



EU Mandatory disclosure regime: DAC6 state of play

14 November 2019



... with you today



Rodney Lawrence

Principal, Global Head of
International tax
KPMG International
T: +1 (312) 665-5137
E: rlawrence@kpmg.com



Robert van der Jagt

Partner, Chairman of KPMG's
EU Tax Centre
T: +31 88 909 1356
E: vanderjagt.robert@kpmg.com



Raluca Enache

Director,
KPMG's EU Tax Centre
T: +31 88 909 1465
E: enache.raluca@kpmg.com



Claus Jochimsen

Partner, Head of
International Tax
KPMG in Germany
T: +49 (0) 89 9282 3778
E: cjochimsen@kpmg.com

Administration

Polling questions

- Polling questions will appear as we proceed through the presentation.
- As mentioned, in order to receive the certificate of attendance, we require participants to take part in at least four of the seven polling questions.
- If you qualify for the certificate of attendance, it will be sent to you following the webcast.



Attendee questions

- You may submit questions in the *Ask a question* button on the left. We will answer as many questions as we can during Q&A. If we are unable to answer your question during the webcast, someone from KPMG may reply via phone or email following the webcast.
- For technical issues, please use the *Question Mark* button in the upper-right hand corner of the media player.



Your feedback

- When the webcast is over, the webcast player will automatically refresh to display an exit survey. Feel free to complete the survey, as your comments are very valuable to us.



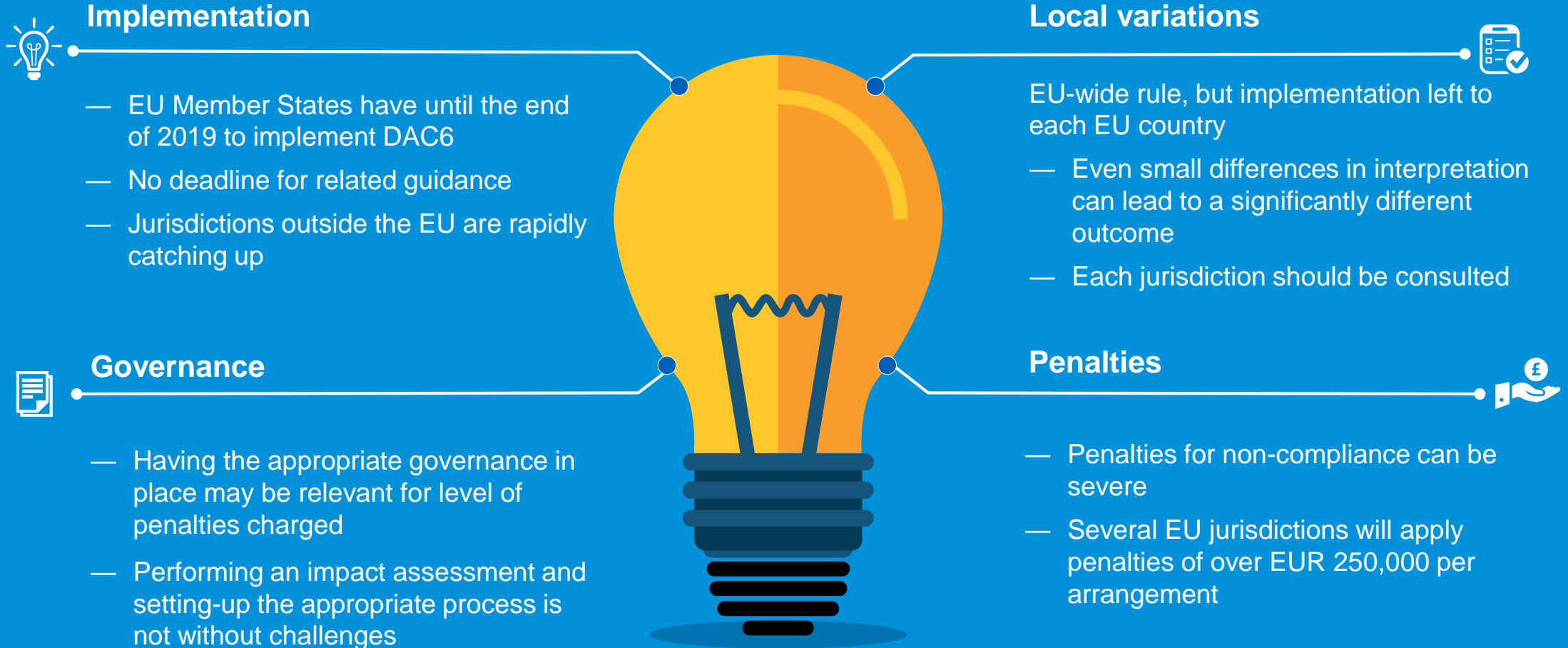
Topics for discussion

Agenda



- 1 **Implementation state of play**
- 2 **Some differences in interpretation**
- 3 **Mandatory Disclosure Rules outside the EU**
- 4 **A few practical examples**
- 5 **Challenges and possible approaches**

DAC6 implementation: what to keep in mind





DAC6: local implementation state of play

Timeline



DAC6 is adopted

Formal adoption by ECOFIN

May 25,
2018

June 25,
2018



State of play

7 countries have implemented the rules
17 countries are discussing/in process of approving draft legislation
Remaining 4: Draft bills expected during the course of 2019

