

# Risks within reporting obligations for cross-border tax arrangements

**MANDATORY REPORTING ACCORDING TO DAC-6 RULES COVERS A VERY WIDE SCOPE OF APPLICATION. VIOLATIONS MAY RESULT IN HARSH PENALTIES. TIGHT DEADLINES REQUIRE EARLY ACTION.**

## Executive Summary

- Certain cross-border tax arrangements must be reported to the tax authorities.
- The concept of tax planning is interpreted very broadly. A simple foreign connection may already suffice if there are tax implications.
- The report must be made within 30 days only.
- Violations may incur a penalty of up to € 25,000 per case.
- Tax compliance expertise is essential for risk assessment and risk mitigation.

## Who is affected?

Since 1 July 2020, the regulations of the *6th EU Directive on Administrative Cooperation*, or in abbreviated form *DAC-6*, have been tightened within the German law. Cross-border tax arrangements must be reported to the Federal Central Tax Office (Bundeszentralamt für Steuern - BZSt) if they meet certain criteria (so-called *hallmarks*). The scope of application does not cover only the well-known "*big players*" in international tax arrangements. In principle, anyone who carries out cross-border activities that are tax relevant can be affected. An international business partner, investor or other parties involved in the design can be a trigger for an international reference. The only regularly remaining criteria for exclusion are the *hallmarks*, which often require a complex tax assessment and an in-depth tax compliance expertise.

## What are the typical cases?

Not only is the financial sector affected. An increased risk of reporting requirements exists particularly in the real estate sector, e.g. in the case of real estate share deals with RETT blocker structures and international participants. The same applies to when a leasing compa-

ny is operated from abroad or to project development in the case of international investments. In addition, classical companies are also affected by the obligation to report, e.g. when founding and making use of finance companies, especially in low-taxing foreign countries or when setting up central companies within a company in low-taxing countries, e.g. purchasing or service companies. An increased risk, furthermore, may be associated with many other constellations.

## When to report?

The law provides for an obligation to report within 30 days. The deadline can be triggered when implementation is made available or when information and documents on the implementation are provided by a consultant.

## What sanctions will be applied in case of violations?

Anyone who intentionally or carelessly fails to submit a report or fails to submit it in time risks a penalty of up to €25,000. A single economic event may result in several reporting obligations and thus in penalties.

## Practical advice:

We recommend that potential risk cases be reviewed at an early stage in order to identify reportable cases and to be able to document non-reportable cases in a well-founded manner. In doing so, a careless failure to report, and thus a risk of incurring a penalty, can be avoided. This is, therefore, necessary in order to prevent liability. Expert advice thus serves both internal and external risk mitigation. Should a reportable transaction be identified, we offer a "*one-stop shop*" support, i.e. we advise you comprehensively from the examination of a reporting obligation to the notification of the authorities. If in the future a non-registration should be disputed, we will support you in your defence against the tax authorities. Our experienced experts are gladly at your disposal.



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