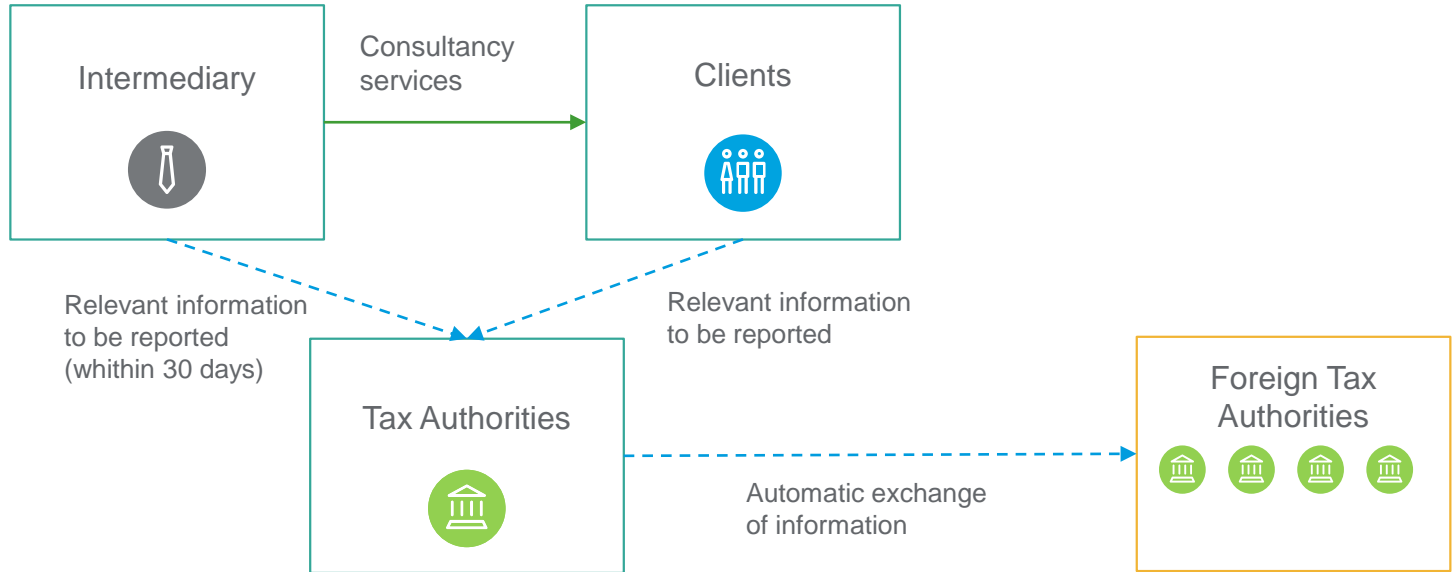




DAC6 – NEW RULES AND IMPLICATIONS

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DAC 6 – What is it?



DAC 6– global timeline

Beps Project

December 2015

Action 12 Mandatory disclosure Rules

Every **five years** review of the directive



Every **two years** review of the hallmarks



First Tax Authorities exchange

The Tax Authorities communicate to each other the relevant information

DAC 6 Member States

Within December 2019 all the EU Countries must implement locally the DAC6 Directive

