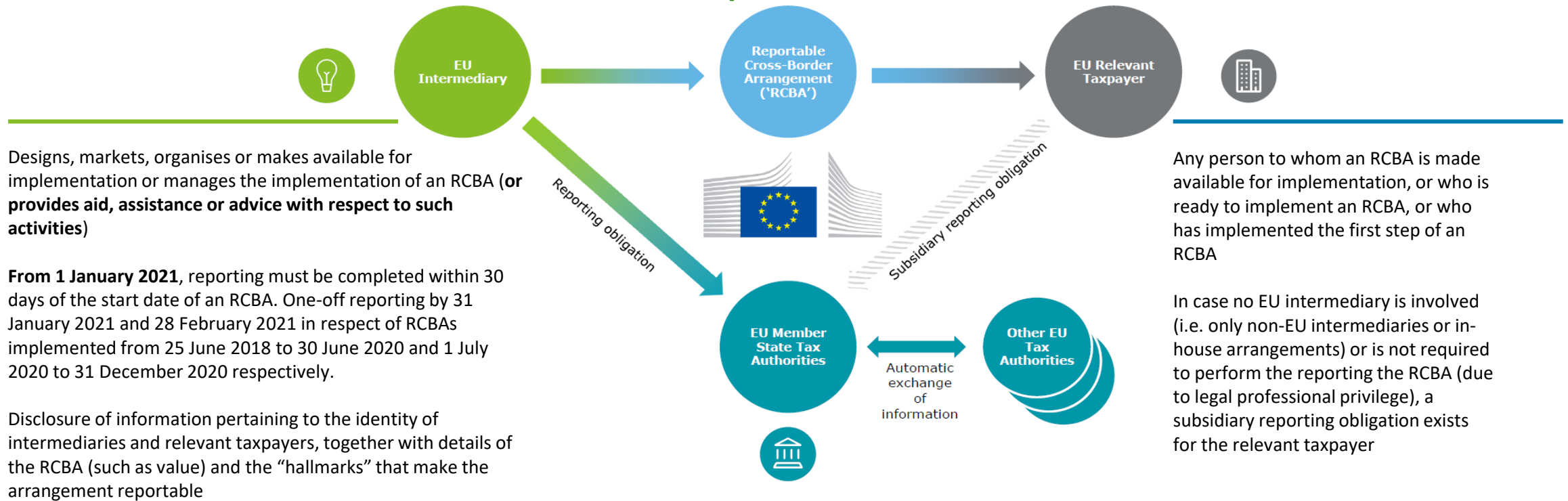
Market

- The definition of an EU intermediary is broad, capturing lawyers and advisers, and is expected to apply to banks, trustees, insurance companies, asset managers and other service providers – even potentially in-house tax functions advising other associated entities.
- Taxpayers benefitting from an RCBA may have to report if the intermediary does not or cannot (e.g. non-EU). They are expected to obtain proof that reporting has occurred and will likely want to maintain oversight of information to monitor any tax exposure.
- **The regulatory timeline is tight and all businesses, especially MNCs, need to take practical steps to comply.**



The requirements

Who has an obligation?



- Any group entity is potentially in scope of DAC6 as an **Intermediary** where the entity in the EU implements, promotes or provides **RCBAs** to other group entities or third parties (e.g. suppliers)
- Focus on **services provided**
- An entity is potentially in scope of DAC6 as a **relevant taxpayer** where it benefits from **RCBAs** promoted or provided by advisors, professional service providers and other **Intermediaries** (including other group entities)
- Focus on **services received**