Today



DAC6 becomes effective

MDRs become applicable

December
31, 2019



Automatic exchange

First exchange of information between tax authorities

August 31,
2020

October 31,
2020



DAC6 enters into force

MDR directive comes into force



Local implementation

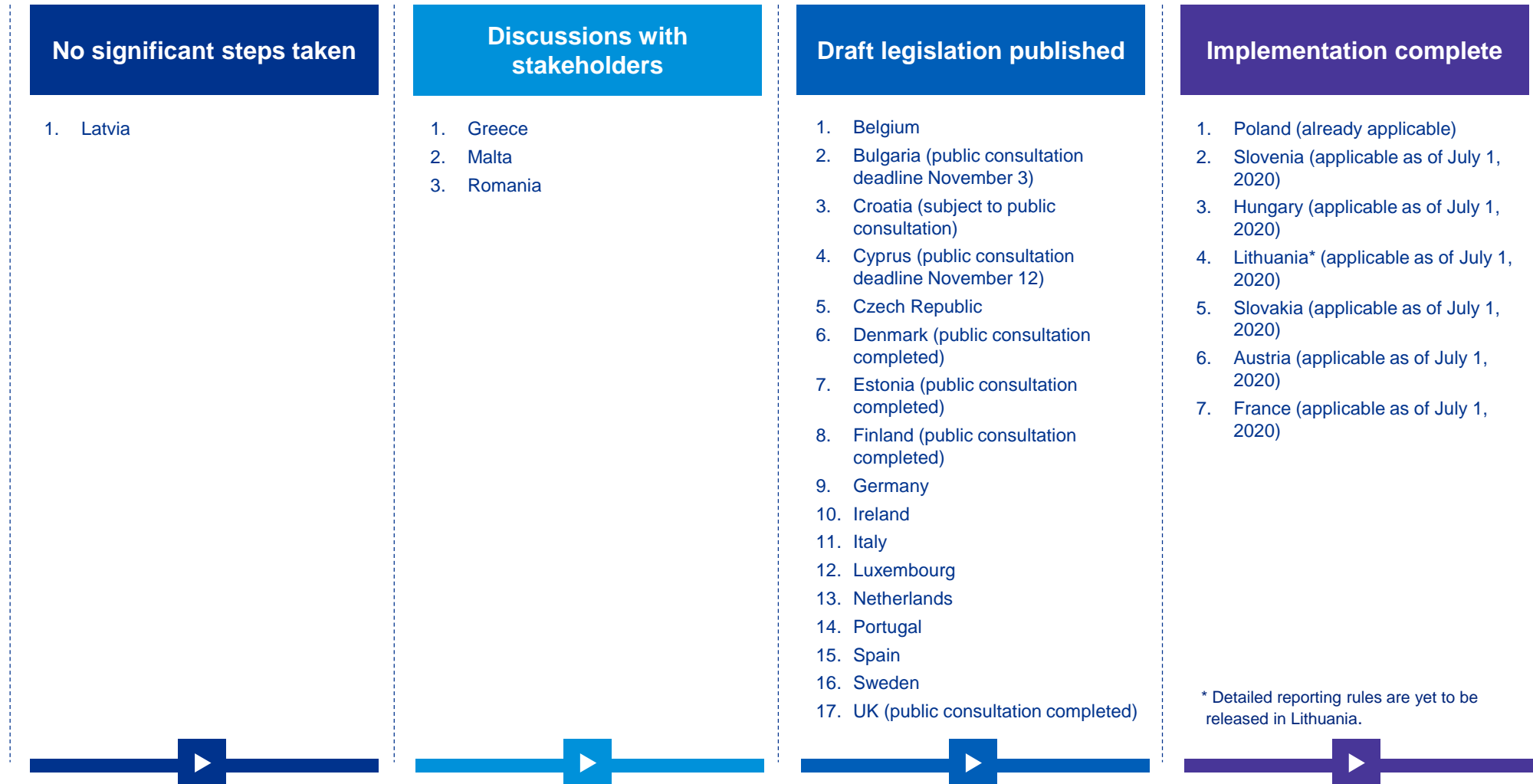
Deadline for EU Member States to implement DAC6 into local law







First deadline

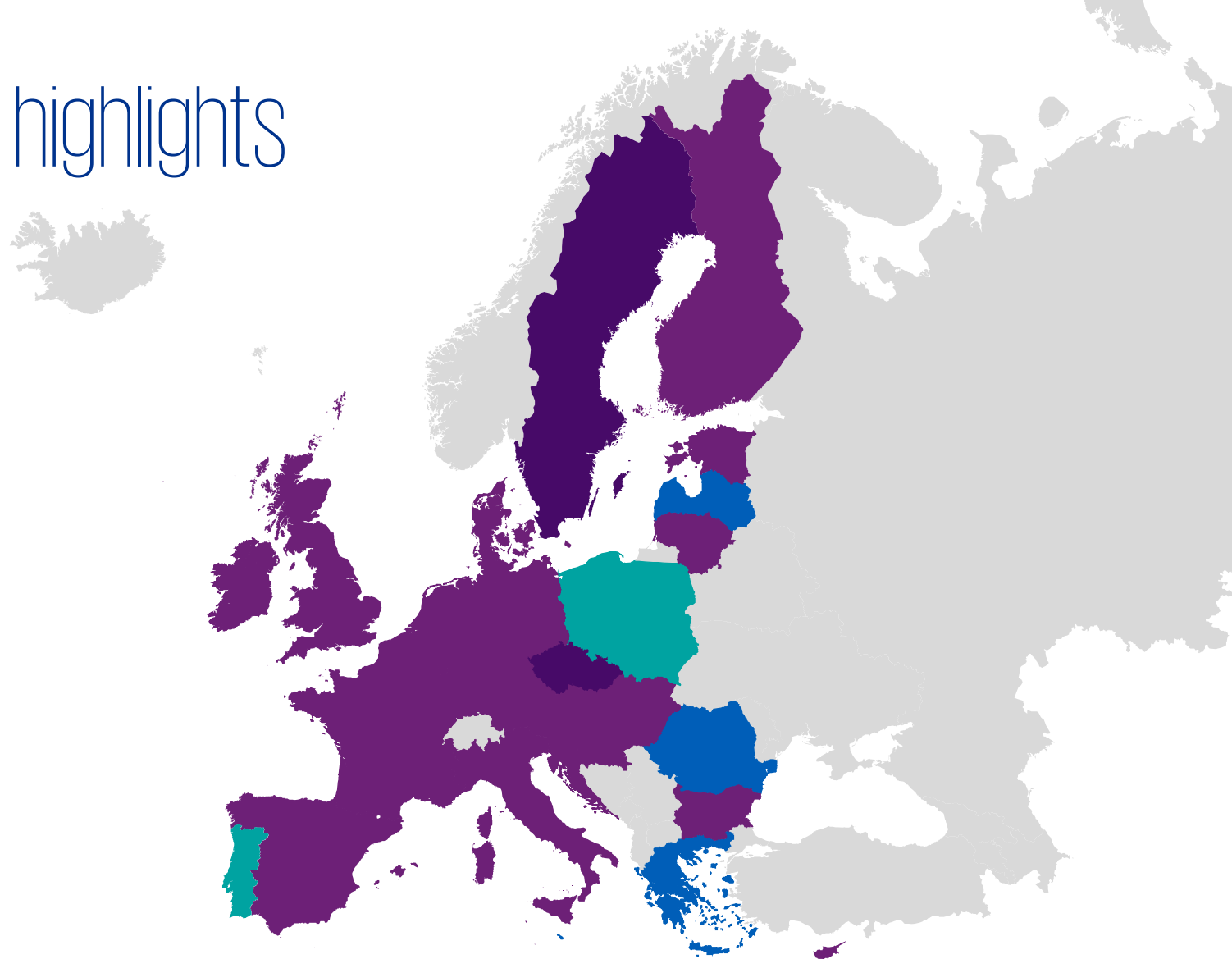
Deadline to file retroactive information

