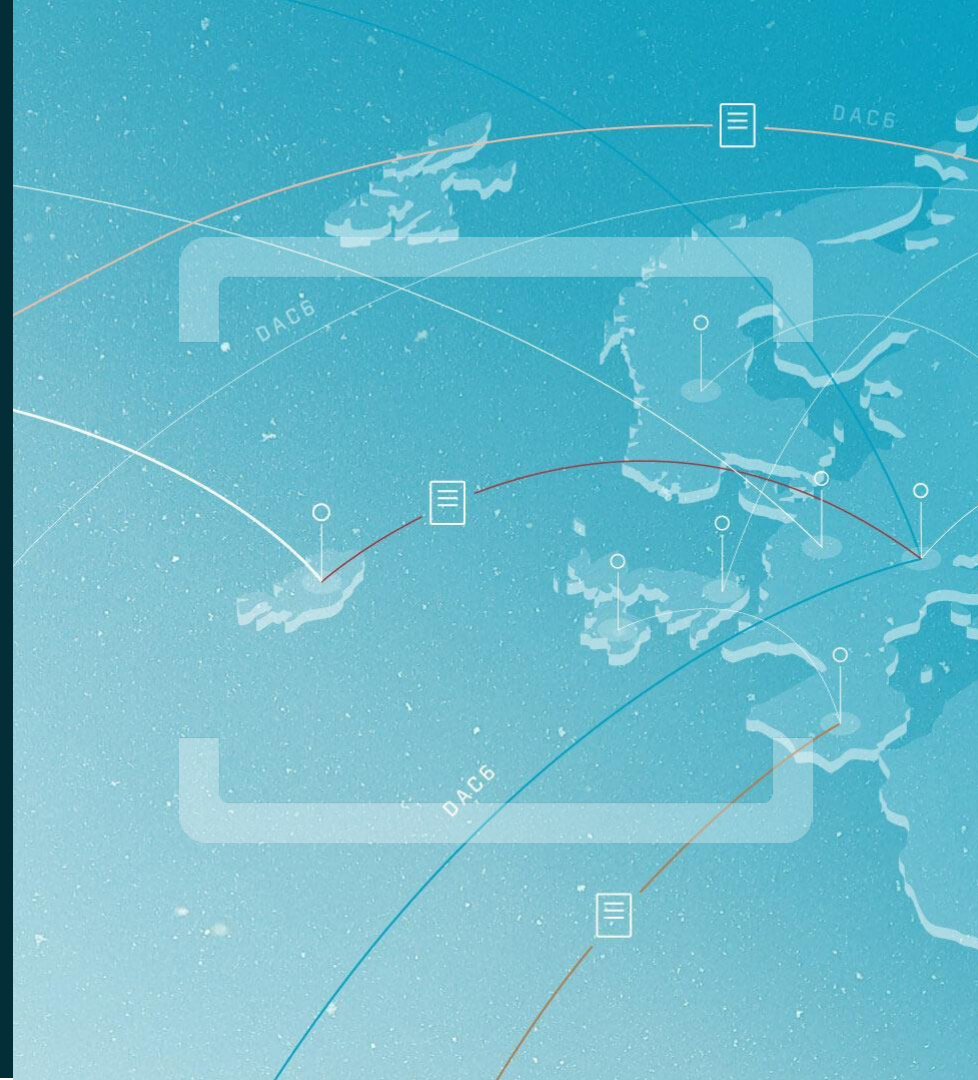


DAC6 in Cyprus

How Cyprus will implement
the EU's Intermediary
Disclosure Regime

16 December 2020



Your speakers



Paul Millen

Paul is a first mover and foremost thinker on the impact of the MDRs and DAC6 on the financial services industry, having spoken on the topic at prominent tax conferences in Switzerland and abroad and published detailed analyses in leading periodicals since 2018. As the founder of Millen Tax & Legal GmbH, he advises a range of clients, including banks, trust companies, fund managers and single family offices, on an array of US and cross-border tax and legal matters, most notably DAC6, FATCA and CRS.



Anna Szkudlarek

Anna is a client adviser focusing on regulatory disclosure requirements. By combining a chartered certified accounting qualification with a strong technical background, she can build relationships and provide comprehensive regulatory services such as MDR and DAC6, FATCA and CRS to family offices, service providers and internationally mobile Ultra High Net Worth Individuals (UHNWIs) in over 80 countries. Anna is a RegTech expert.

Content of today's presentations

Welcome remarks & introduction to your speakers

How does DAC6 operate in Cyprus?

DAC6 Background in Cyprus

The Mechanics of DAC6 in Cyprus

The DAC6 Hallmarks

How is Cyprus limiting DAC6 reporting?

Limit via the MBT and Hallmarks

Key DAC6 Hallmark provisions in Cyprus (1/3)

Key DAC6 Hallmark provisions in Cyprus (2/3)

Key DAC6 Hallmark provisions in Cyprus (3/3)

What other key DAC6 interpretations stand out in Cyprus?

Key DAC6 interpretations in Cyprus

Key DAC6 reporting and penalty provisions in Cyprus

What are the consequences of these provisions for Cypriot firms?

