

# **Guide to Exchange of Information under Council Directive 2011/16/EU, Ireland's Double Taxation Agreements and Tax Information Exchange Agreements and the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters**

## **Part 35-01-01a**

### **Role of International Tax Division**

Document last updated September 2022

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## Scope of this guide

Exchange of taxpayer information between Revenue and other tax administrations is provided for in various legal instruments such as Ireland's Double Taxation Agreements. The extent of the exchange provided for, and the taxes covered, depend on the provisions in the relevant instrument.

This Guide sets out:

- the role of Exchange of Information Branch, International Tax Division, in relation to exchange of information under Council Directive 2011/16/EU on administrative cooperation in the field of taxation, Ireland's Double Taxation Agreements and Tax Information Exchange Agreements and the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters;
- the procedures for dealing with the making of requests for information and the receipt of requests for information in relation to those requests that fall to Exchange of Information Branch to process; and
- an overview of the Automatic Exchange of Information agreements in operation in Ireland, including the legal instruments under which the information is exchanged and the restrictions on the use of the information received from other jurisdictions under these agreements.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

## 1. What is Exchange of Information (EOI)?

EOI is the cross-border sharing of information between tax administrations to detect and prevent tax evasion and to ensure, among other things, the correct application of a Jurisdiction's domestic tax legislation.

### 1.1 Why Is It Important To Exchange Information?

Many taxpayers now operate cross-border and, therefore, tax administrations need to co-operate with each other to protect their respective tax bases. One of the key elements of this co-operation is EOI.

### 1.2 What Is The Legal Basis For Exchanging Information?

Information may be exchanged under the following legal instruments:

- Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC ("[Council Directive 2011/16/EU](#)"). The relevant national implementing provision is [S.I. 549 of 2012 \(European Union \(Administrative Cooperation in the field of Taxation\) Regulations, 2012\)](#).
- The Exchange of Information Article (usually Article 26) in Ireland's Double Taxation Agreements ("[DTAs](#)"). Ireland's DTAs are given force of law under Section 826(1) of the Taxes Consolidation Act 1997, as amended. All of Ireland's DTAs contain an Exchange of Information Article.
- Ireland's Tax Information Exchange Agreements ("[TIEAs](#)"). Ireland's TIEAs are given force of law under Section 826(1B) of the Taxes Consolidation Act, 1997, as amended.
- OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters ("the [Convention](#)"). The relevant national implementing provision is [S.I. 34 of 2013 \(Mutual Assistance in Tax Matters Order 2013\)](#).

In addition, information is exchanged automatically under a number of legal instruments. See [section 3](#) for further details on these instruments.

### 1.3 With Which Jurisdictions Does Ireland Exchange Information?

Council Directive 2011/16/EU enables information to be exchanged between all Member States of the EU.

Ireland has a wide network of DTAs and TIEAs and new agreements are in the pipeline. Details of [DTAs](#) and [TIEAs](#) in effect and under negotiation are available on our website.

The Convention enables information to be exchanged among those jurisdictions that are Parties to that Convention. A [list](#) of those jurisdictions is available on the [OECD website](#).

### 1.4 What Taxes Are Covered?

Council Directive 2011/16/EU provides for the exchange of information relating to taxes of “any kind levied by, or on behalf of, a Member State or the Member State’s territorial or administrative subdivisions, including the local authorities”. However, Council Directive 2011/16/EU does not provide for exchanges relating to VAT, customs duties, and EU excise duties as these are covered by other EU legislation on administrative cooperation between Member States.

Ireland’s older DTAs provide for exchange of information relating to direct taxes only. However, more recent DTAs provide for exchange of information relating to taxes of every kind and description.



All of Ireland's [TIEAs](#) provide for the exchange of information relating to direct taxes and to such other taxes as are specified in the TIEA.

The Convention provides for the exchange of information relating to direct taxes and taxes on net wealth. Parties to the Convention may also agree that information may be exchanged in relation to other taxes listed in the Convention. Information on the taxes in respect of which information may be exchanged between Ireland and other Parties to the Convention is available by the [Council of Europe website](#).

