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Date: 06 April 2023

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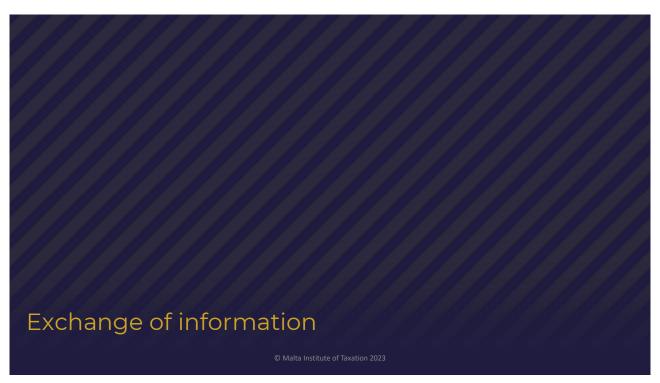
AGENDA

- Exchange of information
- The Directive on administrative cooperation in the field of taxation



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Exchange of information (1)

- "A key element of international co-operation in tax matters is exchange of information. It is an
 effective way for countries to maintain sovereignty over their own tax bases and to ensure the
 correct allocation of taxing rights between tax treaty partners. Exchange of information can
 be based on a number of different exchange mechanisms."
- "Information is typically exchanged for one of two purposes: First, information is exchange in order to ascertain the facts in relation to which the rules of an income tax convention are to be applied. Second, information is exchanged with a view to assisting one of the contracting parties in administering or enforcing its domestic tax law."

- OECD Manual on the Implementation of Exchange of Information Provisions for Tax Purposes (2006)



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Exchange of information (2)

- There are a number of international legal instruments on the basis of which EOI for tax purposes may take place, including:
 - Bilateral tax conventions: Malta's DTAs typically contemplate an EOI clause.
 - International instruments designed specifically for administrative assistance purposes in tax matters such as tax information exchange agreements (bilateral or multilateral):
 Malta has entered into several EOI Agreements with countries with which no DTA is in place. Malta is also a party to the Joint Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters Order
 - Within the European Union, Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/779/EEC (the Directive on Administrative Cooperation, or DAC)

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Exchange of information (3)

- Article 10A ITMA:
- (1) The Commissioner may, when and as often as he deems necessary, give **notice** in writing to any person to furnish him, within a reasonable time stated in such notice, not being less than twenty (20) days, such information as may be necessary in order to provide information, including documents, to foreign tax authorities where arrangements between Malta and the respective State or its tax authorities exist for the reciprocal exchange of information for tax purposes.
- (2) The provisions of this article shall apply even if the Commissioner could not collect the relevant information for the purposes of the Income Tax Acts. The provisions of this article shall have effect in respect of any person, entity or scheme, ..., notwithstanding any obligation to secrecy or confidentiality, or to any other restriction relating to the disclosure of information.

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Rationale

- Direct tax is not harmonised across the EU, such that the EU considers that taxpayers may manage to avoid or evade tax in their country of residence further to their freedom to move, operate and invest across national borders
- EU tax authorities have therefore agreed to cooperate more closely so as to be able to apply their taxes correctly to their taxpayers and combat tax fraud and tax evasion
- The DAC has a wide scope, all taxes of any kind with the exception of VAT, customs duties, excise duties and compulsory social contributions, because these are separately covered by alternative means
- It also covers all legal and natural persons in the EU