Consequences and key takeaways

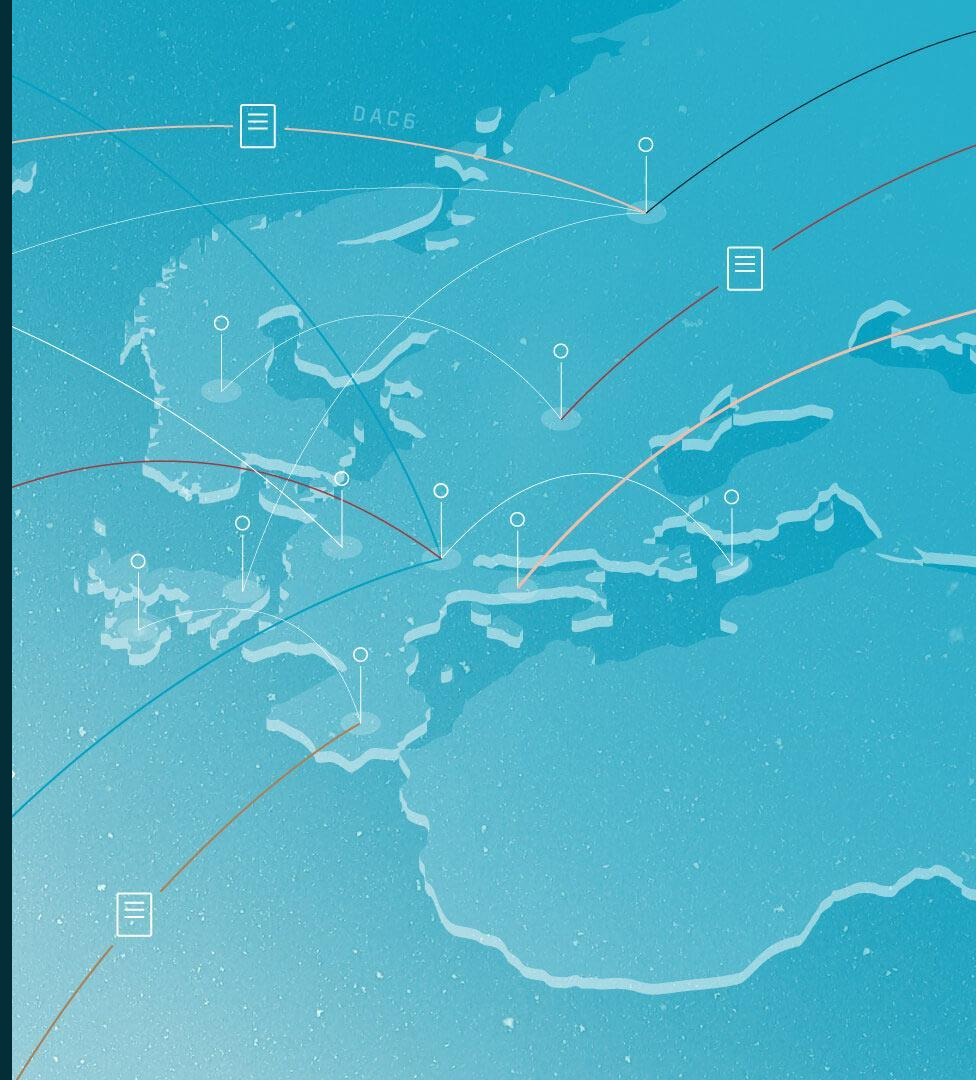
Q&A

Upcoming Webinar

Appendix: DAC6 Reporting Deadlines Flowchart

Closing remarks & thank you

How does DAC6 operate in Cyprus?



DAC6 Background in Cyprus

- The Amendment to Directive 2011/16/EU on administrative cooperation in the field of taxation (known colloquially as “**DAC6**”) is the **EU’s version of the OECD’s Mandatory Disclosure Rules** (“MDRs”), which **target CRS avoidance**, coupled with reporting on other tax-planning activities regarded as “**aggressive**”
- DAC6 imposes reporting of cross-border Arrangements that implicate one or more Hallmarks (the set of tax attributes deemed indicative of aggressive planning) and concern one or more EU member states

All EU member states, including Cyprus, are mandated to enact DAC6 into local law by end 2019 for activation on 1 July 2020, **subsequently deferred to 1 January 2021***

- On 21 October 2019, the Inland Revenue Department (IRD) published a draft bill for public consultation (available in Greek only)
- The final version of the law and accompanying guidance notes are expected shortly

The Mechanics of DAC6 in Cyprus

For every Reportable Cross-Border Arrangement (RCBA), Cyprus-connected parties that qualify as “Intermediaries” with respect to the Arrangement, **or the taxpayers affected by it** (if no EU Intermediary can*), must report:

- Disclose specified information
 - About the transaction and
 - **The parties involved in it**
- To the Cyprus Tax Authority
- **Within 30 days**
- For exchange on an automatic basis with other EU member states

DAC6 in Cyprus seeks to identify Cyprus-based parties, such as tax advisors, lawyers, asset managers, accountants and fiduciaries, with information about RCBA's by setting forth two types of qualifying Intermediaries:

- **Promoters:** Any Person that “designs, markets, organizes or makes available for implementation or manages the implementation of” a reportable transaction
- **Service Providers:** Any Person “**who provides aid, assistance or advice**” (referred to as “Relevant Services”) **in connection with the design, marketing, implementation or organization** of a reportable transaction