### 1.5 Does A Person Need To Be Authorised To Exchange Information With Another Jurisdiction?

Yes. Taxpayer information is confidential and may only be exchanged by persons authorised by the Board of the Revenue Commissioners to effect such exchanges. Certain staff in Exchange of Information Branch are so authorised. Every exchange of information, whether incoming to Ireland or going out from Ireland, must be effected by an authorised person in Exchange of Information Branch.

### 1.6 How Is Information Actually Exchanged?

Information is usually exchanged on request, spontaneously or automatically.

## 2. Exchange of Information on Request

### 2.1 Requests for Information Initiated by Revenue

#### 2.1.1 What Is EOI On Request?

EOI on request is where a tax administration has a particular case in mind. For example, during a compliance intervention the Revenue Officer may become aware of UK-source income and may wish to have the quantum of the income verified by HMRC.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

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#### 2.1.3 How Far Back In Time Can I Go In Requesting Information?

Council Directive 2011/16/EU and Ireland's DTAs (with the exception of the DTA with Switzerland) do not contain any time limits in relation to requesting information from another tax administration although it is possible that information relating to tax years more than 5 years prior to the request will not be available for exchange.

In relation to TIEAs, the normal rule is that information relating to civil cases may only be requested for taxable periods from the date the TIEA takes effect and information relating to criminal matters may be requested without any restriction. Individual TIEAs (usually Article 13) should be consulted for details.

In relation to the Convention, information relating to civil cases may only be requested for taxable periods from the date the Convention takes effect in both jurisdictions. [The Convention came into effect in Ireland on 1 January 2014.] Generally, information relating to criminal matters may be requested without restriction.

#### 2.1.4 Are There Restrictions On The Use Of Information Received?

Yes. The general rules are:

- Council Directive 2011/16/EU (Article 16) provides that information received under the Directive may only be used for the administration and enforcement of the domestic laws concerning the taxes referred to in Article 2 of the Directive i.e. to taxes of “any kind levied by, or on behalf of, a Member State or the Member State’s territorial or administrative subdivisions, including the local authorities” but does not apply to VAT, customs duties and EU excise duties.
- Ireland’s older DTAs (the Exchange of Information Article (usually Article 26)) provide that information received under those Agreements may only be used for direct tax purposes. Some of Ireland’s more recent DTAs (signed on or after 24 October 2008) are wider in scope and allow information received to be used for any tax purpose.
- TIEAs (usually Article 8) generally allow the information to be used for all the taxes covered by the TIEA.
- The Convention (Article 22) allows information to be used for other purposes provided that the laws of the Party which supplied the information permits this and that that Party authorises such use. However, where a category of tax is subject to a reservation by the sending Party, the receiving Party cannot use the information for the category of tax that is subject to this reservation.

All documentation received by Exchange of Information Branch on foot of a request sent to another tax administration is stamped, before it is passed to the Business Unit/Division that initiated the request, with a stamp indicating that the use to which it may be put is restricted. Business Units/Divisions should ensure that the information is only used for the uses permitted by the instrument in accordance with which the information was received - the relevant instrument should be consulted. Exchange of Information Branch should be contacted if there is any doubt regarding the use to which information received may be put.



## 2.2 Requests for Information Received by Revenue

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

### 2.2.2 Is Ireland Obligated To Respond?

Council Directive 2011/16/EU and all of Ireland's DTAs, TIEAs and the Convention oblige the contracting parties to respond to valid requests for information.

### 2.2.3 Are There Restrictions On The Use Of Information Sent To Another Tax Administration?

Yes, the same restrictions apply as are set out in section 2.1.1

## 2.3 Spontaneous Exchange of Information

### 2.3.1 What Is Spontaneous EOI?

Spontaneous EOI is where a Business Unit/Division has information that may be of interest to another tax administration, e.g. the receipt by a company resident in another jurisdiction of substantial consultancy fees from an Irish company, and wishes the other jurisdiction concerned to be made aware of that information even though no request has been received.