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Developments

DAC1	DAC1	DAC2	DAC3	DAC4	DAC5	DAC6
2011/16/EU	2011/16/EU	2014/107/EU	2015/2376/EU	2016/881/EU:	2016/2258/EU	2018/822/EU
NON AEOI	AEOI ITEMS	AEOI ITEMS	AEOI ITEMS	AEOI ITEMS	NON AEOI	AEOI ITEMS
Applies:1/2013	Applies:1/2015	Applies:1/2016	Applies:1/2017	Applies:6/2017	Applies:1/2018	Applies:7/2020
All exchanges	1 st exchanges	1st exchanges	1st exchanges	1st exchanges	Art. 22, para 1a	1st exchanges
of info except	on 2014 by:	on 2016 by:	by 30.9.2017	on 2016 by:	20. 0000	by: 31.8.2020
Art. 8	30.6.2015	30.9.2017	Art. 8a	30.6.2018	Access by tax	Art. 8aaa and
Exchanges on	Art. 8	Art. 8, para 3a	COMMUNICATION OF THE PARTY OF T	Art. 8aa	authorities to heneficial	hallmarks in
equest	*Automatic	370	Automatic	Automatic	ownership	Annex 4
Spontaneous	exchange of	Automatic	exchange of	exchange of	information as	*Mandatory
exchanges	Information on 5	exchange on	information	information on	collected under	disclosure rules
Presence in	non-financial	financial account	(using a central	country-by-	AML rules	for
dm. offices	categories:	information:	directory as from	country reports	AIVIL TOTES	intermediaries
Simultaneous	*Income from	*Interests,	1.2018) of:	on certain		and
controls	employment	dividends or other	*Advance cross-	financial		*Automatic
Request for	*Directors fees	income generated	border rulings	information:		exchange of
notification	*Pensions	by financial	*Advance pricing	*Revenues		information on
Sharing best	*Life insurance	account	arrangements	*Profits		tax planning
practices	products	*Gross proceeds		"Taxes paid and		
Use of standard	*Immovable	from sale or		accrued		cross-border
orms	property (income	redemption		*Accumulated		arrangements
	and ownership)	*account		earnings *Number of		
	una contrantpy	10.777		employees		
		balances		*Certain assets		

 $\textbf{Source:} https://taxation-customs.ec.europa.eu/taxation-1/tax-co-operation-and-control/general-overview/enhanced-administrative-cooperation-field-direct-taxation_en$

· As well as:

• DAC 7: Council Directive (EU) 2021/514

Applies: 1/2023 to EU and non-EU digital platform operators

• DAC 8(?): TBD

Applies: 1/2026(?), to expand EOI to cover also crypto-assets and e-money

• DAC 9(?)/Unshell Directive: TBD Applies: 1/2024(?), to expand EOI to cover indicators of minimum substance



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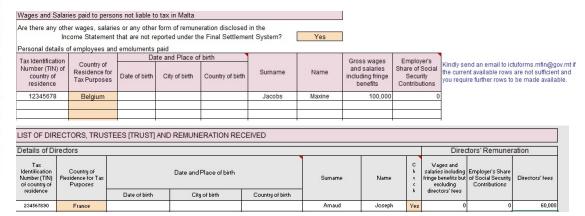
DAC₁

DAC 1 provides for the following methods of information exchange: A requested authority shall communicate to the requesting authority information that it has in its Exchange of possession or that it obtains as a result of administrative inquiry, as quickly as possible, and no info on later than 6 months from the date of receipt of the request (2 months if the info is readily request available) If unavailable, information is collected locally in terms of article 10A ITMA The CA of each MS shall, by automatic exchange, communicate to the CA of another MS, Automatic information that is available concerning residents of the other MS, on the following specific exchange of categories of income and capital: (a) income from employment, (b) director's fees, (c) life info insurance products, (d) pensions, (e) ownership of and income from immovable property and, wef 2023, (f) royalties TRA82 to the income tax return The Maltese CA shall communicate, within 1 month, information it has in its possession or that it Spontaneous obtains as a result of administrative enquiries to the CA of another MS in certain defined cases. exchange of Additionally, the Maltese CA may spontaneously communicate information of which it is aware info and which it considers to be useful to the CA in another MS. MALTA INSTITUTE OF TAXATION

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DAC 1 - AEOI







- CRS requires reporting financial institutions (RFIs) to report to their home tax authorities –
 in Malta's case being the Malta CA financial information about financial accounts (FAs)
 held by persons tax resident in participating jurisdictions, or by certain foreign entities the
 Controlling Person/s of which are tax resident in participating jurisdictions
- · CRS is not just EU-wide, it is an OECD initiative which is based on the US' FATCA
- The Malta CA is required to share the FA information by means of AEOI with CRS participating jurisdictions (over 110 jurisdictions, including all EU MS)



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DAC 2 (the Common Reporting Standard) (2)