Local implementation — progress so far



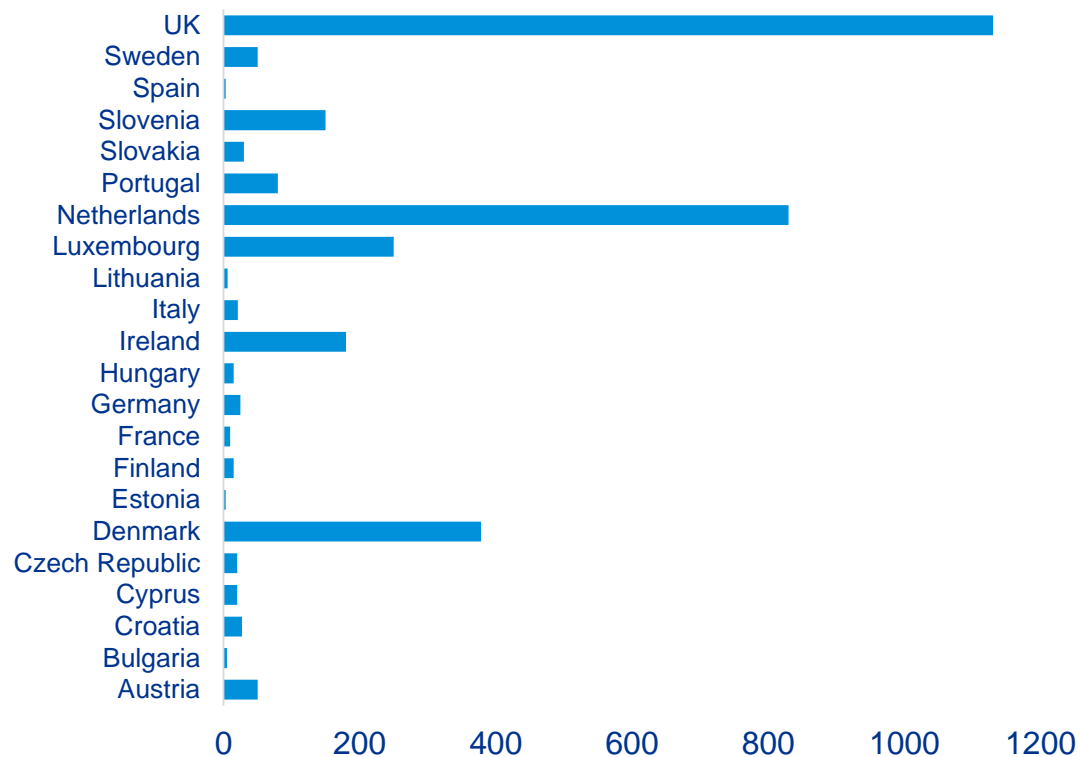
Local implementation — highlights

-  'Vanilla' implementation closely following directive
-  Implementation closely following directive, with (potentially) marginally expanded scope
-  Significantly expanded scope, e.g. including domestic arrangements, additional taxes
-  Approach still to be established

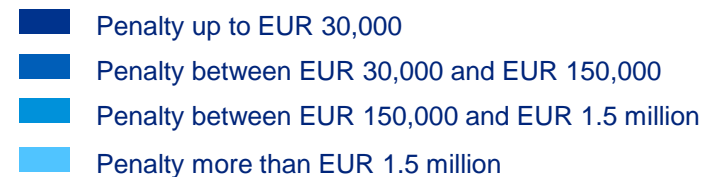
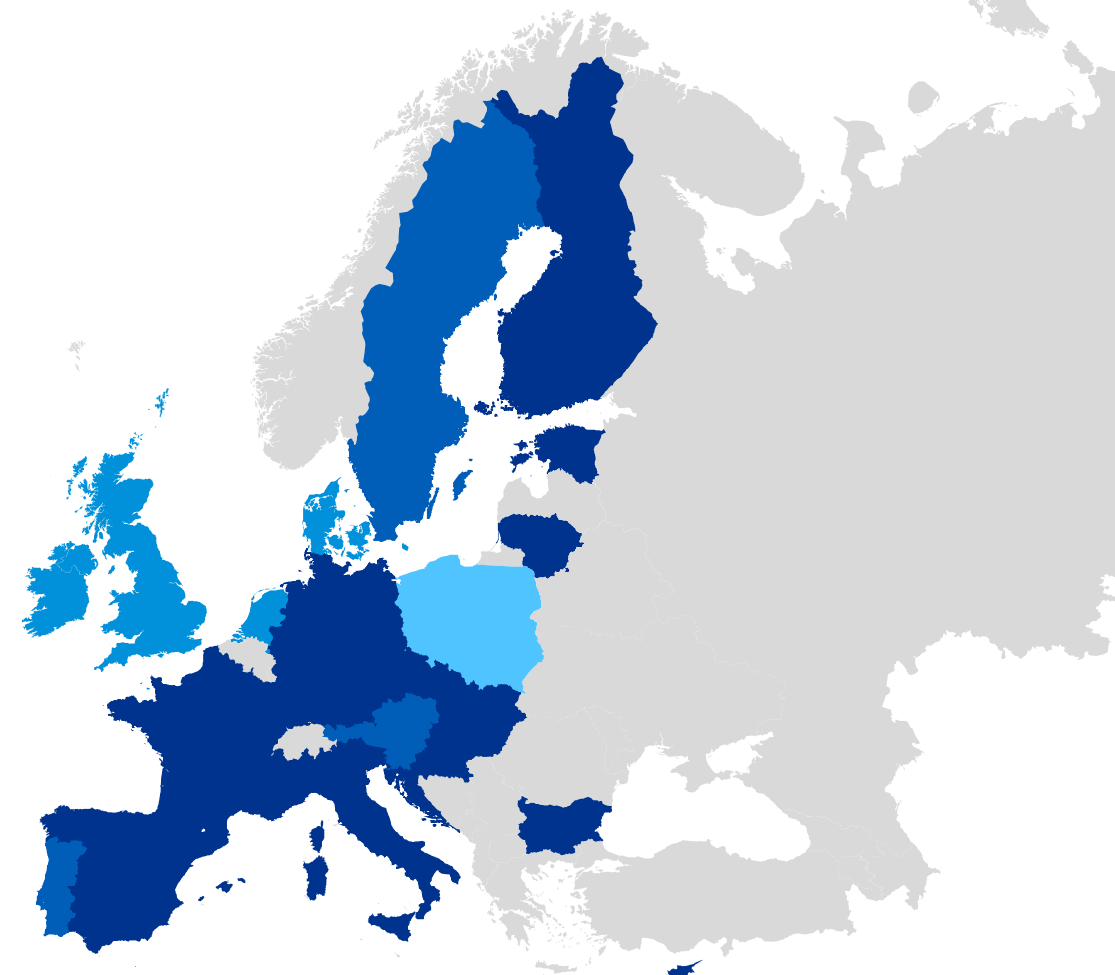


Local implementation — penalties

Maximum penalty* (EUR '000)



* Note that the chart does not include penalties applicable in Poland





DAC6: Some differences in interpretation

Local implementation — some variations

C.1(b)(i): zero or almost zero

- A number of Member States do not appear to have defined the term “zero or almost zero”
- Consensus that “almost zero” should mean less than 1% may be developing (Netherlands, Portugal, Spain and the UK). Also the view of the European Commission.
- However, Germany: less than 4%; Poland: less than 5%

Heading E: Transfer Pricing

- Portugal: Hallmark E.1, safe harbor rules are those that are not included in OECD Transfer Pricing Guidelines.
- The UK: Hallmark E (general), only intended to seek disclosure of arrangements that are contrary to the OECD Transfer Pricing Guidelines.
- Spain: TP hallmarks should not apply where an advance pricing agreement is in place.

Tax advantage

- Austria, Germany, Luxembourg, Italy, Poland, the Netherlands, Spain and the UK have proposed/confirmed that the implementation of DAC6 will apply to non-EU tax advantages.
- The (draft) rules in Cyprus will not apply to third countries unless there is also an impact on an EU Member State.
- Some countries (e.g. Austria, Spain) may consider the tax advantage (tax saving) to be the reportable value.

