Guidelines on the Mandatory Automatic Exchange of Information in relation to Cross-Border Arrangements

(S.L. 123.127)

Version 1.0 issued on 4 January 2021

The information provided in these guidelines shall be read and construed as one with the applicable legislation and shall have effect to the extent that such guidelines, explanations or instructions are not in conflict with Malta's international commitments.

While every effort has been made to ensure that the above information is consistent with existing policies and practices, should there be any changes, the Commissioner for Revenue reserves the right to vary its position accordingly.

Table of Contents

1. Introduction

1.1 Overview of Council Directive (EU) 2018/822

Over the past few years, automatic exchange of information has been viewed as the ultimate tool to combat tax fraud and tax evasion. In order to allow for new initiatives in tax transparency, Council Directive 2011/16/EU[1] ('Directive on Administrative Cooperation' or 'DAC') has been amended a number of times. On 25 May 2018 the DAC was amended by Council Directive (EU) 2018/822[2] ('DAC 6') regarding the mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements. DAC 6 entered into force on 25 June 2018.

DAC 6 requires intermediaries and, in certain circumstances, taxpayers to provide information on reportable cross-border arrangements to the relevant EU Member State tax authority. In line with the scope outlined in Article 2 of the DAC this disclosure regime applies to all types of taxes except for value-added tax, customs duties, excise duties and compulsory social security contributions. Cross-border arrangements are reportable if they contain certain features known as hallmarks, which cover a broad range of structures and transactions.

The DAC was further amended by Council Directive (EU) 2020/876[3] of 24 June 2020, in order to address the urgent need to defer certain time limits for the filing and exchange of information in the field of taxation because of the COVID-19 pandemic.

1.2 Implementation of DAC 6 into local legislation

DAC 6 has been implemented into Maltese legislation by virtue of legal notice L.N. 342 of 2019[4] which amended S.L. 123.127, entitled the *Cooperation with Other Jurisdictions on Tax Matters Regulations* (the 'Cooperation Regulations'), with effect from 1 July 2020.

In light of the amendment to the DAC because of the COVID-19 pandemic, the Commissioner for Revenue has deferred the first reporting deadlines under regulation 13 of the Cooperation Regulations by six months. This has been done through an amending legal notice L.N. 315 of 2020[5]. The intention was to provide taxpayers and intermediaries dealing with the impacts of the COVID-19 pandemic with additional time to ensure that they can comply with their obligations under regulation 13(7) of the Cooperation Regulations, with minimal impact on their business.

1.3 Purpose of these Guidelines

These guidelines are issued in terms of Article 96(2) of the Income Tax Act (Chapter 123 of the Laws of Malta) and are to be read in conjunction with the Cooperation Regulations (S.L. 123.127).

These guidelines will be regularly reviewed and in the case of any changes, the revised version of the guidelines will be published on the Commissioner for Revenue website. It is within the

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02011L0016-20200701
[2] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018L0822
[3] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32020L0876
[4] https://legislation.mt/eli/ln/2019/342/eng/pdf
[5] https://legislation.mt/eli/ln/2020/315/eng/pdf

interest of the reader to ensure that the most recent version of the published guidelines is being referred to.

2. Intermediaries

2.1 Definition of Intermediary

The definition of intermediary in regulation 13(9) of the Cooperation Regulations contemplates two categories of intermediaries:

- a person that designs, markets, organises or makes available for implementation or manages the implementation of a reportable cross-border arrangement. This type of intermediary shall be referred to in these guidelines as the 'primary intermediary';
- 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 be reasonably 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 reportable cross-border arrangement. This type of intermediary shall be referred to in these guidelines as the 'secondary intermediary'.

To fall within the definition of intermediary under either category a person must meet at least one of the following conditions:

- be resident for tax purposes in an EU Member State;
- have a permanent establishment in an EU Member State, through which it provides the services with respect to the arrangement;
- be incorporated in an EU Member State, or governed by the laws of an EU Member State;
- be registered with a professional association relating to legal, taxation or consultancy services in an EU Member State.

2.2 Meaning of 'person'

The term 'person' is defined in Regulation 11(2) of the Cooperation Regulations and includes an individual, a legal person, and a legal arrangement regardless of whether it has legal personality.

The relevant criterion to determine whether a person qualifies as an intermediary is whether a person is acting on its own behalf, or on behalf of an entity. Therefore, in the case of an employee carrying out work in terms of his employment contract in relation to a reportable cross-border arrangement, it is the employer that would qualify as an intermediary. Similarly, a director acting in his capacity as an official of an entity would not fall within the definition of an intermediary unless he provides other services on his own behalf. In addition, where for example, a partner of a firm, such as a tax advisory, law or accountancy firm, provides advice in respect of a reportable cross-border arrangement in the name of such firm, the firm (and not the individual partner) would qualify as the intermediary.

2.3 Primary Intermediary

A primary intermediary is the person that has a full understanding of the material aspects of the arrangement, including the legislation being relied on and the conditions that need to be met to achieve the planned outcome. In the absence of such knowledge it is likely that such person would be classified as a secondary intermediary.

This category of intermediary would generally include persons such as professional tax advisors who are actively involved in designing and advising on arrangements for implementation by their clients. A primary intermediary would also include companies within a group having in-house tax experts involved in designing and advising on arrangements for implementation by other group members.

2.4 Secondary Intermediary

This category of intermediary generally encompasses a wider range of persons and may include lawyers, accountants, auditors, notaries, financial advisers, banks, insurance companies and fund managers amongst others. The list is not exhaustive and a secondary intermediary encompasses any person who knows or should reasonably have known that they have (directly or by means of other persons) committed to provide aid, assistance or advice with respect to designing, marketing, organising, making available for implementation or managing the implementation of a reportable cross-border arrangement.

2.4.1 'Knows or could reasonably be expected to know'

Unlike a primary intermediary who would have visibility of the arrangement as a whole, a secondary intermediary would generally only be involved in a particular aspect of it and would not have full knowledge of the wider arrangement. For this purpose, a person will not qualify as a secondary intermediary if it is reasonable to conclude that the person does not have the knowledge or could not reasonably be expected to know that the arrangement is a reportable cross-border arrangement.

