



DAC 6 - Mandatory Disclosure Rules - Are you ready?

Webinar
8 May 2020

Agenda

01 Norwegian proposal to implement MDR

02 DAC 6 - in brief

03 DAC 6 - our experience

04 DAC 6 - process

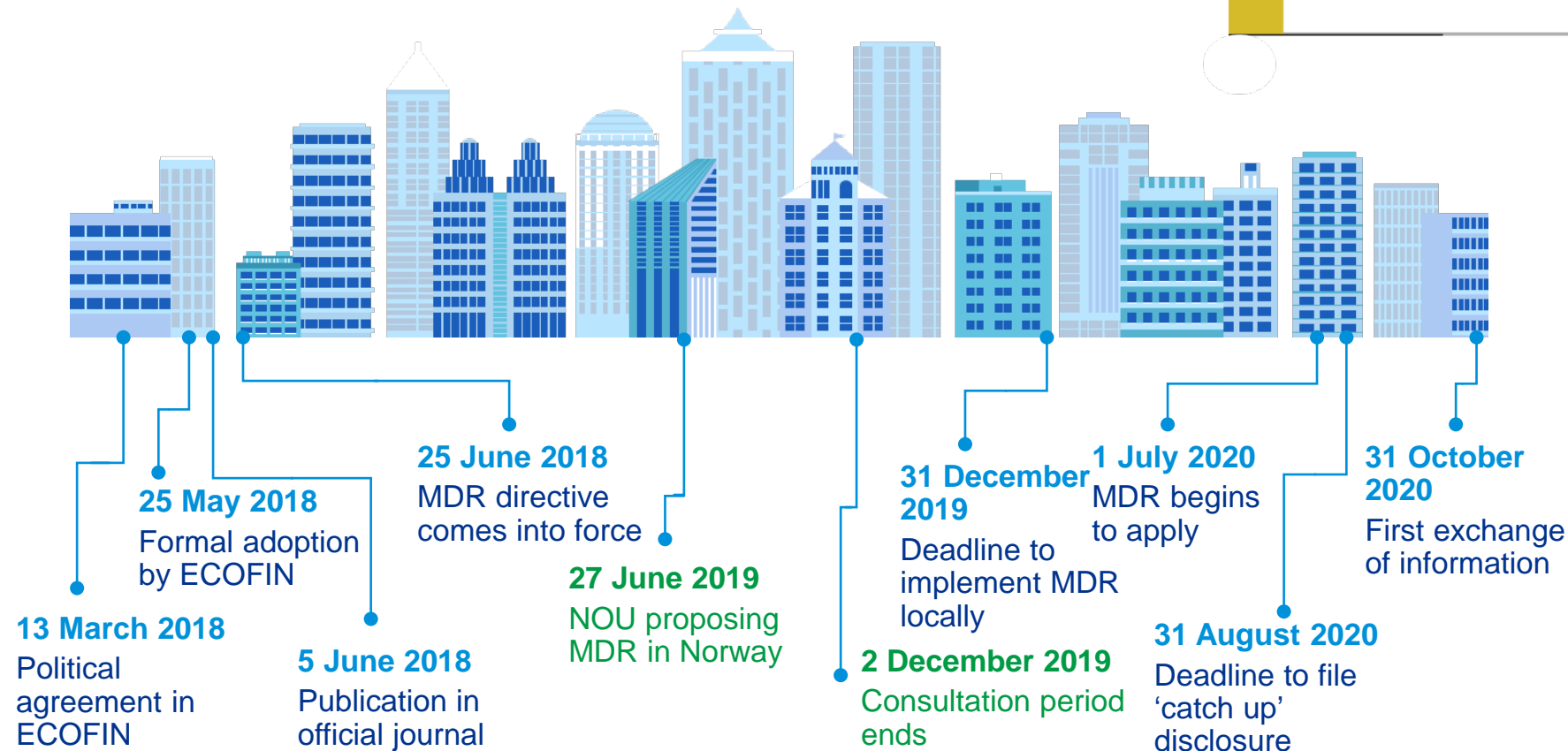
Proposal for MDR in Norway

NOU

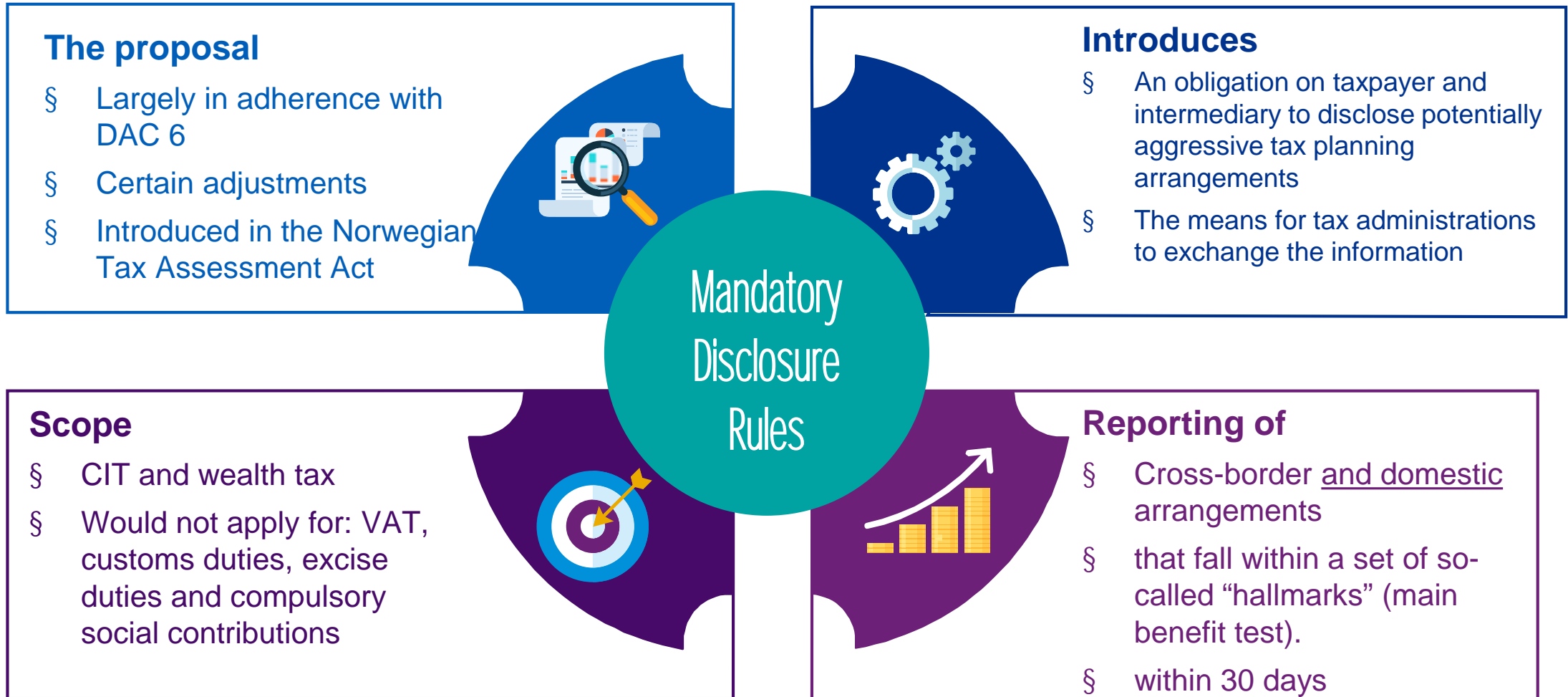
Norges offentlige utredninger 2019:15

Skatterådgiveres opplysningsplikt og taushetsplikt

Forslag til opplysningsplikt om skattearrangement



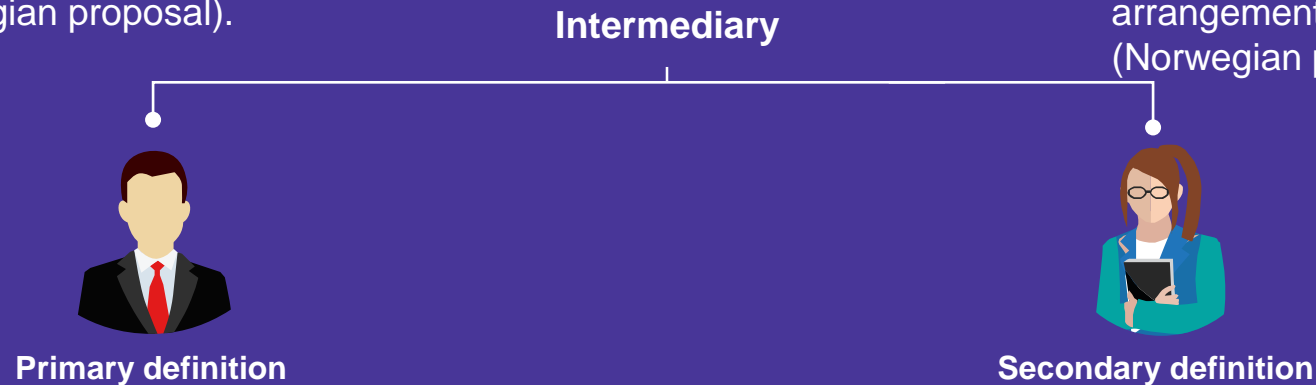
Norwegian update on MDR



Who can qualify as an intermediary?

