

Further thoughts on DAC6

As a follow-up to our previous letter, we would like to provide additional reflections on Council Directive (EU) 2018/822 of 25 May 2018 ("DAC6"). This directive represents a significant amendment to the Directive on Administrative Cooperation, which is the primary legislative framework governing the exchange of information and cooperation between EU Member States in the area of direct taxation. Over the years, the DAC has evolved through several iterations, each expanding its scope with the aim of enhancing transparency and combating aggressive tax planning by multinational enterprises.

DAC6, in particular, introduced a mandatory disclosure regime for potentially aggressive cross-border arrangements. It requires that any such arrangement involving at least one EU Member State be reported to the relevant tax authorities, provided it meets one or more predefined "hallmarks." These hallmarks serve as indicators of potential tax avoidance schemes. The reporting obligation generally falls on EU-based intermediaries, though taxpayers themselves may also bear this responsibility in certain cases.

Now in force since 2018, DAC6 has proven to require a disproportionately high compliance workload. In practice, nearly every cross-border transaction must be assessed against the hallmarks, resulting in a significant administrative burden. However, experience over the past seven years indicates that reportable cases are rare, raising concerns about the balance between the effort involved and the actual outcomes. Furthermore, in the limited number of cases where disclosures have been made, we are not aware of any substantive follow-up or enforcement action by tax authorities—casting doubt on the practical utility of the information collected under DAC6.

In addition, the introduction of the OECD's Pillar 2 framework since 2018 has established a global minimum corporate tax rate of 15%, further addressing concerns around base erosion and profit shifting. This new standard arguably renders aspects of DAC6 redundant, as it achieves similar anti-avoidance goals through a different mechanism.

In this note, we therefore focus on the ongoing ambiguities and practical limitations of DAC6—particularly regarding the interpretation of hallmarks and the inconsistent implementation across Member States—and question its continued effectiveness in the context of evolving international tax standards.

1. Promoting Consistency and Reducing Administrative Burden in the Application of DAC6

Invest Europe supports the objectives of DAC6 in promoting tax transparency and curbing aggressive cross-border tax planning. However, we believe that the administrative burden associated with the Directive can be significantly reduced—without undermining its goals—through a more harmonised and proportionate approach to its implementation across EU Member States.

A key challenge lies in the inconsistent interpretation and application of fundamental concepts, such as the Main Benefit Test outlined in Annex IV of the Directive. Member States have adopted widely divergent definitions of what constitutes a "tax advantage." For instance:

- Some jurisdictions limit the concept to tax benefits within the EU, while others—such as Germany and Austria—include advantages obtained in third countries.
- Luxembourg excludes tax outcomes that are aligned with the legislative intent of the relevant rules, whereas other Member States provide no such clarification.

This fragmentation means that cross-border arrangements often require complex assessments under multiple national frameworks to determine whether a reporting obligation exists—significantly increasing legal uncertainty and compliance costs for intermediaries and investors.

To address this, we recommend that the legislator takes steps to promote greater alignment in the interpretation and application of DAC6 provisions. This could include the issuance of detailed, binding guidance on key definitions—particularly the scope of the "tax advantage"—to ensure legal certainty and reduce unnecessary reporting.

We further suggest that the FISCALIS programme be leveraged more effectively as a forum for dialogue and convergence among Member State tax authorities. A more coordinated EU-wide approach would help ensure that DAC6 remains a meaningful and efficient tool for tax transparency—rather than a source of disproportionate compliance burden for the European investment community.

2. Refining Hallmarks to Ensure Proportionality and Focus

Under DAC6, transactions are deemed potentially aggressive if they fall within one of five categories of hallmarks. As stated in Recital 9 of the Directive, the aim was to identify transactions that present a strong indication of tax avoidance or abuse by compiling a list of features—so-called "hallmarks"—rather than attempting to define "*aggressive tax planning*" itself.

While we understand the intention was to keep the hallmarks sufficiently broad to address evolving and innovative tax planning structures, in practice, the definitions are often too expansive. As a result, the current scope of some hallmarks goes beyond the original intent of the Directive and inadvertently captures routine cross-border transactions that present no genuine risk of tax avoidance.

This issue is particularly pronounced for hallmarks that are not subject to the Main Benefit Test. These can trigger reporting obligations for arrangements that are clearly commercial and non-abusive. For example, the reference to EBIT in hallmark E3 can automatically capture legitimate group reorganisations or financing structures with no tax avoidance motive—leading to unnecessary disclosures and administrative costs.

