INVEST EUROPE

Invest Europe response to public consultation on the possible recast of the Directive on Administrative Cooperation in Direct Taxation (DAC)

This document is limited to the consultation questions that have received a response from Invest Europe.

DAC6

DAC6 foresees that any potentially harmful cross-border tax arrangement needs to be reported within 30 days after the arrangement has been made available.

Would you support a longer deadline to report an arrangement? In that respect, reasonable extended deadlines, also based on other existing deadlines in DAC, could be 60 days or 90 days.

- ☐ Yes - 60 days
- ☐ **Yes - 90 days**
- ☐ No
- ☐ No opinion

Please clarify:

We support a longer deadline for reporting of 90 days, which would be more appropriate than the current 30-day timeframe.
In practice, cross-border arrangements are often complex, involve multiple intermediaries, and require analysis across several jurisdictions with differing DAC6 interpretations. The current deadline frequently does not allow sufficient time to properly assess reportability and to gather complete and accurate information. This can lead to defensive or premature reporting, which does not improve the quality of information provided to tax authorities.
Extending the reporting deadline to 90 days would allow for a more thorough and consistent analysis, improve the accuracy and relevance of reports, and better align with other reporting timelines under the DAC framework, without undermining the objective of timely information exchange.

As indicated in the DAC evaluation, the Main benefit test (MBT) and the connected hallmarks A1, A2 and A3 have been highlighted as difficult to apply and as creating significant administrative burden due to its inherent complexity and divergent interpretation of the concept across Member States.

Do you agree with the outcome of the DAC evaluation on this issue?

- ☐ **Yes**
- ☐ No
- ☐ No opinion

Avenue Louise 81
B-1050 Brussels, Belgium
78 Pall Mall, St James's
London SW1Y 5ES, UK
investeurope.eu
info@investeurope.eu
VAT: BE 0424 557 716
IBAN: BE33 33005785 0046
BIC/SWIFT: BBRUBEBB
European Transparency
Register: 60975211600-74

Please explain:

We agree with the outcome of the DAC evaluation. The Main Benefit Test and the associated hallmarks A1, A2 and A3 are inherently complex and are interpreted differently across Member States, which creates significant legal uncertainty and administrative burden for intermediaries and taxpayers. *In particular, the application of hallmark A3 is inconsistent, as Member States diverge on what constitutes "substantially standardised" documentation or structures and on whether a clear link to an expected tax advantage is required. These differences complicate cross-border assessments and increase the risk of over-reporting. Greater harmonisation at the EU level, including clearer definitions and a consistent approach to the connection with a tax benefit, would improve legal certainty and reduce unnecessary compliance burdens.*

Did you encounter issues with application of any other hallmarks?

	The description of the hallmark is clear and does not generate difficulty in application	The description of the hallmark is clear but occasionally raises questions in application	The description of the hallmark is unclear and challenging in application	The description of the hallmark is unclear and practically impossible to apply
B1 – transfer of Losses			**X**	
B2 – conversion of income into capital				**X**
B3 – circular / round tripping transaction			**X**	
C1a) Cross-border deductible payment – non-resident recipient		**X**		
C1b) I – no CIT (Corporate Income Tax)		**X**		

Avenue Louise 81
B-1050 Brussels, Belgium

78 Pall Mall, St James's
London SW1Y 5ES, UK

investeurope.eu
info@investeurope.eu

VAT: BE 0424 557 716
IBAN: BE33 33005785 0046
BIC/SWIFT: BBRUBEBB

European Transparency
Register: 60975211600-74

C1b) ii – non-cooperative jurisdiction		X		
C1c) – full exemption of benefits		X		
C1d) – preferential tax regime for benefits		X		
C2 – duplication of deductions		X		
C3 – duplication of relief from double taxation			X	
C4 – value of transfer of assets			X	
D1 – Circumvention of DAC2/CRS automatic exchange of Information			X	
D2 – non-transparent ownership chain			X	
E1 – unilateral safe harbour rules			X	
E2 – transfer of hard-to-value intangibles			X	
E3 – intragroup Cross-border transfers		X		

Please explain the reply

We have encountered significant issues with the application of several other hallmarks, primarily due to their overly broad drafting, lack of clear definitions, and inconsistent interpretation across Member States.

