TRIDENT TRUST

Memo

DAC6 Technical Information Sheet

May 2020

On 25 May 2018, the Economic and Financial Affairs Council formally adopted the council directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (RCBAs) in order to disclose potentially aggressive tax planning arrangements (also commonly referred to as DAC6), which was published in the Official Journal of the European Union (OJ) on 5 June 2018. DAC6 entered into force on the twentieth day following the date of its publication in the OJ, which was on 25 June 2018.

The main purpose of DAC6 is to strengthen tax transparency and fight against aggressive tax planning through mandatory disclosure of cross-border arrangements by intermediaries, or individual or corporate taxpayers, to the tax authorities and mandates automatic exchange of this information among member states.

However, the term aggressive tax planning is not defined and instead reference is made to a number of pre-determined hallmarks, which are features that could render a cross-border arrangement reportable under the Directive. The hallmarks are broadly scoped and represent certain typical characteristics and elements of transactions that may present an indication of tax avoidance or abuse of direct taxes. The said transactions may include arrangements that are tax-motivated, but also ordinary transactions that are not driven by tax planning motives. Consequently, arrangements may also need to be reported to the competent local tax authorities in situations where no tax advantage is obtained.

What are the Disclosure Requirements under DAC6?

Since the obligation for reporting seems to be falling on the intermediaries, it is imperative to know which intermediaries fall within the scope of the DAC6 directive. In this respect, an intermediary is anyone who:

- designs, markets, organizes or makes available for implementation or manages the implementation of a RCBA
- provides, directly or by means of other persons, aid, assistance or advice with respect to designing, marketing, organizing, making available for implementation or managing the implementation of a RCBA

As a result, the reporting obligation may fall on accountants, auditors, legal advisors, tax advisors, administrative service providers, or any other professionals who undertake any of the above acts.

Under certain conditions though, the reporting obligation may fall on the relevant taxpayers, i.e., in case there are no intermediaries involved or a non-EU intermediary is involved. Usually this may occur if RCBAs are planned and executed in-house or in case an intermediary is not obliged to disclose any information subject to the legal professional privilege.

What is a RCBA?

A RCBA generally refers to an arrangement or series of arrangements concerning either more than one member state, or a member state and a third country. (At least one participant must be located within the EU.)

As provided for by the directive, the categorisation of an arrangement as reportable is connected to whether such an arrangement falls under any of the following indicators of presumed aggressive tax avoidance known as "hallmarks". **Hallmarks** are sub-divided into five categories:

- **Generic Hallmarks – Category A:** arrangements where a relevant taxpayer or a participant in the arrangement undertakes to comply with a condition of confidentiality in order not to disclose how such an arrangement could secure a tax advantage vis-a-vis other intermediaries or the tax authorities, or which may give rise to performance/success fees or mass-marketed schemes
- **Specific Hallmarks – Category B:** such arrangements include the acquisition of loss-making companies (as a means of reducing tax liabilities), conversion of income into lower-taxed revenue schemes and circular transactions/ round-tripping of funds
- **Specific Hallmarks – Category C:** arrangements relating to cross-border payments between associated companies where the recipient of such payment is not subject to tax, subject to zero or almost zero tax, or subject to a full tax exemption or a preferential tax regime; this hallmark also includes payments to associated stateless enterprises or associated enterprises located in blacklisted jurisdictions (as per the EU blacklist), multiple deductions of depreciation on the same assets, double reliefs under the relevant double tax treaties, or mismatches in relation to transfer pricing provisions
- **Specific Hallmarks – Category D:** arrangements that have the effect of undermining the Common Reporting Standard or the rules on identification of beneficial ownership (non-transparent legal or beneficial ownership chains)
- **Specific Hallmarks – Category E:** arrangements related to transfer pricing and the misuse of unilateral safe harbour rules

Certain hallmarks will only be satisfied if a Main Benefit Test is fulfilled. This test can only be satisfied if it can be established that the main benefit or one of the main benefits of a certain transaction is the obtaining of a tax advantage.

Multiple Intermediaries

If multiple intermediaries are involved for the implementation of a RCBA or a series of RCBAs, then co-ordination between all intermediaries will be essential in order to ideally avoid multiple reports on the same arrangement.

Penalties

The law transposing the DAC6 Directive into national legislation is still in draft form. It is expected that the penalties for failing to report, delayed reporting, incomplete or misleading report, failure to notify other intermediaries, etc. will range between €1.000 and €20.000, depending on the severity of the transgression.

