M&A Tax Talk

DAC 6 and Mandatory Disclosure Rules

Introduction

Mandatory Disclosure Rules ("MDRs), including DAC 6, have been in place in various jurisdictions for a number of years. They are a means for tax authorities to have real-time insight into cross-border arrangements contemplated or implemented by businesses (even where the arrangement is not tax motivated). Failing to comply with these reporting obligations can trigger penalties, negatively impact relationships with local tax authorities and potentially create a reputation issue. This article explores why it is important for a business to have sufficient processes in place to deal with mandatory reporting rules in general, particularly in anticipation of an M&A transaction, and the types of transactions that could be reportable in undertaking or preparing for an M&A deal. This article focuses specifically on DAC 6 as an illustration of a complex and far-reaching set of rules that could catch intermediaries and taxpayers by surprise.

MDRs: The basics

Although some countries like the United Kingdom had similar rules before, MDRs generally stem from the Organization for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) Action 12 initiative, the final report of which was published in 2015, and have continued through the European Union's (EU) implementation of Council Directive (EU) 2018/822—commonly known as "DAC 6."

These rules relate to the mandatory disclosure and exchange of information for certain cross-border arrangements where the disclosure is made to local tax authorities. The person responsible for making the disclosure can be an "intermediary" (e.g., an entity's tax advisers, lawyers or even an entity's in-house tax team/legal counsel) or taxpayers themselves.

The stated purpose of these MDRs includes enhancing transparency and dissuading intermediaries from designing, marketing and implementing harmful tax structures. Although their stated intention is to target the most aggressive of tax structures, DAC 6 has an extremely wide scope, and cross-border arrangements that are not tax motivated can be reportable.

Along with their wide-reaching nature, MDRs can be difficult for businesses to address. For instance, certain EU member states have exercised their right under EU law to go beyond the Directive's requirement and have adopted rules that go beyond DAC 6. This gives further scope for divergence of requirements and the approach of relevant authorities.

Even where the local law aligns with the EU Directive, different jurisdictions may interpret the rules in different ways. Applying the rules to cross-border transactions involving multiple jurisdictions can therefore be complicated, particularly in an M&A environment.

What is reportable
For a cross-border arrangement to be reportable under MDRs, the arrangement needs to satisfy certain characteristics, referred to as "hallmarks."[1] Certain hallmarks have a main benefit test attached, which is considered met if the main benefit, or one of the main benefits, is to obtain a tax advantage, taking into account all relevant facts and circumstances that a person may reasonably expect to derive from an arrangement.

The main benefit test adds additional uncertainty as to how jurisdictions may interpret whether an arrangement is reportable, given its subjective nature.

In 2024, the European Commission undertook an evaluation of Council Directive 2011/16/EU on administrative cooperation in the field of taxation, which included DAC 6. The evaluation highlighted, among other things, significant interpretative challenges of DAC 6, alongside inconsistent application across member states and increased compliance costs. The evaluation concluded that further work is to be done on streamlining the DAC 6 rules. Subsequently, on June 24, 2026, the EU released its DAC Recast as part of a tax simplification package. The Recast covers various proposals (for example, including extending the 30-day reporting deadline). It is currently undergoing the legislative process and requires unanimous agreement from the Council of the EU. Approval is expected by late 2026 or 2027, with the simplified DAC 6 rules taking effect on January 1, 2028.

How can MDRs apply in the context of M&A?

Penalties for noncompliance
The impact of MDRs is to require intermediaries or taxpayers to make disclosures, in relation to a cross-border arrangement, to tax authorities. The laws in relation to MDRs do not, for example, levy taxation on a business. However, the potential penalties for noncompliance can be significant, and therefore, ensuring compliance in an M&A context (e.g., during due diligence or while getting the business ready for a sale) can be critical. For instance, in Poland, potential penalties for noncompliance can reach approximately PLN 27 million ($7.3 million).

Ensuring a business has robust and sufficient internal processes in place to comply with MDRs can help defend against potential penalties for noncompliance. For example, internal policies specific to DAC 6 or MDRs should ensure that the appropriate personnel within a business properly consider these rules for any cross-border arrangements that the business is contemplating.

The deadline for reporting under the DAC 6 rules is 30 days from a particular triggering event. Broadly, the trigger event is linked to either (i) the availability of the arrangement (e.g., when it is "made available for implementation," which is often not clear-cut) or (ii) the implementation of the arrangement. In any case, the timeline is short and, therefore, another reason for ensuring that a business has suitable processes in place for complying with MDRs to safeguard against the reporting deadline not being met.

Private equity insights

MDRs such as DAC 6 can be highly relevant in a private equity context, particularly where transactions involve cross border financing arrangements or global restructurings. While these disclosure rules are sometimes perceived to be associated with aggressive tax planning, their scope is broad and can extend to conventional planning such as intercompany debt push-down or routine post closing action items such as entity rationalization, refinancings, or the separation of business lines following an acquisition. Importantly, there is generally no de minimis threshold, meaning that even straightforward cross border steps undertaken for commercial reasons may trigger reporting obligations. There is even greater scrutiny for private equity sponsor-led leveraged buyouts, where lenders operating in an MDR jurisdiction often customarily require an analysis of potential disclosures to commit to providing financing.