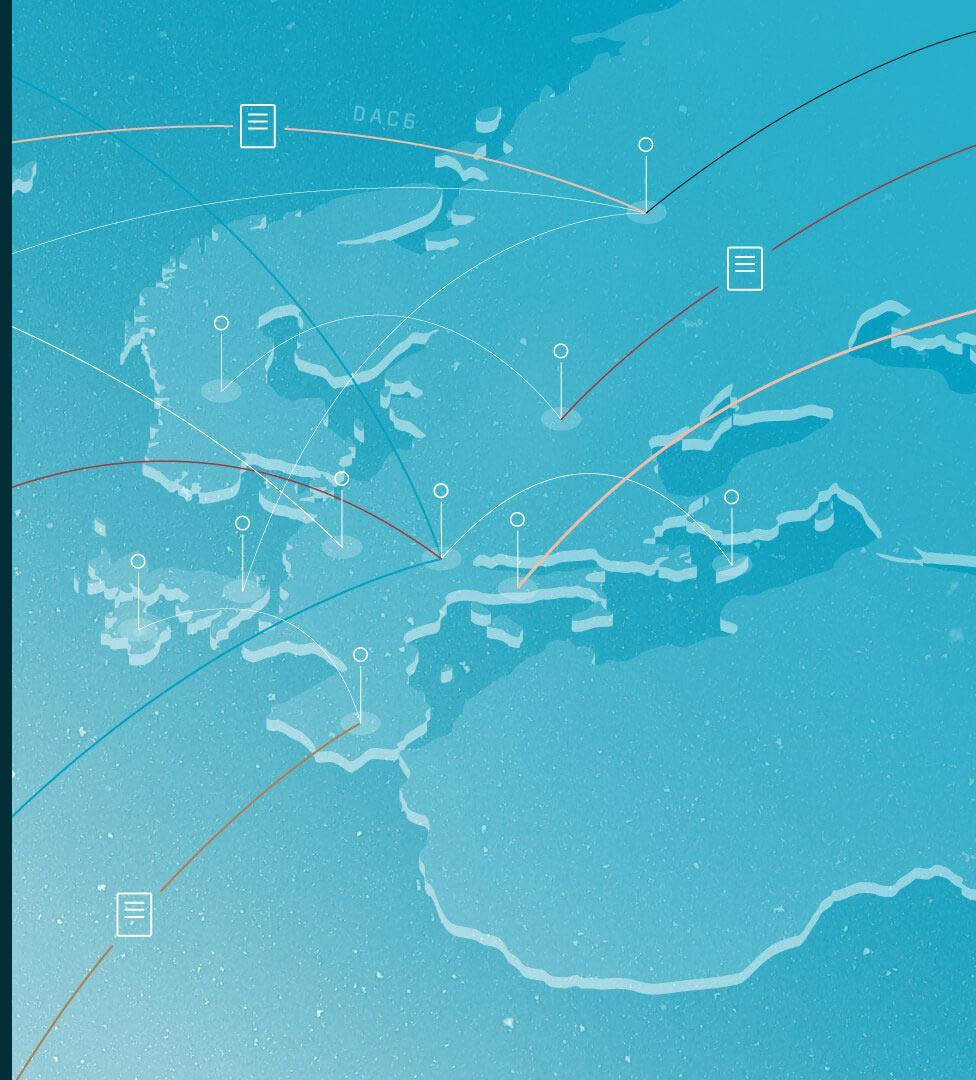


* If, for example, the Reportable Information is subject to legal professional privilege (LPP), such as for client communications per the Cyprus Law on Advocates

The DAC6 Hallmarks

Main Benefit Test		Cross-Border Transactions		AEOI/CRS and Beneficial Ownership	Transfer Pricing
A. Generic	B. Specific	C		D	E
1. Confidentiality clause included	1. Acquisition of a loss-making company	1. (b) (i) Deductible cross-border payments to Associated Enterprises subject (when received) to a zero or almost zero tax rate	1. (a) Tax-deductible payment to an Associated Enterprise with no tax residency	1. Schemes which may undermine CRS (i.e. the automatic exchange of information regime)	1. Use of unilateral safe harbour rules
2. Fees contingent upon successful receipt of tax advantage	2. Conversion of income types which are taxed at lower level or tax exempt	1.(c) Deductible cross-border payments to Associated Enterprises subject (when received) to a full tax exemption	1.(b)(ii) Tax-deductible payment to an Associated Enterprise resident in an EU/ OECD-blacklisted jurisdiction		2. Transfer of hard-to value intangibles
3. Substantially standardized documentation/ set-up available to more than one taxpayer	3. Circular transactions without primarily commercial function	1. (d) Deductible cross-border payments to Associated Enterprises subject (when received) to a preferential tax regime	2. Depreciation on same asset in multiple jurisdictions	2. Schemes involving a non-transparent legal or beneficial ownership chain	3. Restructuring resulting in significant profit shifts (50%) following the transfer of functions and/or risks and/or assets between Associated Enterprises
Main Benefit Test (MBT) must be fulfilled: <i>Is the main benefit or one of the main benefits which—having regard to all relevant facts and circumstances—a person may reasonably expect to derive from a Cross-Border Arrangement, the obtaining of a tax advantage?</i>		3. Relief from double taxation in multiple jurisdictions			
		4. Transfer of assets with a material difference in the price used for tax purposes			

How is Cyprus limiting DAC6 reporting?