Definition 1: any resident person that designs, markets, organises or makes available for implementation or manages the implementation of a reportable cross-border arrangement (DAC 6)/ reportable tax arrangement (Norwegian proposal).

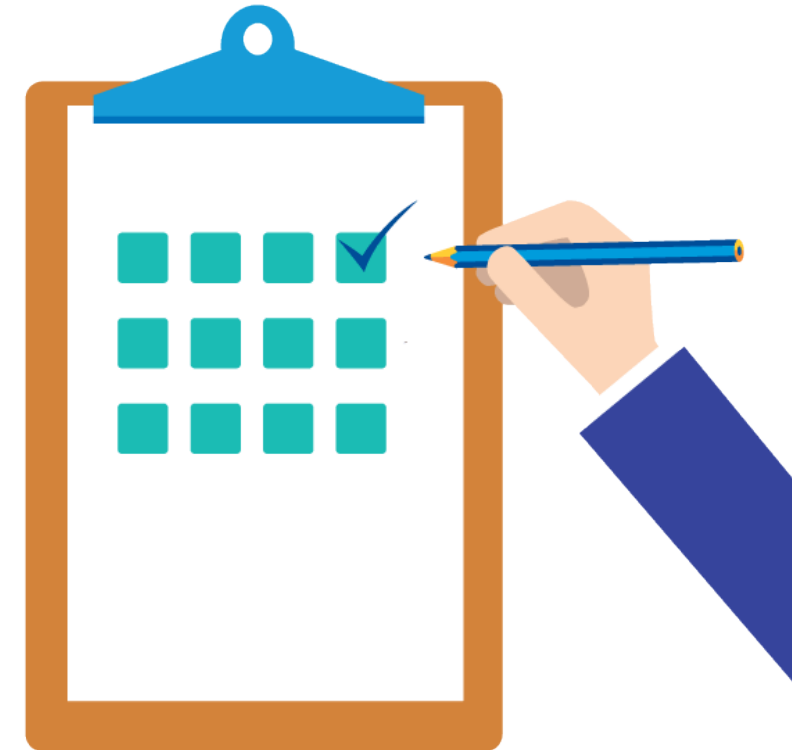
Definition 2: Intermediary (“Tilbyder”) also includes “any person that [...] knows or could be reasonably expected to know that they have undertaken to provide aid, assistance or advice with respect to [...] a reportable cross-border arrangement (DAC 6)/ reportable tax arrangement (Norwegian proposal).



