

DAC6 compliance - aspects to consider

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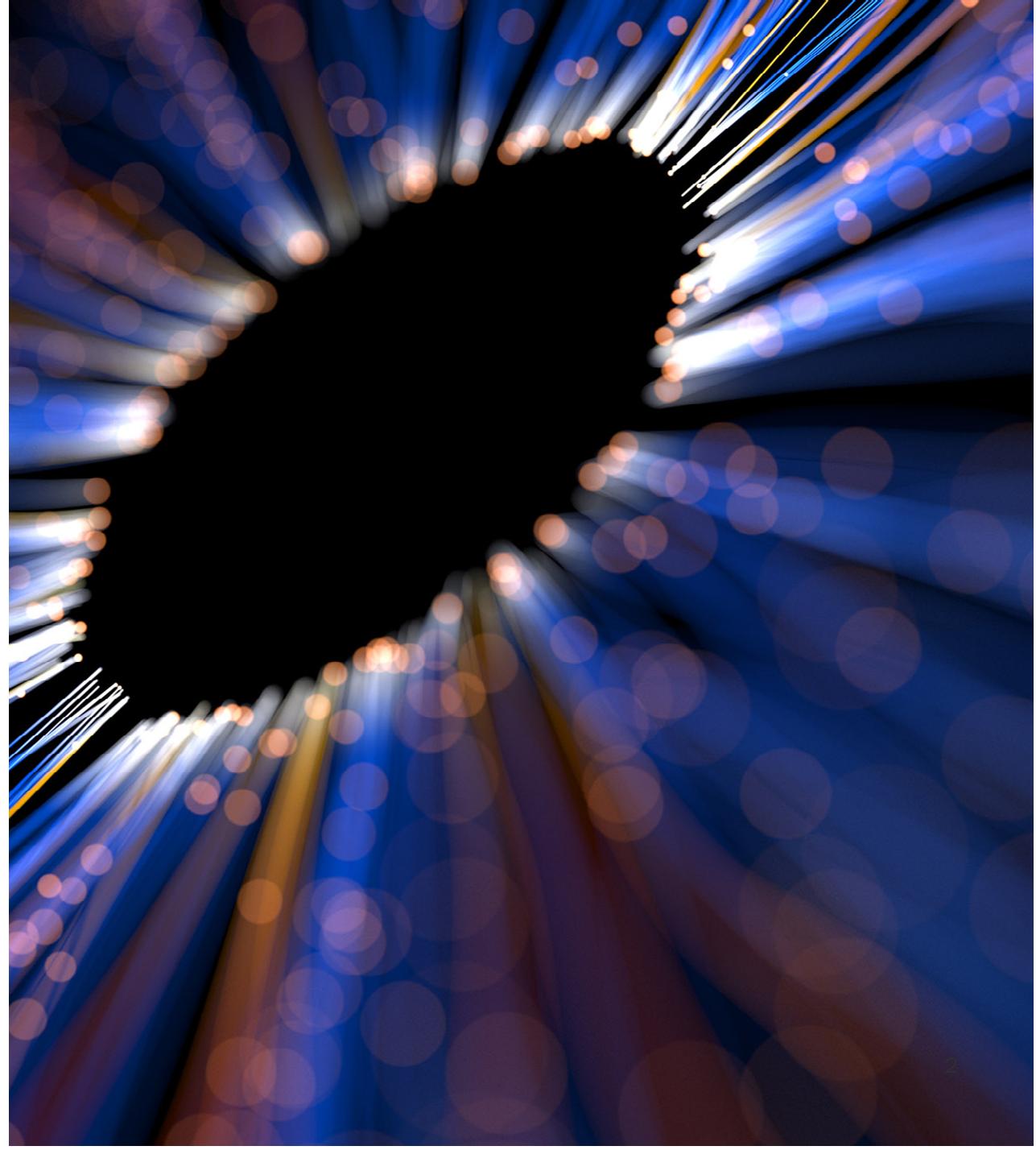
Financial Markets Legal Update
– the webinar series

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Agenda

DAC6 compliance – aspects to consider

- 1 What is DAC6? – does it apply to you?
- 2 What are the deferral rules and what do they mean for you?
- 3 When does a waiver to report based on the Attorney Client privilege apply?
- 4 What practical steps should you take NOW?
- 5 Key takeaways.



1 What is DAC6?

Mandatory Reporting of potentially Aggressive Tax Transactions

The EU Directive on Administrative Cooperation in the field of taxation 2011/16/EU, requires mandatory reporting of potentially aggressive transactions by Intermediaries as of **July 1, 2020**.

There is retroactive effect for Qualifying Transactions implemented as of **June 25, 2018** (referenced as “Inventory Cases”).

(Significant) Penalties apply for each non-reported Qualifying Transaction.

Implemented through Council Directive 2018/822/EU amending the EU Directive on Administrative Cooperation in the field of taxation 2011/16/EU

1 What is DAC6?

What must be reported?

- Details of the Intermediary;
- Details of the taxpayer and its affiliates;
- Summary of the content of the crossborder arrangement;
- The relevant hallmarks;
- The relevant national statutory provision;
- The value of the crossborder arrangement;
- The implementation date of the crossborder arrangement;
- The relevant EU Member States involved.

2 What are the Deferral Rules?



Original Reporting dates:

“Inventory cases”: by August 31, 2020

July 1, 2020 cases: within 30 days beginning on

- the day the arrangement is made available for implementation
- the day the arrangement is ready for implementation
- the first step in implementation has been made.

Deferred Reporting dates:

“Inventory cases”: by February 28, 2021

July 1, 2020 – December 31, 2020 cases: within 30 days of January 1, 2021

As of January 1, 2021: same as original Reporting dates.

3 When does a waiver based on the Attorney Client privilege apply?

- When the reporting obligation would breach **the legal professional privilege** under the national law of that Member State. In that case, without delay, another intermediary needs to be notified or the taxpayer, of their reporting obligations.
- Intermediaries may only be entitled to a waiver [...] to the extent that they operate within the **limits of the relevant national laws** that define their professions.
- [...] where there is no intermediary or the intermediary notifies the relevant taxpayer or another intermediary of the application of a waiver [...], the obligations to file information on a reportable crossborder transaction lie with the other notified intermediary, or, if there is no such intermediary, with the relevant taxpayer.

4 What practical steps should you take now? §

1. Contact your intermediaries regarding the Inventory Cases, and ask them to list if the matters they were involved in since June 25, 2018, qualify under DAC6.
2. As of July 1, 2020, for any new matter where a finance, tax or legal intermediary is consulted, lay out the matter and inquire if the engagement would involve a DAC6 arrangement. If so, determine if the intermediary can invoke a waiver.
3. Determine whether any intercompany or third party agreements need to be updated authorizing you to disclose information on the contracting party under DAC6 to the relevant tax authorities, to avoid liabilities and disputes.
4. Arrange that the narratives and reference numbers of any and all reportable transactions from intermediaries are coordinated and shared with you up front.

Key takeaways



DAC6

- 1 Any cross-border tax-driven transaction or that achieves tax benefits is potentially in scope to be reported.
- 2 The obligation to report is that of the intermediary, but the information to be reported is that of the taxpayer.
- 3 The information will be exchanged between all EU Member States – and may be exchanged with non-EU Member States.
- 4 There will be tax audits and inquiries based on the reported information
- 5 Penalties apply for each non-reported Qualifying Transaction.



Thank you

Thank you for joining

For further information, please contact us or visit our website simmons-simmons.com.



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