- In short, CRS entails:
 - A Maltese entity, including a partnership and even a trust, must first assess its classification for CRS purposes
 - If it is determined to be a **non-financial entity** (NFE), its obligations under CRS would be limited to the **submission of a self-certification form vis-à-vis any FAs it holds with RFIs**



DAC 2 (the Common Reporting Standard) (3)

- A NFE which holds a FA will be requested by the RFI to provide a self-certification form in order to enable the RFI to confirm whether the FA is reportable, and, if so, to provide the information which the RFI is bound to include in its CRS report
- The OECD have drafted templates of self-certification forms, but RFIs may set their own
- CRS Regulations specify that self-certification forms must be obtained upon the opening of the FA. A RMFI is required to establish procedures when self-certification forms are not provided within 90 days, such as:
 - making the opening of the account condition on the receipt of a valid self-certification;
 - · closure or freezing of the account until a valid self-certification is obtained;
 - · blocking access to the account until a valid self-certification is received.



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DAC 2 (the Common Reporting Standard) (4)

- In short, CRS entails:
 - If it is determined to be a **financial institution** (FI), it must determine (1) the type of FI and (2) whether it is a **reporting Malta financial institution** (RMFI) or a **non-reporting Malta financial institution** (NRMFI)
 - If it is a NRMFI, no further obligations other than registering with the CfR
 - If it is a RMFI:
 - register with the CfR (and in the case of FATCA, the IRS)
 - identify the FAs and obtain self-certification from the FAs' holders with a view of identifying the Reportable FAs (RFAs)
 - obtain and collate the reportable financial information for the RFAs and report the information to the CfR on an annual basis and within the stipulated deadlines



DAC 2 (the Common Reporting Standard) (5)

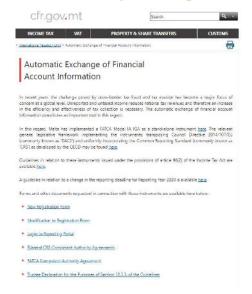
- In short, CRS entails:
 - If it is determined to be a **financial institution** (FI), it must determine (1) the type of FI and (2) whether it is a **reporting Malta financial institution** (RMFI) or a **non-reporting Malta financial institution** (NRMFI)
 - If it is a NRMFI, no further obligations other than registering with the CfR
 - If it is a RMFI:
 - register with the CfR (and in the case of FATCA, the IRS)
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 - obtain and collate the reportable financial information for the RFAs and report the information to the CfR on an annual basis and within the stipulated deadlines



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DAC 2 (the Common Reporting Standard) (6)







DAC 2 (the Common Reporting Standard) (7)

- The reportable financial information should be reported via the submission of an XML schema by not later than 30 April after the end of the year to which such information relates.
- Where the RMFI is not able to transmit information using the XML schema, it may request the Commissioner for Revenue to submit the RFI through alternative reporting. Such a request is made by sending an email on cfrdata.mfin@gov.mt. In such case, the reportable financial information should be reported by not later than 30 March after the end of the year to which such information relates.
- The 30 March deadline also applies in the case of a submission of a nil report.



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- DAC3 entails the automatic exchange of **Advance Cross-Border Rulings** (ACBRs) and **Advance Pricing Arrangements** (APAs) amongst the CAs of EU MSs, including the Malta CA, and the European Commission
- It is at the Malta CA's discretion to determine whether any correspondence with the CfR constitutes a reportable exchange. In doing so, the Malta CA may ask for any reportable information which is unavailable to it



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DAC 3 (2)

- An advance-cross border ruling means any agreement, communication or any other instrument or action with similar effects...and which meets the following conditions:
- a) is issued, amended or renewed by the CfR, or on behalf of, the Government of Malta, irrespective of whether it is effectively used;
- b) is **issued**, amended or renewed **to a particular person or a group of persons**, and upon which that person or a group of persons is entitled to rely;
- c) concerns the interpretation or application of a legal or administrative provision concerning the administration or enforcement of Maltese law relating to taxes;
- d) relates to a **cross-border transaction** or the question of whether or not **activities carried on by a person in another jurisdiction create a PE**; and
- e) is **made in advance** of the transactions or of the activities in another jurisdiction potentially creating a PE or in **advance of the filing of a tax return** covering the period in which the transaction or activities took place