For this purpose, the expression "knows or could reasonably be expected to know" must be determined by reference to the person's actual knowledge based on readily available information and the degree of expertise and understanding required to provide the relevant services.

In this regard, potential secondary intermediaries are not required to seek out additional information or to do any additional checking or due diligence beyond what they would normally do in the course of their business and in compliance with their existing obligations. By way of example, a lawyer who is not involved in the design of an arrangement but is engaged to provide legal advice with respect to one aspect of the arrangement would only need to consider the facts, circumstances and information made available to him and which are necessary to provide the relevant advice for which he was engaged in determining whether there is a reportable cross-border arrangement. However, where a person chooses to be wilfully ignorant, such person may still meet the test to fall within the definition of an intermediary if an arrangement is reportable.

An intermediary may be an organisation having employees carrying out services on its behalf. In this regard, where information in relation to an arrangement is spread between a number of individuals within the organisation, unless there is a clear attempt to deliberately

fragment such information, the Commissioner for Revenue would not necessarily treat all knowledge held in the organisation as known to one person. Whether it is reasonable to conclude that such knowledge is known to one person will depend on the circumstances of the case, which may include the size of the organisation, collaboration and sharing of information between individuals, and the level of involvement of the individuals in the arrangement.

For the avoidance of doubt, where a secondary intermediary is notified of an obligation to report by another intermediary applying the waiver in terms of regulation 13(7)(e) of the Cooperation Regulations, this would not automatically mean that the intermediary in receipt of such notification has sufficient information to know or is reasonably expected to know that there is a reportable cross-border arrangement.

2.4.2 Aid, assistance or advice provided 'by means of other persons'

Example 1

A US parent company engages a Maltese accountancy firm to advise on the tax implications of an arrangement involving its Maltese subsidiary. The proposed arrangement is designed in-house by the US parent company and falls within the definition of a reportable cross-border arrangement. The Maltese tax advisory firm provides the advice to the US parent company which in turn gives instructions to its subsidiary company in relation to the implementation of the proposed transaction. In this scenario, the Maltese tax advisory firm will fall within the definition of secondary intermediary if it knows or could reasonably be expected to know that the advice it provided is in relation to a reportable cross-border arrangement. The fact that the advice is not provided directly to the Maltese subsidiary implementing the arrangement but to the US parent company is irrelevant.

Example 2

A Maltese tax advisory firm (Firm A) is involved in the design of an arrangement for implementation by its client, a company tax resident in Malta. The arrangement falls within the definition of a reportable cross-border arrangement. In turn, Firm A engages a Maltese law firm (Firm B) to provide legal advice in relation to the arrangement. In such case Firm A will fall within the definition of primary intermediary since it is the intermediary that designed and made the arrangement available for implementation by its client. Firm B will fall within the definition of secondary intermediary if it knows or could reasonably be expected to know that the legal advice it provided to Firm A is in relation to a reportable cross-border arrangement.

2.4.3 Provision of services post-implementation

A person should not fall within the definition of an intermediary where it becomes aware of a reportable cross-border arrangement subsequent to its implementation, for example through the provision of routine services such as bookkeeping/accounting, audit of financial statements or assistance with preparing and filing tax returns. A person would also not fall within the definition of an intermediary when providing other services post-implementation such as payroll/FSS compliance services, corporate compliance services, filing of Country-by-Country reports, compliance with FATCA/Automatic Exchange of Information and the provision of routine banking operations such as the granting of finance or the transfer of funds

For the purposes of the above, the implementation of an arrangement would be regarded as complete when all the actions required to achieve the intended purpose have been completed. This is a question of fact and depends on the circumstances of each specific arrangement, but reference can be made to the below examples:

Example 1

An arrangement comprises the setting up of a Maltese company to be funded by equity to provide loans to group companies. The implementation of the arrangement is complete once the Maltese company would have been incorporated, the necessary equity funding would have been received and the planned loans would have been extended. Applicable registrations, such as for tax compliance purposes and obtaining the required authorisations to carry on the intended business, also constitute an integral part of the implementation of an arrangement.

Example 2

An existing company intends to change the manner in which it is financed, and the arrangement comprises the replacement of third-party bank finance by intra-group finance. The arrangement is complete once the intra-group finance is put in place and the bank finance closed.

Example 3

An arrangement comprises the transfer of assets, functions and risks carried out by a company in Country A to a group company in Country B. The arrangement is complete once the relative agreements would have been drawn up, executed and given effect to.

2.5 Nexus with Malta

Irrespective of the tax residency of the participants involved in a reportable cross-border arrangement, a person falling within the definition of an intermediary will have an obligation to file information with the Commissioner for Revenue only where such person has a nexus with Malta. For this purpose, the intermediary needs to satisfy at least one of the following conditions:

- it is resident for tax purposes in Malta;
- it has a permanent establishment in Malta through which the services with respect to the arrangement are provided;
- it is incorporated in Malta, or governed by the laws of Malta;
- it is registered with a professional association related to legal, taxation or consultancy services in Malta.

The above-mentioned criteria are listed in order of priority. Where on the basis of the above-listed criteria the intermediary has a nexus with both Malta and another EU Member State and such Member State features before Malta on the above-mentioned list, in practice the intermediary will be required to file information with the tax authorities of that other EU Member State. The intermediary will be exempt from its reporting obligations with the Commissioner for Revenue provided that it retains:

(i) the Arrangement Reference Number ('Arrangement ID') assigned to the arrangement by the other EU Member State; and

(ii) a copy of the information submitted with the competent authority of the other EU Member State.

In addition, where Malta features at the same level of another EU Member State on this list, for example in the case of dual residency, the intermediary will likewise be exempt from its reporting obligations with the Commissioner for Revenue provided that the same information is reported in the other Member State and the respective Arrangement ID and a copy of the information submitted are retained by the intermediary.

Where an intermediary is not resident in Malta for tax purposes but has a permanent establishment herein it will only need to consider the activities of the Malta permanent establishment in determining whether a report is due to be filed with the Commissioner for Revenue. Other activities that are not connected with the Malta permanent establishment and that might lead to a reporting obligation will need to be considered at the level of the head office. That said, knowingly fragmenting knowledge between the permanent establishment and the head office so that it is not possible for the Malta permanent establishment to determine whether an arrangement is reportable will constitute a breach of the Cooperation Regulations.

