

DAC 6 – EU Directive concerning automatic exchange of information which relates to reportable cross border tax arrangements

DAC 6 is a EU Directive which entails that advisers are subject to a duty to notify the relevant tax authorities concerning their client's cross border arrangements. The purpose of the information disclosure obligation is to combat tax evasion, tax fraud and tax avoidance.

The Directive was implemented in the Swedish legislation by lag (2020:434) om rapporteringspliktiga arrangemang and changes of skatteförfarandelagen (2011:1244) and other laws. The national legislation entered into force on 1 July 2020.

In order for an arrangement to be subject to the reporting duty, the arrangement must be cross border and have at least one of the "hallmarks" which indicate that there can be a risk of tax avoidance. These hallmarks are defined in the legislative proposal and have a broad scope of application. This means that an arrangement (for example a transaction) which is conducted without tax reasons can be subject to the reporting duty. It should also be specifically noted that the reporting duty relates to advisers who have participated in the transaction and in such event irrespective of whether they provided tax law advice or not.

Lawyers who are members of the Swedish Bar Association have a specifically regulated duty of confidentiality. The Swedish legislation thus includes an exemption for lawyers' reporting obligation. **In light of the above, Gernandt & Danielsson will not report any arrangements to the Swedish Tax Agency unless our client expressly instructs us to do so and in connection therewith releases us from our duty of confidentiality.** In the event the client does not instruct us to report, then primarily the other advisers are responsible for ensuring that the transaction is reported (and ultimately the client).

In those cases where we do not report an arrangement to the Swedish Tax Agency, the legislation states that we should inform the client's other advisers that they should report. In the view of the Swedish Bar Association, however, we cannot do so without breaching our duty of confidentiality. This means that we will not inform other advisors of their obligation to report.

The new legislation (Swedish) is available [here](#).