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- An advance pricing arrangement means any agreement, communication or any other instrument or action with similar effects...and which meets the following conditions:
- a) is **issued**, amended or renewed **by the CfR**, or on behalf of, the Government of Malta or more EU Member States, irrespective of whether it is effectively used; and
- b) is **issued**, amended or renewed **to a particular person or a group of persons**, and upon which that person or a group of persons is entitled to rely; and
- determines in advance of cross-border transactions between associated enterprises, an appropriate set of criteria for the determination of the transfer pricing for those transactions or determines the attribution of profits to a PE



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DAC 4 (1)

- DAC 4 implements the BEPS Action 13 minimum standard, Country-by-Country Reporting (CbCR), which is part of the OECD's 3-tiered standardised approach to transfer pricing documentation.
- CbCR entails the submission of a CbC Report by MNEs having a **consolidated group** revenue of at least €750 million or more during a particular financial year.
- The CA that receives the CbC Report is to share the CbC Report, by way of **automatic exchange**, with any **participating jurisdiction** in which 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 through a PE.



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- A CbC Report provides a **breakdown** of the MNE's revenue, profits before taxes, income taxes paid and accrued, the number of employees, the stated capital, the retained earnings and the tangible assets **for each jurisdiction in which it does business**
- The CbC Report may be used as a high-level transfer pricing risk assessment tool, but DAC
 4 provisions provide that it cannot be used as a substitute for a detailed transfer pricing
 analysis.



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DAC 4 (3)

Table 1: Overview of allocation of income, taxes and business activities by tax jurisdiction

				Na: Fi	me of the N scal year o Currency	INE group: oncerned: used:				
Tax Jurisdic- tion	1	Revenues		Profit (Loss)	Income Tax Paid	Income Tax	Stated	Accumulated	Number of	langible Assets
	Unrelated Related Party Total			before Income Tax	(on Cash Basis)	Accrued - Current Year	Capital	Earnings	Employees	other than Cash Equivalent
			0.							



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Table 2: List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction

					Name Fisca	of the	MNE	roup: ned:							
	Constituent Entities	Tax Jurisdiction		Main Business Activity(ies)											
Jurisdic- tion	Resident in the Tax Jurisdiction	of Organi- sation or	Research and Development	Holding or Managing Intellectual Property	Purchasing or Procurement	Manufacturing or Production	Sales, Marketing or Distribution	Administrative, Management or Support Services	Provision of Services to Unrelated Parties	Internal Group Finance	Regulated Financial Services	Insurance	Holding Shares or Other Equity instruments	Dorm and	Othuri
	1. 2.		_						-						F
	3.														
	2. 3.														

Please specify the nature of the activity of the Constituent Entity in the "Additional Information"



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DAC 4 (5)

Table 3: Additional Information

Name of the MNE group: Fiscal year concerned:

Please include any further brief information or explanation you consider necessary or that would facilitate the understanding of the compulsory information provided in the country-by-country report

 Per the CbCR Guidelines, Table 3 should include a description of the sources of data used to populate the CbC Report



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- The CbC Report is to be filed in the MS in which the **UPE of the MNE Group** or **any other reporting entity** (surrogate parent entity, or other constituent entity if the secondary reporting mechanism is applied) is resident for tax purposes.
- If the CbC Report is to be submitted in Malta:
 - The deadline for submission is 12 months after the last day of the group's reporting fiscal year
 - The XML CbC Report is to be submitted through the IRD Secure File Transfer Protocol (SFTP) server
 - In order to obtain access and upload the file, the Maltese Reporting Entitt should send an email on itu.mfin@gov.mt with a view to obtaining the relevant logging information



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DAC 4 (7)

- Each constituent entity of the MNE other than the reporting entity is required to submit a **CbCR notification form** to the CA of the country in which it is resident on an **annual basis**.
- Through such a notification form, the constituent entity must notify the CfR:
 - · whether it is the Reporting Entity by virtue of it being the UPE, SPE or by virtue of the secondary mechanism;
 - if the constituent entity is not the Reporting Entity, the identity and tax residence of the Reporting Entity.
- There is no prescribed format for this notification, it typically takes the form of a directors' declaration. Such notifications are currently submitted manually to the ITU, but the plan is to automate the submission process.