For the purposes of the above, where a Trust arrangement is administered by a Maltese-resident Trustee, the Trust will be considered to be resident in Malta for tax purposes.

2.6 Professional Secrecy

The Cooperation Regulations seek to protect professional secrecy and through the provisions of regulation 13(7)(e) grant intermediaries whose profession is listed in Article 3 of the Professional Secrecy Act (Chapter 377 of the Laws of Malta), including law firms, accountancy firms and banks, the right to waive their reporting obligations in respect of information covered by the obligation of professional secrecy.

Where an intermediary who has a right to waive his reporting obligations exercises such right, the reporting obligations with respect to the information covered by such professional secrecy will shift to any other intermediary involved in the same arrangement, or the relevant taxpayer if there is no other intermediary.

A non-disclosing intermediary is required to notify another intermediary or the relevant taxpayer of their reporting obligation within 7 working days from the date when the reporting trigger point arises (as outlined in section 6.2). However, with respect to cross-border arrangements subject to reporting in the period from 25 June 2018 to 31 December 2020 notification shall be made by not later than 12 January 2021.

Notification shall be made in writing on an ad hoc basis and shall include details of the intermediary exercising the waiver, including the name, address and tax identification number.

The right to a waiver from filing information in respect of a reportable cross-border arrangement shall no longer apply where the intermediary fails to notify any other intermediary involved in the same arrangement, or the relevant taxpayer of their reporting obligations within the prescribed deadline.

The waiver of reporting obligations contemplated in regulation 13(7)(e) of the Cooperation Regulations is not applicable in case of a reportable marketable arrangement.

2.7 Multiple reporting

In line with regulation 13(7)(j) of the Cooperation Regulations, where there are multiple intermediaries involved in an arrangement, each and every intermediary has an obligation to report, unless an intermediary exercises the right of waiver in terms of the provisions of regulation 13(7)(e). However, in order to avoid duplicate reporting, an intermediary that does not have or does not exercise the right of waiver will in any case be exempt from the obligation to file a return with the Commissioner for Revenue where the same information is filed by another intermediary.

The receipt of the Arrangement ID assigned to the arrangement by the Commissioner for Revenue or the tax authorities of another EU Member State together with a copy of the information submitted will constitute sufficient evidence that a report has been filed by another intermediary and that all reportable information has been provided. There is no need for the intermediary to review the report filed by the other intermediary to verify that the reportable information held by the former was included within the report, unless there are particular reasons to believe otherwise. In this regard, a secondary intermediary shall be entitled to rely on the fact that a report submitted by a primary intermediary should contain all reportable information in relation to the arrangement. On the other hand, it is less likely that a report submitted by a secondary intermediary would contain all information held by the primary intermediary given that a secondary intermediary generally would not have full knowledge of all aspects of the arrangement. Therefore, unless a primary intermediary can assure itself that the information reported by the secondary intermediary includes everything that it is required to report, an additional report may be necessary. When in doubt as to whether another intermediary has already reported the specified information, then the safest option would always be to report.

2.8 Duty to share Arrangement ID and information submitted

Where an intermediary files a report with the Commissioner for Revenue and an Arrangement ID is assigned to the arrangement, the intermediary is required to provide written confirmation of the Arrangement ID to each relevant taxpayer requesting the said identification number for the purposes of complying with reporting obligations under regulation 13(7)(l). In addition, in order to avoid multiple reporting of the same information and at the same time ensuring that all relevant information in respect of the same arrangement is filed under one Arrangement ID, the intermediary is required to provide written confirmation of the Arrangement ID together with a copy of the information submitted to any other intermediary involved in the same arrangement and requesting such identification number/information. An intermediary is also required to provide written confirmation of the Arrangement ID to non-disclosing intermediaries requesting such identification number for the purposes of the annual notification required to be filed in terms of regulation 13(7)(e).

3. Relevant Taxpayer

3.1 Definition of relevant taxpayer

A relevant taxpayer is defined as any person to whom a reportable cross-border arrangement is made available for implementation, or who is ready to implement a reportable cross-border arrangement or has implemented the first step of such an arrangement.

3.2 Obligation to file information

A relevant taxpayer would have the obligation to disclose information in relation to a reportable cross-border arrangement where it has a nexus with an EU Member State, and:

- an intermediary involved in the arrangement has the right of non-disclosure and waives the obligation to report and no other intermediary has the duty to report the arrangement in the EU; or
- no intermediary (as defined in the Cooperation Regulations) is involved in the arrangement.

In this regard it should be noted that an individual in-house tax advisor cannot qualify as an intermediary itself. If such advisors are employed by the taxpayer, and devise an arrangement for the taxpayer, then the scheme would qualify as in-house and the person responsible for reporting would be the relevant taxpayer himself.

3.3 Nexus with Malta

A relevant taxpayer will have an obligation to file information with the Commissioner for Revenue only where such person has a nexus with Malta. For this purpose, the relevant taxpayer needs to satisfy at least one of the following conditions:

- it is resident for tax purposes in Malta;
- it has a permanent establishment in Malta benefitting from the arrangement;
- it receives income or generates profits in Malta;
- it carries on an activity in Malta.

The above-mentioned criteria are listed in order of priority. Where on the basis of the above-listed criteria the relevant taxpayer has a nexus with both Malta and another EU Member State and such Member State features before Malta on the above-mentioned list, in practice the relevant taxpayer will be required to file information with the tax authorities of that other EU Member State. The relevant taxpayer will be exempt from its reporting obligations with the Commissioner for Revenue provided that it retains:

(i) the Arrangement ID assigned to the arrangement by the other EU Member State; and
(ii) a copy of the information submitted with the competent authority of the other EU Member State.

In addition, where Malta features at the same level of another EU Member State on this list, for example in the case of dual residency, the relevant taxpayer will likewise be exempt from its reporting obligations with the Commissioner for Revenue provided that the information required to be filed in terms of the regulations is reported in the other Member State and the respective Arrangement ID and a copy of the information submitted are retained by the relevant taxpayer.

For the purposes of the above, where a Trust arrangement is administered by a Maltese-resident Trustee, the Trust will be considered to be resident in Malta for tax purposes.