Main Benefit Test

Germany



- The test will not be satisfied if the tax advantage is not a major advantage of the arrangement, i.e. the tax advantage fades into the background when viewed against the arrangement as a whole.
- A tax advantage will not be considered to arise where the arrangement only has an effect domestically, and if it is legally provided for in German domestic law.

UK



- A tax advantage will only be considered to arise where the obtaining of the advantage “cannot reasonably be regarded as consistent with the principles on which the relevant provisions that are relevant to the reportable cross-border arrangement are based and the policy objectives of those provisions”.

Netherlands

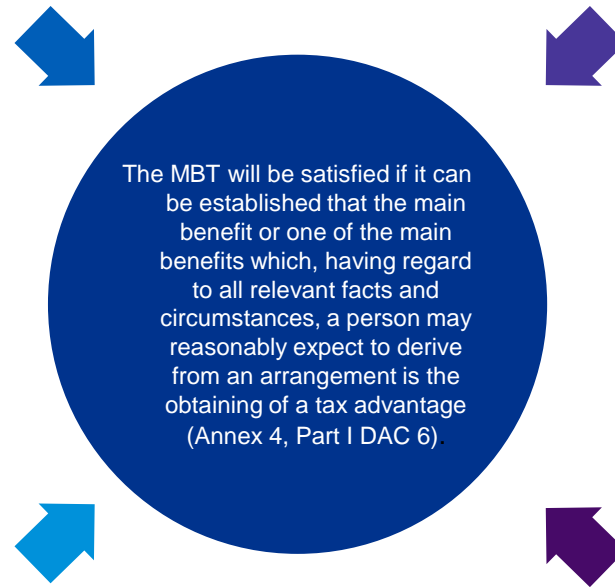


- Latest guidance from the Dutch authorities aligns treatment of main benefit test to UK position (below).
- Previous draft guidance suggested the Dutch main benefit test would apply the Cadbury Schweppes doctrine (i.e. a requirement for an artificial element).

Poland



- Main benefit test is a three-pronged test in Poland:
- The tax arrangement results in a tax benefit;
 - The tax benefit is the main or one of the main benefits of the arrangement; and
 - There was no alternative course of action which a person, acting reasonably and driven by legitimate non-tax reasons, could sensibly have chosen that would not result in achieving the tax benefit.





Mandatory disclosure rules outside the EU

Looking ahead — other third countries

OECD BEPS 12

- DAC6 is only the EU implementation of OECD BEPS Action 12, albeit in a broadened form
- Other jurisdictions are likely to implement similar rules
- EU partners (e.g. Switzerland) may be pressured into implementing some version of DAC6

South Africa

- Perceived offshore structures designed to avoid financial account reporting under the OECD's Common Reporting Standard.
- 2019/20 Budget — proposal to implement mandatory disclosure rules in line with the OECD requirements

Norway

- Intention to introduce some form of mandatory disclosure rules
- Similar lines to DAC6
- Existing information exchange agreements with EU member states

Channel Islands

- Jersey and Guernsey committed to introduce legislation before end of 2019 to implement mandatory disclosure rules aligned to international (OECD) standards (CRS avoidance).

Mexico

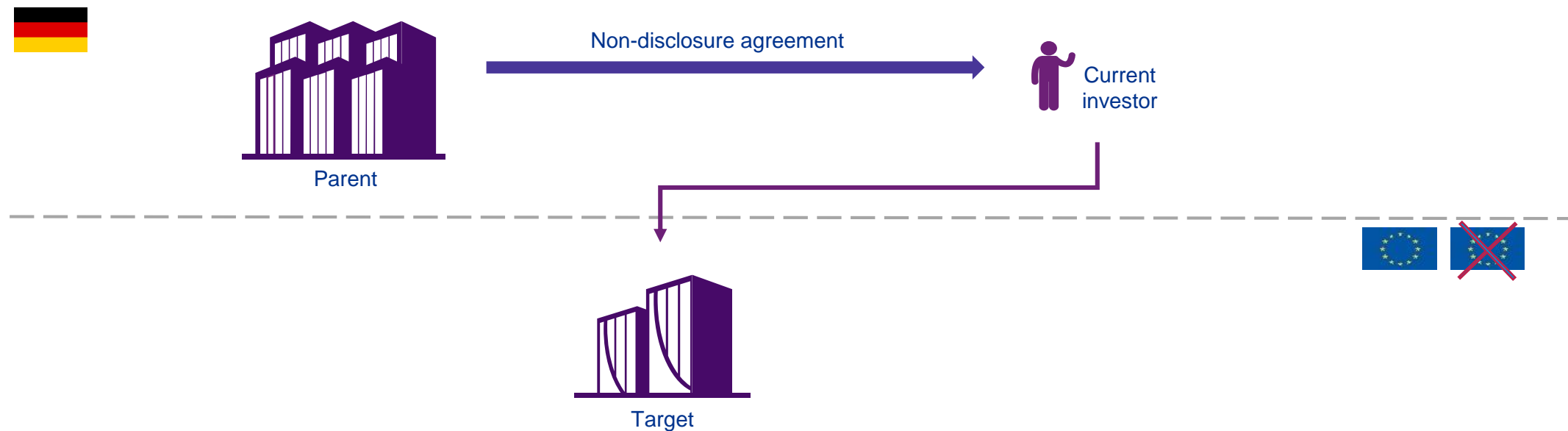
- MDRs included in Tax reform initiative for 2020. Approval required from Mexican Senate.
- Rules include a list of reportable operations, including treaty shopping, loss planning, private wealth planning and operations that obscure income, etc.
- Penalties for non-compliance can reach the equivalent of EUR 1 million.





A few practical examples

Example 1: Non-disclosure agreement



Intention to acquire a foreign target; an NDA is concluded with the current investor.

Tax synergies for acquiring the target are factored in for the business case.

Hallmark A.1.

An arrangement where ... 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?

Example 2: Employee assignment (with Dual Contract)