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- DAC 5 grants the CfR with access to the mechanisms, procedures, documents and information referred to in articles 13, 30, 31 and 40 of the 4th Anti-Money Laundering Directive, that is, the beneficial ownership information collected under the said directive and due diligence controls.
- In practice, this means that the CfR has access to:
 - The Register of Beneficial Owners for Companies kept by the Registry of Companies Agency;
 - The Register of Beneficial Owners for Trust kept by the Malta Financial Services Authority; and
 - The Register of Beneficial Owners for Associations and Foundations kept by the Registry for Legal Persons



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- DAC 6 implements BEPS Action Plan 12. It aims to provide CAs of EU MS with information on reportable cross-border arrangements (RCBAs) and marketable arrangements which would enable them to act promptly by either closing down loopholes or by undertaking adequate risk assessments and carrying out tax audits.
- The obligation to report RCBAs lies primarily on **intermediaries with an EU nexus**, although certain exceptions are envisaged.
- The obligation to report marketable arrangements may **not** be shifted by intermediaries.



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DAC 6 - Intermediaries

- Primary intermediaries: A person that designs, markets, organises or makes available for implementation or manages the implementation of an RCBA
 - The person that has a full understanding of the material aspects of the arrangement. Typically **professional tax advisors** or the taxpayer's **in-house tax experts**
- Secondary intermediaries: A person that, having regard to the relevant facts and
 circumstances and based on available information and the relevant expertise and
 understanding required to provide such services, knows or could reasonably be expected to
 know that they have undertaken to provide, directly or by means of other persons, aid,
 assistance or advice with respect to designing, marketing, organising, making available for
 implementation or managing the implementation of a RCBA.
 - May include lawyers, accountants, auditors, notaries, financial advisors, banks, insurance companies, fund managers who, based on readily available information, is in a position to determine that they are providing aid, assistance or advice.

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DAC 6 - RCBA (1)

- **Arrangement**: An arrangement means any transaction, scheme, action, operation, agreement, grant, understanding, promise, undertaking or event. An arrangement may comprise more than one step or part.
- Bearing on covered taxes: The term 'covered taxes' refers to all taxes levied in Malta, other than taxes not within the scope of DAC. In short, covered taxes are those contemplates in the Income Tax Acts or the Duty on Documents and Transfers Act.



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- Cross-border nature: An arrangement concerning more than one EU MS or an EU MS and a third country and which satisfies at least one of the following:
 - Not all participants are resident for tax purposes in the same jurisdiction;
 - One or more of the participants is simultaneously resident in multiple jurisdictions;
 - One or more of the participants in the arrangement carries on a business in another jurisdiction through a PE and the arrangement forms part or is the whole business of that PE
 - One or more of the participants in the arrangement carries on an activity in another jurisdiction without being resident or creating a PE
 - Such arrangement has a possible impact on the automatic exchange of information or the identification of the beneficial ownership of the arrangement.
- Features a hallmark: For a CBA to give rise to a reporting obligation under DAC 6, at least one of the hallmarks must be satisfied. In certain instances, reporting is subject to a main benefits test (MBT) being satisfied too.

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DAC 6 - RCBA (3)

- Main benefits test: The MBT is considered satisfied when, having regard to all relevant facts
 and circumstances, it can be established that the obtaining of a tax advantage is the main
 benefit or one of the main benefits which a person may reasonably expect to derive from
 an arrangement.
 - Tax advantage: includes a repayment of tax, a tax relief, a reduction in the tax charge, a tax deferral or the absence of taxation, obtained with respect to taxes which fall within the scope of the DAC. A tax advantage would be considered for the purposes of the MBT to the extent that it is not consistent with the legislator's intent.
 - Main benefit: does not contemplate subjective assessments which would take into account
 purpose or intentions. To determine whether the obtaining of a tax advantage is the main
 benefits or one of the main benefits one would need to compare the value or significance of
 the expected tax advantage with any other benefits arising as a result of the arrangement. If
 it is concluded that the tax advantage constitutes a significant element and is not merely
 incidental, the MBT would be satisfied.