3.4 Multiple reporting

Where multiple relevant taxpayers have an obligation to file information with the Commissioner for Revenue in relation to the same arrangement, reporting shall be done only by the relevant taxpayer that features first in the list below:

(i) the relevant taxpayer that agreed the reportable cross-border arrangement with the intermediary;
(ii) the relevant taxpayer that manages the implementation of the arrangement

A relevant taxpayer shall only be exempt from its reporting obligations with the Commissioner for Revenue provided that it retains the Arrangement ID assigned to the arrangement upon filing of a report by another relevant taxpayer together with a copy of the information submitted.

3.5 Duty to share Arrangement ID and information submitted

Where a relevant taxpayer files a report with the Commissioner for Revenue and an Arrangement ID is assigned to the arrangement, the relevant taxpayer is required to provide written confirmation of the Arrangement ID together with a copy of the information submitted to any other relevant taxpayer requesting the said identification number/information either for the purposes of complying with reporting obligations under regulation 13(7)(l) or to avoid multiple reporting of the same information as well as to any intermediary who advised the relevant taxpayer of the said intermediary's waiver to report.

4. Reportable Cross-border Arrangement

4.1 Arrangement

The Cooperation Regulations provide that an 'arrangement' for the purposes of DAC 6 includes a series of arrangements and may consist of several steps or parts. This implies that where an arrangement comprises a number of steps or transactions it is still necessary to look at an arrangement holistically.

Given the nature of DAC 6, the term 'arrangement' should be very broadly interpreted and in this regard the scope of what would constitute an arrangement can be seen in the light of the *Commission Recommendation of 6 December 2012 on aggressive tax planning (2012/772/EU)* [6], which provides that *'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.'*

4.2 Cross-border arrangement

Under DAC 6, cross-border arrangements are defined as arrangements concerning more than one EU Member State or an EU Member State and a third country and having satisfied at least one of the following conditions:

i) not all of the participants in the arrangement are resident for tax purposes in the same jurisdiction;

[6] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012H0772&from=EN

For the avoidance of doubt, this condition would be satisfied also where at least one of the participants is not resident in any jurisdiction.

ii) one or more of the participants in the arrangement is simultaneously resident for tax purposes in more than one jurisdiction;

iii) one or more of the participants in the arrangement carries on a business in another jurisdiction through a PE situated in that jurisdiction and the arrangement forms part or is the whole business of that PE;

iv) one or more of the participants in the arrangement carries on an activity in another jurisdiction without being resident for tax purposes or creating a PE in that jurisdiction;

v) such arrangement has a possible impact on the automatic exchange of information or the identification of the beneficial ownership of the arrangement.

The term participant is not defined in the Cooperation Regulations and whether a person qualifies as a participant or otherwise would depend on the specific circumstances of the arrangement. However, broadly speaking, a participant should include any person having a role in the arrangement without necessarily falling within the definition of relevant taxpayer.

The residence of the Intermediary is not relevant in determining whether a cross-border arrangement exists unless the intermediary is itself a participant.

For an arrangement to fall within the definition of a cross-border arrangement it must 'concern' multiple jurisdictions one of which should be an EU Member State. In this regard, to be taken into consideration in determining whether there is a cross-border element, a jurisdiction must be material to the arrangement. This will depend on the facts and circumstances of the particular arrangement. However, as a rule of thumb, if there are tax consequences in a particular jurisdiction triggered by an arrangement, then such arrangement will concern that jurisdiction.

4.3 Marketable arrangement

A marketable arrangement is defined as a cross-border arrangement that is designed, marketed, ready for implementation or made available for implementation without a need to be substantially customised.

Therefore, the key feature of a marketable arrangement is that it can 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 in accordance with regulation 13(7)(b). In this regard, information in relation to the reportable cross-border arrangement 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.

4.4 Reportable cross-border arrangement

A reportable cross-border arrangement is an arrangement that contains at least one of the hallmarks listed in Annex IV of the Cooperation Regulations.

5. Hallmarks

5.1 General overview

A hallmark is a characteristic or feature of a cross-border arrangement that presents an indication of a potential risk of tax avoidance. The hallmarks are listed in Annex IV of the Cooperation Regulations and are grouped under 5 broad categories. Where a cross-border arrangement contains any of the hallmarks outlined in the said Annex (and also satisfies the main benefit test for certain hallmarks), such cross-border arrangement becomes a reportable cross-border arrangement although this does not necessarily mean that the arrangement represents unacceptable or aggressive tax planning.

5.2 Main Benefit Test (MBT)

The hallmarks under category A, category B and sub-paragraphs (b)(i), (c) and (d) of paragraph 1 of category C may be taken into account in determining whether an arrangement is a reportable cross-border arrangement only if the MBT is satisfied. The MBT does not have to be satisfied for any of the other hallmarks to be taken into account.

The MBT is met if it can be shown that, having regard to all relevant facts and circumstances, the main benefit or one of the main benefits that can reasonably be expected from an arrangement is the obtaining of a tax advantage.

5.2.1 Tax advantage

The term 'tax advantage' should be broadly interpreted and includes a repayment of tax, a tax relief, a reduction in the tax charge, a tax deferral or an absence of taxation.

In interpreting this term reference should also be made to the *Commission Recommendation of 6 December 2012 on aggressive tax planning* (2012/772/EU) which states that '*in determining whether an arrangement or series of arrangements has led to a tax benefit as referred to in point 4.2, national authorities are invited to compare the amount of tax due by a taxpayer, having regard to those arrangement(s), with the amount that the same taxpayer would owe under the same circumstances in the absence of the arrangement(s). In that context, it is useful to consider whether one or more of the following situations occur:*

(a) an amount is not included in the tax base;
(b) the taxpayer benefits from a deduction;
(c) a loss for tax purposes is incurred;
(d) no withholding tax is due;
(e) foreign tax is offset.'

A tax advantage would be considered for the purposes of the main benefit test to the extent that it is not consistent with the legislator's intention for the particular provision in terms of which the tax advantage is being obtained. In this regard, it is however necessary to look at the arrangement as a whole. This is because steps in an arrangement analysed in isolation and not with reference to the whole arrangement might be consistent with policy objectives, however when considered as a whole, the advantage can potentially be inconsistent with the policy objectives resulting in the MBT being met. For example, where a tax advantage arises due to a mismatch between the domestic tax rules of two different jurisdictions, even though it might be consistent with the intent of the legislation in each jurisdiction when

considered separately, the MBT may still be met if it is reasonable to conclude that, due to the mismatch, the overall outcome is not consistent with what was intended under the tax regime as a whole.

