

EU mandatory disclosure requirements DAC 6 French Implementation



Background

The European DAC6 (*Directive of Administrative Cooperation in the Field of Taxation*) creates an obligation for intermediaries and relevant tax payers to report specific information on cross border arrangements that meet certain criteria to the tax authorities. It has been implemented into French Law via an order published on October 22, 2019 ([Ordonnance n° 2019-1068](#)).

The French Tax Authorities (FTA) published their guidelines in this respect on March 9, 2020 and April 29, 2020, both of which are subject to a public consultation until May 31, 2020 in order to gather the comments of French stakeholders. These guidelines are already binding but could be amended further to the consultation process.

French Tax Authorities guidelines on DAC6 implementation rules

The FTA's comments provide the intermediaries and taxpayers with some clarifications on the definitions of the terms of the DAC6 as well as the reporting process and the interpretation of the hallmarks.

The FTA's guidelines are organized in three sections:

- **Scope of the reporting obligation** [BOI-CF-CPF-30-40-10](#) – published on March 9, 2020 - giving details on the notions of cross border arrangements to be declared as well as intermediaries or tax payers subject to the reporting obligation.
- **Conditions of the reporting obligation** [BOI-CF-CPF-30-40-20](#) – published on March 9, 2020- to the first event giving rise to the reporting obligation, the content of the declaration as well as the filing terms and conditions. It is to be noted that a decree should be shortly published with respect to the information to be reported as provided by the order.
- **Information on the hallmarks** [BOI-CF-CPF-30-40-30](#) – published on April 29, 2020 – providing details on the hallmarks to be assessed in order to determine whether or not a cross-border arrangement reportable as well as several practical examples. No white list is available but the guidelines give one or two examples for each hallmark. Some of them aim to comment on reporting obligation for financial institutions.

Details with respect to the main benefit test

One of the major input of these guidelines concerns the main benefit test to be met in addition to certain hallmarks.

This test is met when the main benefit or one of the main benefits which, having regard to all relevant facts and circumstances, a person may reasonably expect to derive from an arrangement is the obtaining of a tax advantage.

The FTA indicates that in order to determine whether this test is met, the arrangement must be analyzed as a whole, considering the effects in European Union (UE) Member States as well as and non-EU States.

In addition, the FTA state that the analysis must be objective without taking into account the intent of the parties (i.e. the fact that a person is not seeking a principal tax advantage is irrelevant to assess whether or not the cross-border arrangement meets the main benefit test). It is assessed based on the value of the tax advantage obtained compared to other benefits arising from the arrangement.

Finally, the FTA considers that this test is not met when the principal tax advantage is obtained in France in accordance with the intention of the French lawmaker (such as the benefit of tax incentives).

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