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DAC 6 - RCBA (4)

Hallmarks MBT Confidentiality Α1 An arrangement where the relevant taxpayer or a participant in the arrangement undertakes to comply with a condition of confidentiality which may require them not to disclose how the arrangement could secure a tax advantage vis-à-vis other intermediaries or the tax authorities. Compensation related to a tax advantage **MBT** Α2 An arrangement where the intermediary is entitled to receive a fee for the arrangement and the fee is fixed by reference to (1) the amount of the tax advantage derived from the CBA, or (2) whether or not a tax advantage is actually derived from the arrangement. This would include an obligation on the intermediary to partially or fully refund the fees where the intended tax advantage derived from the arrangement was not partially or fully achieved. Standardised documents/structures, ready-to-sell schemes MBT Α3 An arrangement that has substantially standardised documentation and, or structure and is available to more than one relevant taxpayer without a need to be substantially customised for implementation. MALTA INSTITUTE OF TAXATION

DAC 6 - RCBA (5)

Halln	narks		
B1	MBT	•	Acquiring a loss-making company An arrangement whereby a participant in the arrangement takes contrived steps which consist in acquiring a loss-making company, discontinuing the main activity of such company and using its losses in order to reduce its tax liability, including through a transfer of those losses to another jurisdiction or by the acceleration of the use of those losses.
B2	MBT	•	Conversion of income into other categories An arrangement that has the effect of converting income into capital, gifts or other categories of revenue which are taxed at a lower level or are exempt from tax.
В3	MBT	•	Circular transactions An arrangement which includes circular transactions resulting in the round-tripping of funds, namely through involving interposed entities without other primary commercial function or transactions that offset or cancel each other or that have similar features.



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DAC 6 - RCBA (6)

Hallmark	(S		
C1(a)	No MBT	•	Deductible cross-border payments (1) — No tax residence An arrangement that involves deductible cross-border payments made between two or more associated enterprises where the recipient is not resident for tax purposes in any tax jurisdiction.
C1(b)(i)	MBT	•	Deductible cross-border payments (2) – No or low nominal taxation An arrangement that involves deductible cross-border payments made between two or more associated enterprises where the recipient is resident in a jurisdiction which does not impose any corporate tax or imposes corporate tax at the rate of zero or almost zero (nominal rate below 1%).
C1(b)(ii)	No MBT	•	Deductible cross-border payments (3) — Non-cooperative jurisdictions An arrangement that involves deductible cross-border payments made between two or more associated enterprises where the recipient is resident in a jurisdiction that is included in a list of third-country jurisdictions which have been assessed by EU MS collectively or within the framework of the OECD as being non-cooperative.

DAC 6 - RCBA (7)

Hallma	rks	
C1(c)	MBT	 Deductible cross-border payments (4) – Full exemption An arrangement that involves deductible cross-border payments made between two or more associated enterprises where the recipient benefits from a full exemption from tax in the jurisdiction where the recipient is resident for tax purposes.
C1(d)	MBT	 Deductible cross-border payments (5) – Preferential tax regimes An arrangement that involves deductible cross-border payments made between two or more associated enterprises where the payment benefits from a preferential tax regime in the jurisdiction where the recipient is resident for tax purposes.
C2	No MBT	 Deductions for the same depreciation Deductions for the same depreciation on the asset are claimed in more than one jurisdiction.
С3		 Relief from double taxation Relief from double taxation in respect of the same item of income or capital is claimed in more than one jurisdiction MALTA INSTITUTE OF TAXATION

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DAC 6 - RCBA (8)

Hallma	rks	
C4	No • MBT •	Transfer of assets There is an arrangement that includes transfers of assets and where there is a material difference in the amount being treated as payable in consideration for the assets in those jurisdictions involved.
D1	No • MBT •	Undermining AEOI reporting obligations EU legislation and equivalent agreements on the automatic exchange of Financial Account Information are undermined or the lack of such legislation or agreements is taken advantage of.
D2	No • MBT •	Non-transparent legal or beneficial ownership chain The usage of non-transparent legal or beneficial ownership chains with the usage of persons, legal arrangements or structures that do not carry on substantive economic activity and that are incorporated, managed, resident or controlled in different jurisdictions than that of the beneficial owners of the assets held by such and where the beneficial owners, legal arrangement or structures are made unidentifiable. MALTA INSTITUTE OF TAXATION

DAC 6 - RCBA (9)

Hallma	rks	
E1	No MBT	Unilateral safe harbour rules An arrangement which involves the use of unilateral safe harbour rules.
E2	No MBT	Hard-to value intangibles An arrangement involving the transfer of hard-to-value intangibles, that is, intangibles or right on intangibles for which, at the time of their transfer between associated enterprises (1) no reliable comparables exist and (b) at the time the transaction was entered into, the projections of future cash flows or income expected to be derived from the transferred intangible, or the assumptions used in valuing the intangible are highly uncertain, making it difficult to predict the level of ultimate success of the intangible at the time of the transfer.