Council Directive 2011/16/EU and all of Ireland's DTAs and the Convention provide for spontaneous EOI. Ireland's TIEAs only provide for EOI on request.

Article 9 of Council Directive 2011/16/EU obliges Member States to spontaneously exchange information where the tax base of another Member State may be at risk. A separate instruction i.e. [Tax and Duty Manual Part 35-00-01](#), concerns the spontaneous exchange of cross-border rulings, and the provisions of that instruction should be followed in relation to such rulings.

If you become aware of information not covered by instruction [Tax and Duty Manual Part 35-00-01](#) and which you consider would affect the tax base of a jurisdiction with which Ireland may spontaneously exchange information, you should bring that information to the attention of Exchange of Information Branch.

### 3 Automatic Exchange of Information

#### 3.1 What is Automatic Exchange of Information (AEOI)?

AEOI is the term used to describe exchange of information between jurisdictions whereby information is exchanged each year without having to send a specific request to another jurisdiction. Revenue participates in a number of AEOI initiatives and has exchange agreements in place with the United States, other EU Member States and other non-EU jurisdictions. Further information and links to AEOI legislation can be found on the AEOI portal on the [Revenue website](#).

The following paragraphs number 3.2 - 3.7 set out the Automatic Exchange of Information Agreements are in place in Ireland.

#### 3.2 Exchange of Financial Account Information

##### 3.2.1 Foreign Account Tax Compliance Act (FATCA)

The FATCA Intergovernmental Agreement is an agreement which was signed by Ireland and the United States (US) and provides for a bilateral and reciprocal exchange of information with the US in relation to accounts held in Irish Financial Institutions by US persons, and accounts held in US Financial Institutions by Irish tax residents.

The information for exchange by Ireland is filed via ROS by Irish Financial Institutions and exchanged with the US by 30 September each year in respect of the preceding calendar year. The US also sends Revenue details of Irish financial accounts by 30 September each year. The FATCA Intergovernmental Agreement was implemented by Section 891E TCA 1997 and [S.I. No. 292 of 2014 \(Financial Accounts Reporting \(United States of America\) Regulations 2014\)](#). [S.I. No. 292 of 2014 \(Financial Accounts Reporting \(United States of America\) Regulations 2014\)](#) was subsequently amended by [S.I. No. 501 of 2015 \(Financial Accounts Reporting \(United States of America\) \(Amendment\) Regulations 2015\)](#) and [S.I. No. 19 of 2018 \(Financial Accounts Reporting \(United States of America\) \(Amendment\) Regulations 2015\)](#).

The first exchange of information related to 2014 data and took place in 2015. Exchanges relating to subsequent years take place each September in respect of the preceding year.

- **What is the legal instrument under which FATCA information is exchanged?**

FATCA information is exchanged under the provisions of the Exchange of Information Article (Article 27) in the [Ireland/US DTA](#).

- **What are the restrictions attaching to the use of the information received from the US under FATCA?**

The use and disclosure of FATCA data is governed by the provisions of the Ireland/US DTA. Revenue officers should familiarise themselves with the applicable restrictions to ensure compliance with the legal provisions contained in the treaty; Revenue officers should note that FATCA information cannot be disclosed to other Government Departments or used for joint Government activities. In addition to this restriction, the information can only be used for income tax, corporation tax and capital gains tax purposes. To ensure compliance with the legal provisions contained in the treaty, Revenue officers must ensure that it is not used for the assessment of any other taxes.

### 3.2.2 The Standard for Automatic Exchange of Financial Account Information in Tax Matters (The Common Reporting Standard (CRS))

The CRS is the global standard on AEOI which was developed by OECD members. The CRS is similar to FATCA and under CRS, participating jurisdictions will exchange the financial account information of non-resident account holders with the jurisdiction of tax residence of the account holder. The financial account information for exchange is reported to Revenue each year by Irish Financial Institutions. Legislation to implement the CRS in Ireland was introduced in Finance Act 2014 by inserting Section 891F of the Taxes Consolidation Act 1997, and [S.I. 583 of 2015 \(Returns of Certain Information by Reporting Financial Institutions Regulations 2015\)](#). The legislation came into effect on 31 December 2015 and the first exchanges of CRS data took place in September 2017 in respect of 2016 data. Exchanges relating to subsequent years take place each September in respect of the preceding year.

