

Luxembourg Tax Alert / Regulatory News Alert

Decision to defer DAC6 reporting obligations by six months and relevant clarifications published

4 June 2020

Following a recent compromise, Member States may exercise the option to defer the DAC6 reporting deadlines by six months. The Luxembourg government has just published a communication stating it would introduce a draft law to transpose the deferral of DAC6 reporting, and commits to not applying penalties relating to these reporting obligations while the deferral is still being implemented. Also, the Luxembourg Tax Authorities recently published information on DAC6 on its website, including a document providing clarifications and practicalities about DAC6 reporting.

Deferral of deadlines under DAC6

In the context of the COVID-19 outbreak, many stakeholders have asked for more time to report information under DAC6. Following a compromise, Member States may exercise the option to defer the reporting deadlines under DAC6 (as well as DAC2).

Even though the Council of the EU would soon formally adopt the amended version of the DAC6 and the text would be published in the Official Journal of the European Union in the coming weeks, it leaves Member States with too little room to run an appropriate implementation process before the initially scheduled effective date of 1 July 2020. Therefore, the Luxembourg Ministry of Finance has just published on its website a [communication](#) stating that DAC6 reporting obligations could be deferred by six months and would introduce a draft law to transpose this deferral. The Luxembourg Ministry of Finance also commits to not applying any penalties for the late transmission of information under DAC6 until the amendments are transposed in domestic law.

In practical terms, the new deadlines to report cross-border arrangements for intermediaries and relevant taxpayers would be the following (the text amending DAC6 is not yet available as it is not yet formally adopted):

- The reportable cross-border arrangements of which the first step was implemented between 25 June 2018 and 30 June 2020 would need to be reported by 28 February 2021 (and not 31 August 2020).
- Any reportable cross-border arrangements where a triggering-date criterion takes place between 1 July 2020 and 31 December 2020, and as from 1 January 2021, would need to be reported within a 30-day period starting as from 1 January 2021

Guidelines of the Luxembourg Tax Authorities

The Luxembourg Tax Authorities (LTA) recently launched a dedicated webpage (only in French) on its [website](#) containing an overview of obligations stemming from DAC6. The LTA also published the first [document](#) providing clarifications. While some specifications explain substantive notions, some of them concern reporting technicalities.

Arrangement and Disclosure ID

The LTA specify that intermediaries or relevant taxpayers will be able to file their reporting on the *MyGuichet* platform in two ways:

- Manual entry; or
- Uploading a structured XML file, which will be made available on the website soon.

Upon reporting, the LTA will issue a receipt confirming the information transmitted by the declarer as well as providing ID information.

Each new filing will be given a unique *Disclosure ID* that is listed on the receipt issued by the LTA at the moment of the electronic transmission by the declarer. As personal data, the disclosure ID must not be disclosed to other parties. It should only allow the declarer to modify or view the transmitted reporting.

Similarly, each reported arrangement will be attributed an *Arrangement ID*. Unlike the Disclosure ID that is unique to each disclosure, the Arrangement ID is attributed to a given arrangement.

The LTA will share the Arrangement ID to the first person that reports the arrangement (i.e., the initial declarer) on the receipt that is subsequently issued to the filing of the reporting by the declarer. In the case where the initial declarer transmits its reporting to another Member State than Luxembourg, the other Member State attributes this reference.

When the initial declarer files the reporting in Luxembourg, he/she should immediately communicate the Arrangement ID to any other person—relevant taxpayer or intermediary—which may be also subject to the reporting obligation that results from the same arrangement, be it in Luxembourg or another Member State. That other taxpayer or intermediary should provide the Arrangement ID upon any subsequent transmission of a reporting relating to the same arrangement.

Once the LTA exchange information with other Member States under the secured central depository, the LTA generate a certificate of disclosure that will be made available to the declarer on the *MyGuichet* platform.

The LTA remind that the declarer can prove that an arrangement has already been reported by means of a written document from the competent authority of the concerned Member State. However, the Arrangement ID alone is not sufficient proof.

Practical modalities of the reporting

Furthermore, the LTA have provided a series of useful guidelines on how to complete the reporting form.

When the declarer does not know the information that should be mandatorily disclosed, the relevant sections may be filled out as follows:

- “Unknown” for the TIN number and free text sections;
- “01/01/1900” for dates; and
- “1” for the amount.

While the form should be available in French, German and English, any free text fields—namely the description of the arrangement and details on the relevant national legal provisions—must be completed only in English, whatever the language used in the other steps.

As for the legal basis, providing the number or paragraph and exact title of the law (indicating the State of origin of that legal text) is sufficient. Copying the text of the relevant legal provisions is not required.

The value of the arrangement should be understood as the amounts at hand in the context of the reportable cross-border arrangement—and not as the expected tax advantage.

Finally, the LTA also underline the principle where intermediaries do not have a specific obligation to actively research information that they do not initially possess, and which goes above and beyond their existing professional obligations.

Other notions

Last, but not least, the LTA has clarified some other notions of the law. While most of them are in line with explanations presented during the parliamentary works ([please refer to our alert published on the law](#)), the LTA also provide additional clarifications.

For the first time, the LTA has provided examples of what could constitute an arrangement: a sale, an acquisition, a loan or a capital investment.

The LTA has also mentioned that the triggering-date criterion “made available for implementation” is fulfilled when the intermediary transmits or makes available to the relevant taxpayer contractual documents. It is not required for the arrangement to be effectively implemented. This triggering-date criterion would only apply to arrangements as from 1 July 2020 (with two further triggering-date criteria: “ready for implementation” and “first step of implementation”).

For what is commonly known as the “backlog” (25 June 2018–30 June 2020), it is important to remember that there is only one triggering-date criterion: the “first step of implementation”.

Finally, the LTA have provided additional information on the way the notification process will work. Intermediaries covered by a professional privilege shift the reporting obligation on by notifying other intermediaries or a relevant taxpayer, even if these reside in a Member State other than Luxembourg. The notified intermediary or relevant taxpayer can review the initial assessment of the notifying intermediary, based on all facts and circumstances, and conclude that it is not reportable. This will not engage the liability of the notifying intermediary.

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