Limit via the MBT and Hallmarks

- In order to limit the scope of RCBA's through an enhanced MBT, **the Cyprus guidance sets out a mathematical formula** of sorts, contrasting the value of the expected tax advantage to the value the other advantages obtained (e.g. profits) from the Arrangement
- In essence, this formula calculates the amount of tax due with the Arrangement in effect and the amount of tax that would have been owed in the absence of the Arrangement and presumably compares the difference to the total value obtained from the Arrangement, using a minimal percentage threshold to define a “main benefit”
- Unlike, say, the UK guidance, which generally relies on an enhanced MBT in order to reduce the volumes of RCBA's under DAC6, The Cyprus draft guidance further limits the RCBA's for common activities by following aspects of the other popular approach for reducing DAC6 reporting volumes: **The white-/blacklist approach pioneered by Germany**
- Further, the Cyprus guidance reflects a strategy to **define each Hallmark and interpret key concepts in a fashion that is appropriate for (and presumably advantageous to) Cypriot financial firms**

Key DAC6 Hallmark provisions in Cyprus (1/3)

No.	Description	Cypriot Interpretation
HMA1	Confidentiality clause	<ul style="list-style-type: none"> The clause in question need not contain express non-disclosure language, but merely result in limiting disclosure of the expected tax advantage
HMA3	Substantially standardized documentation	<ul style="list-style-type: none"> The substantiality limit is met if the standardized characteristics affect the document's (or the structure's) fundamental design, and are not peripheral to how the arrangement operates
HMB2	Income conversion	<ul style="list-style-type: none"> Example: Share options turn wages into sales proceeds, but remain a legitimate mode of remuneration, not an aggressive tax-planning practice No conversion of income, rather a choice between different commonplace options, both with underlying commercial rationales

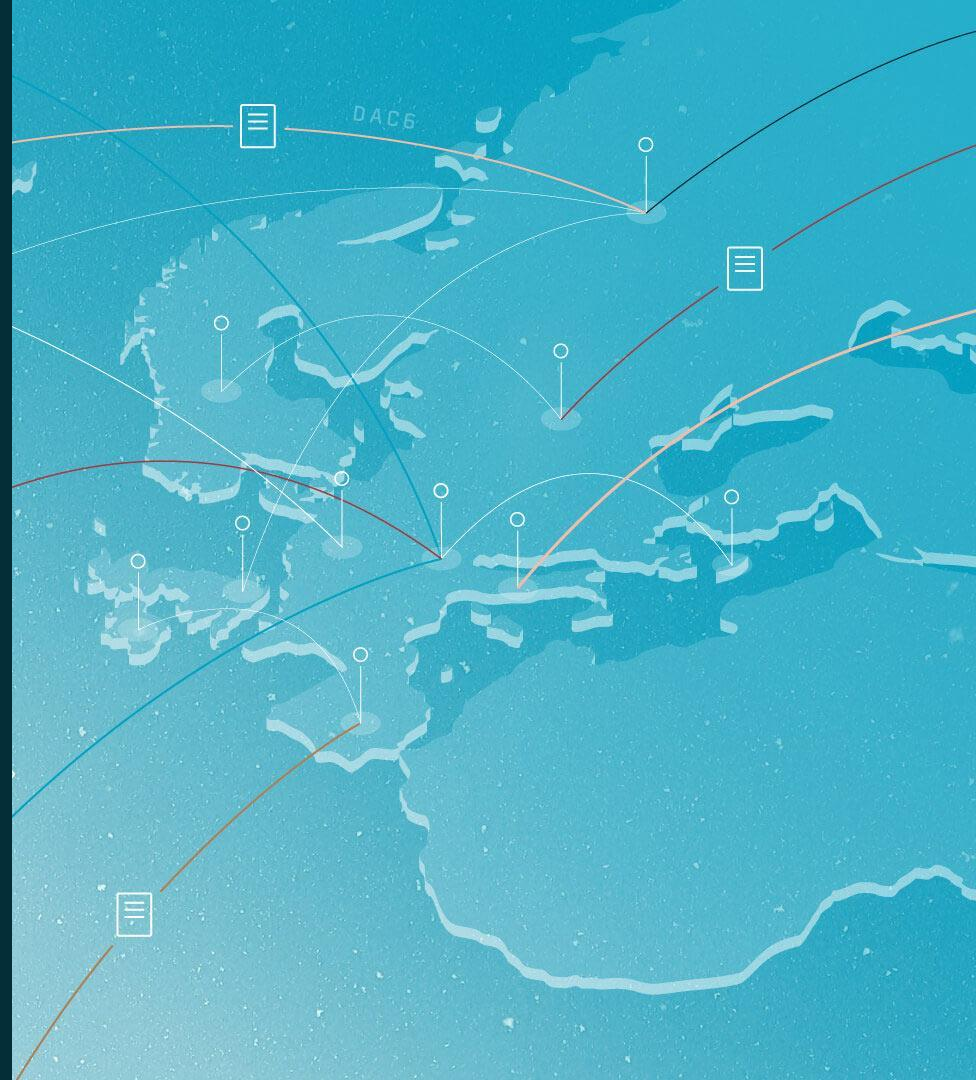
Key DAC6 Hallmark provisions in Cyprus (2/3)