- **What is the legal basis for exchange of CRS information?**

In general, Ireland exchanges CRS information under the Convention on Mutual Administrative Assistance in Tax Matters (the Convention). Section 826 of the Taxes Consolidation Act 1997 was ratified to allow for this exchange provision. However, in certain cases information will be exchanged using another exchange agreement (i.e. a DTA or TIEA). Hong Kong is currently the only jurisdiction with which Ireland will exchange CRS on the basis of a legal instrument other than the Convention. In the case of Hong Kong, Ireland exchanges CRS information under Article 24 of the Agreement Between the Government of Ireland and the Government of the Hong Kong Special Administrative Region of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income (Ireland – Hong Kong DTA).

- **Are there restrictions on the use CRS information received from other jurisdictions?**
  - **The Convention** provides for the exchange of information relating to income tax, corporation tax and capital gains tax, and therefore CRS information received under the Convention from other jurisdictions can only be used for the purposes of these taxes. To ensure compliance with the legal provisions contained in the Convention, Revenue officers must ensure that it is not used for the assessment of any other taxes.
  - In the case of Hong Kong, the use of information is set out in Article 24 of the Ireland – Hong Kong DTA. Article 24 states that information received under the Agreement may only be used for the purposes of income tax, corporation tax and capital gains tax and that these restrictions will apply to CRS information. In addition to this, the information cannot be disclosed to a third party, except to a body involved in the enforcement or prosecution of matters related to these taxes.
  - As is the case with other information exchanged, the information cannot be disclosed to other Government Departments or used for joint Government activities.

### 3.2.3 Council Directive 2014/107/EU amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (DAC2)

DAC2 extends Council Directive 2011/16/EU to include the exchange of financial account information. It essentially imports the OECD Common Reporting Standard (CRS) into EU legislation and requires Financial Institutions to report financial account information in relation to non-resident account holders to Revenue. Revenue will then exchange this information with the tax authority of the Member State of residence of the account holder. Legislation to implement the Directive in Ireland was introduced in Finance Act 2015 by inserting Section 891G of the Taxes Consolidation Act 1997, and [S.I. 609 of 2015 \(Mandatory Automatic Exchange of Information in the Field of Taxation Regulations 2015\)](#). The first exchanges of information under DAC2 took place in September 2017 in respect of 2016 data. Exchanges relating to subsequent years take place each September in respect of the preceding year.



- **Restrictions on the use information received from other EU Member States under Council Directive 2011/16/EU (or an amending Directive)**

Information received from other EU Member States under the provisions of Council Directive 2011/16/EU (or one of the amending Directives set out below) can be used in the assessment of all taxes with the exception of VAT, customs duties, EU excise duties and compulsory social security contributions. In addition, the information cannot be disclosed to other Government Departments or used for joint Government activities. Revenue officers who use data received from other EU Member States under the Directive (or one of the amending Directives) should familiarise themselves with the applicable restrictions to ensure compliance with the legal provisions contained in the Directive (or amending Directives). The links to these are on the [AEOI portal on the Revenue website](#).

### 3.3 Country-by-Country Reporting

Country-by-Country Reporting is part of Action 13 of the OECD/G20 Base Erosion and Profit Shifting (BEPS) Action Plan and requires multinational enterprises (MNEs) to file a Country-by-Country Report with tax authorities. The Country-by-Country Report provides a breakdown of the amount of revenue, profits, taxes and other indicators of economic activities for each tax jurisdiction in which the MNE group does business. The Country-by-Country Report is then automatically exchanged with other jurisdictions where, on the basis of the information provided in the Country-by-Country Report, one or more constituent entities of the MNE Group are either resident for tax purposes, or are subject to tax with respect to the business carried out through a permanent establishment.