For the avoidance of doubt, the tax advantage needs to be obtained with respect to taxes that fall within the scope of the DAC. These include all taxes levied by (or on behalf of) an EU Member State, with the exception of VAT, customs duties, excise duties and compulsory social security contributions.

5.2.2 Main benefit

The MBT is an objective one and does not contemplate subjective assessments which would take into account the purpose or intentions of the participants to the arrangement. Therefore, the fact that a person does not actively seek to obtain a tax advantage will not be a determinative factor when considering whether a cross-border arrangement meets the MBT.

To determine whether the obtaining of a tax advantage is the main benefit 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. The MBT would be satisfied where based on this objective comparison it is determined that the tax advantage constitutes a significant element of the benefits a person may reasonably expect to derive from the arrangement and is not merely incidental.

In practice, the obtaining of a tax advantage is likely to be the main benefit or one of the main benefits where:

- The tax advantage is the decisive factor in the arrangement, without which the arrangement would not be implemented or continue to exist;
- The arrangement contains steps that have been added in order to obtain the tax advantage and which arrangement could have equally worked out had these additional steps not been added or included.

In determining whether the main benefit test is met, it is essential to look at the arrangement as a whole.

5.3 Hallmark category A: Generic hallmarks linked to the MBT

A cross-border arrangement containing a category A hallmark will not be reportable unless the MBT is satisfied.

5.3.1 Hallmark A1: Confidentiality

In relation to the condition of confidentiality referred to in hallmark A1, this specifically looks at confidentiality around how the arrangements could secure a tax advantage. This hallmark will apply where a condition of confidentiality places a limit on a taxpayer's or participant's ability to disclose information on how the arrangement could secure a tax advantage to other intermediaries or to tax authorities.

Confidentiality conditions protecting commercial secrets and business know-how and that do not relate to how the arrangement secures a tax advantage will not be caught under this hallmark.

For instance, a generic confidentiality clause in a client engagement letter would not normally cause this hallmark to be met, because in practice it would not normally prevent a taxpayer or participant in an arrangement from disclosing relevant information relating to a tax advantage to tax authorities or other intermediaries if necessary. Provisions in an engagement contract, including restrictions in the dissemination of deliverables without consent, intended to restrict the duty of care and liability of the intermediary solely to the client are not considered to be confidentiality clauses within the meaning of this hallmark.

5.3.2 Hallmark A2: Compensation related to a tax advantage

Hallmark A2 will apply where any form of compensation that may be derived by an intermediary (whether a primary or a secondary intermediary) in relation to a cross-border arrangement is linked to a tax advantage potentially/actually being obtained. In this regard, compensation could also include the provision of goods or services in place of a fee.

5.3.3 Hallmark A3: Standardised documentation and/or structures

Documentation and/or structures will be considered to be 'substantially standardised' where they require very little adaptation to suit a particular client.

This hallmark captures ready-to-sell schemes which can be made available to clients for implementation without the need for substantial modification or significant additional professional advice or services.

For hallmark A3 to be met there has to be a link between the standardised documentation and/or structure used and the tax advantage that was intended to be obtained. The use of documentation with standardised features is common in many businesses, where documentation such as straightforward loan agreements or standard articles of association, may be standardised for regulatory or other legal reasons. In particular, in the business of banking and insurance, many products are provided using largely standardised documentation. Taken on its own, the use of such documentation will not normally constitute the hallmark to be met - for example, merely setting up a company in Malta using relatively standard articles of association or opening a bank account using standardised documentation. However, it is important to recognise that if these kinds of products are used as part of a wider arrangement, the outcome of which is not consistent with the underlying legislative intent, then such arrangements may still be reportable as the MBT could be satisfied.

5.4 Hallmark category B: Specific hallmarks linked to the MBT

A cross-border arrangement containing a category B hallmark will not be reportable unless the MBT is satisfied.

5.4.1 Hallmark B1: Acquiring a loss-making company

For the purposes of hallmark B1, steps are considered to be 'contrived' where they are pre-planned and, having regard to all facts, it is reasonable to conclude that they are artificial and have no evident commercial reason.

5.4.2 Hallmark B2: Conversion of income into other categories

This hallmark will be met where there is a conversion of income into capital or into any other category of revenue which attracts a lower rate of tax or is tax exempt. For this purpose one

would need to compare the tax payable had the conversion of income not taken place with the tax payable following the conversion, if any.

5.4.3 Hallmark B3: Circular transactions

Hallmark B3 captures arrangements involving the use of circular transactions resulting in the round tripping of funds. Such round tripping of funds must be facilitated through the use of either interposed entities without primary commercial function, or transactions that offset or cancel each other (or have similar features).

For the purposes of hallmark B3 one must consider whether the interposed entities serve a primary commercial function other than facilitating the round tripping of funds. If there is only a minor or subsidiary commercial purpose, then the arrangement would be reportable provided that the main benefit test is satisfied.

This hallmark will typically apply to arrangements whereby domestic funds are routed via an offshore jurisdiction, in order to benefit from a preferential tax treatment.

5.5 Hallmark category C: Specific hallmarks related to cross-border transactions

5.5.1 Hallmark C1: Deductible cross-border payments

A cross-border arrangement containing a category C(1)(b)(i), C(1)(c) or C(1)(d) hallmark will not be reportable unless the MBT is satisfied. Hallmarks C(1)(a) and C(1)(b)(ii) are not subject to the MBT.

For the purposes of hallmark C1, the recipient of a payment refers to the person who is taxable on receipt. In the case of transparent vehicles such as partnerships, one would therefore need to look at the tax residence of the partners (as recipients) to determine whether this hallmark applies.

Tax at the rate of almost zero referred to in hallmark C(1)(b)(i) refers to a nominal rate of tax below 1%.