The hallmarks

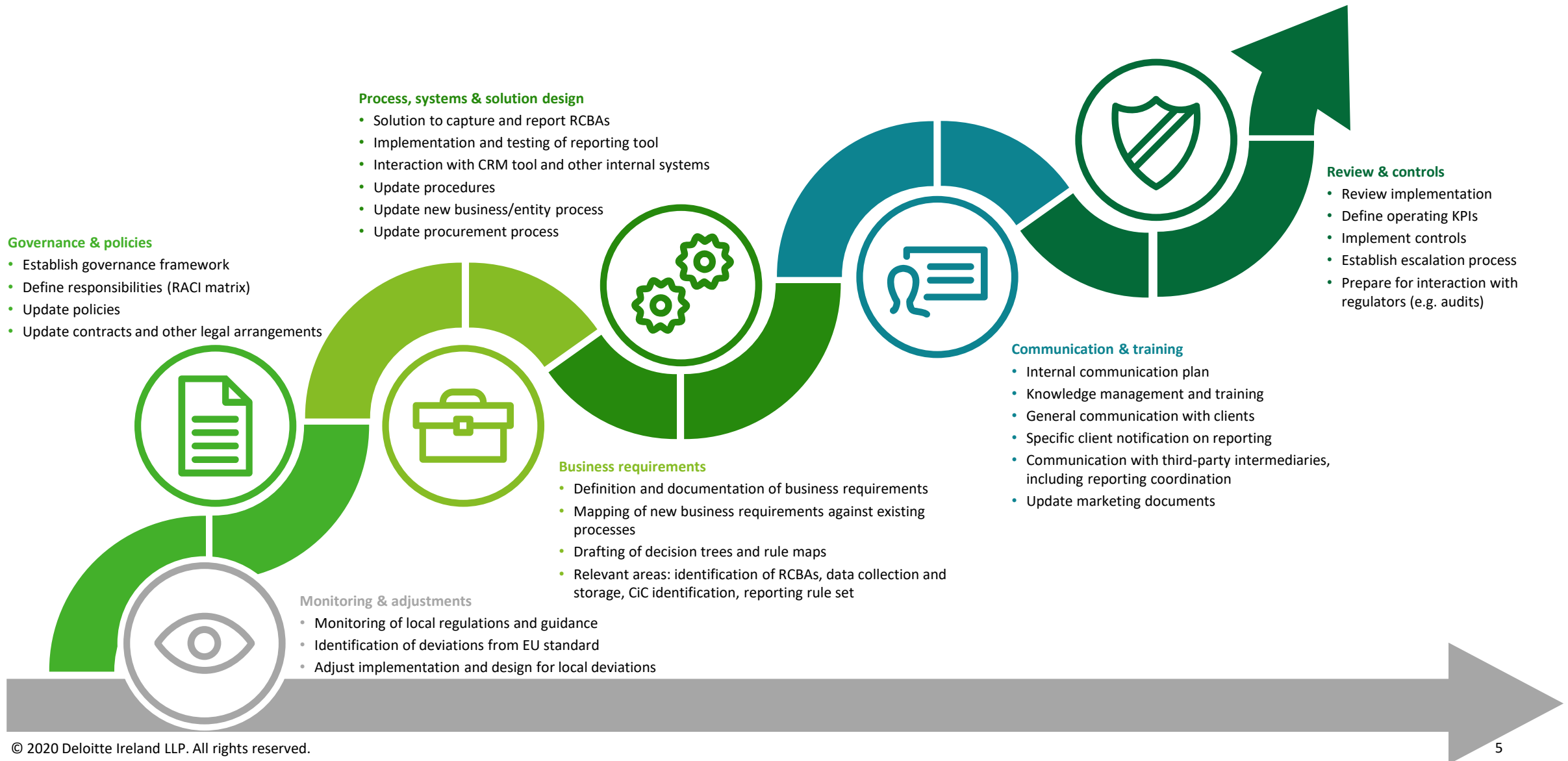
The EU MDR hallmarks are split into five categories. Hallmarks either apply universally or are subject to the main benefit test

Hallmarks subject to the main benefit test	
Category A Generic hallmarks	<ol style="list-style-type: none"> 1. Confidentiality: From a tax authority or other intermediaries 2. Contingent Fee: Fixed by reference to: <ol style="list-style-type: none"> a. Amount of tax advantage; or, b. Whether or not a tax advantage is actually derived. 3. Standardised documentation not requiring substantial customisation
Category B Specific hallmarks	<ol style="list-style-type: none"> 1. Losses: Offset to reduce taxable profits, including through transfer of those losses to another jurisdiction or by acceleration of the use of those losses 2. Conversion: Income into capital, gifts or other categories of revenue which are taxed at a lower level 3. Circularity: Transactions resulting in round-tripping of funds, namely through involving interposed entities without other primary commercial function
Category C Specific hallmarks related to deductible cross-border transactions	<ol style="list-style-type: none"> 1. Cross-border deductible payment and: <ol style="list-style-type: none"> a. Recipient subject to zero or almost zero tax rate b. Recipient has full tax exemption c. Recipient benefits from preferential tax regime