The legislation that implements Country-by-Country Reporting in Ireland is contained in Section 891H of the Taxes Consolidation Act 1997 (as amended by Section 24 of Finance Act 2016) and the [Taxes \(Country-by-Country Reporting\) Regulations 2016 \(S.I. No. 653 of 2016\)](#). Country-by-Country Reporting requirements apply in Ireland for fiscal years beginning on or after 1 January 2016 and the first exchanges took place in 2017.

- **What is the legal basis for the exchange of Country-by-Country Reports?**

Country-by-Country Reports can be exchanged under a Double Tax Agreement (DTA), Tax Information Exchange Agreement (TIEA) or the Convention. In most cases, the exchange of Country-by-Country Reports takes place pursuant to **the Convention**, however in the cases of the exchange of Country-by-Country Reports with the United States, the exchanges take place pursuant to Article 27 of the Double Taxation Treaty between Ireland and USA.

- **What are the restrictions on the use of information received from other jurisdictions pursuant to Country-by-Country Reporting?**

Restrictions on the use of data received from other jurisdictions pursuant to Country-by-Country Reporting will be governed by the exchange agreement under which the information is exchanged. As stated above, in most cases the information is exchanged



under the Convention and in these instances the information can only be used for income tax, corporation tax and capital gains tax purposes.

In addition to the restrictions in respect of the taxes for which the information can be used, the OECD has specified that the use of information received pursuant to Country-by-Country Reporting is restricted to the evaluation of high-level transfer pricing risk, the evaluation of other BEPS-related risks and economic and statistical analysis, where appropriate. These restrictions apply to Country-by-Country Reports received under all exchange instruments.

In the case of Country-by-Country Reports received from the United States, the use of information is set out Article 27 of the Double Taxation Treaty between Ireland and USA. That is, the information can only be used for income tax, corporation tax and capital gains tax purposes. Furthermore, as stated in the preceding paragraph, the use of information is restricted to the evaluation of high-level transfer pricing risk, the evaluation of other BEPS-related risks and economic and statistical analysis.

To ensure compliance with the legal provisions governing the exchange of Country-by-Country Reports, Revenue officers must ensure that the information is not used in relation to taxes other than those specified or for any purpose other than those stated above.

As is the case with other information exchanged, the Country-by-Country Reporting information cannot be disclosed to other Government Departments or used for joint Government activities. This restriction applies to Country-by-Country Reports received under all exchange instruments.

Revenue has published guidance, [Tax and Duty Manual Part 38-03-21](#), which provides detailed information on Country-by-Country Reporting requirements in Ireland.

### 3.4 Council Directive (EU) 2016/881 Amending Directive 2011/16/EU As Regards Mandatory Automatic Exchange Of Information In The Field Of Taxation (DAC4)

DAC4 is the EU equivalent of Country-by-Country Reporting (see paragraph 3.3 above) and provides for the mandatory automatic exchange between EU Member States of the Country-by-Country Report of a multinational enterprise (MNE). As with the OECD Action 13 reporting obligations laid out above, DAC4 requires MNEs to submit a Country-by-Country Report of certain financial information (including the revenues, profits, taxes paid and accrued, accumulated earnings, number of employees and certain assets broken down by each tax jurisdiction in which the MNE operates). This information is subsequently exchanged with any other Member State in which, on the basis of the information provided in the Country-by-Country Report, one or more Constituent Entities of the MNE group of the Reporting Entity are either resident for tax purposes or subject to tax with respect to the business carried out through a permanent establishment. The legislation

that implements DAC4 is contained in Section 891H of the Taxes Consolidation Act 1997 (as amended by Section 24 of Finance Act 2016) and the [Taxes \(Country-by-Country Reporting\) Regulations 2016 \(S.I. No. 653 of 2016\)](#). DAC4 Reporting requirements apply in Ireland for fiscal years beginning on or after 1 January 2016 and exchanges began in 2017.

The use of data under DAC4 is subject to the same restrictions as set out in [3.2.3](#) above regarding DAC2. In addition, similarly to Country-by-Country Reports received from non-EU jurisdictions, information exchanged under DAC4 can only be used for the evaluation of high-level transfer pricing risk, the evaluation of other BEPS-related risks and economic and statistical analysis, where appropriate.