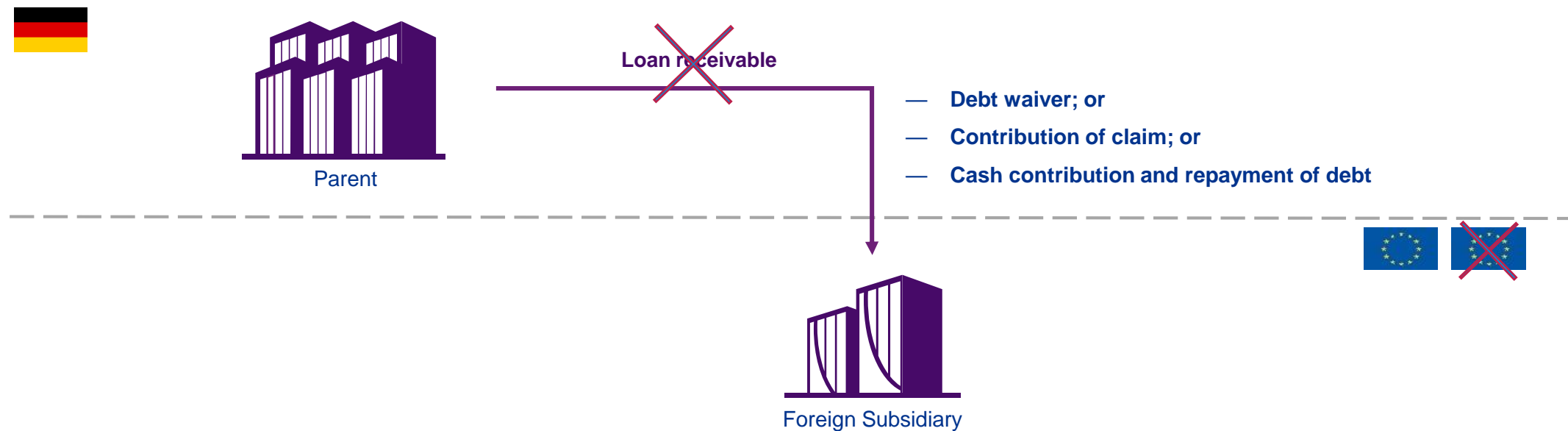


Standardized assignment agreements, e.g. through dual contract to provide the employee with tax benefits (progression benefits, tax breaks/holidays, special tax rates on salary components).

Hallmark A.3.

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?

Example 3: Debt-to-equity swap



Foreign distribution company becomes distressed (for example, economic downturn, intensified competition) and can no longer settle existing liabilities. Parent converts the claim into equity.

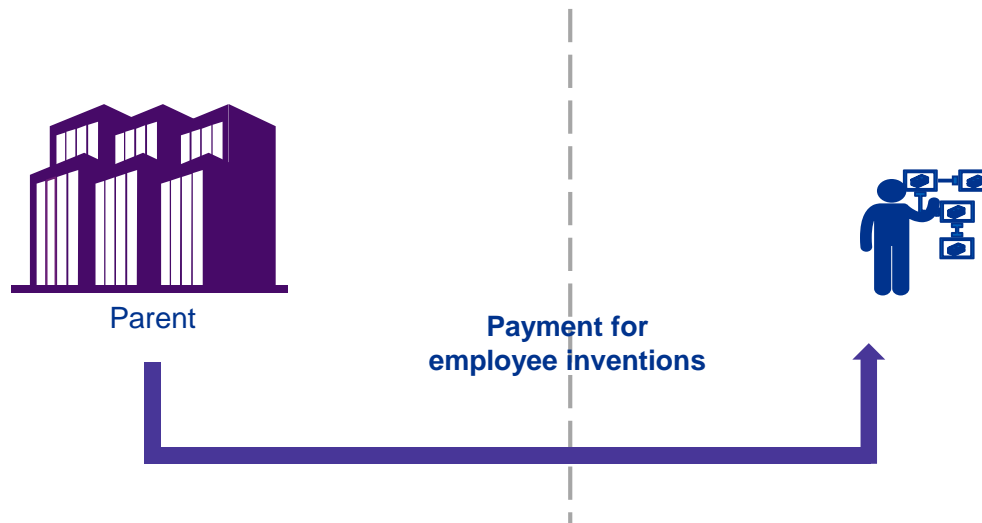
Hallmark B.2.

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 exempt from tax?

Hallmark B.3.

An arrangement which includes circular transactions resulting in the round-tripping of funds, namely through ... transactions that offset or cancel each other?

Example 4: Employee inventions



Employees receive compensation for their participation in the development of IP within the legal and contractually agreed conditions.

Hallmark A.3.

An arrangement that has substantially standardized documentation and/or structure and is available to more than one relevant taxpayer without a need to be substantially customized for implementation?

Hallmark C.4.

Transfers of assets where there is a material difference in the amount being treated as payable in consideration for the assets in those jurisdictions involved?

Hallmark E.2.

Transfer of hard-to-value intangibles (e.g. in case the employee is allocated to a foreign PE)?

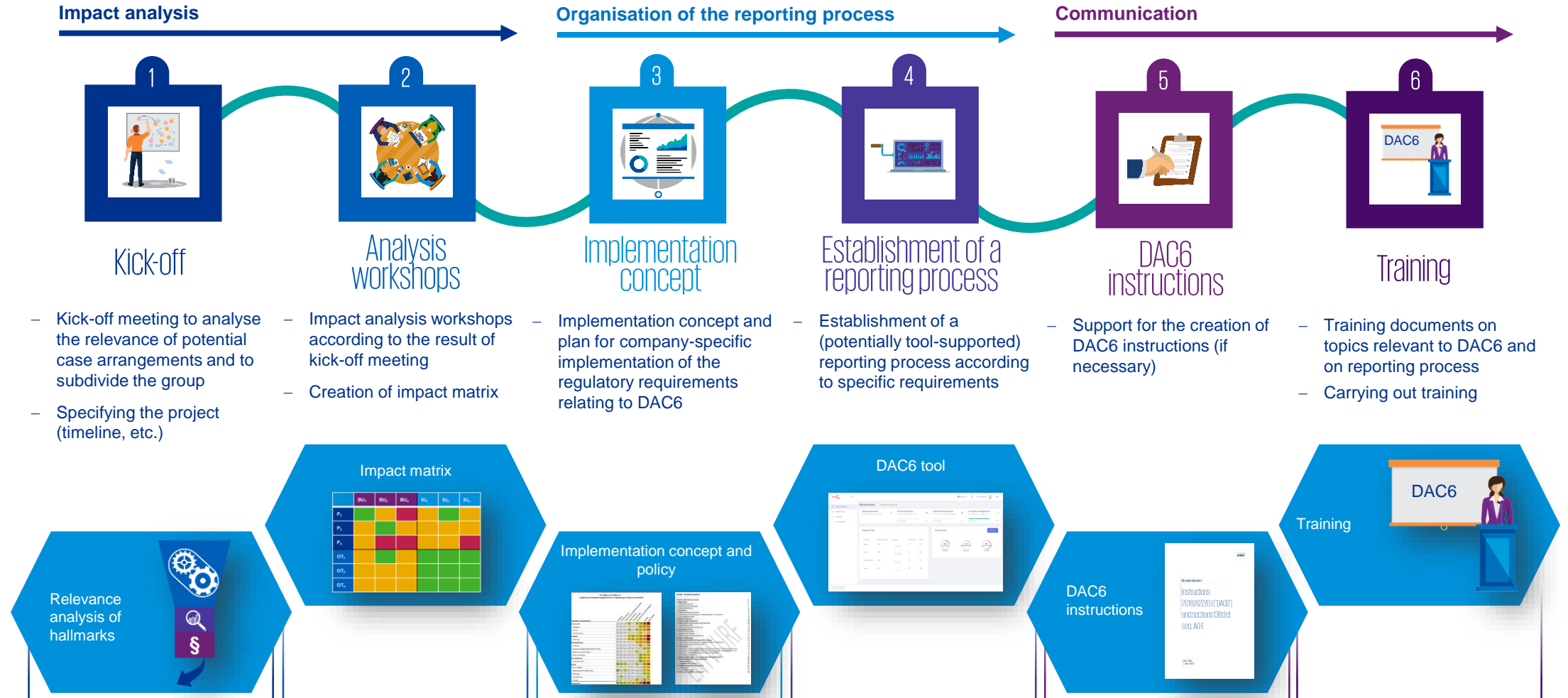


Challenges and possible approaches

The expanded reporting obligations present companies with a large number of challenges



Modular project approach





KPMG's approach using technology

A solution..... Classify, track and report

KPMG's DAC6 Processor is a technology solution that will assist intermediaries and tax payers to determine whether their organization has any reporting obligations under this regime. The software is designed track the decision making process, allow local DAC6 hallmarks to be assessed and it will allow you to report arrangements to the tax authorities.