Avenue Louise 81
B-1050 Brussels, Belgium
78 Pall Mall, St James's
London SW1Y 5ES, UK
investeurope.eu
info@investeurope.eu
VAT: BE 0424 557 716
IBAN: BE33 33005785 0046
BIC/SWIFT: BBRUBEBB
European Transparency
Register: 60975211600-74

A recurring issue is that several hallmarks capture arrangements that are clearly not aggressive or harmful but nevertheless trigger reporting obligations through a mechanical application of the rules. This is particularly problematic for hallmarks that are not subject to the Main Benefit Test, as purely commercial, tax-neutral, or even tax-increasing transactions can still fall within scope, leading to over-reporting and limited added value for tax authorities.

In particular, Hallmarks E2 and E3 have proven difficult to apply in practice. Key concepts such as "cross-border transfer," "intragroup," and "EBIT" are not defined at EU level, resulting in divergent national interpretations. The EBIT-based test under Hallmark E3 may, for example, capture legitimate business reorganisations even where transactions are carried out at arm's length and do not erode the tax base. Moreover, the absence of thresholds means that immaterial transactions are often reportable.

Finally, Hallmarks B2 and B3 suffer from unclear definitions, leading to inconsistent reporting of income conversions and round-tripping arrangements. In some cases, these hallmarks overlap with existing EU anti-avoidance legislation, creating duplicative reporting obligations.

Overall, clearer EU-level guidance, more precise definitions, and a stronger focus on arrangements with genuine tax risk would significantly improve legal certainty and reduce disproportionate compliance burdens, while preserving the effectiveness of DAC6.

Article 8ab, paragraph 9 requires that in situations where there are multiple intermediaries involved in the same reportable cross-border arrangement, all of them are liable to report information. While this provides for complete information on the arrangement, it can also lead to duplicative reporting. Furthermore, if intermediaries do not report (e.g. in situations of legal professional privilege), the reporting obligation falls to the taxpayer.

Please indicate below which option to streamline reporting would you be in favour of:

- ☐ Taxpayer as a principal reporting subject, intermediaries secondary
- ☐ **Single report by intermediaries who are jointly liable**
- ☐ Taxpayer as a sole reporting subject
- ☐ Other
- ☐ No change to the current situation
- ☐ No opinion

Please explain

A joint reporting mechanism among intermediaries would allow the relevant information to be submitted once, while preserving accountability through joint liability. This approach would incentivise coordination among intermediaries, improve consistency and quality of the information reported, and significantly reduce unnecessary duplication. Clear rules on designation of a lead reporting intermediary and confirmation mechanisms for other intermediaries would further enhance legal certainty, including in situations involving legal professional privilege.

Avenue Louise 81
B-1050 Brussels, Belgium
78 Pall Mall, St James's
London SW1Y 5ES, UK
investeurope.eu
info@investeurope.eu
VAT: BE 0424 557 716
IBAN: BE33 33005785 0046
BIC/SWIFT: BBRUBEBB
European Transparency
Register: 60975211600-74

Additional views or information

Would you like to add any comments or suggestions on possible solutions to simplify and/or improve the functioning of DAC?

DAC6 plays an important role in promoting tax transparency, but its effectiveness could be significantly improved through greater harmonisation and proportionality in its application. Divergent interpretations of core concepts, particularly the Main Benefit Test and the notion of "tax advantage", create legal uncertainty and require intermediaries and taxpayers to assess the same arrangement under multiple national frameworks, leading to unnecessary compliance costs and over-reporting.

Clear, binding EU-level guidance on key definitions and hallmarks would substantially improve consistency across Member States. The FISCALIS programme could be used more effectively as a platform for convergence among tax authorities and for issuing practical interpretative guidance.

Procedural simplifications are also needed. Streamlining reporting obligations—for example, by enabling coordinated reporting among intermediaries and extending exemptions where full disclosure has already been made by another party—would reduce duplicative filings and administrative burden while maintaining comprehensive information for tax authorities.

Finally, greater transparency on how DAC6 data is used, combined with more aligned penalty regimes across Member States, would enhance proportionality, legal certainty, and trust in the system, ensuring DAC6 remains focused on genuinely aggressive cross-border tax planning.

Contact:

For further information, please contact Martin Bresson (martin.bresson@investeurope.eu) or Klaudia Luppino (klaudia.luppino@investeurope.eu) at Invest Europe.

Avenue Louise 81
B-1050 Brussels, Belgium
78 Pall Mall, St James's
London SW1Y 5ES, UK
investeurope.eu
info@investeurope.eu
VAT: BE 0424 557 716
IBAN: BE33 33005785 0046
BIC/SWIFT: BBRUBEBB
European Transparency
Register: 60975211600-74