Secondary reporting obligation

Secondary reporting obligation applies:

1. When the intermediary/tilbyderen is not resident in the same jurisdiction as the person using the tax arrangement.
2. When there is no intermediary/tilbyder.
3. Legal privilege. When using legal privilege the intermediary/tilbyder has an obligation to inform about the reporting obligation.



Norwegian update on MDR

Hallmarks subject to the main benefit test



General hallmarks (A)

A.1 The taxpayer undertakes to comply with a confidentiality condition

Exemption for certain documentation.

A.2 Contingent fee

A.3 Standardized documentation (including standard forms) is used

Exemption for certain standardized documentation, e.g. BSU, fund account.



Specific hallmarks (B)

B.1 Acquisition of loss making company, discontinuation of main activity and using losses

Also include arrangements where the main activity is discontinued before acquisition.

B.2 Conversion of income into a category taxed at a lower level / exempt

B.3 Circular transactions resulting in the round-tripping of funds



Cross-border transactions (C1)

Deductible payments to a related party:

b) i. If the recipient is tax resident in a jurisdiction with no CIT, or 0% (or almost 0%) CIT rate

Propose: 0% – 1%.

c) If the payment benefits from a full exemption from tax

d) If the payment benefits from a preferential tax regime

Norwegian update on MDR

Hallmarks with no main benefit test



Cross-border transactions (C)

C.1 Deductible payments to a related party which is:

- a) Not tax resident in any jurisdiction
- b) ii. Resident in a black-listed country (EU / OECD)

C.2 Deduction of the same depreciation on asset in multiple jurisdictions

C.3 Double tax relief claimed in multiple jurisdictions

C.4 Transfer of assets with significant differences in valuation



Automatic exchange of information and BO (D)

D.1 Circumvention of reporting obligation on automatic exchange of financial account information

D.2 Legal structure lacking substantive economic activity where beneficial owners are unidentifiable

Propose to not implement. Consider implementing at a later stage.



Transfer pricing (E)

E.1 Unilateral safe harbor rules

E.2 Transfer of hard-to-value intangibles

E.3 Transfer of functions / risks/ assets resulting in EBIT decrease >50% during the next 3 years

Propose to not implement. Suggest that the Norwegian Tax Authorities consider to include this in Form RF-1123 at a later stage.

When should information be disclosed?

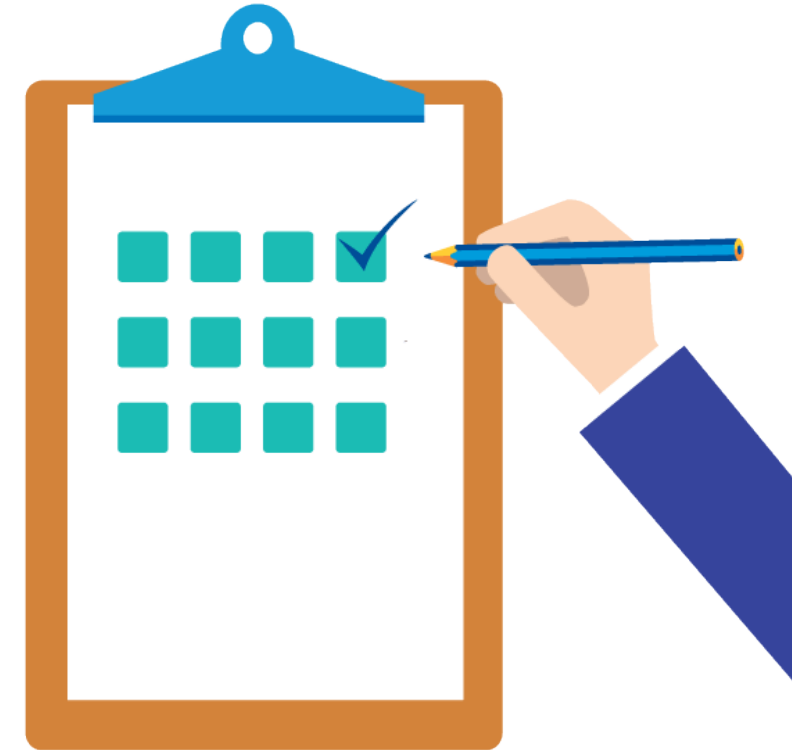
 **Intermediaries/ taxpayers:** within **30 days**, beginning on:

- the day after the reportable tax arrangement is made available for implementation to the relevant person, or
- is ready for implementation by the relevant person, or
- when the first step in its implementation has been made in relation to the relevant person,

whichever occurs first.

What to report?

- **Identification of intermediaries and taxpayers (including their names)**
- **Hallmarks applicable**
- **Summary of the reportable arrangements**
- **Date of implementation**
- **National tax provisions applicable**
- **Tax benefit or value of the transaction (if available)**
- **Other jurisdictions involved or concerned**



DAC 6 - Implementation (April 2020)

Discussions with stakeholders

1. Greece

Draft legislation published

1. Cyprus
2. Czech Republic
3. Italy
4. Portugal
5. Spain
6. Sweden

Implementation complete – applicable as of 1 July 2020*

1. Poland (already applicable)
2. Austria
3. Belgium
4. Bulgaria
5. Croatia
6. Denmark
7. Estonia
8. Finland
9. France**
10. Germany
11. Hungary
12. Ireland
13. Latvia
14. Lithuania
15. Luxembourg
16. Malta
17. Netherlands
18. Romania
19. Slovakia
20. Slovenia
21. UK

* Unless otherwise indicated

** Parliament approval required for full legislative force.

Norway - Penalties



Enforcement Fines

Less relevant as the tax authorities usually are not aware of the reportable tax arrangement.