The jurisdictions considered as non-cooperative for the purposes of hallmark C(1)(b)(ii) are those which are included on the list published in the Official Journal of the EU[7] or which are assessed as "non-compliant" jurisdictions by the Global Forum on Tax Transparency and Exchange of Information[8]. The assessment of whether a jurisdiction meets the condition of this hallmark should be made on the date that the reporting trigger point arises and where the countries on the lists subsequently change there is no requirement to make a re-evaluation as to whether the hallmark is met.

For the purposes of hallmark C(1)(d), a tax regime is considered to be preferential if it is a preferential tax regime assessed by the OECD's Forum on Harmful Tax Practices[9] or by the EU Code of Conduct Group[10].

[7] https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/
[8] http://www.oecd.org/tax/transparency/documents/exchange-of-information-on-request-ratings.htm
[9] http://www.oecd.org/ctp/harmful-tax-practices-2018-progress-report-on-preferential-regimes-9789264311480-en.htm
[10] https://www.consilium.europa.eu/register/en/content/out?typ=SET&i=ADV&RESULTSET=1&DOC_TITLE=&CONTENTS=&DOC_ID=9639%2F18&DOS_INTERINST=&DOC_SUBJECT=&DOC_SUBTYPE=&DOC_DATE=&document

5.5.2 Hallmark C2: Deductions for the same depreciation

This hallmark is not subject to the MBT.

Hallmark C2 will not apply where there is a corresponding taxation of profits from the asset in the same jurisdiction where the deduction for depreciation is claimed. Therefore, by way of example, a deduction for depreciation claimed in the jurisdiction of a permanent establishment and also in the jurisdiction of the head office would not trigger the applicability of this hallmark provided the associated profits are also taxed in both jurisdictions, subject to any double taxation relief.

5.5.3 Hallmark C3: Relief from double taxation

This hallmark is not subject to the MBT.

Hallmark C3 will not apply where double taxation relief is given in more than one jurisdiction but the corresponding income is also taxed in each of those jurisdictions.

5.5.4 Hallmark C4: Transfer of assets

This hallmark is not subject to the MBT.

Hallmark C4 targets arrangements involving the transfer of assets for which the value of the consideration obtained or to be obtained is different according to the jurisdictions concerned. The consideration obtained or to be obtained refers to the amount for tax purposes.

Re-domiciliation or the transfer of tax residence to another jurisdiction are not targeted by this hallmark.

5.6 Hallmark category D: Specific hallmarks concerning automatic exchange of information and beneficial ownership

Hallmarks under category D are not subject to the MBT and thus shall be taken into account even if the arrangement in question is not expected to generate a tax advantage.

Consistently with Recital 13 to DAC 6, Hallmark D shall be interpreted in line with the OECD's *Model Mandatory Disclosure Rules for Addressing CRS Avoidance Arrangements and Opaque Offshore Structures* and the related commentary[11] ('OECD MDR CRS Rules') to the extent that these are aligned with EU law.

5.6.1 Hallmark D1: Undermining reporting obligations

Hallmark D1 captures arrangements where it is reasonable to conclude that these may have the effect of undermining reporting obligations under Council Directive 2014/107/EU ('DAC 2') and the Common Reporting Standard ('CRS'), as implemented in the domestic legislation of EU Member States. The DAC2 and CRS have been implemented into Maltese legislation

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[11] https://www.oecd.org/tax/exchange-of-tax-information/model-mandatory-disclosure-rules-for-crs-avoidance-arrangements-and-opaque-offshore-structures.pdf

by virtue of L.N. 384 of 2015[12] entitled the *Cooperation with Other Jurisdiction on Tax Matters (Amendment) Regulations, 2015*, which amended the Cooperation Regulations with effect from 1 January 2016.

In this regard the OECD commentary explains that *'the test of 'reasonable to conclude' is to be determined from an objective standpoint by reference to all the facts and circumstances and without reference to the subjective intention of the persons involved. Thus, the test will be satisfied where a reasonable person in the position of a professional adviser with a full understanding of the terms and consequences of the Arrangement and the circumstances in which it is designed, marketed and used, would come to this conclusion'*.

The OECD MDR CRS Rules also clarify that *'an Arrangement is not considered to have the effect of circumventing CRS Legislation solely because it results in non-reporting under the relevant CRS Legislation, provided that it is reasonable to conclude that such non-reporting does not undermine the policy intent of such CRS Legislation.'*

The fact that information in relation to an account is not reportable under DAC2/CRS will not automatically mean that hallmark D1 is triggered unless it is reasonable to conclude, for instance, that a reportable account has been deliberately converted into a non-reportable account in order to circumvent DAC2/CRS legislation. Similarly, an arrangement which makes use of a jurisdiction that has not implemented CRS legislation would not automatically bear this hallmark unless it is reasonable to conclude that one of the reasons for choosing such jurisdiction is to exploit the absence of CRS legislative provisions.

5.6.2 Hallmark D2: Non-transparent legal or beneficial ownership chain

The terms 'beneficial ownership' and 'beneficial owner' should be interpreted in accordance with the definitions outlined in S.L. 373.01 - *Prevention of Money Laundering and Funding of Terrorism Regulations*[13] and any implementing procedures issued thereunder.

Where the identity of the beneficial owners is available on public registers of beneficial ownership, hallmark D2 will not apply.

Subject to the provisions in paragraphs (a) and (b) of hallmark D2, this hallmark is likely to be met where arrangements involve jurisdictions where there is no requirement to keep information on beneficial ownership or to disclose nominee shareholders.

Where a beneficial owner is not identified because, for example, the ownership interest falls below the required ownership threshold or the arrangement involves a discretionary trust, this would not in itself mean that the hallmark is triggered. However, if there is an indication that an owner is deliberately keeping the interest just below the threshold or is being deliberately excluded from the trust temporarily to avoid being identified, the hallmark could then be met.

5.7 Hallmark category E: Specific hallmarks concerning transfer pricing

Hallmarks under category E are not subject to the MBT and thus shall be taken into account even if the arrangement in question is not expected to generate a tax advantage.

[12] https://legislation.mt/eli/ln/2015/384/eng/pdf
[13] https://legislation.mt/eli/sl/373.1/eng/pdf

5.7.1 Hallmark E1: Unilateral safe harbours

In determining whether an arrangement makes use of unilateral safe harbour rules reference should be made to the latest version of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations ('OECD Transfer Pricing Guidelines').