Contact Us

To have a discussion on how DAC6 might affect your business, please contact:

Michael C. Constantinides
Director, Client Services
T: +357 258 20 650
E: mconstantinides@tridenttrust.com

Marilena Stylianou
Manager, Client Accounting Department
T: +357 258 20 650
E: mstylianou@tridenttrust.com

TRIDENT TRUST

Global Presence

Offices

The Americas/Caribbean

Bahamas
Trident Corporate Services (Bahamas) Ltd
T: +1 242 322 6154
bahamas@tridenttrust.com

Barbados
Trident Corporate Services (Barbados) Ltd
T: +1 246 621 0760
barbados@tridenttrust.com

British Virgin Islands
Trident Trust Company (BVI) Ltd
T: +1 284 494 2434
bvi@tridenttrust.com

Canada
TT Services (Canada) Ltd
T: +1 604 687 0811
vancouver@tridenttrust.com

Cayman Islands
Trident Trust Company (Cayman) Ltd
T: +1 345 949 0880
cayman@tridenttrust.com

Nevis
Morning Star Holdings Ltd
T: +1 869 469 1817
nevis@tridenttrust.com

Meridian Trust Company Ltd
T: +1 869 469 1333
nevis@tridenttrust.com

Panama
Trident Trust (Panama) S.A.
T: +507 302 7494
panama@tridenttrust.com

United States

Atlanta
Trident Corporate Services, Inc
T: +1 404 233 5275
usa@tridenttrust.com

Trident Fund Services, Inc
T: +1 404 364 2019
americasfunds@tridenttrust.com

Miami
Integritas, Inc
T: +1 305 405 9006
contact@integritastrust.com

New York
Trident Corporate Services, Inc
T: +1 212 840 8280
nyc@tridenttrust.com

Sioux Falls
Trident Trust Company (South Dakota) Inc
T: +1 605 679 4355
sd@tridenttrust.com

US Virgin Islands
Trident Trust Company (VI) Ltd
T: +1 340 774 7322
usvi@tridenttrust.com

Asia

Hong Kong
Trident Corporate Services (Asia) Ltd, Trident Fund Services (HK) Ltd & Trident Trust Company (HK) Ltd
T: +852 2805 2000
hongkong@tridenttrust.com

New Zealand
Trident Trust Company (NZ) Ltd
T: +64 9 300 6067
nz@tridenttrust.com

Singapore
Trident Corporate Services (Singapore) Pte Ltd, Trident Fund Services (Singapore) Pte Ltd & Trident Trust Company (Singapore) Pte Ltd
T: +65 6653 1800
singapore@tridenttrust.com

EMEA

Cyprus
Trident Trust Company (Cyprus) Ltd
T: +357 258 20 650
cyprus@tridenttrust.com

Dubai
Trident Trust Company (UAE) Ltd DMCC Branch
T: +971 4 423 9988
dubai@tridenttrust.com

Trident Fund Services (DIFC) Ltd
T: +971 4 277 1191
dubai@tridenttrust.com

Guernsey
Trident Trust Company (Guernsey) Ltd
T: +44 1481 727571
guernsey@tridenttrust.com

Isle of Man
Trident Trust Company (IOM) Ltd
T: +44 1624 646700
iom@tridenttrust.com

Jersey
Trident Trust Company Ltd
T: +44 1534 733401
jersey@tridenttrust.com

Luxembourg
Trident Trust Company (Luxembourg) S.A.
T: +352 26 30 28 48
luxembourg@tridenttrust.com

Malta
Trident Corporate Services (Malta) Limited & Trident Trust Company (Malta) Ltd
T: +356 21 434 525
malta@tridenttrust.com

Mauritius
Trident Trust Company (Mauritius) Ltd
T: +230 210 9770
mauritius@tridenttrust.com

Seychelles
Trident Trust Company (Seychelles) Ltd
T: +248 4 422 000
seychelles@tridenttrust.com

Switzerland
Trident Corporate Services AG
T: +41 44 396 1080
switzerland@tridenttrust.com

United Kingdom
Trident Trust Company (UK) Ltd
T: +44 20 7935 1503
uk@tridenttrust.com

Trident Company Services (UK) Ltd
T: +44 20 7487 0460
corpservices@tridenttrust.com

© 2020, Trident Trust. All rights reserved. 5.20