Hallmarks that apply without qualification	
Category C Specific hallmarks related to cross-border transactions	<ol style="list-style-type: none"> 1. Cross-border deductible payment and: <ol style="list-style-type: none"> a. Recipient has no tax residence b. ii. Recipient is resident in non-cooperative jurisdiction¹⁾ 2. Depreciation: on same asset deducted in more than one jurisdiction 3. Claiming double taxation relief in multiple jurisdictions: In respect of the same income or capital 4. Transfer of assets: Where material difference in amount treated as payable
Category D Specific hallmarks concerning AEOI and beneficial ownership	<ol style="list-style-type: none"> 1. Circumvention of automatic exchange of information of Financial Account information 2. Arrangements with non-transparent legal or beneficial ownership chain
Category E Specific hallmarks concerning transfer pricing	<ol style="list-style-type: none"> 1. Unilateral transfer pricing safe harbour rules 2. Transfer of hard to value intangibles 3. Transfer of functions, risks and/or assets which results in profit shifting

DAC6 implementation project

Actual implementation: Impacted areas



Deloitte propositions

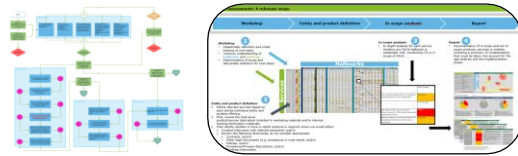
We are assisting businesses to meet the compliance requirements and can support you in a range of areas

Impact assessment

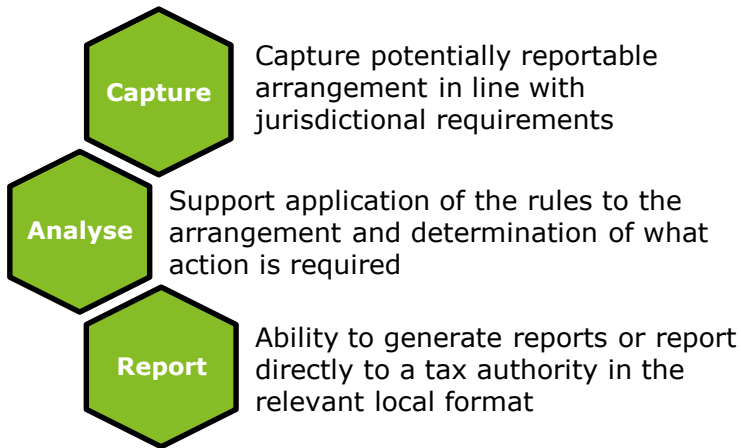
Scalable support for assessment of the impact using a mixture of decision trees, questionnaires workshop and template reports

Example accelerators

Template reports
Hallmark decision trees

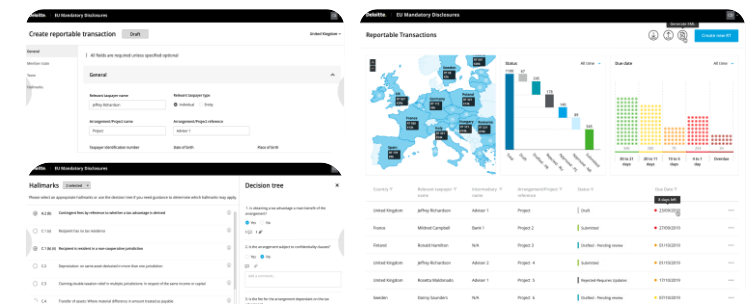


Technology



Example accelerators

Deloitte EU MDR Reporter



Knowledge management

Monitoring of regulatory status and detailed analysis of local requirements delivered through proprietary knowledge platforms or bulletins. Tax technical advisory based on the content of legislation delivered through a range of channels.

Example accelerators

Proprietary web-crawler technology
Practitioner network supporting CMS tool



Tax Risk & Governance

Technology on its own is not able to solve all compliance challenges. Setting up the right processes, governance and training are essential components of effectively ensuring compliance. Deloitte provides consulting services as well as pre-packaged products.