Why use a tool and not simply a excel spreadsheet?

There are a number of advantages to using a technology based solution

- The tool provide a series of questions which include bespoke or jurisdiction specific questions including any domestic requirements, helping you determine whether an arrangement should be reported (or where further information is required to determine this);
- A secure audit trail help to show who did what and when and allow the decision making process to be evidenced;
- Management can have access to a centralized view of the global status that indicates your organizations reporting progress across all jurisdictions that you are active in. This is crucial for reporting arrangements within a 30 day timeline.
- Management information reporting and drill down analytics can help to provide the ability to view or compare different data sets to identify trends or risks associated with the reporting, including assessment by:
 - arrangements reported,
 - arrangements per tax, per jurisdiction, per hallmark.

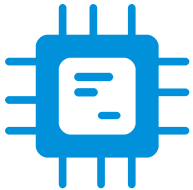




How the solution works

Configuration of the account

The configuration of the account allows the Manager to enter information about the intermediary organisation, entities and business units as well as the members of the group. Details of the users are also entered and their roles (or ability to access/view data) will also be configured, for example:



User:

Can initiate an arrangement and input basics



Editors stages 1 & 2:

Responsible for data input for stage 1 and stage 2 analysis



Reviewer:

Has the ability to review the arrangements. This ensures a “4 eyes review process”.



Intermediary:

Allows intermediaries to answer arrangement surveys, allowing continuity with reporting.

Arrangement analysis


The solution encompasses ‘smart questionnaires’ which have been designed to take a user through a structured analysis of the arrangement that needs to be reported. The questionnaire is dynamic and specific to the tax type and jurisdiction(s) in question.

The structured process aims to:





- Determine based on the countries involved in the arrangement the questions that need to be answered and which countries reporting is potentially required;
- Permits users to access ready made arrangements to help streamline your organization's reporting obligations.
- Users can upload documents relating to the arrangement (e.g. where external advice that has been received documenting whether an arrangement is reportable).
- The tool can be configured to mandate a secondary review of the conclusion reached for each arrangement (or group of arrangements).





Arrangement analysis





[Dashboard](#)
[Master data](#)
[Reporting and Documentation](#)
[Administration](#)














Defaultijschuld

Arrangements





 Export to excel
  Create new arrangement
















Show advanced filters

Actions	Arrang. ID	Arrangement	Description	Country	Status	To report	Published	Criticality
 Actions	21	Other	Default Transaction type	DE, DK	Open	Not computable		Medium
 Actions	16	Other	Default Transaction type	DE	In progress	Not computable		Medium
 Actions	14	Other	Default Transaction type	ES, PL	Open	Not computable		Medium
 Actions	12	Other	Default Transaction type	DE, DK	In progress	Not computable		Medium
 Actions	10	Contribution of claims	Conversion of income into income taxed at a lower rate or not taxable income	DE	In progress	Not computable		Medium
 Actions	5	Test	Test	FI	Published	Negative	August 14, 2019 2:54 PM	Medium
 Actions	4	Other	Default Transaction type	AT	Open	Not computable		Medium
 Actions	2	Test	Test	AT, BE	Completed	Negative		High
 Actions	1	Test	Test2	AT, BE	Open	Not computable		Low

