

## Public hearing with the Subcommittee on Tax Matters

**“The development of new tax practices: what new schemes should the EU pay attention to?”**

**Tuesday 22 June 2021 - 13:45-16:15**

### **Introductory statement by the services of the European Commission**

#### **(2.) on the Directive on Administrative Cooperation (DAC6) (available time 3,5 minutes)**

Tax transparency and exchange of information are key tools in the fight against tax evasion and avoidance. However, one of the challenges is to ensure that rules remain up-to-date and keep up with the latest practices. This explains why the scope of exchange of information is regularly reviewed and expanded.

The exchange of information between Member States is not designed around some specific (mal)practices, since these tend to evolve over time and new ones appear continuously.

Instead the Directive on administrative cooperation – “the DAC” - and in particular DAC6 focuses on requiring the reporting of information that would be useful for deterring and detecting practices that would be expected to be at the basis of any particular practice.

Directive 2018/822/EU – DAC6 - was adopted in 2018. It became applicable from July 2020.

The first exchanges should have taken place in 2020 but due to the pandemic, they were deferred in most Member States and most took place only in 2021.

Total number of Cross-Border Arrangements submitted to the DAC6 CD so far: 25.794. It should be noted that this includes also the “backlog”, that is the reportable Cross Border Arrangements from the date of entry into force of the Directive: 25 June 2018.

[Considering the recent start of these exchanges it is too soon to draw any conclusion based on statistics. As soon as there is more statistics on the reporting and exchanges as well as of the use of the data, preliminary conclusions could be drawn on the effects of the Directive.]

Exchanges take place within one month after each quarter of the year in which information was filed. It is made available to all Member States on a Central Directory set up by the Commission. The Commission has only a limited access to this information. The Commission’s access is limited to information, which allows it to monitor the functioning of the Directive.

The directive provides for an obligation for intermediaries and possibly taxpayers to inform tax authorities of arrangements that they have set up for clients.

The directive provides for a number of so-called “hallmarks” that contain criteria for when an arrangement needs to be reported.

The hallmarks determine what type of arrangements are reportable. Hallmark means an arrangement that presents an indication of a potential risk of tax avoidance. There is no presumption of tax avoidance. The authorities may on this basis determine whether there is an illegitimate tax practice based on the information that they receive and what if any action to take.

These criteria are designed to oblige intermediaries to report arrangements that could lead to tax avoidance.

The idea is that by setting up these reporting obligations, intermediaries but also taxpayers are deterred from setting up arrangements that may lead to tax avoidance. In case they are not deterred, tax authorities are better equipped to uncover such arrangement and take action to ensure that the correct amount of tax is paid.

Among the hallmarks are for example:

- Use of (cross-border) losses to obtain a tax advantage
- Converting income into other categories of revenue taxed at lower level
- Same depreciation claimed on a specific asset in more than one jurisdiction
- Cross-border transfers of assets & there is a material difference in the amount treated as payable in consideration for the assets in the jurisdictions involved

These are quite general elements and can be part of various types of schemes set up to avoid taxation.

If this type of elements are present in an arrangement that is an indication for the tax authority that there is a risk of tax avoidance.

We believe that the procedure set up by DAC6 is flexible and allows for catching new types of arrangements that present one of the hallmarks defined in the Directive.

In addition, the Directive states that every 2 years after 1st July 2020: evaluation of the relevance of the Hallmarks. The Commission will report and as a result there may be a legislative proposal if necessary.