To improve legal certainty and reduce excessive compliance burdens, we recommend that the scope of certain hallmarks be refined and clarified in a way that continues to fulfil the Directive's underlying objectives. A more targeted and proportionate approach would allow tax authorities to focus on genuinely high-risk transactions while reducing unnecessary reporting by intermediaries and taxpayers.

As part of a broader harmonisation effort across Member States, we believe this refinement should be coordinated at the EU level, with guidance issued by the European Commission.

3. Enhance the Precision of Hallmarks and Streamlining Reporting Procedures

To further align DAC6 with its intended focus on genuinely aggressive cross-border tax planning—and to alleviate disproportionate compliance burdens—we propose targeted refinements to key hallmarks and certain procedural rules:

3.1 Hallmarks E2 & E3

Hallmarks E2 and E3 have proven to be among the most frequently reported under DAC6. However, their broad and sometimes ambiguous drafting has resulted in inconsistent application across Member States and a high volume of reports that often do not reflect aggressive tax planning.

Hallmark E2 targets arrangements involving the transfer of hard-to-value intangibles. The wording of the hallmark does not explicitly require that the transfer be cross-border, which has led to confusion as to whether purely domestic transfers could fall within scope if they form part of a broader cross-border arrangement. We believe that the intent of the Directive was to address cross-border tax planning risks, and therefore recommend clarifying that this hallmark should apply exclusively to cross-border transfers of such intangibles.

Hallmark E3, which applies to intragroup cross-border transfers of functions, assets, or risks that significantly reduce EBIT, raises several interpretative challenges. Key terms such as “intragroup,” “cross-border transfer,” and “EBIT” are undefined in the Directive, resulting in divergent national interpretations. For instance, some Member States align “intragroup” with the OECD concept of “associated enterprises,” while others apply it more broadly, including internal transfers between a head office and its permanent establishment. Similarly, differences persist regarding what constitutes a cross-border transfer—particularly where the legal entities involved are situated in different jurisdictions but the assets remain within one country’s tax base.

The application of the EBIT test has also proven problematic. As an accounting measure, EBIT may be interpreted inconsistently across jurisdictions—particularly in terms of whether non-operating income such as dividends is included, or whether share transfers fall within scope. In addition, the relevance of arm’s-length remuneration remains unclear; some interpret the test as applying regardless of whether a transfer is appropriately priced under OECD guidelines, raising concerns about whether legitimate commercial transactions are being inappropriately flagged.

Importantly, these hallmarks are not subject to the Main Benefit Test, meaning that even tax-neutral or tax-increasing transactions—such as transfers from low- to high-tax jurisdictions—can still trigger reporting obligations. This adds significantly to compliance burdens while offering little added value in terms of identifying aggressive tax planning.

To address these concerns, we suggest that the European Commission provide targeted interpretative guidance to harmonise the application of Hallmarks E2 and E3 across Member States. Introducing a minimum value threshold could help exclude immaterial transactions from the scope, thereby focusing resources on arrangements that present genuine tax risks. In the case of Hallmark E3, the Directive should clarify that any remuneration received by the transferee must be taken into account when applying the EBIT test.

We also recommend considering the introduction of a tax-based test—similar to the Main Benefit Test—for these hallmarks, ensuring that only transactions with meaningful tax consequences are subject to mandatory disclosure. Lastly, where relevant, transfers falling within the scope of other EU Directives, such as the Merger Directive, should be excluded from DAC6 reporting to avoid regulatory overlap.

These refinements would significantly improve legal certainty and reduce excessive compliance obligations, all while preserving the integrity and intent of DAC6 as a tool for addressing cross-border tax avoidance.

Recommendations:

1. Issue EU-level guidance—ideally under FISCALIS—on these ambiguous terms to harmonise application.
2. Introduce a de minimis valuation threshold to exclude immaterial transfers from E2/E3.
3. Clarify that any remuneration received by the transferee reduces the EBIT impact.

4. Consider extending the Main Benefit Test to E2/E3, or introduce a targeted tax-impact test that captures only transactions affecting Member State tax bases.
5. Exclude transactions already covered by other EU Directives (e.g., the Merger Directive) from E2/E3 scope.

3.2 Hallmark A3

Hallmark A3 captures “*substantially standardised documentation and/or structure*,” but Member States vary in whether they require both documentation *and* structure to be standardised, and whether a clear link to the expected tax advantage is needed. Some even maintain whitelists of approved arrangements.

Recommendation:

Harmonise A3 by defining “substantially standardised” at EU level and requiring a demonstrable connection to a tax benefit—while allowing benign, pre-approved arrangements to be excluded.

