



**Rabobank**



# DAC6 Mandatory Disclosure Rules

## FAQ

DAC stands for 'Directive on Administrative Cooperation'. This is a EU Directive that deals with the exchange of information between EU tax authorities. EU Member States are obliged to incorporate EU Directives like this one in their domestic laws.

### **What is DAC6?**

DAC6 is the 6th version of the original Directive. Each new version adds a new topic to the exchange of information. DAC6 deals with the exchange of information regarding potentially aggressive tax planning using specific cross-border "arrangements".

### **What is an arrangement according to DAC6? What is a RCBA?**

DAC6 does not provide a definition of an "arrangement". It can be many things, e.g. a simple transfer of funds between two bank accounts or a complex corporate structure including an entity in a tax haven. Relevant for the application of DAC6 is that an arrangement includes a cross-border element.

All cross-border arrangements that meet one or more hallmarks will have to be reported to the relevant tax authorities. Such arrangements are called Reportable Cross-Border Arrangements ("RCBA").

### **What kind of hallmarks should I think of?**

In DAC6 a number of hallmarks are included and more can be added in future years. The current list of hallmarks covers a broad spectrum of forms of possible cross-border tax planning arrangements.

For example, there is a hallmark that determines that a cross-border arrangement may have to be reported if the fee of the involved tax adviser is fixed by reference of the amount of the tax advantage derived from the arrangement. Another example is a payment of money to an associated enterprise in another country where the payment is deductible in one country and not or almost not taxed in the other country.

## How do the tax authorities get the information that is to be exchanged?

In addition to taxpayers almost always external parties will be involved in a RCBA. For example, the tax adviser that designs the arrangement, the lawyer that drafts the required contracts, the bank that makes its products available, etc.

These parties are called “intermediaries” in DAC6. EU based intermediaries are obliged to report all RCBA’s in which they are involved to the tax authorities. Not meeting this obligation may lead to substantial fines. An intermediary does not have to report if this would mean breaching legal professional privilege or if he is certain that another intermediary will report. In the latter case he will have to receive the reference number of the registration from the other intermediary.

Sometimes no intermediary will be involved. In such cases a taxpayer will have to report itself. In all other cases the taxpayer is not allowed to file a report.

## What needs to be reported?

A wide range of information needs to be filed, including:

- For which taxpayers the arrangement will create a benefit.
- The content of the arrangement and the hallmarks that make the arrangement reportable.
- The value of the arrangement.
- Which other intermediaries are involved.

## What are tax authorities doing with the information received?

First of all, the information is shared with the tax authorities of other EU Member States that are involved in the RCBA. Based on the information filed the tax authorities get a better picture of arrangements that are used often and of the amounts of tax that may be avoided. That is important information to adjust tax laws and make avoidance harder and harder.

## Which timelines apply to DAC6?

DAC6 applies to RCBA’s as from 25 June 2018. The actual reporting by intermediaries to tax authorities in the Netherlands and most other EU Member States starts at 1 January 2021. As from that date new RCBA’s need to be reported, usually within 30 days after the RCBA is made available or ready for implementation.

## Is Rabobank an intermediary?

Rabobank does not provide tax advice en will therefore never play an active role in designing or organising the implementation of an RCBA. Also, products and services offered by Rabobank are not designed for avoiding taxes. But in some cases, Rabobank products can nevertheless be used as part of a RCBA. In such situations Rabobank can be an intermediary.

## Wat does Rabobank do if there is a RCBA?

Rabobank thinks it is not in the best interest of the taxpayer if each intermediary involved files a report. That is why Rabobank thinks that the taxpayer should determine which intermediary has most knowledge of the RCBA and preferably files the report. Usually that will be the tax adviser that designed the RCBA and not Rabobank.

If Rabobank detects a RCBA it will get in touch with the taxpayer to agree which person will file the report. If necessary, Rabobank itself will do that.

### **My question is not included**

The website of the [Dutch tax authorities](#) contains more information.