No.	Description	Cypriot Interpretation
HMC1(d)	Payment to “Associated Enterprise” under a preferential regime	<ul style="list-style-type: none"> • The concept of a "preferential" regime for the purpose of this Hallmark links to an assessment by the EU Code of Conduct Group (Business Taxation) that the regime was found to be "harmful" • Notably, the EU Code of Conduct Group (Business Taxation) found the Cyprus Notional Interest Deduction (NID) law to NOT be "harmful"
HMD1	CRS Avoidance Arrangements (CAA)	<ul style="list-style-type: none"> • Refers to the MDR commentary for further guidance including the key relief that non-reporting alone is not grounds for an Arrangement “to have the effect of circumventing CRS” • Broadly speaking, therefore, routine financial transactions occurring in the normal course of business, like bank transfers, are unlikely to qualify as CAAs

Key DAC6 Hallmark provisions in Cyprus (3/3)

No.	Description	Cypriot Interpretation
HMD2	Opaque Offshore Structures (OOS)	<ul style="list-style-type: none"> • In addition to the use of nominees, OOS seeks situations where control is not aligned with formal ownership, but rather exercised indirectly • To that end, it focuses prophylactically on any structures where there is no requirement (a) to keep information on beneficial ownership, or a legal mechanism to obtain it, (b) to disclose the BOs of shares held by nominees, or (c) to notify of changes in ownership of or control over the entity
HME2	Transfers of hard-to-value intangibles	<ul style="list-style-type: none"> • Rights in intangible assets, such as a licence or a contractual right to use the asset, also count • “Transfers” should be broadly construed to include changes in activities that result in changes in risk-allocations

**What other key
DAC6
interpretations
stand out in
Cyprus?**



Key DAC6 interpretations in Cyprus

Concept	Cypriot Interpretation
New Arrangement	<ul style="list-style-type: none">Where an existing Arrangement is renewed, extended or materially modified, it might be treated as a new Arrangement under DAC6
Person	<ul style="list-style-type: none">Careful scrutiny as to when someone is acting in his or her individual capacity and when on behalf of a firm and the reporting consequences stemming therefromOf especial interest where the partners act as agents of a partnership
Intermediary	<ul style="list-style-type: none">Scope of Service Provider-type Intermediary definition limited by detailed ignorance defence and exceptions provided for attorney-client communications per the Cyprus Law on Advocates via the DAC6's LPP
Associated Enterprise (AE)	<ul style="list-style-type: none">Last sections provide detailed analysis and helpful diagrams in order to identify AEs in various situations

Key DAC6 reporting and penalty provisions in Cyprus

Reporting provisions:

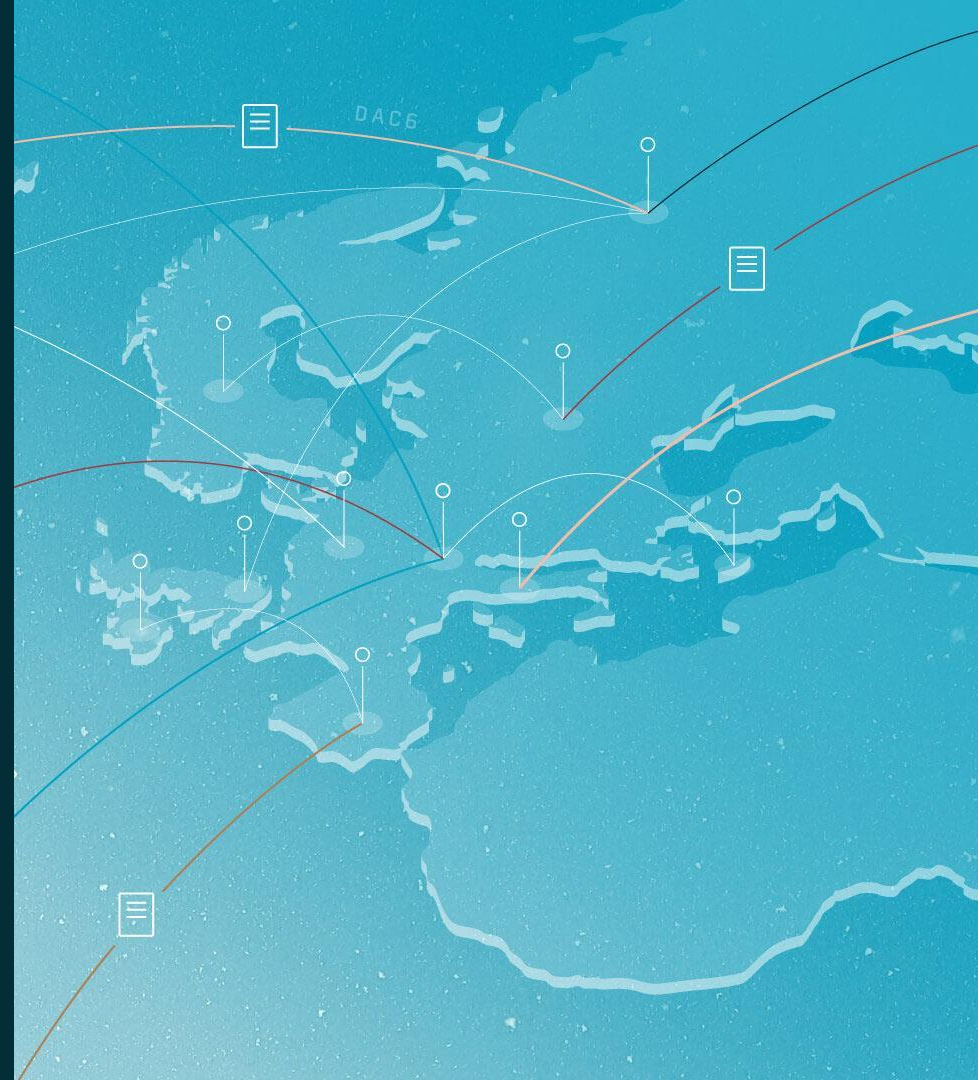
- Provides examples on the **trigger dates** for the reporting deadline*
- Describes scenarios in which a **Relevant Taxpayer incurs the residual reporting duty**
- Sets out a **hierarchy of jurisdictions** if the reporting party has multiple EU nexuses
- Provides a **“good faith” defense** for missing information not in control of a reporting party