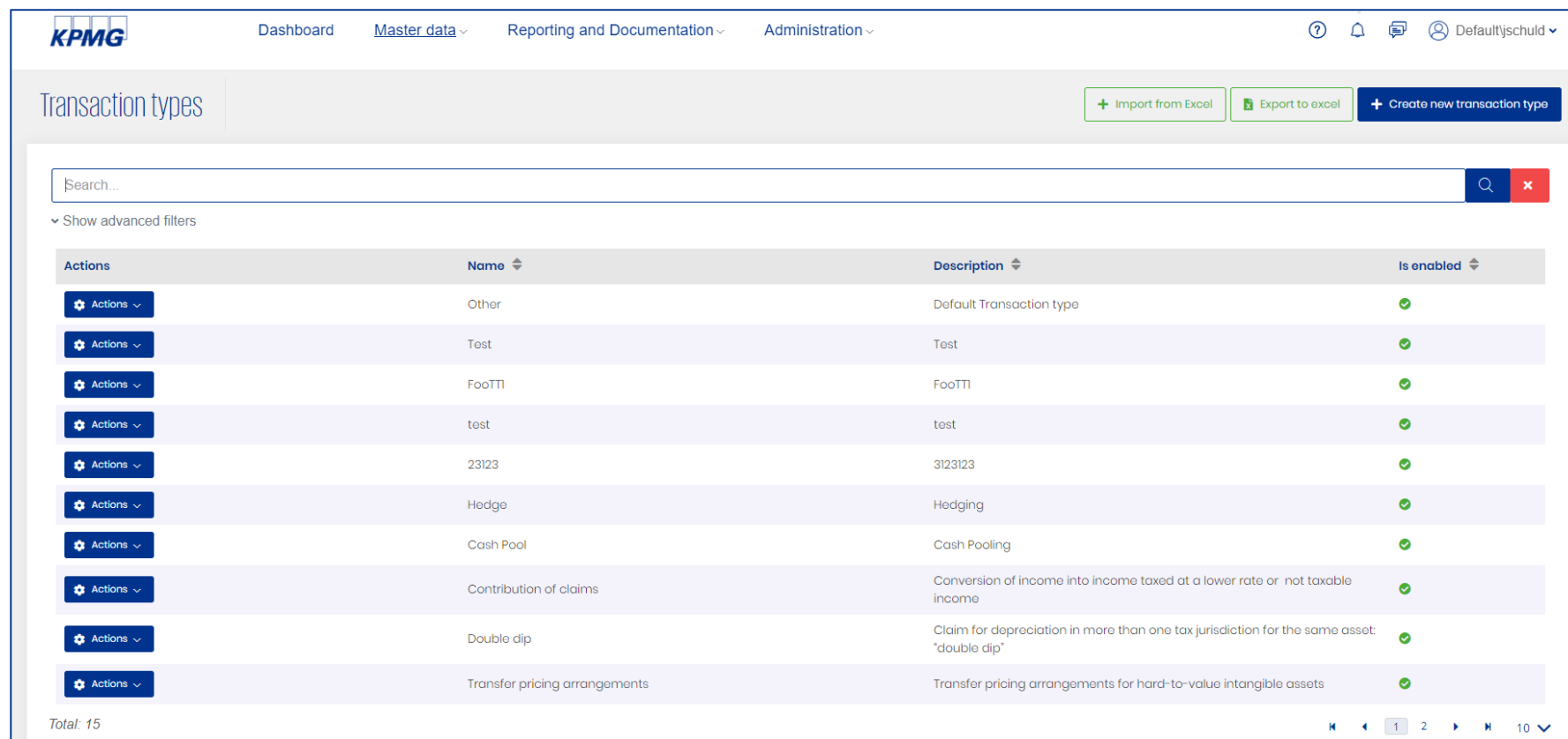
Total: 9



1


10

Arrangement Survey

<div>  <div> Dashboard Master data Reporting and Documentation Administration </div> <div>     Defaultijschuld </div> </div>									
<div> Arrangement Surveys <div>Export to excel</div> </div>									
<div> <div>Search...</div> <div>   </div> </div>									
<div> Show advanced filters </div>									
Actions	Arrang.ID	Arrangement	Company code	Company name	Country	Survey name	Survey category	Status	To report
 Actions	21	Other	T1	Testcompany 1	DE	Default Stage 2 Survey EU	Survey Stage 2	Open	Not computable
 Actions	21	Other	T2	Testcompany 2	DK	Default Stage 2 Survey EU	Survey Stage 2	Open	Not computable
 Actions	21	Other	T1, T2	Testcompany 1, Testcompany 2	DE, DK	TestSurvey	Test	Open	Not computable
 Actions	16	Other	T1	Testcompany 1	DE	TestSurvey	Test	Open	Not computable
 Actions	16	Other	T1	Testcompany 1	DE	TestSurvey	Test	Completed	Not computable
 Actions	14	Other	400	Ratha OpCo ES	ES	Default Stage 2 Survey EU	Survey Stage 2	Open	Not computable
 Actions	14	Other	300	Ratha OpCo S.A.	PL	Default Stage 2 Survey EU	Survey Stage 2	Open	Not computable
 Actions	14	Other	400, 300	Ratha OpCo ES, Ratha OpCo S.A.	ES, PL	TestSurvey	Test	Open	Not computable

Predefined arrangements



Actions	Name	Description	Is enabled
Actions	Other	Default Transaction type	✓
Actions	Test	Test	✓
Actions	FootTI	FootTI	✓
Actions	test	test	✓
Actions	23123	3123123	✓
Actions	Hedge	Hedging	✓
Actions	Cash Pool	Cash Pooling	✓
Actions	Contribution of claims	Conversion of income into income taxed at a lower rate or not taxable income	✓
Actions	Double dip	Claim for depreciation in more than one tax jurisdiction for the same asset: "double dip"	✓
Actions	Transfer pricing arrangements	Transfer pricing arrangements for hard-to-value intangible assets	✓

Total: 15

Stage 1 Questionnaire

StartQuestionnaire

Survey

Stage1

1 . Has a confidentiality clause been agreed in connection with the arrangement? *

If helpful, refer to Legal.

☐ true ☐ not true

further comments

2 . Is the remuneration of external and internal consultants dependent on the economic success of the arrangement? *

If helpful, refer to Legal.

☐ true ☐ not true

further comments

3 . Characteristics of the arrangement, either affecting one person involved, undertaken by one person involved or undertaken between two or more persons involved *

☐ A1-Transfer of intangible assets between related persons

☐ A2-Take-over of any business function between related persons

☐ A3-Take-over of any risk between related persons

☐ A4-Transfer of shares between related persons

☐ A5-Transfer other assets between related persons

☐ A6-Merger of entities with foreign related persons as shareholders

Stage 2 Questionnaire

StartQuestionnaire

Survey

DAC6 Stage2 Survey

Cross-border character

1 . According to the current input from Stage 1, it is to be assumed that a cross-border arrangement in the meaning of the Directive is given - is this correct from your perspective? *

Relevant only if - according to Question C in Arrangements and master data or input under Question F - two or more different persons are involved with different tax residence.

☒ confirmed

☐ Show further questions

☐ Not true, NO cross-border arrangement is given

further comments

2 . A cross-border arrangement is given. Has it been reported by any intermediary or similar person in any other country or in your country with liberating effect? *

☐ true

☒ not true

Previous

Next

Save current state

Dashboard and landing page

The management dashboard provides a centralized view of summary status highlighting any open actions across the organization, business unit, user or jurisdiction (i.e. this will include arrangements not yet reported where they are determined to be in-scope or those which are still unclassified).

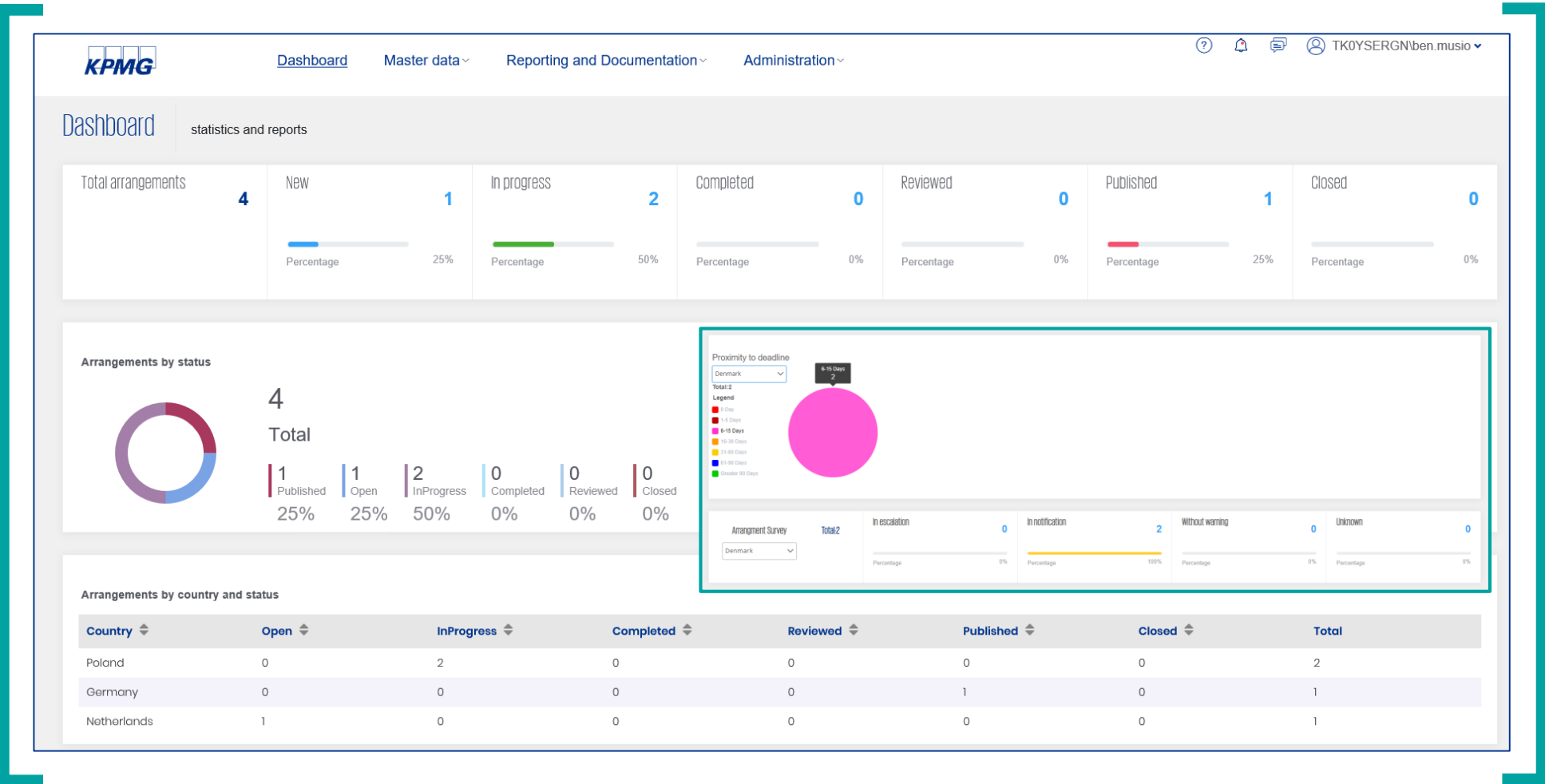
The dashboard acts as a risk management tool and is configured to show how all arrangements are being progressed within your organization, allowing action to be taken for those approaching deadline and not yet completed.

