

# THE IMPLICATIONS OF DAC6 FOR PRIVATE CLIENTS AND THEIR ADVISORS

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BERNARD FELTEN  
FELTEN & ASSOCIES  
LUXEMBOURG

JOHN GRAHAM  
GRAHAM SMITH & PARTNERS  
NETHERLANDS

# WHAT IS DAC 6?

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MANDATORY DISCLOSURE BASED ON EU AML DIRECTIVES

EFFECTIVE 25 JUNE 2018, IN FORCE 1 JULY 2019,  
DEFERRAL POSSIBLE TO 1 JANUARY 2020

30 DAYS TO REPORT

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# REPORTABLE CROSS-BORDER ARRANGEMENT

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BETWEEN MORE THAN ONE EU STATE OR BETWEEN EU STATE AND THIRD STATE

HALLMARKS (STANDARD LIST):

- SOME SUBJECT TO MAIN BENEFIT TEST
  - CRS AND UBO NOT RESTRICTED
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# INTERMEDIARIES HAVE TO REPORT

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ANY PERSON THAT

- DESIGNS, MARKETS, ORGANISES OR MAKES AVAILABLE FOR IMPLEMENTATION
- OR MANAGES THE IMPLEMENTATION

OF A REPORTABLE CROSS-BORDER ARRANGEMENT

- OR HAS PROVIDED ASSISTANCE OR ADVICE IN THESE AREAS OR COULD REASONABLY BE EXPECTED TO HAVE

SO WHO IS NOT AN INTERMEDIARY?

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# WHICH INTERMEDIARIES?

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INTERMEDIARY MUST MEET ONE OF THE FOLLOWING CONDITIONS:

- RESIDENT IN EU MEMBER STATE;
  - PERMANENT ESTABLISHMENT IN EU MEMBER STATE THROUGH WHICH SERVICES PROVIDED;
  - BE INCORPORATED IN OR GOVERNED BY THE LAWS OF A MEMBER STATE;
  - BE REGISTERED WITH A PROFESSIONAL ASSOCIATION RELATED TO LEGAL, TAXATION OR CONSULTANCY SERVICES IN A MEMBER STATE
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# RELEVANT TAXPAYER

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ANY PERSON TO WHOM REPORTABLE TRANSACTION  
MADE AVAILABLE, OR READY TO IMPLEMENT OR HAS  
IMPLEMENTED FIRST STEP

DOES NOT NEED TO BE WITHIN THE EU

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# OBLIGATIONS FOR INTERMEDIARY

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OBLIGATION TO FILE AS INTERMEDIARY APPLIES TO ALL INTERMEDIARIES INVOLVED IN THE SAME ARRANGEMENT UNLESS PROOF THAT ANOTHER INTERMEDIARY HAS FILED

INTERMEDIARY WITH PRIVILEGE MUST TELL CLIENT OR OTHER INTERMEDIARIES

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# IF NO INTERMEDIARY HAS TO FILE

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IF NO INTERMEDIARY OR INTERMEDIARY SUBJECT TO PRIVILEGE THEN RELEVANT TAXPAYER MUST FILE BUT ONLY IN ONE STATE

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# HALLMARK D1 RE UNDERMINING CRS

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## UNDERMINING CRS REPORTING OBLIGATIONS WITH:

- THE USE OF ACCOUNT, PRODUCT OR INVESTMENT NOT BEING FINANCIAL ACCOUNT BUT HAVING SUBSTANTIALLY SIMILAR CHARACTERISTICS;
  - THE TRANSFER OF ACCOUNTS OR ASSETS TO, OR THE USE OF JURISDICTIONS THAT ARE NOT BOUND BY AEOI;
  - THE RECLASSIFICATION OF INCOME/CAPITAL INTO PRODUCTS/PAYMENTS NOT SUBJECT TO AEOI;
  - THE TRANSFER OF A FINANCIAL INSTITUTION/ACCOUNT/ASSETS INTO A FINANCIAL INSTITUTION/ACCOUNT/ASSETS NOT SUBJECT TO AEOI.
  - THE USE OF LEGAL ENTITIES/ARRANGEMENTS/STRUCTURES THAT ELIMINATE REPORTING OF ACCOUNT HOLDERS/ CONTROLLING PERSONS;
  - THE USE OF ARRANGEMENTS THAT UNDERMINE OR EXPLOIT WEAKNESSES IN THE DUE DILIGENCE PROCEDURES USED BY FINANCIAL INSTITUTIONS TO COMPLY WITH THEIR OWN OBLIGATIONS TO REPORT FINANCIAL ACCOUNT INFORMATION.
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# HALLMARK D2 RE UBO