Relief from duplicate reporting in the case of multiple Intermediaries or Relevant Taxpayers, so long as obtain submissions and unique report ID numbers for files

Penalties and audit provisions:

- Levies an assortment of fines for Intermediaries and Relevant Taxpayers who—intentionally or not—**neglect a reporting duty, file an incomplete or misleading report or miss a reporting deadline** (one amount if by less than 90 days or another if by more)
- Penalizes other acts of non-compliance, such as **not retaining documents for 6 years, not providing documents to the CTA upon request or not notifying other parties in the case of an LPP reporting exemption**
- Reduces penalties for remediations effected **prior to the planned DAC6 audits**

What are the consequences of these provisions for Cypriot firms?



Consequences and key takeaways

The positives

- + Laws and regulations are **detailed, clear and relatively friendly** without undermining the regime
- + Guidance evidences a **comprehensive and thought-through effort to reduce reporting volumes** down to topics of actual interest to the local tax authorities
- + The **good faith effort defense (for reporting and penalties) is invaluable** during the implementation phase of DAC6
- + Home-cooking provision safeguard pillars of Cypriot financial industry

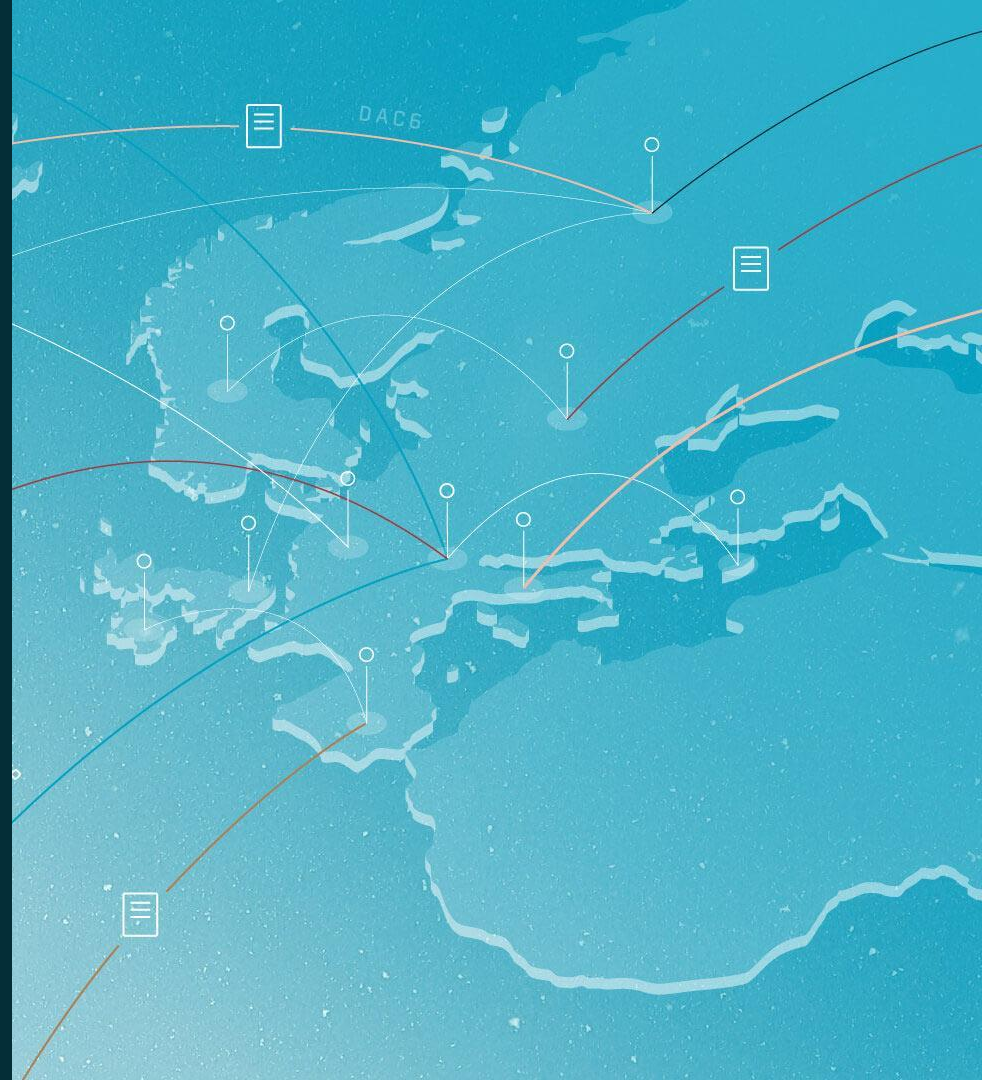
The not-so positives

- **Cross-border deviations**—e.g. regarding preferential regimes—may result in reporting in the Relevant Taxpayer’s jurisdiction, but not Cyprus, which will be chaotic and perhaps bring EU scrutiny
- Idiosyncrasies of Cypriot regime **complicate DAC6 compliance for firms with operations in Cyprus and other EU Member States**
- **Significant risk of over-reporting** remains (as it does across the EU under DAC6)
- **Dynamism of guidance** will be crucial to accommodate unforeseen developments