3.3 Hallmarks B2 & B3

Definitions of “converting income” (B2) and “round-tripping of funds” (B3) are currently unclear, leading to inconsistent reporting.

Recommendation:

Publish practical examples and detailed definitions to ensure uniform interpretation.

3.4 Procedural Improvements

Beyond the substantive interpretation of hallmarks, the operation of DAC6 in practice has revealed a number of procedural issues that unnecessarily increase the compliance burden for intermediaries and taxpayers without materially improving the quality or relevance of the information received by tax authorities.

One of the key concerns relates to the extremely short 30-day timeframe currently imposed for reporting cross-border arrangements. Given the complexity of the rules, the need to assess multiple jurisdictions’ interpretations, and the involvement of several intermediaries in cross-border transactions, this deadline often proves difficult to meet in practice. Extending the reporting deadline to 90 days would provide taxpayers and intermediaries with a more reasonable window to conduct a thorough analysis and ensure the quality and accuracy of submissions, without undermining the Directive’s objective of timely information exchange.

Another area requiring attention is the rule on exemptions from reporting obligations where the same information has already been filed. Under the current regime, an intermediary may be exempt from filing only if it can demonstrate that another intermediary has already submitted the relevant information. However, no such exemption applies where it is the *relevant taxpayer* who has made the disclosure. This can lead to duplicative filings by intermediaries, even where full disclosure has already been made by the taxpayer. We recommend extending the exemption to cover cases where the intermediary has reliable proof that the relevant taxpayer has filed the required information, thereby reducing redundant compliance effort.

We also note a structural imbalance in how reporting obligations are applied across different types of advisors. In several Member States, legal professionals benefit from client confidentiality protections or legal privilege that limit their obligation to report, while non-legal intermediaries offering the same

tax advisory services are subject to full disclosure requirements. This creates an unlevel playing field and can distort competition within the professional services market. A more consistent approach to the application of DAC6 obligations across all intermediaries—while respecting legal privilege in appropriate cases—would support a fairer and more effective system.

Addressing these procedural shortcomings would not only reduce administrative burdens but would also improve the usability of the data collected by tax authorities. In turn, this would contribute to a more balanced and proportionate implementation of DAC6 that remains fully aligned with its policy objectives.

Conclusion

As the international tax landscape continues to evolve—particularly with the adoption of the OECD’s Pillar 2 global minimum tax—it is timely to reassess the effectiveness and proportionality of DAC6 within the broader EU tax framework.

The introduction of Pillar 2 has, to some extent, addressed many of the concerns that DAC6 was designed to confront—particularly around base erosion and profit shifting by multinational enterprises. However, the long-term stability and global alignment of Pillar 2 remain uncertain. In particular, the possibility of a future U.S. withdrawal from the Pillar 2 framework raises legitimate concerns about the coherence and effectiveness of the international minimum tax standard. In such a scenario, EU Member States may need to reconsider how DAC6 interacts with broader tax transparency and anti-avoidance goals in a fragmented global environment.

While the Directive was introduced with the important objective of increasing transparency and addressing aggressive cross-border tax planning, its practical implementation has shown significant shortcomings. The complexity, interpretative divergence among Member States, and the administrative burden it imposes—particularly in relation to transactions with little or no tax avoidance potential—have raised serious questions about its ongoing fitness for purpose.

In this context, we welcome the renewed focus on simplification and competitiveness reflected in recent EU-level initiatives. The Council’s Tax Decluttering and Simplification Agenda, as well as the European Parliament’s reflections on The Role of Simple Tax Rules and Tax Fragmentation in European Competitiveness, rightly recognise that a more coherent, predictable, and streamlined tax environment is essential to supporting investment and economic growth across the Single Market. DAC6, as currently applied, sits uncomfortably with these ambitions. Without reform, it risks continuing to divert resources away from productive activity and toward overly complex compliance tasks that offer little added value to tax administrations.

We believe that a focused recalibration of DAC6—clarifying and narrowing the scope of hallmarks, harmonising interpretations across Member States, introducing materiality thresholds, and simplifying reporting procedures—would significantly improve the regime. Such reforms would better align the Directive with the EU’s broader competitiveness and simplification agenda, helping to ensure that it remains a meaningful transparency tool rather than a source of regulatory overreach.

Invest Europe remains committed to engaging constructively with EU institutions and Member States in shaping a more proportionate, effective, and business-friendly implementation of DAC6.



As always, we are at your service to meet with you, and/or any other relevant colleagues, to further explore and delve deeper into any of the points raised if that would be beneficial.

Yours sincerely,

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