Enforcement fines are daily fines that are imposed on enterprises who fail to submit mandatory information by the relevant deadline.

The rate that is applied in the fine is calculated based on the court fee.

In 2020, the court fee is NOK 1,172 per day.

The maximum limit is 50 court fees.
The maximum amount is NOK 58,600.



Non Compliance Penalty

Most relevant for MDR

The Non-compliance penalty may be levied if the MDR reporting obligation is not fulfilled.

Non-reporting: 10 court fees
(NOK 11,720).

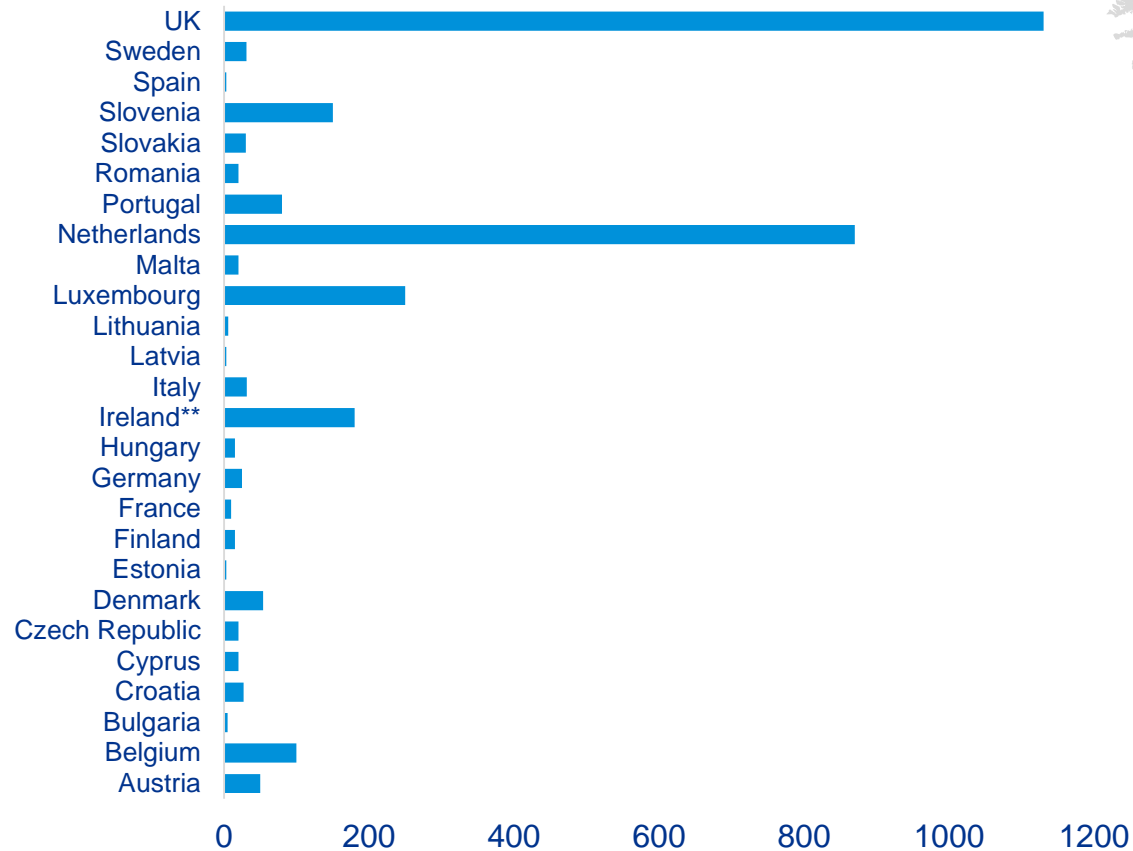
In the event of repeated breaches within a period of 12 months, the penalty will be doubled
(NOK 23,440).

Additional penalty of 2 court fees
(NOK 2,344) per person that should have been included in the report.

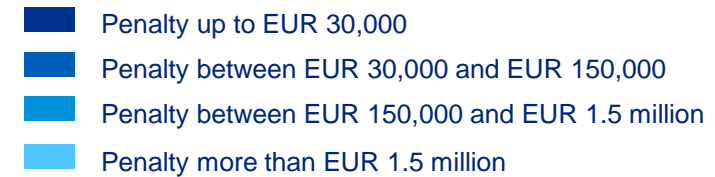
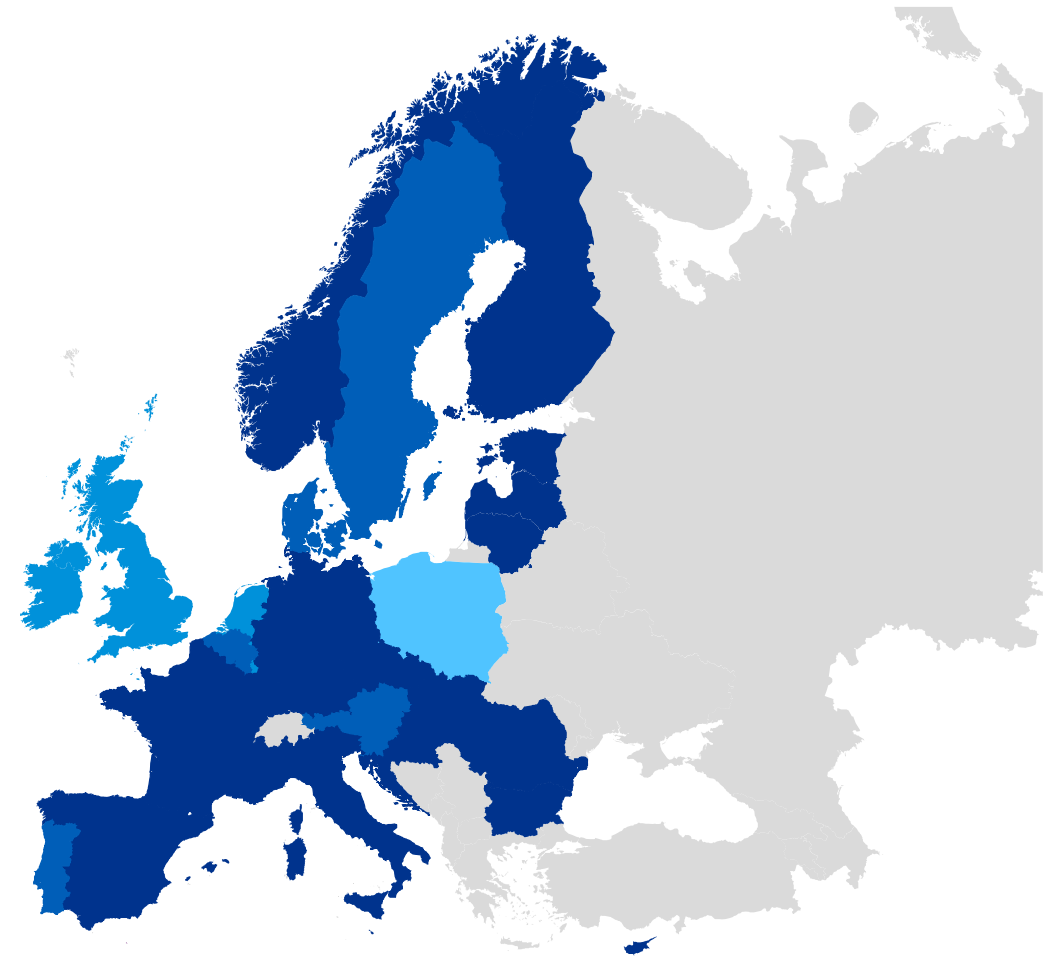
Numbers are based on the court fee for 2020.

