

STEP-BY-STEP PLAN

Obligation to report under DAC6?

Inventory of cross-border tax arrangements

QUESTION 1

ARE AT LEAST TWO COUNTRIES INVOLVED IN ANY WAY?

YES: Proceed to question 2

NO: NO OBLIGATION TO REPORT

QUESTION 2

ARE THERE ONE OR MORE OF THE FOLLOWING HALLMARKS?

- A. There is a deductible cross-border payment, and the recipient is not resident for tax purposes in either country;
- B. The recipient is resident in a country that has been classified by the OECD as non-cooperative;
The same write-off is claimed in more than one country;
- D. Prevention of double taxation is claimed in more than one country on the same item of income or capital;
- E. A tax arrangement involving the transfer of assets where in the countries concerned there is a material difference between the amount considered there as payment for the assets;
The tax arrangement may undermine the reporting obligation under EU legislation or equivalent agreements on the automatic exchange of financial accounts;
A tax arrangement in which the legal or actual ownership is not transparent;
- H. A tax arrangement using unilateral safe-harbour rules for transfer pricing (this is the case, for example, if a commercial interest rate of 5% is deductible in the Netherlands and is taxed in the recipient country on the basis of transfer pricing rules applicable there, but only 3% interest is taxed there);
- I. A tax arrangement involving the transfer of intangible fixed assets that are difficult to value;
and/or
- J. An intra-group cross-border transfer with the result that the estimated profit of the transferor decreases by at least 50% in the three years following the transfer.

YES: Proceed to question 5

NO: Proceed to question 3

QUESTION 3

IS THE 'MAIN BENEFIT TEST' MET? SO IS THE MAIN BENEFIT OR ONE OF THE MAIN BENEFITS OF THE TAX ARRANGEMENT REALISING A TAX BENEFIT?

YES: Proceed to question 4

NO: NO OBLIGATION TO REPORT

QUESTION 4

ARE THERE ONE OR MORE OF THE FOLLOWING HALLMARKS:

- A. Has the taxpayer or any other participant in the tax arrangement committed himself to secrecy, and is that party on this basis not allowed to disclose to other intermediaries or to the Tax and Customs Administration how the tax arrangement can provide a tax benefit;
- B. Is the remuneration of the intermediary dependent on the tax benefit;
- C. Is use made of standard documents and/or a standard tax arrangement that is/are available to more than one taxpayer without substantial adjustments;
- D. An arrangement whereby, through a series of planned steps, a loss-making enterprise is bought, the main activity is discontinued and the losses are used to reduce the payable tax, including by transfer to another country or by accelerated use of the losses;
- E. An arrangement whereby revenues are converted into capital, gifts, or other categories of income that are taxed lower or are exempted;
- F. Circular transactions that result in funds being pumped around without a primary commercial purpose, transactions that cancel each other out or that have other similar characteristics; and/or
- G. There is a deductible cross-border payment, whereby in the receiving country:
 - * no or virtually no corporate income tax is levied;
 - * the income is exempted; or
 - * the payment falls under a favourable tax regime.

YES: Proceed to question 5

NO: NO OBLIGATION TO REPORT

QUESTION 5
HAS AN INTERMEDIARY BEEN INVOLVED?

YES: *Proceed to question 6*

NO: YOU YOURSELF HAVE AN OBLIGATION TO REPORT

QUESTION 6
HAS ONLY AN INTERMEDIARY FROM OUTSIDE THE EU BEEN INVOLVED?

YES: YOU YOURSELF HAVE AN OBLIGATION TO REPORT

NO: *Proceed to question 7*

QUESTION 7
HAS THE INTERMEDIARY INVOKED HIS PROFESSIONAL RIGHT OF NON-DISCLOSURE AND INFORMED YOU OF THAT?

YES: YOU YOURSELF HAVE AN OBLIGATION TO REPORT

NO: YOU DO NOT HAVE AN OBLIGATION TO REPORT