A more recent version of this manual is available.

### 3.5 Exchange of Tax Rulings

#### 3.5.1 Council Directive (EU) 2015/2376 Amending Directive 2011/16/EU As Regards Mandatory Automatic Exchange Of Information In The Field Of Taxation (DAC3)

DAC3 provides for the mandatory automatic exchange of information on advance cross-border rulings and advance pricing arrangements (APAs) provided by Revenue to companies and other entities in respect of all taxes except VAT, customs duties, excise duties and compulsory social security contributions. Information in respect of these rulings is to be exchanged with all other EU Member States and a more limited set of information is also to be shared with the European Commission. The information exchange under DAC3 must take place within three months of the half calendar year during which the ruling was issued, amended or renewed. This means that, for rulings provided in the first half of the calendar year, i.e. January - June, information has to be exchanged at the latest by the end of September of that year and, for rulings provided in the latter half of the calendar year, i.e. July - December, information has to be exchanged at the latest by the end of March of the following year.

DAC3 was transposed into Irish law by way of [S.I. No. 619 of 2016 European Union \(Administrative Cooperation in the Field of Taxation\) \(Amendment\) Regulations 2016](#) and the provisions apply from 1 January 2017. These regulations amended [S.I. No. 549 of 2012 European Union \(Administrative Cooperation in the Field of Taxation\) Regulations 2012](#) which transposed the original Council Directive 2011/16/EU of 15 February 2011 into Irish law. Further information is available in Tax and Duty Manual [Part 35-00-01](#), entitled "Revenue arrangements for implementing spontaneous exchange of information in respect of opinions/confirmations under Council Directive 2011/16/EU".

The use of data under DAC3 is subject to the same restrictions as set out in [3.2.3](#) above regarding DAC2.

#### 3.5.2 OECD Framework For The Exchange Of Tax Rulings

As part of Action 5 of the OECD/G20 BEPS project, the OECD has agreed a framework for the compulsory spontaneous exchange of information on certain categories of taxpayer specific rulings. Currently there are five categories of rulings that are subject to exchange under the OECD framework. These are:

- 1) Cross-border rulings related to preferential regimes;
- 2) Cross-border rulings relating to unilateral APAs and any other cross-border unilateral transfer pricing ruling;
- 3) Cross-border rulings that provide for a unilateral downward adjustment to a taxpayer's taxable profits that is not directly reflected in the taxpayer's financial or commercial accounts;
- 4) Permanent Establishment rulings and
- 5) Related Party Conduit Rulings.

The framework applies to rulings issued on or after 1 April 2016 with exchanges of relevant rulings every three months starting in June 2016. Again, additional information is available in Tax & Duty Manual [Part 35-00-01](#), entitled “Revenue arrangements for implementing spontaneous exchange of information in respect of opinions/confirmations under Council Directive 2011/16/EU”.

- **What is the legal basis for the exchange of rulings under the OECD framework?**

Rulings which come within the scope of the OECD framework can be exchanged under Council Directive 2015/2376, a Double Tax Agreement (DTA), Tax Information Exchange Agreement (TIEA) or the Convention.

- **What are the restrictions on the use of information received from other jurisdictions under the OECD framework for the exchange of tax rulings?**

Restrictions on the use of data received from other jurisdictions pursuant to OECD framework on tax rulings will be governed by the exchange agreement under which the information is exchanged. If you have any queries in this regard please contact the Exchange of Information Branch - [eoι@revenue.ie](mailto:eoι@revenue.ie).

### 3.6 Council Directive 2011/16/EU On Administrative Cooperation In The Field Of Taxation And Repealing Directive 77/799/EEC (DAC1)

DAC1 provides for the exchange of Revenue held data with other EU Member States in respect of 5 categories of income and capital:

- 1) employment income
- 2) director's fees
- 3) pensions
- 4) ownership of and income from immovable property and
- 5) life insurance products.