Bilateral or multilateral Advanced Pricing Agreements (APAs) made between tax authorities and companies or groups do not constitute unilateral safe harbours and therefore do not fall within scope of this hallmark.

5.7.2 Hallmark E2: Hard-to-value intangibles

The term 'hard-to-value intangibles' shall be interpreted and determined by reference to the latest version of the OECD Transfer Pricing Guidelines and the OECD Guidance for Tax Administrations on the Application of the Approach to Hard-to-Value Intangibles.

5.7.3 Hallmark E3: Intra-group cross-border transfers

An intra-group cross-border transfer for the purposes of hallmark E3 refers to a cross-border transfer between associated enterprises. The term 'associated enterprise' is defined in Regulation 13(9) of the Cooperation Regulations.

Re-domiciliation or the transfer of tax residence to another jurisdiction are not targeted by this hallmark. The projected annual EBIT of the transferor(s) must be considered at the level of the individual company rather than at the level of the sub-group that is located in the same jurisdiction (including in cases of fiscal unity/consolidated tax filing).

The term EBIT shall refer to the earnings before interest and taxes for accounting purposes and not for tax purposes.

Hallmark E3 shall not apply with respect to an arrangement where the transferor (s) would be projected to make a loss if the transfer were not to go ahead.

For the avoidance of doubt, Hallmark E3 shall also apply where the transferor(s) would be projected to make a profit if the transfer were not to go ahead and following the transfer the transferor(s) ceases to exist. In such case the expected EBIT after the transfer would amount to 'nil'.

6. Reporting

6.1 Information to be reported

The information to be filed with the Commissioner for Revenue is listed in regulation 13(7)(o) of the Cooperation Regulations and is as follows:

- the identification of intermediaries and relevant taxpayers, including their name, date and place of birth (in the case of an individual), residence for tax purposes, taxpayer identification number and, where appropriate, the persons that are associated enterprises to the relevant taxpayer;
- details of the hallmarks set out in Annex IV that make the cross-border arrangement reportable;

In this regard it should be noted that where an arrangement contains more than one hallmark, details of all applicable hallmarks have to be reported.

- a summary of the content of the reportable cross-border arrangement, including a reference to the name by which it is commonly known, if any, and a description in abstract terms of the relevant business activities or arrangements, without leading to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information the disclosure of which would be contrary to public policy;
- the date on which the first step in implementing the reportable cross-border arrangement has been made or will be made;
- details of the national provisions that form the basis of the reportable cross-border arrangement;

  This refers to the provisions in tax legislation upon which the arrangement is based, if any. Where an arrangement makes use of provisions found in the tax legislation of more than one jurisdiction, the applicable provisions of all jurisdictions should be reported.
- the value of the reportable cross-border arrangement;

  For the avoidance of doubt, this value does not refer to the value of any tax advantage obtained or expected to be obtained. The value attributable to the cross-border arrangement will depend on the type of arrangement being reported. For example, this could be the consideration in a contract related to a cross-border transaction such as a merger or transfer of assets, or the balance in a financial account in case of an arrangement falling under hallmark D. Where the exact value is not known at the time of reporting, a reasonable estimate should be included.
- the identification of the EU Member State of the relevant taxpayer(s) and any other EU Member States which are likely to be concerned by the reportable cross-border arrangement;
- the identification of any other person in an EU Member State likely to be affected by the reportable cross-border arrangement, indicating to which EU Member States such person is linked.

  This refers to any other participant in the arrangement which does not fall within the definition of relevant taxpayer.

6.2 Reporting trigger points and time limits for filing

6.2.1 Primary Intermediary

A primary intermediary is required to file information with the Commissioner for Revenue within 30 days commencing on the earliest of the following:

(i) the day after the reportable cross-border arrangement is made available for implementation; or

(ii) the day after the reportable cross-border arrangement is ready for implementation; or

(iii) when the first step in the implementation of the reportable cross-border arrangement has been made.

Where the trigger point for reporting took or takes place between 1 July 2020 and 31 December 2020, the period of 30 days for filing information will commence on 1 January 2021.

6.2.2 Secondary Intermediary

A secondary intermediary is required to file information with the Commissioner for Revenue within 30 days commencing on the later of:

(i) the day after such intermediary provided, 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 reportable cross-border arrangement; or

(ii) the earlier of the trigger points outlined in section 6.2.1 above

Where the trigger point for reporting took or takes place between 1 July 2020 and 31 December 2020, the period of 30 days for filing information will commence on 1 January 2021.

6.2.3 Relevant Taxpayer

Where the reporting obligation lies with the relevant taxpayer, the latter is required to file information with the Commissioner for Revenue within 30 days commencing on the earliest of the following:

(i) the day after the reportable cross-border arrangement is made available for implementation to that relevant taxpayer; or

(ii) the day after the reportable cross-border arrangement is ready for implementation by the relevant taxpayer; or

(iii) when the first step in its implementation has been made in relation to the relevant taxpayer

Where the trigger point for reporting took or takes place between 1 July 2020 and 31 December 2020, the period of 30 days for filing information will commence on 1 January 2021.

6.2.4 Made available for implementation

For the purposes of the above, an arrangement should be considered as 'made available' for implementation if it is capable of being implemented in practice and no further material amendments are expected before implementation by the relevant taxpayer. In this regard, the fact that there are a number of options available to the relevant taxpayer does not mean that the arrangement should not be considered as 'made available' for implementation if the relevant taxpayer can choose such option and proceed with its implementation without the need to make material changes to the proposed arrangement or to undertake further analysis.

6.2.5 Ready for implementation

For the purposes of the above, an arrangement should generally be considered as 'ready' for implementation when the relevant parties are ready to proceed with the arrangement.

However, it should be noted that this step can in certain cases come prior to the arrangement being made available for implementation. This would be the case for instance where an intermediary designs a marketable arrangement which is sufficiently finalised, but which has not been promoted to potential clients as yet.

6.2.6 'Look-back' reporting period

Intermediaries and/or relevant taxpayers as may be applicable are required to file information in respect of reportable cross-border arrangements the first step of which was implemented between 25 June 2018 and 30 June 2020 by 28 February 2021.

For this period, information in respect of any arrangements the first step of which was not implemented, is not reportable.

