



Disclosure obligations acc. to Sec. 138d ff. of the German Fiscal Code

Important information for the FS Real Estate Sector
August 2023



In this flyer you will find a concise overview of the relevant information.

In addition to the already existing disclosure obligations for cross-border tax arrangements ("DAC6") pursuant to Sec. 138d – 138k, the "Growth Opportunities Act" (draft bill published on 30.08.2023^(a)) is also intended to introduce an additional disclosure obligation for purely domestic tax arrangements ("DomTA") in a draft of Sec. 138l – 138n of the German Fiscal Code.

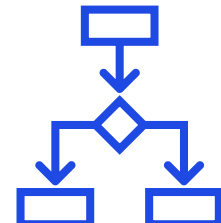
We are happy to support you with the disclosure obligations pursuant to Sec. 138d ff. of the German Fiscal Code with our comprehensive service offering:



**E-Learning
Plattform**



Workshops



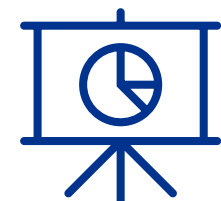
**Set-up of Internal
Processes**



Strategy



**Analysis &
Disclosure**



DAC6 Processor

Note.: (a) Act to Strengthen Growth Opportunities, Investment and Innovation as well as Tax Simplification and Tax Fairness

Draft of the Growth Opportunities Act – Disclosure obligation for domestic tax arrangements

What is new?^(a)

Scope

The obvious first: a tax arrangement **no longer has to be cross-border** to be reportable. However, there are additional criteria for a disclosure obligation such as **turnover thresholds** or **certain user groups**, e.g.:

- The relevant taxpayer is an investment fund or a special investment fund within the meaning of the German Investment Tax Act, or its investors, or
- The relevant taxpayer belongs to a group within the meaning of § 18 of the German Stock Corporation Act.

New Hallmarks

Unconditional Hallmarks do not apply to DomTA. In addition to the existing Conditional Hallmarks (except for C-Hallmarks), three new Hallmarks have been added:

- Multiple classification of taxable events
- Generation of taxable losses and wholly or partially exempt income
- Arrangements in the area of tax deduction from capital gains

Deadlines

Instead of the 30-day period, a **2-month disclosure** period applies to DomTA and 30 days instead of 10 days for marketable arrangement.

Applicable Periods

BMF will be authorized to determine a first application date with a lead up time of at least 1 year. Accordingly, only DomTA where the event triggering the disclosure obligation occurred after this application date are subject to disclosure. This means that the first application date will be no earlier than January 1, 2025 and no later than approx. January 1, 2028.

What remains the same?^(a)

Conditional Hallmarks & Main Benefit Test

The Conditional Hallmarks A1 (confidentiality clause), A2 (contingent fee) and A3 (standardized documentation) also apply unchanged to DomTA. The definition of the “main benefit test” for DomTA is the same as the previous definition for DAC6.

Involved Persons & Types of affected taxes

The definitions of the intermediary, relevant taxpayer, and the other participants involved in the arrangement basically correspond to the previous definitions for DAC6. The types of affected taxes correspond to DAC6; thus, in principle, all types of taxes with the exception of VAT.

Disclosure Process

Filing (official data record/official interface) to the Federal Central Tax Office → an updated form is also expected with respect to the DAC6 form via BOP.

Note.: (a) Compared to the previous DAC6 disclosure requirements for cross-border tax arrangements.

Service Offering – How we can support you

E-Learning Platform



You can embed our intuitive online training courses with explanatory video sequences and illustrations including automated reminders directly into your company's internal (training) system.

Workshops



We train your employees in individual workshops in which tailor-made case studies and questions are discussed and explained.

Set-up of Internal Processes



We support you in the internal creation, implementation of efficient and guideline-compliant processes in connection with the disclosure obligations pursuant to Sec. 138d ff. of the German Fiscal Code.

Strategy



Together with you, we develop the company's internal DAC6 strategy and document and explain it in the form of a strategy paper as well as technical work aids for your employees.

Analysis & Disclosure



We take care of the examination of all relevant facts and cases to check for a potential disclosure obligation. If necessary, we further take care of the preparation and transmission of the respective reporting.

KPMG DAC6 Processor



Your digital platform for the preparation and transmission of reportings in accordance with Sec. 138d ff. of the German Fiscal Code via the integrated interface to the Federal Central Tax Office as well as documentation of all necessary documents and processes.

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