Consideration should be given to factoring MDRs into a transaction's execution and post closing planning, rather than viewing solely from a compliance or historical diligence standpoint. Early identification of potentially reportable steps, clear internal processes, and coordination among advisers can help manage tight reporting timelines and avoid penalties. Further, proactive compliance can mitigate reputational and relationship risks with tax authorities at a time when portfolio companies are often undergoing significant structural change.

Examples
There will be various ways in which M&A transactions (including pre-sale restructuring or post-acquisition enhancement steps) can potentially fall within the scope of MDRs. Again, this is due to the wide-reaching nature of the rules. It is often asked whether MDRs contain a de minimis threshold, such that for transactions with a lower value, MDRs do not need to be considered. The answer to this is, generally, no. And therefore, for transactions that are considered cross-border, MDRs will generally always need to be considered.

Here are some examples that may be reportable:

Example 1: Intragroup financing is used to fund an acquisition that results in an intragroup loan being implemented between one jurisdiction and another EU jurisdiction. There are various hallmarks that could be met leading to this arrangement potentially being reportable under the DAC 6 rules, including:

a. Hallmark E1 – This hallmark targets arrangements that involve the use

[1] See Appendix for a list of the hallmarks.

of unilateral safe harbor rules (i.e., a safe harbor rule that relieves the need to consider certain transfer pricing requirements). If, for example, the intragroup cross-border loan has interest priced at a safe harbor rate (e.g., the US Applicable Federal Rate), negating the need to consider transfer pricing in relation to the interest rate, then this could be reportable.

b. Hallmark C1 – This hallmark targets arrangements where there is a deductible cross-border payment between associated enterprises and where the recipient is not taxed on the receipt (e.g., because it is not tax resident in any jurisdiction, the jurisdiction does not impose corporate tax, or a preferential tax regime applies).

Example 2: Intangible property or other assets are transferred cross-border as part of an intragroup transaction (e.g., in preparation for a third-party sale or following a third-party acquisition as a means to enhance the group's post-acquisition structure). The hallmarks that can apply in these scenarios and should be given careful consideration are:

a. Hallmark E3 – This hallmark covers arrangements involving intragroup cross-border transfers of assets, where projected earnings before interest and taxes (EBIT) during the three years after the transfer, of the transferor, is less than 50% of the projected annual EBIT if the transfer had not been made. This hallmark is targeting transactions that are anticipated to move EBIT from one jurisdiction to another but can also apply where this outcome is not necessarily the expected outcome (for example, in the context of an intragroup transfer of shares—see example 3 below).

b. Hallmark E2 – This hallmark covers arrangements where hard-to-value intangibles are transferred between associated enterprises. "Hard-to-value intangibles" generally follows the definition provided by the OECD under transfer pricing regulations (for example, where no reliable comparable exists).

Example 3: Following a multi-jurisdictional acquisition involving multiple companies, the buyer group wishes to streamline the corporate organization structure and achieve this through corporate share reorganizations and transfers. To the extent that this involves a company in one jurisdiction transferring shares to a company in another EU jurisdiction, this could be reportable under DAC 6. The most applicable hallmark is likely hallmark E3, which, as noted above, targets cross-border intragroup transfers of assets. While the motive of this transaction may not be to move EBIT from the transferor, in one jurisdiction, to the transferee in another jurisdiction, this may be the result of the transaction to the extent that dividends from the transferred subsidiary are now being paid to a different parent jurisdiction. The conclusion as to whether a transaction such as this is considered reportable from a DAC 6 perspective can be dependent upon local country interpretation and may vary across EU member states.

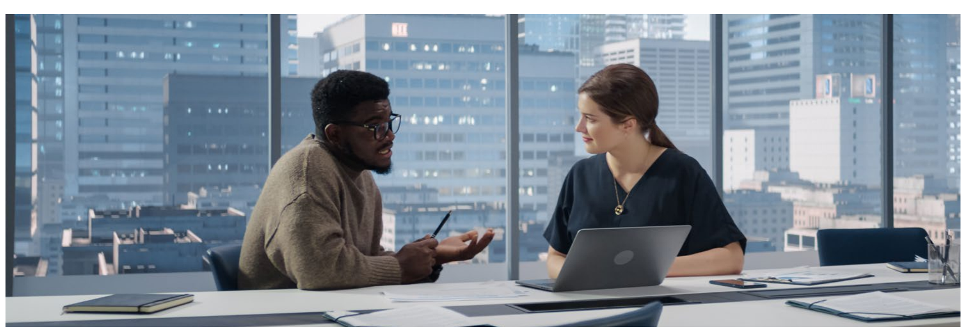
Management of intermediaries

A final important point to highlight is in relation to the coordination and management of various intermediates that may be working on an M&A transaction. Parties need to be clear on who is responsible for evaluating the need for disclosure, and if so, for preparing, reviewing, and ultimately making the related notifications.