DAC 6 - Penalties (April 2020)

Maximum penalty* (EUR '000)



* Note that the chart does not include penalties applicable in Poland and Ireland (no cap)





MDR compliance

Experience from the Danish market

Large MNEs, offices and production sites across Europe

- Full implementation:
 - Kick-off workshop, going through KPMG 90+ use cases
 - Impact analysis workshops with relevant stakeholders (e.g. HR, Treasury, Tax, M&A, local finance managers, etc.)
 - Design of control and reporting process Defence file
 - DAC6 documentation guidelines

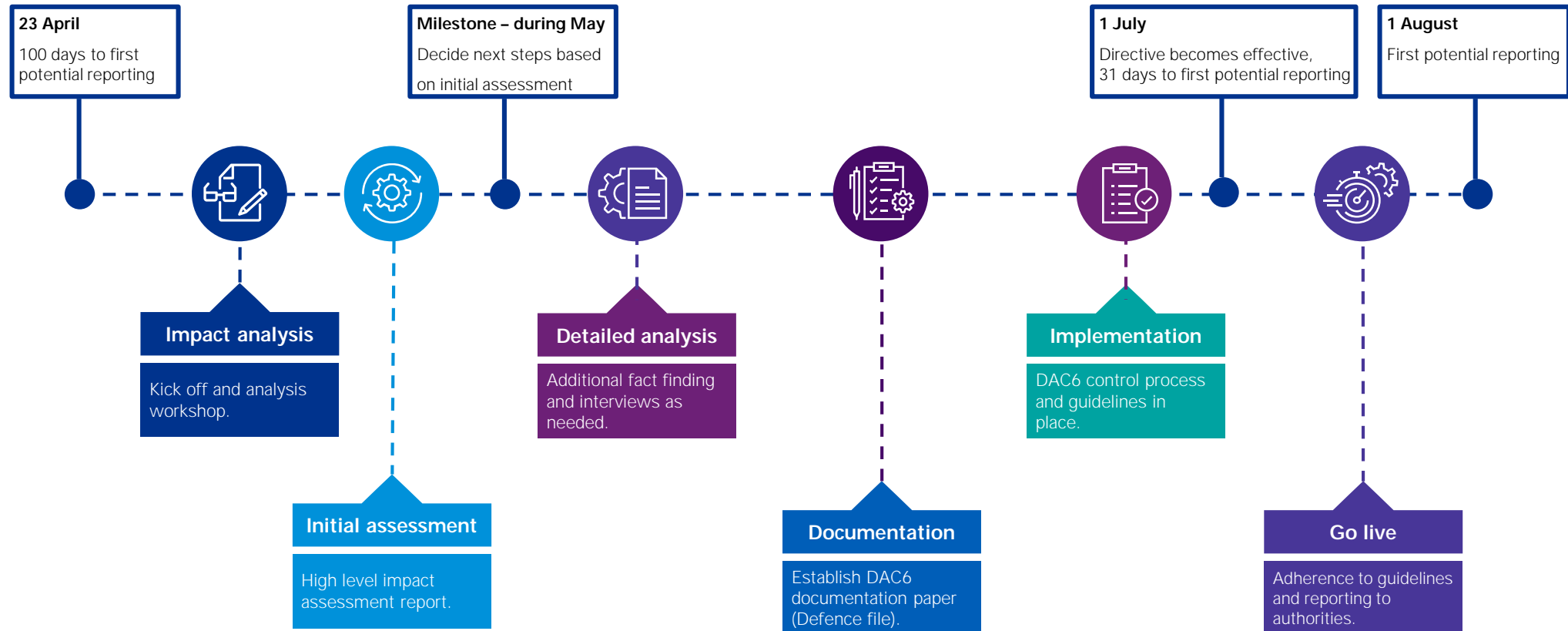
MNEs with limited number of cross-border arrangements

- Assessment done by Head of Tax and their team
- Review of assessment and ad-hoc meetings for sparring on results
- Advice on lighter control and reporting process

