

TAX SHOT: DAC 6 – Obligation to Report as  
Prevention of Abusive Tax Planning

[www.roedl.de/portugal](http://www.roedl.de/portugal) | [www.roedl.com/portugal](http://www.roedl.com/portugal)



## → DAC 6 – Obligation to Report as Prevention of Abusive Tax Planning

from Leonor Xavier,  
Rödl & Partner Portugal

The Council Directive (EU) 2018/822, 25 May 2018, hereinafter DAC 6, promotes tax transparency in the European Union in order to combat aggressive tax planning practices (potential tax evasion) by amending the Directive 2011/16/EU. Therefore, DAC 6 imposes an obligation to communicate certain cross-border arrangements (plans, proposals, recommendations, advices) to the Tax Authorities, as well as automatic exchange between tax authorities of the Member States of the European Union in order to ensure the proper functioning of the Internal Market and to avoid loopholes in the legislation.

Recently, DAC 6 was implemented in the Portuguese legal system through the Portuguese Law n.º 26/2020, of 21 July, which carries out the following main differences from the Directive in question:

- a. In addition to the obligation to report cross-border transactions (between Member States of the European Union and Third State), there is an obligation to report domestic transactions (between Member States);
- b. Taxes such as Municipal Property Tax, VAT, Municipal Property Transfer Tax and Stamp Duty are covered by the obligation to communicate whenever we are dealing with internal arrangements;
- c. Although communication prevails over the duty of secrecy, it is not mandatory for those who provide descriptive information on the tax legal regime, for those who advise on a pre-existing situation, and also for those who act as agents in certain situations (for example, tax challenge proceedings).

And who has the duty to communicate arrangements? Intermediaries. Who are they? These could be, for example, Banks, Insurance Companies and Lawyers. And what happens to the duty of secrecy that falls on some intermediaries?

It is expressly stated in the law that the duty to communicate prevails over the duty of secrecy, however, it allows the intermediary to notify the taxpayer to communicate the arrangements in question and, only if the taxpayer says nothing, does the duty to communicate fall upon the intermediary.

The arrangements to be communicated are those listed in Portuguese law and have as reference general and specific hallmarks.

These specific hallmarks refer to the main benefit test (when the tax benefit translates into tax advantage), cross-border and domestic transactions, financial accounts and identification of UBOs, and transfer pricing.

Although Portuguese law has been in force since 22 July 2020, with effect from 1 July 2020, there is a transitory regime which requires the reporting of cross-border transactions carried out from 25 June 2018 until 28 February 2021.

However, it is important to acknowledge that the Council Directive (EU) 2020/876, of 24 June, determines the extension of the deadlines to communicate the arrangements to the tax authorities, granting the Member States of the European Union the possibility of extending the deadlines originally foreseen, which Portugal just implemented through Decree-Law n.º 53/2020, of 11 July. Therefore, with an extension of six months, the reporting deadlines are the following at the present moment:

- a. Concerning the cross-border arrangements that were implemented or made available from 25 June 2018 to 30 June 2020, the reporting deadline is extended to 28 February 2021;
- b. Concerning the new cross-border arrangements implemented or made available from 1 July 2020, the reporting deadline is extended to 1 January 2021; and
- c. Regarding the first exchange of information on cross-border arrangements between the Portuguese tax authorities and other jurisdictions' tax authorities, the deadline is extended to 30 April 2021. This date is also the date of the first communication report concerning the marketable cross-border arrangements.

Additionally, Decree-Law n.º 53/2020 created a “DAC 6 Forum” with the purpose to implement the Directive in Portugal and assist the taxpayers.

Last but not least, it is important to be aware of the consequences of non-compliance. Note that the fines are serious once they can go until 80,000.00 Euros, therefore, a correct implementation of the Directive in Portugal is important,

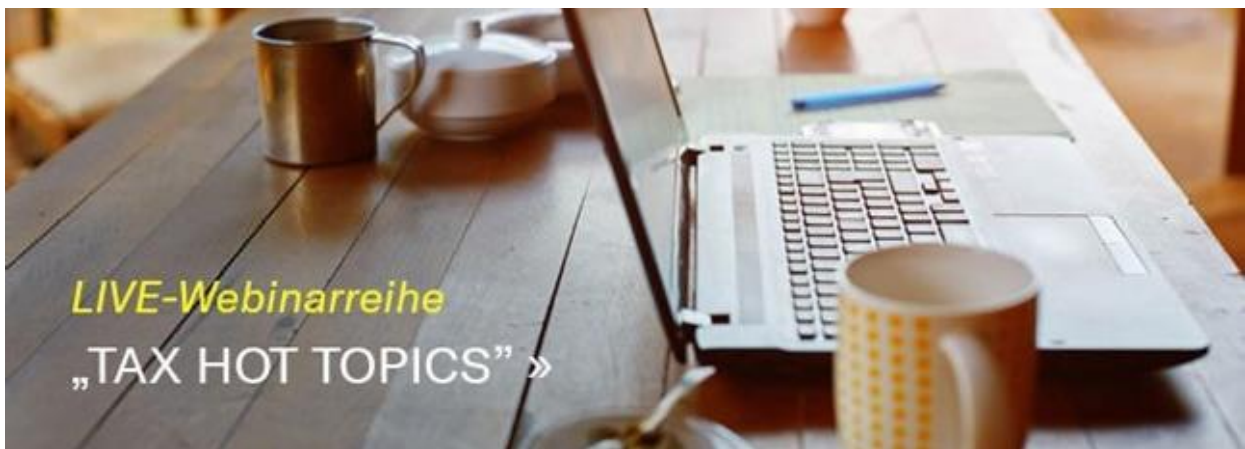
and the support of a professional is essential. This is a new subject on the table and more regulation will appear.

Contact for further information

---



Leonor Xavier  
T +351 212 472 688  
[leonor.xavier@roedl.com](mailto:leonor.xavier@roedl.com)



In order to be able to inform yourself flexibly and regardless of location about current developments in tax law, our experts offer you the opportunity to participate in the “[TAX HOT TOPICS - Live-Webinars](#)” from June 2020. Quarterly, changes in case law, legislation, and administration are

presented in compressed form for you. Furthermore, significant practical implications are outlined and discussed with you. Registration and program inspection is possible at [www.roedl.de/-webinaretaxhottopics](http://www.roedl.de/-webinaretaxhottopics).

## Imprint

**Publisher:**  
Rödl PT Rechtsanwalts-gesellschaft mbH  
Sucursal em Portugal  
Rua João Chagas N°10B  
1500-493 Lisbon  
Portugal

**Responsible for the content:**  
Leonor Xavier  
[leonor.xavier@roedl.com](mailto:leonor.xavier@roedl.com)

**Layout/Set:**  
Hugo Amaral  
[hugo.amaral@roedl.com](mailto:hugo.amaral@roedl.com)

This Newsletter offers non-binding information and is intended for general information purposes only. It is not intended as legal, tax or business administration advice and cannot be relied upon as individual advice. When compiling this Newsletter and the information included therein, Rödl & Partner used every endeavour to observe due diligence as good as possible, nevertheless Rödl & Partner cannot be held liable for the correctness, up-to-date content or completeness of the presented information.

The information included herein does not relate to any specific case of an individual or a legal entity, therefore, it is advised that professional advice on individual cases is always sought. Rödl & Partner assumes no responsibility for decisions made by the reader based on this Newsletter. Should you have further questions please contact Rödl & Partner contact persons.