In relation to DAC 6, the primary reporting obligation is on the intermediary involved in a transaction, but in a multi-jurisdictional M&A transaction, a number of intermediaries could be involved (e.g., different tax advisers, lawyers, in-house teams). Ensuring there is alignment on which intermediary should make the disclosure (and what that disclosure should say) is important and another matter that needs to be appropriately managed within the 30-day timeline noted above.

Summary conclusion

MDRs enforce an obligation for certain cross-border arrangements to be reported to tax authorities. They have been implemented in many jurisdictions globally and can apply in varying forms. Many aspects of the rules (in particular in relation to DAC 6) are subjective and are interpreted differently depending on the country of implementation. This can make the rules complex to deal with, particularly in a multi-jurisdictional M&A context. MDRs can be extremely wide reaching in scope, meaning that they can apply in the simplest of cross-border M&A transactions. As such, a business should consider adopting a robust policy for dealing with MDRs to ensure compliance with the tight deadline for reporting and safeguard against penalties. Beyond penalties, failing to comply with the rules may give the impression that a taxpayer is not being transparent, which may attract unwarranted attention during a time of M&A activity. Even if the EU Commission is likely to undergo significant revisions alongside the tax simplification Recast of June 24, 2026, DAC 6 and MDR rules are very likely here to stay, and taxpayers and their advisers must take into account this reporting obligation and be ready for it.



Appendix: DAC 6 hallmarks

- Hallmark A1: The relevant taxpayer or a participant in the arrangement undertakes to comply with a condition of confidentiality that may require them not to disclose how the arrangement could secure a tax advantage vis-à-vis other intermediaries or the tax authorities.
- Hallmark A2: The intermediary is entitled to receive a fee (or interest, remuneration for finance costs, and other charges) for the arrangement, and that fee is fixed by reference to the tax advantage derived from the arrangement.
- Hallmark A3: The arrangement has standardized documentation and/or structure and is available to more than one relevant taxpayer without a need to be substantially customized for implementation.
- Hallmark B1: This relates to contrived steps involving acquiring a loss-making company, discontinuing the main activity of such company and using its losses in order to reduce its tax liability.
- Hallmark B2: The arrangement converts income into capital, gifts or other categories of revenue that are taxed at a lower level or exempt from tax.
- Hallmark B3: The arrangement includes circular transactions resulting in the round-tripping of funds, namely through involving interposed entities without other primary commercial function, or transactions that offset or cancel each other or that have similar features.
- Hallmark C1: Arrangements where there is a deductible cross-border payment made between two associated enterprises, in which any of the following conditions are met:
  a. The recipient is not resident for tax purposes in any tax jurisdiction;
  b. Although the recipient is resident for tax purposes in a jurisdiction, that jurisdiction either:
     i. Does not impose any corporate tax or imposes corporate tax at the rate of zero or almost zero; or
     ii. Is included in a list of third-country jurisdictions that have been assessed by member states collectively or within the framework of the OECD as being non-cooperative;
  c. The payment benefits from a full exemption from tax in the jurisdiction where the recipient is resident for tax purposes; or
  d. The payment benefits from a preferential tax regime in the jurisdiction where the recipient is resident for tax purposes.

For hallmark C1 to apply with respect to conditions (b)(i), (c), and (d), the main benefit test also needs to apply for the arrangement to be reportable.

- Hallmark C2: Deductions for the same depreciation on the asset are claimed in more than one jurisdiction.
- Hallmark C3: Relief from double taxation with respect to the same item of income or capital is claimed in more than one jurisdiction.
- Hallmark C4: Arrangements that include the transfer of assets where there is a material difference in the amount being treated as payable (for tax purposes) with consideration for the assets in those jurisdictions involved.
- Hallmark D1: Arrangements that have the effect of undermining or circumventing reporting obligations under the Common Reporting Standard.
- Hallmark D2: Arrangements that involve nontransparent legal or beneficial ownership chains that use persons, arrangements or structures that lack economic substance and are incorporated, managed, resident, controlled or established in any jurisdiction other than the jurisdiction of residence of one or more of the beneficial owners.
- Hallmark E1: An arrangement that involves the use of unilateral safe harbor rules (i.e., a safe harbor rule that relieves the need to consider certain transfer pricing requirements).
- Hallmark E2: Arrangements that cover hard-to-value intangibles (e.g., intangibles where no reliable comparables exist). This hallmark applies where there is a transfer of an intangible asset between associated enterprises.
- Hallmark E3: Arrangements that involve intragroup cross-border transfers of functions, risks, or assets if projected EBIT during the three years after the transfer of the transferor is less than 50% of the projected annual EBIT if the transfer had not been made.

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