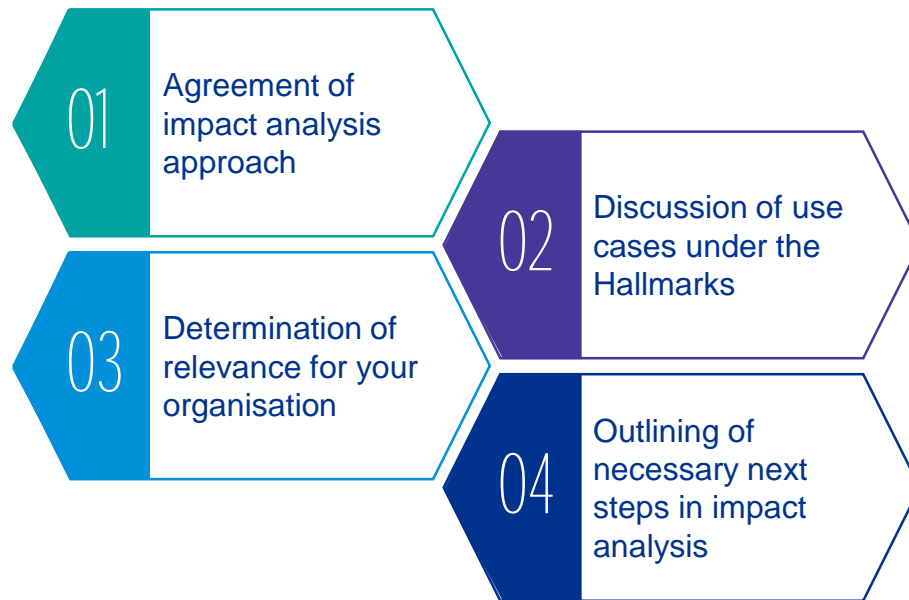
SMEs

- As of now, SMEs have not much focus on the issue

MDR 100-day implementation plan



Kick-off and analysis workshop



Your relevant use cases for hallmarks are documented and broken down to:

- Not relevant
- Likely to require reporting
- Need further analysis

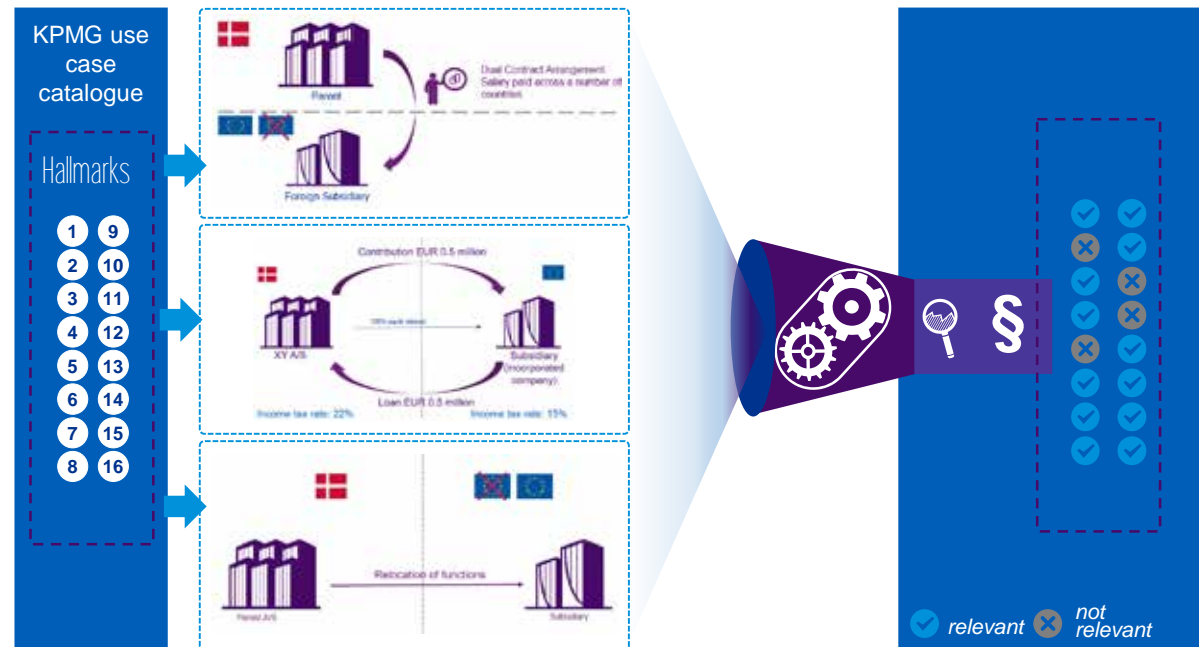
Clustering of countries and entities

Relevance analysis

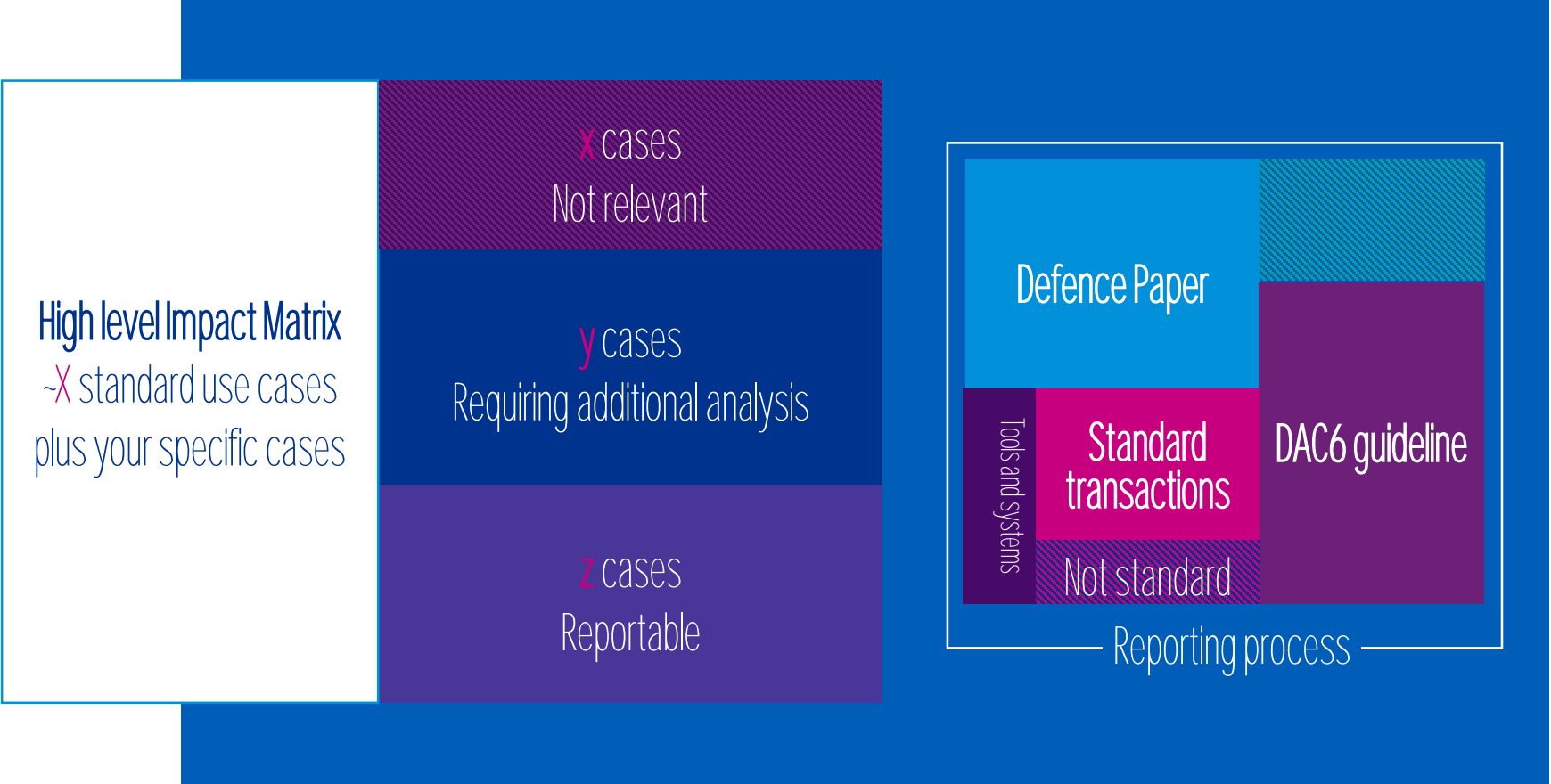
Output

Analysis through concrete case studies reducing the complexity

In the initial analysis, we jointly assess the potential applicability of Hallmarks based on the KPMG use case catalogue.



Outcome of the initial workshop



Impact analysis approach

The relevance rating will be based on your assessment of how likely use cases will need to be reported, and...

...how frequently the use cases in question occur.

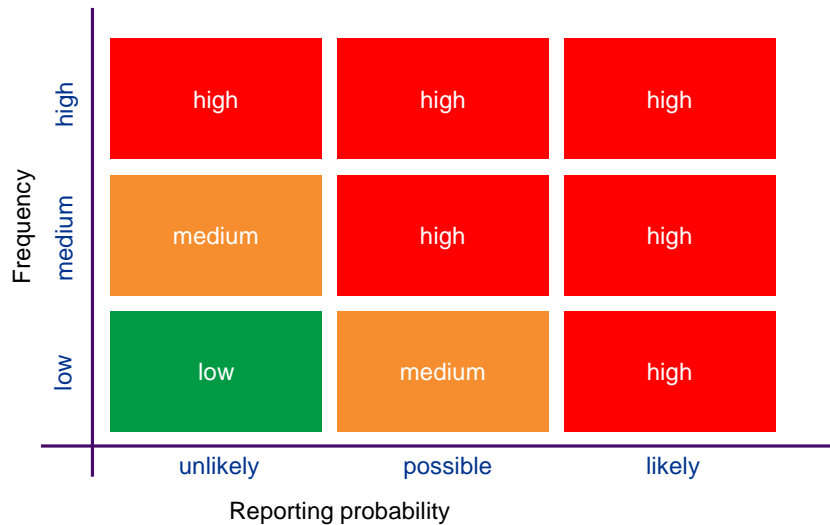
Relevance criteria			Relevance rating
Likelihood of use case to be reportable (unlikely/possible/likely)	Reasons for assessment of reporting likelihood (e.g. MB-test, reporting strategy)	Frequency (low/medium/high)	Overall relevance for you (low/medium/high)
likely		high	high
likely		low	medium
unlikely		medium	low
possible		medium	medium
possible		high	high

Discussion of reporting strategy

Dealing with open application / interpretation questions:

Will all transactions for which a reporting obligation cannot be fully excluded be reported or shall rather just those transactions that very likely trigger a reporting obligation be reported?