The dashboard shows the following:

- Jurisdictions where there are arrangements required to be reported.
- Progress bar indicator providing an overview of the in each jurisdiction.
- The dashboard visualizes the proximity to deadline and a breakdown of arrangements by their progress in the reporting lifecycle.
- The dashboard contains a helpful internal messenger that allows you to contact other users within your organization.



Dashboard



Chat function for easy exchange of information

The screenshot displays the KPMG DAC6-Processor interface. The top navigation bar includes 'Dashboard', 'Master data', 'Reporting and Documentation', and 'Administration'. The main content area is titled 'Arrangements' and features a search bar, a 'Show advanced filters' toggle, and a table with the following data:

Actions	Arrangement	Description	Status	To report
Actions	Neumann	Test	InProgress	Perhaps
Actions	ggg	ggg	Published	Partially

Below the table, it indicates 'Total: 2'. A chat window on the right side of the interface shows a message from 'admin' to 'D1100\Roman' stating: 'Hey Roman, I believe the input you provided on your end to the survey is not correct - please call!'. The chat input field at the bottom says 'Type a message here...'.



Questions?



Appendix

Overview on the current implementation status | 1

Austria	DAC6 implementation complete — rules to be applicable as of July 1, 2020. Limited to cross-border and direct taxes. Legal professional privileges upheld, however, advisors may still file information on reportable cross-border arrangements if they are authorized by their clients. Penalty could be up to 50,000 euros (EUR).
Belgium	Draft law expected before the end of 2019. Professional privilege being considered, but a final decision has not been made yet.
Bulgaria	Draft law published for public consultation (deadline November 3). The major part of the draft mirrors the Directive. Penalties of up to the equivalent of approx. EUR 5,000.
Croatia	Draft law subject to public consultation - closely follows the Directive. Maximum penalties of up to EUR 27,000.
Cyprus	The Ministry of Finance has published draft legislation for public consultation (closes on November 12). Proposed law mirrors DAC6 text. Penalties proposed to be applied progressively, with a maximum of EUR 20,000 per transaction or arrangement.
Czech Republic	In May 2019 Czech Ministry of Finance issued the second version of the DAC 6 implementation into the Czech legislation after receiving comments on its first March version. Mostly 1:1 implementation of DAC6; legal professional privilege applies.
Denmark	Draft bill subject to public consultation (deadline August 22). The major part of the draft mirrors the Directive.
Estonia	DAC6 bill approved by Government on October 3, 2019 and sent to Parliament for three reading.
Finland	Draft DAC6 bill published for consultation. The major part of the draft mirrors the Directive.
France	DAC6 implementation complete — rules applicable as of July 1, 2020. Administrative guidelines have not yet been published.
Germany	On October 10, 2019, the implementation draft bill was approved by the German government. As a next step, the bill needs to pass Bundestag and Bundesrat to be entered into law. The bill closely follows the Directive (domestic arrangements not included at this stage). Penalty up to EUR 25,000 for incomplete or late reporting is being considered.
Greece	Discussions with Ministry of Finance, however timeline of implementation process not yet known yet.
Hungary	DAC6 implementation law signed into law.
Ireland	Legislation implementing DAC6 published on October 17, 2019. Expected that the legislation will be signed into law by the Irish President in December.

Overview on the current implementation status | 2

Italy	Draft law: Administrative penalty ranging from EUR2,000 to EUR21,000. The cross-border arrangement is to be considered as reportable even when the tax benefit arises in a third state — if effective exchange of information with Italy, provided that at least one of the participants is resident in Italy. Final decrees expected before year-end.
Latvia	Draft Law expected during the course of 2019.
Lithuania	Legislation transposing the core provisions of DAC6 approved by the Parliament and signed into law by the Lithuanian President. — text largely mirrors the text of the Directive. Detailed reporting rules to follow in additional regulations and guidance.
Luxembourg	On July 26, 2019, the Luxembourg government approved the transposition bill for the DAC 6. The bill must now be submitted to parliament and follow the legislative process. Implementation closely follows the Directive. Text may be subject to change as it goes through the legislative process.
Malta	Interested constituted bodies have provided comments to the Revenue authorities. Draft legislation expected during the course of 2019.
Netherlands	Bill submitted to Dutch Lower House on July 12, 2019. Largely 1:1 implementation of DAC6. penalties for non-compliance can reach EUR 830,000.
Poland	MDRs apply as of 1 January 2019. Significantly broader scope (includes domestic arrangements and VAT). Criminal penalty for failure to report or inform the taxpayer of up to approx. EUR4.6 million. Discussions on implementation guidelines ongoing.
Portugal	Draft DAC6 bill published end of May 2019. Scope broadened to certain domestic arrangements (incl. related to VAT) and additional hallmarks.
Romania	Draft Law expected during the course of 2019
Slovakia	DAC6 implementation bill adopted. Legal professional privilege upheld. Penalties for non-compliance may reach EUR 30,000.
Slovenia	DAC6 implemented in the Slovenian Taxation Procedure Act.
Spain	On June 20, 2019, the Spanish Government published draft DAC6 implementation legislation. Based on the draft bill, there will be no extension to domestic transactions or to taxes excluded by the Directive. Hallmarks are those included in the Directive, although some interpretive comments have been included, applicable also to the main benefit test.
Sweden	The Swedish MDR Committee has presented its draft proposal to the Swedish government on 15 January 2019. Certain domestic arrangements may be included.
UK	Draft legislation published July 2019



Thank you!



The proposals set out in this document do not constitute an offer capable of acceptance. They are in all respects subject to satisfactory completion of KPMG's procedures to evaluate prospective clients and engagements, including independence and conflict checking procedures, and the negotiation, agreement, and signing of a specific engagement letter or contract. KPMG International provides no client services. No KPMG member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm.

home.kpmg/socialmedia



© 2019 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.