DAC6 Activation

01 July 2020

DAC6 is in force in all the EU Countries

DAC6 Review

07 July 2022

Review of the hallmarks

FATCA

July 2014

CRS

January 2016

MDR OCSE

March 2018

DAC6

June 2018

New EU Directive

Communicate the past

31 August 2020

Report the period 2018-2020

2014-2017

2018

2019

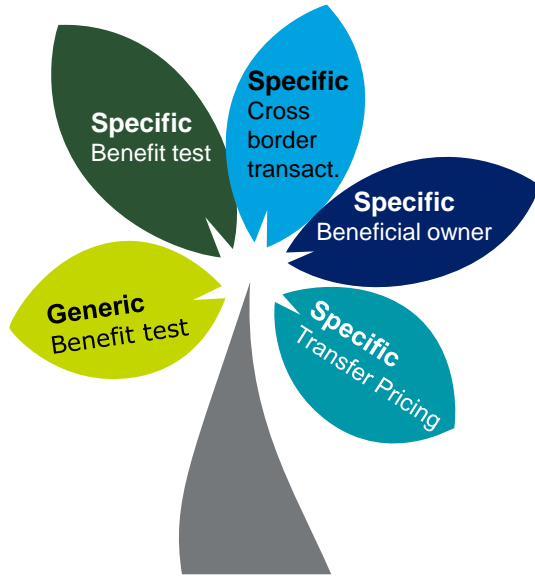
2020

2021

2022

Hallmarks

The obligation to report arises when the main benefit test is fulfilled, and therefore the taxpayer is likely to obtain a tax advantage from a specific mechanism, and this benefit is obtained through one of the following hallmarks.



 **A - Generic hallmarks linked to the main benefit test**

 **B - Specific hallmarks linked to the main benefit test**

 **C - Specific hallmarks related to cross-border transactions**

 **D - Specific hallmarks concerning automatic exchange of information and beneficial ownership**

 **E - Specific hallmarks concerning transfer pricing**



A - Generic hallmarks linked to the main benefit test

Confidentiality

An arrangement where the relevant taxpayer or a participant in the arrangement undertakes to comply **with a condition of confidentiality which may require them not to disclose** how the arrangement could secure a tax advantage vis-à-vis other intermediaries or the tax authorities.

Fees

An arrangement where **the intermediary is entitled to receive a fee** for the arrangement and that fee is fixed by reference to:

- the **amount of the tax advantage** derived from the arrangement; or
- whether or not a **tax advantage is actually derived** from the arrangement.

Standard Arrangement

An arrangement that has substantially **standardized documentation** and/or structure and is **available to more than one relevant taxpayer** without a need to be substantially customized for implementation.

B - Specific hallmarks linked to the main benefit test

01

An arrangement whereby a participant in the arrangement takes contrived steps which consist in **acquiring a loss-making company**, discontinuing the main activity of such company and **using its losses in order to reduce its tax liability**, including through a transfer of those losses to another jurisdiction or by the acceleration of the use of those losses.

02

An arrangement that has the effect of **converting income into capital, gifts or other categories of revenue** which are taxed at a lower level or exempt from tax.

03

An arrangement which includes **circular transactions resulting in the round-tripping of funds**, namely through involving interposed entities without other primary commercial function or transactions that offset or cancel each other or that have other similar features.

C - Specific hallmarks related to cross-border transactions

Conditions

Deductions **for the same depreciation** on the asset are claimed in more than one jurisdiction.

Double Deductions

Avoid double taxations

Relief from double taxation in respect of the same item of income or capital is **claimed in more than one jurisdiction**.

Double Non-taxation

An arrangement that involves deductible **cross-border payments** made between two or more associated enterprises where at least one of the relevant conditions occurs

Relevant conditions

- (a) the **recipient is not resident** for tax purposes in any tax jurisdiction;
- (b) although the recipient is resident for tax purposes in a jurisdiction, **that jurisdiction** either:
 - (i) **does not impose any corporate tax** or imposes corporate tax at the rate of zero or almost zero; or
 - (ii) is included in a list of third-country jurisdictions which have been assessed as **being non-cooperative**;
- (c) the **payment benefits from a full exemption** from tax in the jurisdiction where the recipient is resident;
- (d) the **payment benefits from a preferential tax regime** in the jurisdiction where the recipient is resident.

Transfer of asset

Transfer of asset

There is an arrangement that includes transfers of assets and where there is a material difference in the amount being treated as payable in consideration for the assets in those jurisdictions involved.