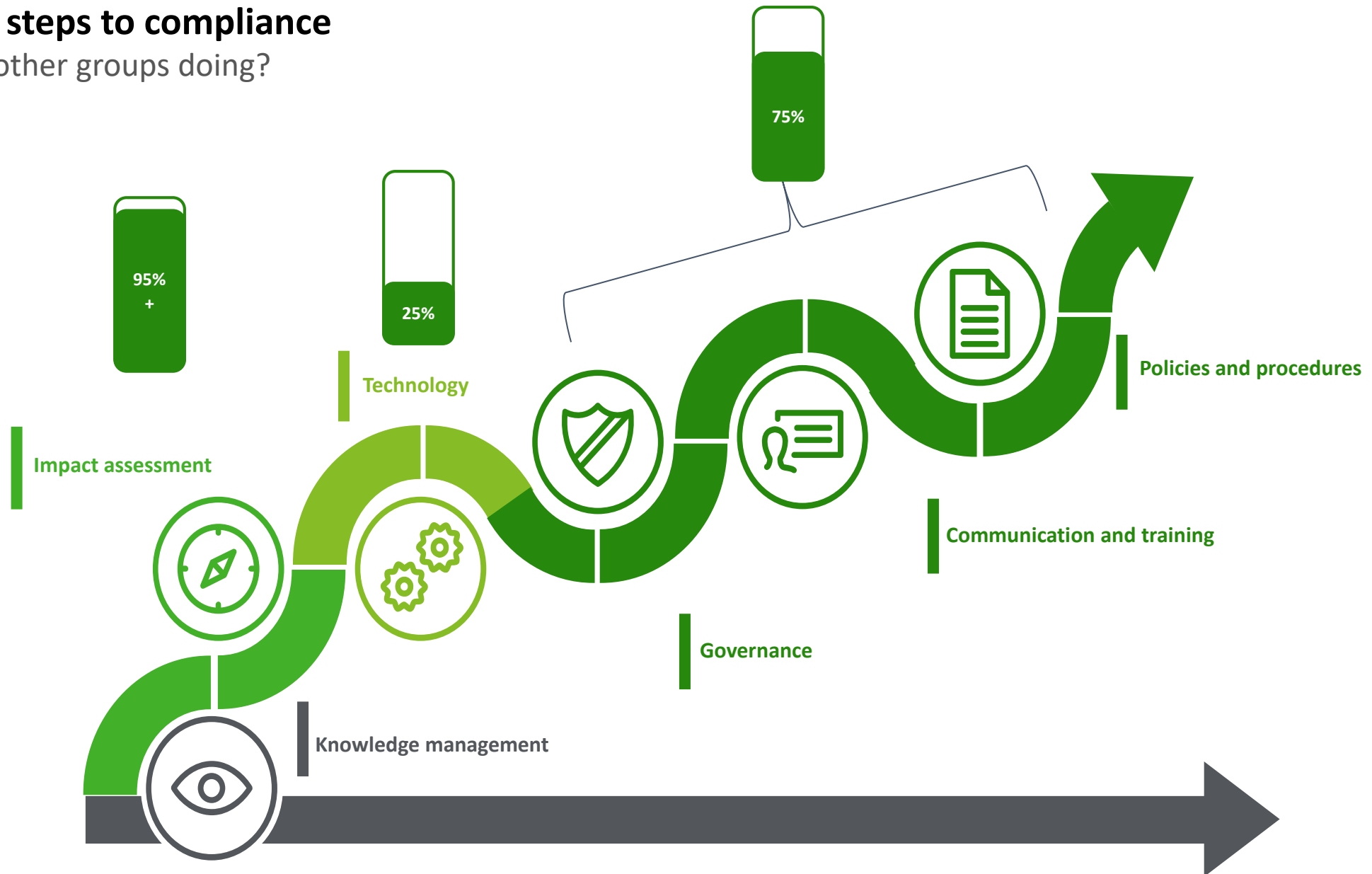
Example accelerators

eLearning awareness module
Training workshop materials
Model tax control framework



Practical steps to compliance

What are other groups doing?





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