The national implementing legislation for DAC1 is [S.I. 549 of 2012 \(European Union \(Administrative Cooperation in the field of Taxation\) Regulations, 2012\)](#). The exchange of DAC1 data between EU Member States started in June 2015. The use of data under DAC1 is subject to the same restrictions as set out in paragraph 3.2.3 above regarding DAC2.



### 3.7 Council Directive (EU) 2018/822 Amending Directive 2011/16/EU As Regards Mandatory Automatic Exchange Of Information In The Field Of Taxation (DAC6 - EU Mandatory Disclosure Regime)

DAC6 introduced a mandatory disclosure regime for reportable cross-border arrangements that could potentially be used for aggressive tax planning. It is intended that the information obtained will enable Member States to act promptly against harmful tax practices by closing loopholes in legislation, undertaking risk assessments, and carrying out tax audits.

- **What is a reportable cross-border arrangement?**

For an arrangement to be “cross-border”, it must concern parties in either (a) more than one Member State or (b) a Member State and a third country. For the arrangement to be “reportable” it must meet the characteristics of at least one of the [five hallmarks](#) listed in DAC6<sup>1</sup>.

- **Who is obliged to report under DAC6?**

Reporting obligations usually fall on the intermediary in the arrangement. An “intermediary” includes persons (individuals or entities) who design, market or manage the implementation of a reportable cross-border arrangement or can be reasonably expected to know about the arrangement. Tax advisors, lawyers and companies who design schemes which meet the criteria of an arrangement are common examples of intermediaries.

In certain circumstances, specifically where legal privilege applies, the intermediary cannot report the arrangement to Revenue. In this case, the obligation to file is on the taxpayer. The intermediary must inform the taxpayer of their reporting obligations and timelines involved.

Intermediaries must file the return with Revenue, providing information on the reportable cross-border arrangement, within 30 days beginning:

- (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.

Revenue exchanges this information with relevant Member States within one month of the end of the quarter in which the information was filed. The first such exchange was made in April 2021.

The following legislation transposes DAC6 into Irish law:

- Chapter 3A of Part 33 of the Taxes Consolidation Act 1997; and

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<sup>1</sup> More detailed information on DAC6 is available in Tax & Duty Manual [Part 33-03-03](#) - EU Mandatory Disclosure of Reportable Cross-Border Arrangements.



- the [European Union \(Administrative Cooperation in the Field of Taxation\) Regulations 2012](#), as amended by S.I. No. 626/2019 - European Union (Administrative Cooperation in the Field of Taxation) (Amendment) Regulations 2019.

The use of data under DAC6 is subject to the same restrictions as set out in [3.2.3](#) regarding DAC2.

More detailed information on DAC6 is available in Tax & Duty Manual [Part 33-03-03](#) - EU Mandatory Disclosure of Reportable Cross-Border Arrangements.

A more recent version of this manual is available.

## 4 General Information

### 4.1 Can The Information Exchanged Be Disclosed To A Third Party?

Information received from a foreign tax administration must be kept confidential in the same way as information obtained from domestic sources. It may only be disclosed as provided for in Council Directive 2011/16/EU (Article 16), the relevant DTA (Article 26) or TIEA (Article 8), or the Convention (Article 22) i.e. usually only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes covered by the instruments concerned.

Most jurisdictions also regard as confidential the fact that they have made requests for information to another country. Therefore, without the express permission of the other country, we do not disclose (for example, in reply to a PQ or press query) the existence of correspondence to third parties.

Exchange of Information Branch should be contacted where a reply to a third party would involve the disclosure that correspondence existed and/or the content of that correspondence.

All documentation received by Exchange of Information Branch on foot of a request sent to another tax administration is stamped, before it is passed to the Business Unit/Division that initiated the request, with a stamp indicating that the use to which it may be put is restricted. Business Units/Divisions should ensure that the information is only disclosed to the persons permitted by the instrument in accordance with which the information was received. In all cases the relevant instrument should be consulted where disclosure other than to persons within Revenue is being contemplated. Exchange of Information Branch should be contacted if there is any doubt regarding the persons to which disclosure may be made.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]