D - Specific hallmarks concerning automatic exchange of information and beneficial ownership

Case 1

An arrangement **which may have the effect of undermining the reporting obligation**. Such arrangements include at least the following:

- a) the use of an account, product or investment **that is not**, or purports not to be, a Financial Account, **but has features that are substantially similar to those of a Financial Account**;
- b) the **transfer** of Financial Accounts or assets **to**, or the use of **jurisdictions** that are **not bound by the automatic exchange** of Financial Account information;
- c) the **reclassification of income and capital into products or payments that are not subject to the automatic exchange** of Financial Account information;
- d) the **transfer or conversion** of a Financial Institution or a Financial Account or the assets therein into a Financial Institution or a Financial Account or assets **not subject to reporting under the automatic exchange**;
- e) the **use of legal entities, arrangements or structures that eliminate** or purport to eliminate reporting of one or more Account Holders or Controlling Persons under the **automatic exchange** of Financial Account information.

Case 2

An arrangement **involving a non-transparent legal or beneficial ownership chain** with the use of persons, legal arrangements or structures:

- a) that **do not carry on a substantive economic activity** supported by adequate staff, equipment, assets and premises; and
- b) that **are** 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 Directive (EU) 2015/849, **are made unidentifiable**.



E - Specific hallmarks concerning transfer pricing

Transfer of Intangibles

An arrangement involving the transfer of **hard-to-value intangibles** for which:

- a) no reliable comparables exist; and
- b) at the time the transaction was entered into, the information used in valuing the intangible are highly uncertain, making it difficult to predict the level of ultimate success of the intangible at the time of the transfer

Safe harbours

An arrangement which involves the use of **unilateral safe harbour rules**

Group Restructuring

An arrangement involving an intragroup cross-border transfer of functions and/or risks and/or assets, if the projected annual earnings before interest and taxes (EBIT), during the three-year period after the transfer, of the transferor or transferors, are **less than 50 %** of the projected annual EBIT of such transferor or transferors if the transfer had not been made

DAC implementation in Italy

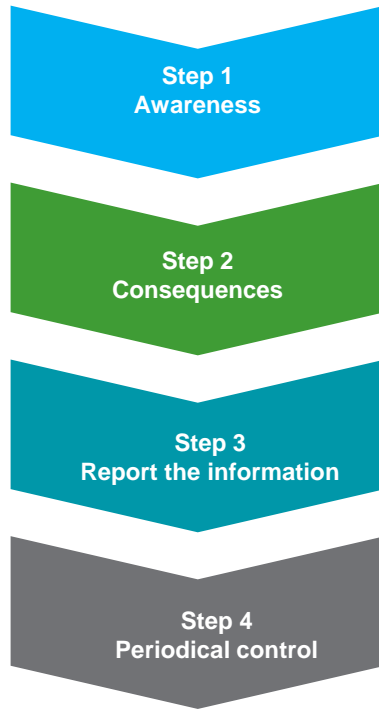
In Italy **taxpayers are still in wait** for the final law that will make the DAC 6 mandatory at national level. Despite that, it is important to note that **Italy already avails a number of local rules** that require the disclosure of relevant information and the implementation of specific requirements that **limit the risk of tax avoidance**, namely:

ATAD Regulation

Beneficial Owner
disclosure obligations

Transfer Pricing
Regulation

How to protect yourself



- The **Tax consultant** as well as any other subject that can be considered an intermediary should start to in depth analyse the tax structures of the client, in order to determine any potential **presence of information that should be disclosed to the Tax Authorities**.
- When, on the basis of the facts and circumstances, **the client has relevant information** that should be communicated to the Tax Authorities, it is important to evaluate and understand **the consequences of this communication** and the potential tax risk of the client.
- **Within 30 days the** intermediary (or the taxpayer) has **to communicate to the Tax Authorities** the relevant information related to the taxpayer and the tax structure that has to be disclosed.
- In order to limit the overall risk, the intermediary should **periodically check** with the client the eventual presence of relevant information **that should be disclosed** to the Tax Authorities.

*Thank you for your
time and attention*