6.2.7 Marketable arrangements

In the case of marketable arrangements, a periodic report shall be made by the intermediary every 3 months, providing an update which contains new reportable information in relation to:

- the identification of intermediaries and relevant taxpayers;
- the date on which the first step in implementing the reportable cross-border arrangement has been made or will be made;
- the identification of the EU Member State of the relevant taxpayer(s) and any other EU Member States which are likely to be concerned by the reportable cross-border arrangement;
- the identification of any other person in an EU Member State likely to be affected by the reportable cross-border arrangement, indicating to which EU Member States such person is linked.

6.3 Manner of reporting

Reportable information as outlined in section 6.1 above shall be filed electronically via an online portal made available by the Commissioner for Revenue.

To gain access to the online portal and file a report electronically a person will need to register as a 'user'. This registration is to be accomplished through the online registration process that will be made available on the exchange of information portal of the website of the Commissioner for Revenue (https://cfr.gov.mt/en/inlandrevenue/itu/Pages/Reportable-Cross-Border-Arrangements.aspx).

Registration will be available with respect to the following categories:

- Individuals;
- Directors / Legal Representatives of Companies or Body of Persons; or

- Registration of DAC6 Reporting Entity (Individual or Company/Body of Persons) delegated to a Tax Practitioner.

Following successful registration, a DAC6 Reporting Entity Number (DRE Number) will be issued. The acknowledgment containing the DRE Number should be retained for future reference.

Once a DRE Number is available a user will be able to access the online portal and file a report after submitting a CfR04 form or CfR02 form (the latter applicable where reporting will be delegated to a tax practitioner). The DRE Number needs to be indicated on the applicable form.

Two filing options will be available to users:

- the upload of an XML data file; or
- the upload of an Excel Sheet.

Reporting of multiple disclosures with respect to the same arrangement will only be supported through the upload of an XML data file.

As mentioned above, an intermediary or relevant taxpayer that has an obligation to file information in terms of regulation 13(7) of the Cooperation Regulations may delegate the reporting to another person through the submission of a CfR02 form. In such case the responsibility for reporting remains with the person that qualified as an intermediary or relevant taxpayer and such person should still be shown as the 'disclosing party' in the report. In case of default to comply with reporting obligations, it is the said intermediary or relevant taxpayer that would be charged with the penalty (as per section 7 below) and not the person that had agreed to submit the report on their behalf.

Reports should be made in English.

6.4 Arrangement and Disclosure Reference Numbers

Upon submission of a report that has passed all validation checks, an arrangement reference number ('Arrangement ID') will be assigned to the arrangement. In addition, a disclosure reference number ('Disclosure ID') will be issued to the person submitting the report.

An Arrangement ID is a unique reference number linked to an arrangement and is assigned upon submission of the first report in respect of that arrangement. The person submitting the said report should share the Arrangement ID with other intermediaries and relevant taxpayers as applicable, where such would have been requested. Any subsequent reports submitted in respect of that same arrangement should make use of the Arrangement ID already assigned to that arrangement. The persons submitting such reports would be issued with a Disclosure ID.

It is important to note that the issuing of an Arrangement ID and Disclosure ID does not mean that the Commissioner for Revenue has taken the view that the information submitted is complete and accurate and that all obligations under the Cooperation Regulations have been complied with.

6.5 Additional reporting obligations

6.5.1 Notification by intermediaries waiving their reporting obligation

In terms of regulation 13(7)(e) of the Cooperation Regulations an intermediary is required to notify the Commissioner for Revenue on an annual basis of those reportable cross-border arrangements in respect of which the reporting obligation was waived to another intermediary or the relevant taxpayer.

Notifications shall contain the details outlined in Annex I to these guidelines and are to be sent electronically in a manner to be determined by the Commissioner for Revenue.

Notifications shall be sent annually by not later than the date to be determined by the Commissioner for Revenue. The first of such notifications shall in no case be required earlier than 1 January 2022.

6.5.2 Inclusion of Arrangement ID in tax return

In terms of regulation 13(7)(l) of the Cooperation Regulations a relevant taxpayer is required to file information about the use of the arrangement with the Commissioner for Revenue in each of the years for which they use it.

To comply with this requirement a relevant taxpayer must include the Arrangement ID in the relevant return as the Commissioner for Revenue may determine.

7. Penalties

Regulation 50 of the Cooperation regulations sets out the penalties that may be imposed on an intermediary or a relevant taxpayer for failure to comply with their obligations under the mandatory automatic exchange of information regime in relation to cross-border arrangements.

Different levels of penalties are applicable with respect to the below failures:

- an intermediary or relevant taxpayer fails to retain the documentation and information it collected in the course of meeting its reporting obligations for a minimum period of five years starting from the end of the year to which the information relates;
- an intermediary or relevant taxpayer fails to report any of the information required to be reported in terms of regulation 13(7) of the Cooperation Regulations within the stipulated time frame;
- an intermediary or relevant taxpayer that has an obligation to file information with the Commissioner for Revenue fails to report the information required to be reported in terms of regulation 13(7) of the Cooperation Regulations in a complete and accurate manner;
- an intermediary or relevant taxpayer that has an obligation to file information in terms of regulation 13(7) of the Cooperation Regulations fails to comply with a request for information made by the Commissioner for Revenue.

In line with regulation 35 of the Cooperation Regulations, where the Commissioner for Revenue intends to impose a penalty due to a failure listed above, a default notice shall be delivered to the respective intermediary or relevant taxpayer. The intermediary or relevant taxpayer may contest the imposition of penalties by submitting to the Commissioner for Revenue a letter of contestation within ten days from receipt of the default notice.

Annex I

The annual notification made by non-disclosing intermediaries in terms of regulation 13(7)(e) shall include the following information:

- the identification of the intermediary;
- in respect of each arrangement, the applicable Arrangement ID assigned by the Commissioner for Revenue or the tax authorities of another EU Member State;

  Provided that when this has been requested and not provided, the date when such request was made is to be furnished.

  Provided further that where it is known that the Arrangement ID is not available because the arrangement has not been reported elsewhere, the date when the intermediary advised the other intermediary or the relevant taxpayer of the waiver is to be provided.
- in respect of each arrangement, the identification of the person to whom the obligation was waived, including the name, address, country of tax residence and tax identification number.