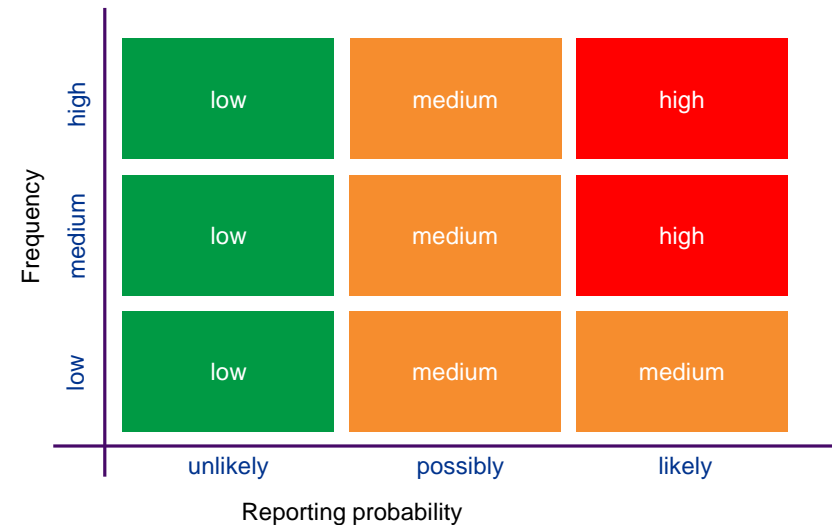
Conservative approach



Use cases to be handled

Should all theoretically possible reportable arrangements be included in the reporting process and monitored?

Lean approach



Dealing with specific hallmarks

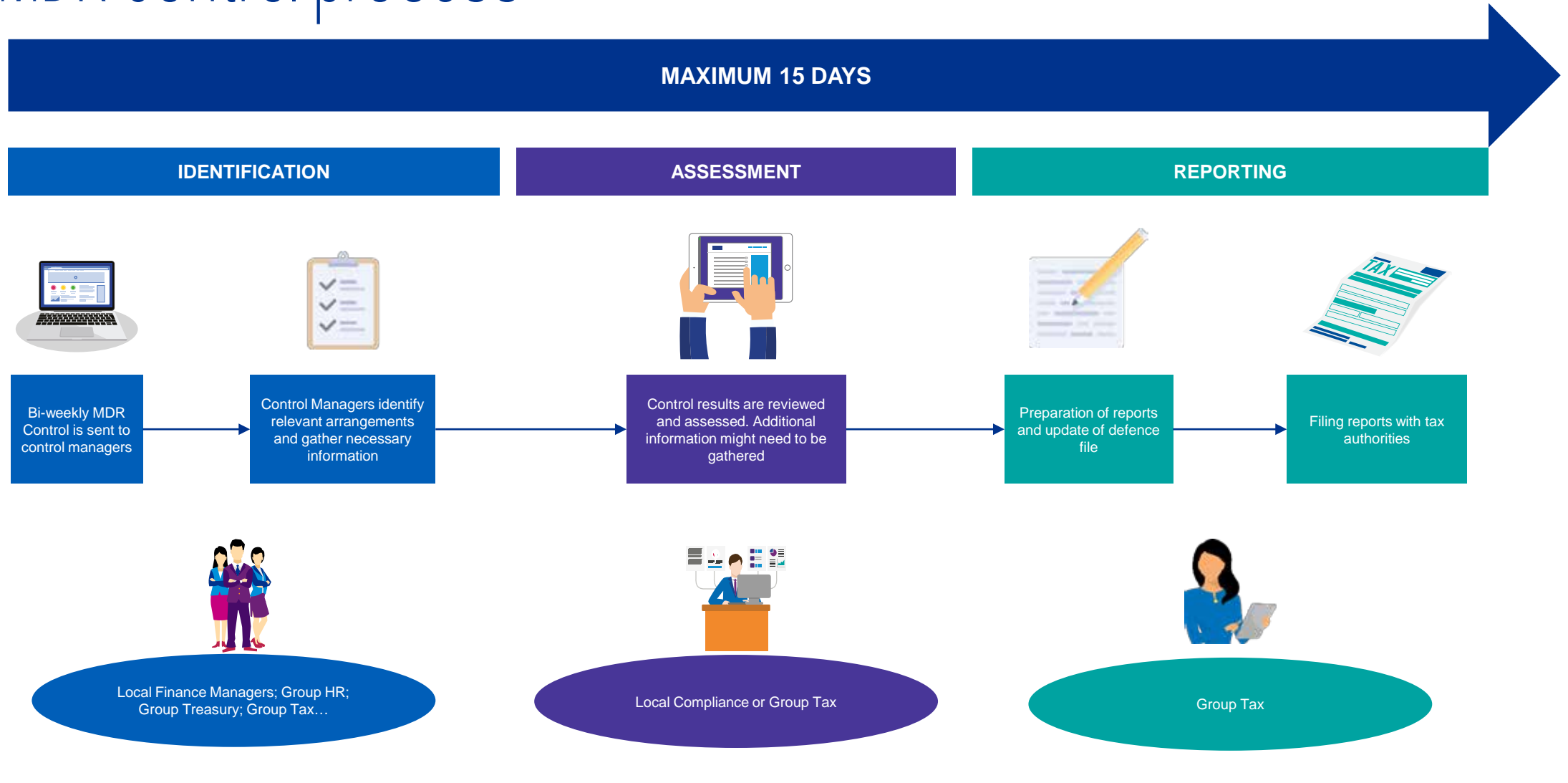
Should a conservative approach on the interpretation of the hallmarks be used or should interpretative leeway be used to deny the broader application of certain hallmarks, e.g. E.1

Responding to the observations

<u>DAC6 Documentation File</u>	
1.	General statement on reporting philosophy
2.	Overview of impact analysis approach
3.	Cases not deemed relevant
4.	Cases potentially relevant, but deemed not triggering the MBT
4.1	Cases where confidentiality clause is agreed
4.2	Cases where a third party receives success fee
4.3	Cases where standard agreements are used
...	
5.	Cases potentially relevant, but deemed to not meet specific hallmark
5.1	Cases not deemed relevant based

<u>Strategy Paper</u>	
1	DAC6 at [COMPANY]
1.1	Reporting philosophy
1.2	Elicitation approach
1.2.1	Impact matrix & impact assessment approach
1.2.2	DAC6 master defense paper & local supplements
1.2.3	Reporting process
2	Evaluation of reporting duties
2.1	Definition of an arrangement
2.2	Definition of an arrangement
2.3	Definition of an arrangement

MDR Control process





Thank you



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