

# WHITEPAPER

## IS CBA A PRIORITY FOR YOU RIGHT NOW?

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The sixth amendment (EU-2018/822) of the EU directive on administrative cooperation (aka: DAC6) requires member states to disclose aggressive cross-border tax arrangements (CBA's). These disclosures will be placed in a central EU directory to be reviewed and used by relevant member states.

### Intermediary

The primary obligation to file a CBA lies with the intermediary that designs, markets, organizes or makes available for implementation or manages the implementation of a reportable CBA. This obligation also exists for intermediaries who, directly or by means of other persons, provided aid, assistance of advice with regard to the aforementioned activities.

Additionally, an intermediary has to:

- be resident for tax purposes in a Member State; or
- have a permanent establishment in a Member State through which the services with respect to the arrangement are provided; or
- be incorporated in, or governed by the laws of, a Member State; or
- be registered with a professional association related to legal, taxation or consultancy services in a Member State.

In principle, all intermediaries should file the CBA. Any relevant intermediary shall only be exempt from filing the information to the extent that it makes use of its right of legal professional privilege or has proof, that the same information has already been filed in another Member State or by another relevant intermediary.

For intermediaries that are protected by legal professional privilege (including auditors, attorneys and tax advisors), the reporting obligation with respect to certain personal data of the cross-border tax arrangement would partly shift to the user provided that:

- 1) the intermediary has informed the user about the possibility to discharge the intermediary from its client confidentiality obligations;
- 2) the user has not discharged the intermediary from the obligation of secrecy; and
- 3) the intermediary has submitted the data they hold on the implementation of the arrangement to the user of the tax arrangement.

Please note that some Member States not allow intermediaries to make use of the right of privilege for so-called marketable arrangements.

### Taxpayer

A relevant taxpayer, and not the intermediary, is likely to need to report to the tax authorities directly in three situations:

- All involved intermediaries are based outside EU
- The EU intermediary(ies) involved benefit from a legal professional privilege
- There is no intermediary (in-house schemes...)

It is possible that multiple relevant taxpayers are involved in a CBA. In that case, the relevant taxpayer that is to file the CBA is the one that:

- agreed on the reportable cross-border arrangement with the intermediary; or
- manages the implementation of the arrangement.

Any relevant taxpayer shall only be exempt from filing the information to the extent that it has proof that the same information has already been filed by another relevant taxpayer.

### **More information**

Visit [www.tax-model.com/dac6pro](http://www.tax-model.com/dac6pro) for more information about the MDR/DAC6 regulation and DAC6pro. Ask your questions through our live chat or via [dac6pro@tax-model.com](mailto:dac6pro@tax-model.com).