

Denmark

DAC 6 Domestic Implementation



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General Information

Territory	Denmark
Tax authority	Skattestyrelsen ("SKAT")
Status of legislation	Implemented. Deadline for reporting is extended in accordance with EU guidelines. Entry into force on 1 January 2021. Reportable transactions for which first implementation step took place between 25 June 2018 and 31 December 2020 need to be reported by 28 February 2021.
Taxes covered	Income taxes, inheritance taxes, property taxes etc. Taxes are defined in accordance with EU regulations.
Taxes excluded	VAT and certain duties under the EU Customs Code
Domestic transactions	No

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Definitions further clarified by guidance

Relevant taxpayer	Any person to whom a reportable cross-border arrangement is made available for implementation, or who is ready to implement a reportable cross-border arrangement or has taken the first step towards implementation
Associated enterprise	A person who is related to another person in at least one of the following ways: a) a person participates in the management of another person and is in a position to exercise significant influence over the other person; b) a person participates in the control of another person through a holding that exceeds 25 % of the voting rights; c) a person participates in the capital of another person through a right of ownership that (directly or indirectly) exceeds 25 % of the capital; d) a person is entitled to 25% or more of the profits of another person.
Marketable arrangement	A crossborder arrangement is marketable if it is designed, marketed, ready for implementation or made available for implementation to be used without the need to be substantially customized. The Danish tax authorities have announced that minor or insignificant changes to an arrangement would not exclude the arrangement from the definition.

Cross-border arrangement

An arrangement concerning either more than one Member State or a Member State and a third country where at least one of the following conditions is met:

- a)** not all of the participants in the arrangement are resident for tax purposes in the same jurisdiction;
- b)** one or more of the participants in the arrangement is simultaneously resident for tax purposes in more than one jurisdiction;
- c)** one or more of the participants in the arrangement carries on a business in another jurisdiction through a permanent establishment situated in that jurisdiction and the arrangement forms part or the whole of the business of that permanent establishment, i.e the arrangement regards a PE abroad;
- d)** one or more of the participants in the arrangement carries on an activity in another jurisdiction without being resident for tax purposes or creating a permanent establishment situated in that jurisdiction, i.e at least one participant has activity in another country;
- e)** such arrangement has a possible impact on the automatic exchange of information or the identification of beneficial ownership.

The term "arrangement" shall also include a series of arrangements. An arrangement may comprise more than one step or part.

Intermediary

Any person that designs, markets, organizes or makes available for implementation or manages the implementation of a reportable cross-border arrangement. It also means any person that, having regard to the relevant facts and circumstances and based on available information and the relevant expertise and understanding required to provide such services, knows or could be reasonably expected to know that they have undertaken to provide, directly or by means of other persons, aid, assistance or advice with respect to designing, marketing, organizing, making available for implementation or managing the implementation of a reportable cross-border arrangement.

Tax advantage

The assessment of the tax advantage should be made on a case by case basis, comparing the tax situation with the arrangement and the tax situation without.

A tax advantage should be considered to arise if, through the arrangement, taxes are to be refunded, tax rebates granted or increased, tax claims waived or reduced or the arising of tax claims is prevented or shifted to other tax periods or tax dates. Similarly, the avoidance of tax withholding is seen as a tax advantage

Legally provided tax advantages due to domestic legislation are not in themselves included in the definition.

Tax advantage continued

The tax advantage should be anticipated when participating in the arrangement, i.e. circumstantial/unexpected tax advantages do not trigger reporting obligations. On the other side, tax advantages that could be expected are subject to reporting obligations notwithstanding this was actually not a part of the participant considerations.

Made available for implementation

Cross-border arrangements are made available for implementation if the intermediary has handed over to the user the information or documents that are required for the implementation. The actual implementation of the arrangement is not required.

Hallmark

A characteristic or feature of a cross-border arrangement that presents an indication of a potential risk of tax avoidance.

3 Additional hallmarks

Additional hallmarks None

4 Operation of legal professional privilege (lpp)

Operation of legal professional privilege (LPP)

For intermediates who are protected by legal professional privilege (which in Denmark solely are lawyers) and the advice provided is subject to secrecy under the ethical guidelines for lawyers, and where the reporting is not done by other intermediates, the reporting obligation shift to the user/client if

- 1) the intermediate provides the client with the needed information to report, and
- 2) the intermediate subsequently documents to the intermediate protected by LPP that reporting has been done.

If this is not documented by the client within the reporting deadline, the intermediate should still report the information.

Exempted from this are situations where the intermediate by performing the reporting would in reality incriminate the client. (I.e. if the intermediate claims to be exempted this is also an indication that the advice provided relates to possibly criminal activities)

In given case the intermediate subject to LPP should immediately notify other involved intermediates about this, and this intermediate should then do the reporting.

If there is no other intermediate and the intermediate subject to LPP is exempted from reporting, the reporting obligation lies upon the client.