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AN ARRANGEMENT INVOLVING A NON-TRANSPARENT LEGAL OR BENEFICIAL OWNERSHIP CHAIN WITH THE USE OF PERSONS, LEGAL ARRANGEMENTS OR STRUCTURES:

A. WITHOUT SUBSTANTIVE ECONOMIC ACTIVITY, STAFF, EQUIPMENT, ETC.;

AND

B. INCORPORATED, MANAGED, RESIDENT, CONTROLLED OR ESTABLISHED IN ANY JURISDICTION OTHER THAN THE JURISDICTION OF RESIDENCE OF ONE OR MORE OF THE BENEFICIAL OWNERS OF THE ASSETS HELD BY SUCH PERSONS, LEGAL ARRANGEMENTS OR STRUCTURES;

AND

C. WHERE THE BENEFICIAL OWNERS OF SUCH PERSONS, LEGAL ARRANGEMENTS OR STRUCTURES AS DEFINED IN THE DIRECTIVE ARE MADE UNIDENTIFIABLE.

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IT DOES NOT APPLY TO ME!

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MISCONCEPTIONS

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# MISCONCEPTIONS 1

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MY ADVISOR HAS LEGAL PRIVILEGE SO NOTHING NEEDS TO BE REPORTED.

WRONG:

IF THE ADVISOR HAS LEGAL PRIVILEGE THEN THE TAXPAYER NEEDS TO REPORT THE TRANSACTION. IN SOME COUNTRIES THE ADVISOR MUST CHECK WHETHER THE CLIENT HAS REPORTED AND IF HE HAS NOT, PRIVILEGE IS WAIVED FOR REPORTING PURPOSES.

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# MISCONCEPTIONS 2

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I AM AN ADVISOR NOT BASED IN THE EU SO DO NOT HAVE TO DO ANYTHING.

WRONG IF YOU (OR YOUR FIRM) ARE:

- RESIDENT FOR TAX PURPOSES IN A MEMBER STATE;
  - REGISTERED WITH A PROFESSIONAL ASSOCIATION FOR LEGAL, TAX OR CONSULTANCY SERVICES IN THE EU;
  - INCORPORATED IN OR GOVERNED BY THE LAWS OF AN EU MEMBER STATE.
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# MISCONCEPTIONS 3

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I DO NOT ADVISE ON COMPLEX PLANNING WITH THE EU AND CERTAINLY DO NOT FACILITATE TAX AVOIDANCE SO DAC 6 DOES NOT APPLY TO ME.

WRONG :

- THE RULES ARE WIDELY DRAWN AND SOME BENIGN ARRANGEMENTS WITH NO TAX AVOIDANCE MOTIVE WILL BE CAUGHT.
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# MISCONCEPTIONS 4

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I DON'T TAKE THE LEAD ON ANY OVERSEAS TRANSACTIONS. I INVOLVE OTHER ADVISERS AND THEREFORE I CAN RELY ON THEM TO MAKE A REPORT.

WRONG :

- OBLIGATIONS APPLY TO THOSE WHO THE LEGISLATION DESCRIBES AS “SERVICE PROVIDERS”, BROADLY THOSE THAT DO NOT TAKE THE LEAD ON REPORTABLE TRANSACTIONS.
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# MISCONCEPTIONS 5

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I AM AN INDIVIDUAL OR PRIVATE CLIENT PRACTITIONER. I AM NOT INVOLVED WITH COMPANIES AND THEREFORE I AM NOT CONCERNED.

WRONG :

- THE RULES CAN APPLY TO PRIVATE CLIENTS. THE RULES TARGET FOR EXAMPLE ARRANGEMENTS WHICH ARE “NON-TRANSPARENT LEGAL OR BENEFICIAL OWNERSHIP CHAINS” AND THERE IS NO REQUIREMENT FOR A TAX AVOIDANCE MOTIVE TO BE PRESENT.
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# MISCONCEPTIONS 6

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I WORK IN-HOUSE AND ENGAGE TAX ADVISERS SO IT IS THEIR RESPONSIBILITY TO ENSURE ARRANGEMENTS THEY ARE ADVISING ON ARE REPORTED.

WRONG :

- IN CERTAIN CIRCUMSTANCES THE TAXPAYER THEMSELVES MAY HAVE TO MAKE A REPORT. THIS CAN HAPPEN WHERE THERE IS NO INTERMEDIARY REPORT DUE TO LEGAL OR PROFESSIONAL PRIVILEGE OR THE TAXPAYER HAS EXTRA INFORMATION ABOUT THE ARRANGEMENT NOT INCLUDED IN THE INTERMEDIARY REPORT.
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