BLU
BRIDGE

Q&A

To find out more about BlueBridge's reporting services,
please visit: www.bluebridgelimited.com
or email us at hello@bluebridgelimited.com



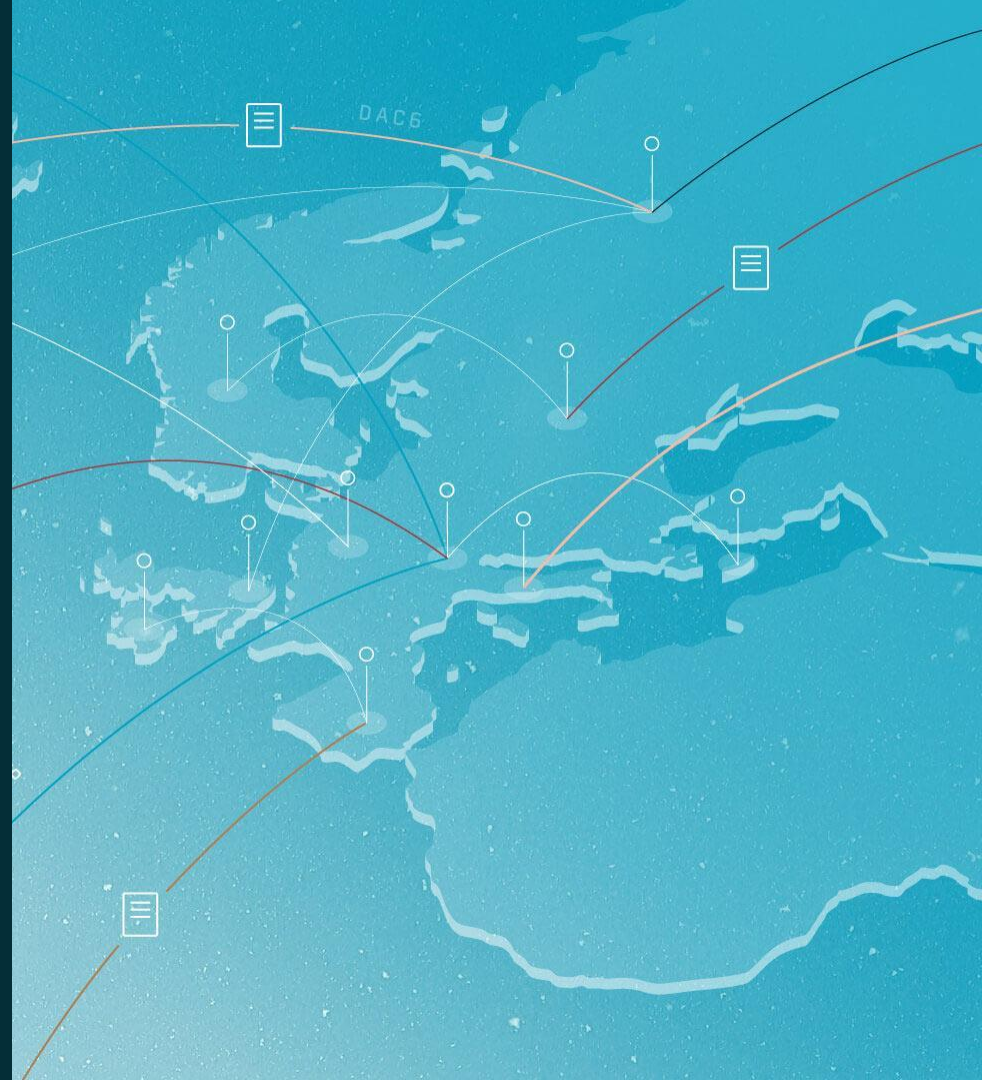
Upcoming webinar

The Specific Impacts of DAC6 on Fiduciaries

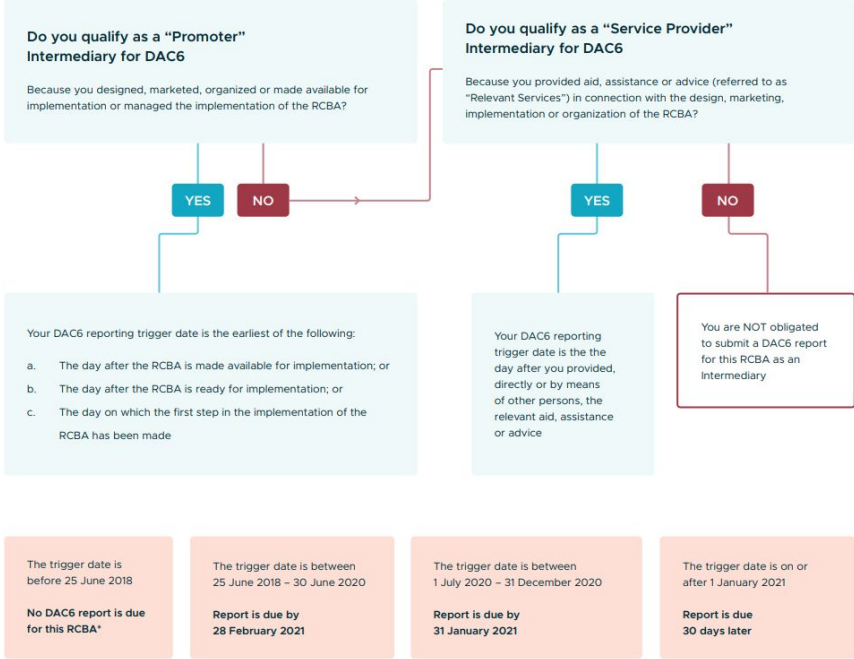
21 January 2021 at 2pm - 3pm CET

- The direct and indirect impacts of the DAC6 directive and local rules on the fiduciary industry
- The DAC6 Hallmarks most likely to ensnare fiduciaries and how
- Pitfalls for fiduciaries in the DAC6 landscape, such as the Main Benefit Test and Legal Professional Privilege exemption from reporting
- Advice for fiduciaries on how best to prepare themselves and their clients for DAC6 compliance demands

Appendix



DAC6 Reporting Deadlines Flowchart

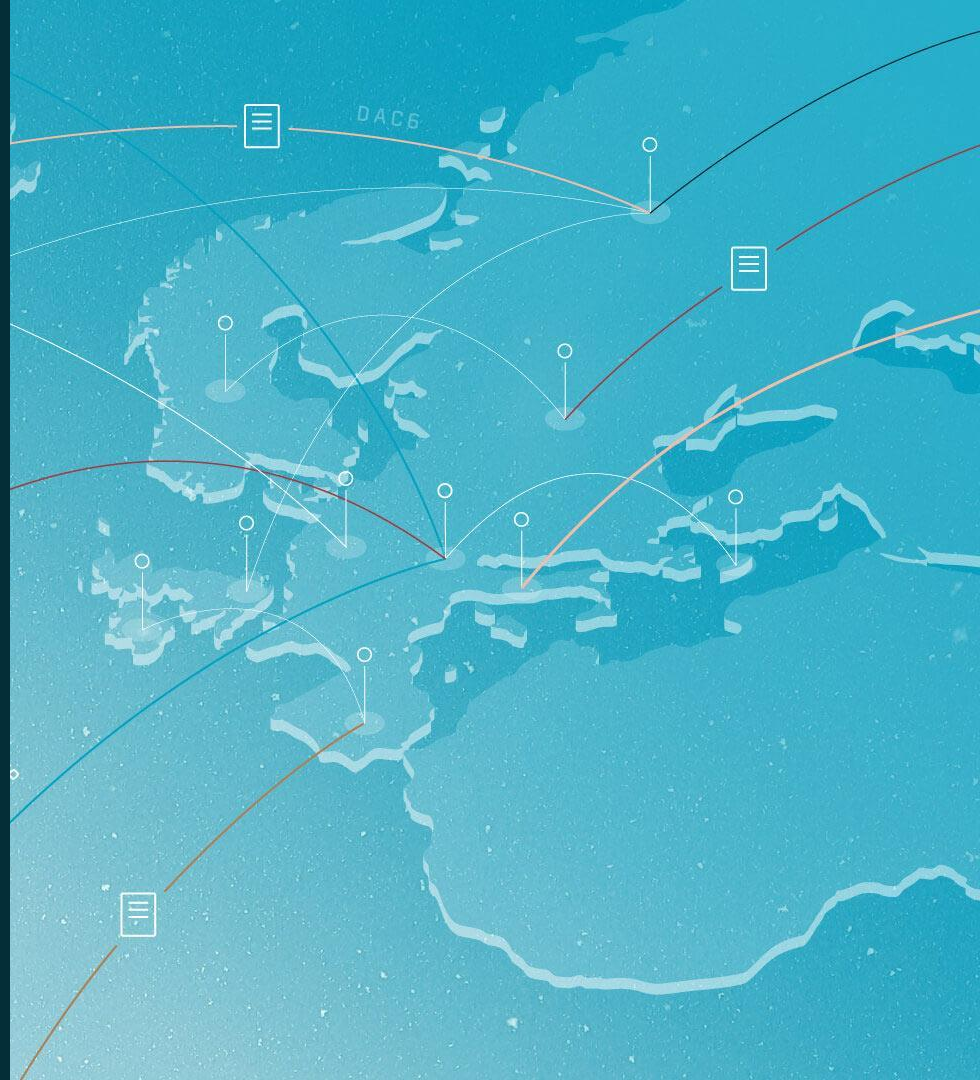


*Provided that RCBA was not extended, renewed or otherwise materially modified.



Thank You, Stay Safe & Happy Holidays

To find out more about BlueBridge's reporting services,
please visit: www.bluebridgelimited.com
or email us at hello@bluebridgelimited.com



Disclaimer

This Presentation is intended solely for informational purposes and may not be relied upon without further analysis and full consideration of your own fact-specific circumstances. BlueBridge took due care to ensure that the information contained in this presentation is current, comprehensive and correct, but is not responsible for any subsequent modifications to the underlying legal provisions or our own interpretations of them. Please consult your professional tax and legal advisers concerning the tax, legal, regulatory, and accompanying risks, specific to your own situation.

©2020 All rights reserved. BlueBridge