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DAC 6 - RCBA (10)

Hallmarks

E3 No • Intra-group cross-border transfers

An arrangement involving an intra-group cross-border transfers of functions and, or risks and, or assets, if the projected annual earnings before interest and taxes (EBIT), during the three-year period after the transfer, of the transferor or transferors, are less than 50% of the projected annual EBIT of such transferor or transferors if the transfer had not been made.



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DAC 6 - marketable arrangements

- A marketable arrangement is a cross-border arrangement that is designed, marketed, ready for implementation or made available for implementation without a need to be substantially customised.
- Their key feature is that such arrangement may be marketed and made available for use without the need for any substantial adjustments for a specific taxpayer.
- If a marketable arrangement is marketed by an intermediary and is then taken up by a client, additional reporting requirements will apply. Information will be reported initially when the arrangement is marketed, and a further report would then need to be submitted when the client takes this up.



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- Reporting needs to occur within 30 days starting from the earliest of:
 - The day after the RCBA is made available for implementation;
 - The day after the RCBA is ready for implementation;
 - When the first step in the implementation of the RCBA has ben made; or
 - The day after the intermediary provided, directly or by means of other persons, aid, assistance or advice with respect to an RCBA.
- The earliest of the events listed above is colloquially referred to as the 'trigger date'.



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DAC 6 - reporting an RCBA (2)

- The primary obligation to report lies with **intermediaries with an EU nexus**, that is, an intermediary who:
 - is resident for tax purposes in a MS; or
 - · has a PE in a MS through which the services with respect to the arrangement are provided; or
 - is incorporated in, or governed by the laws of, a MS; or
 - is registered with a professional association related to legal, taxation or consultancy services in a MS.
- Where there are multiple reporting obligations by different intermediaries, an intermediary
 which has not waived the obligation to report (see next slide) shall be exempt from
 reporting if it has proof that the same information has been reported in another MS.



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DAC 6 - reporting an RCBA (3)

- An intermediary whose profession is listed in Article 3 of the Professional Secrecy Act, Cap. 377 of the Laws of Malta, has a right to waive its reporting obligations in respect of information covered by the obligation of professional secrecy.
- In such case the reporting obligation is shifted to another intermediary with an EU-nexus or the relevant taxpayer. This is done by issuing a written notification within 7 working days from the date of the reporting trigger point.



DAC 6 - reporting an RCBA (4)

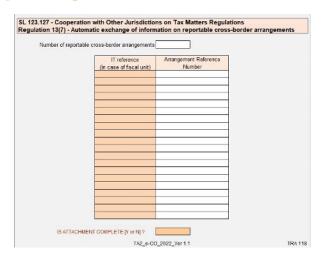
- A relevant taxpayer is any person to whom an RCBA is made available for implementation, or who is ready to implement a RCBA or has implemented the first step of such arrangement. A relevant taxpayer will be considered to have an EU nexus if is satisfies at least one of the following conditions:
 - · it is resident for tax purposes in Malta;
 - it has a PE in Malta benefitting from the arrangement;
 - it receives income or generates profits in Malta; or
 - it carries on an activity in Malta.
- The obligation to report an RCBA will shift to a relevant taxpayer with an EU nexus if:
 - an intermediary involved in the arrangement has the right to waive reporting and exercises if and no other intermediary has the duty to report the arrangement in the EU; or
 - no intermediary is involved in the arrangement.
- Where there are multiple reporting obligations by different relevant taxpayers, a relevant taxpayer shall be exempt from reporting if it has proof that the same information has been reported in another MS.

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DAC 6 - Reporting information in the tax return





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