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Reporting deadline

Intermediaries

Within 30 days following:

- a)** the day after the reportable cross-border arrangement is made available for implementation; or
- b)** the day after the reportable cross-border arrangement is ready for implementation; or
- c)** the moment when the first step in the implementation of the reportable cross-border arrangement is made, whichever of a-c occurs first.

The reporting obligation applies notwithstanding the arrangement is carried through or not, and intermediaries are thus required to file information within 30 days beginning on the day after they provided, directly or by means of other persons, aid, assistance or advice.

Reportable transactions for which first implementation step took place between 25 June 2018 and 31 December 2020 need to be reported by 28 February 2021.

For marketable arrangements, the intermediary is required to file a periodic report with all new details of already reported arrangements every 3 months.

Users (where LPP applies)

Within 30 days following:

- a)** the day after the reportable cross-border arrangement is made available for implementation; or
- b)** the day after the reportable cross-border arrangement is ready for implementation; or
- c)** when the first step in the implementation of the reportable cross-border arrangement has been made, whichever occurs first.

Reportable transactions for which first implementation step took place between 25 June 2018 and 31 December 2020 need to be reported by 28 February 2021.

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Reporting principles for intermediary

Circumstances in which intermediary is obliged to report	Intermediary is obliged to report information that is within their knowledge, possession or control on reportable cross-border arrangements.
Obligation to inform user what data was communicated	No
Priority of reporting where multi member state reporting obligations exist	<p>Where the intermediary is liable to file information on reportable cross-border arrangements with the competent authorities of more than one Member State, such information shall be filed only in the Member State that features first in the list below:</p> <p>a) the Member State where the intermediary is resident for tax purposes;</p> <p>b) the Member State where the intermediary has a permanent establishment through which the services with respect to the arrangement are provided;</p> <p>c) the Member State which the intermediary is incorporated in or governed by the laws of;</p> <p>d) the Member State where the intermediary is registered with a professional association related to legal, taxation or consultancy services.</p>
Circumstances under which intermediary not required to report	<p>In case of multiple reporting obligations, the intermediary shall be exempt from filing if it has proof, in accordance with national law, that the same information has been filed in another Member State or that the required information has been reported by another intermediary.</p> <p>The intermediary shall also be exempt from filing the information if he is bound by legal professional privilege and has notified the other intermediaries or in absence thereof, the relevant taxpayer. Please see section regarding legal professional privilege/LPP.</p>
What will the tax authorities provide for the notification received	The Danish tax authorities have not yet issued details of the reporting system, hereunder the documentaion to be provided for filed information.

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Reporting principles for taxpayer

Circumstances in which taxpayer is obliged to report	<p>The relevant taxpayer is obliged to report if:</p> <p>a) no intermediary was involved in the design, marketing, organizing or making available for implementation or managing the implementation of a reportable cross-border arrangement; or</p> <p>b) he has been notified by the intermediary that the intermediary is bound by legal professional privilege (please see section regarding legal professional privilege/LPP)</p>
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Priority of reporting where multiple taxpayers are involved

Where multiple users are involved, the user that is to file for all general (non-user related) information will be the one that features first in the list below (provided the intermediate is exempted due to legal professional privilege):

- 1) The user that agreed the arrangement with the intermediary; or
- 2) The user that is managing the implementation of the arrangement.

The Danish tax authorities have expressed that the legislation cannot in all situation rule out that double reporting has to be done.

Circumstances under which taxpayer not required to report

There is evidence that the arrangement has been reported by an intermediary; or

There is evidence that the arrangement has been reported by another taxable person; or

There is evidence that the arrangement has been reported in another Member State.

Proof that reporting obligation is satisfied by other taxpayer

There is no legal definition of which documentation has to be provided, i.e. there is no formal requirements and in accordance with Danish legal practice the proof just have to be "sufficient".

Evidence has to be provided in writing. Currently no further practical guidance as to reporting method is provided by the Danish authorities but It is anticipated that this will at least require reference/case numbers and some kind receipt from the relevant authorities

8 Reporting principles applicable to all

Language

The mandatory information to be reported can be submitted in Danish and/ or English.

Information of

- the applicable hallmarks
- the description/characteristics of the arrangement
- the national legislation effected by/related to the reportable arrangement

must in any case be provided in English

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Penalties

Circumstances in which penalties may apply

Penalties might apply in cases where the involved parties (users or intermediaries) by intent or by gross negligence

- provide incorrect or misleading information
- do not file information in due time
- do not file reportable information
- do not register for reporting obligations in due time

Amount

Fines between DKK 25.000 and DKK 400.000 (approx.. EUR 3.300 and EUR 53.500) apply.

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Country specifics

Country specifics / deviation from EU directive

Businesses and intermediaries to register as subject to reporting obligations must register for this no later than 8 days after the reporting obligation sets in. For businesses and intermediaries with reporting obligations for arrangements initiated in the period between 25 June 2018 and 31 December 2020 this means that the deadline for registering is 8 January 2021.



Poul Landergren
Head of Tax
pla@bakertilly.dk