European Commission’s Public Consultation on the

Possible Recast of the Directive on Administrative Co-operation (DAC)

Position Paper

10 February 2026

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1. About the Irish Tax Institute

The Irish Tax Institute is the leading representative and educational body for Ireland's Chartered Tax Advisers (CTA) and is the country's only professional body exclusively dedicated to tax.

The Chartered Tax Adviser (CTA) qualification is the gold standard in tax and the international mark of excellence in tax advice. We benchmark our education programme against the very best in the world. The continued development of our syllabus, delivery model and assessment methods ensure that our CTAs have the skills and knowledge they need to meet the ever-changing needs of their workplaces.

Our membership of over 6,000 is part of the international CTA network which has more than 33,000 members. It includes the Chartered Institute of Taxation UK, The Tax Institute (Australia), the Taxation Institute of Hong Kong and the South African Institute of Taxation. The Institute is also a member of CFE Tax Advisers Europe (CFE), the European umbrella body for tax professionals.

Our members provide tax services and business expertise to thousands of Irish owned and multinational businesses as well as to individuals in Ireland and internationally. Many also hold senior roles in professional service firms, global companies, Government, Revenue, state bodies and in the European Commission.

The Institute is, first and foremost, an educational body but since its foundation in 1967, it has played an active role in the development of tax administration and tax policy in Ireland. We are deeply committed to playing our part in building an efficient and innovative tax system that serves a successful economy and a fair society. We are also committed to the future of the tax profession, our members, and our role in serving the best interests of Ireland's taxpayers in a new international world order.

Irish Tax Institute - Leading through tax education

2. Introduction

We welcome the opportunity to contribute to the European Commission's evaluation of the possible recast of Council Directive 2011/16/EU on administrative cooperation in the field of taxation (Recast of the DAC).

The public consultation notes that while the DAC has been subject to several amendments over time there is no current consolidated legal text of the Directive. The Commission states it is necessary to bring together, in one single legal text, the DAC and its eight legislative amendments to simplify readability and clarity for all relevant stakeholders.

Many of the issues the Institute raised in response to the Commission's Call for Evidence as part of its evaluation of the DAC in 2024 remain relevant when considering the proposed Recast of the DAC.[1] In line with the Commission Work Programme 2026[2] and its work towards simplification, we firmly believe that an important focus of the Commission's evaluation of the possible Recast of the DAC should be to streamline the reporting requirements to the greatest extent possible to help ease the administrative burden and cost imposed on businesses.

The use of the information collected by tax authorities under the DAC must be carefully considered to evaluate the proportionality of the administrative burden and costs for business which compliance with the DAC entails. A key focus of the Commission's evaluation should be ensuring the most efficient use of the information which is already collected from business rather than introducing new reporting requirements.

As each DAC has distinct objectives, it is critical that each element is considered separately and that any proposed changes are evidence based. The Institute would caution that in making changes to the DAC, it is essential to ensure that EU reporting requirements continue to mirror the reporting requirements under equivalent OECD initiatives.

[1] https://taxinstitute.ie/wp-content/uploads/2024/07/2024-07-19-ITI-Position-Paper-on-DAC.pdf
[2] https://commission.europa.eu/strategy-and-policy/strategy-documents/commission-work-programme/commission-work-programme-2026_en

3. DAC4 and DAC9

The consultation questionnaire notes that there are currently two different reporting schemas under DAC4 and DAC9 with numerous overlapping fields. It asks if respondents would be in favour of merging the two reporting schemas to prevent possible overlaps and double reporting.

Before considering any changes to DAC4 and DAC9, it is important that a full assessment is carried out to clearly identify any areas of overlap. While in general it would be helpful to reduce the number of notifications required by taxpayers, the different deadlines for reporting under DAC4 and DAC9 and the fact that in many cases, the reporting under each DAC is carried out by separate advisers must be considered.

In addition, at this stage, taxpayers and their advisers are familiar with the DAC4 reporting schema and many are currently working to complete reporting under DAC9 by the first reporting deadline of 30 June 2026. Taxpayers have already incurred significant costs to implement the necessary IT systems and processes and ensure that their staff are appropriately trained to comply with their obligations under DAC9. While merging the DAC4 and DAC9 reporting schemas may have had some benefits if it had been completed before now, the merit of merging the schemas at this juncture would need to be carefully considered.

Overall, we believe it would be preferable to align the reporting schema under DAC4 and DAC9 where possible rather than merging the reporting requirements into one notification.

Reporting by EU taxpayers under DAC4 and DAC9 mirrors the reporting requirements which apply globally under the OECD's Country-by-Country Reporting (CBCR) and the Pillar Two GloBE Information Return (GIR). In making any changes to the schemas under DAC4 and DAC9, it would be important to ensure that the information to be reported by EU taxpayers would continue to mirror the OECD reporting requirements.

The consultation questionnaire notes that currently DAC4 requires annual reporting of the names of the entities which form part of the MNE Group. The document asks if respondents would be in favour of removing this obligation and instead, require notification of changes in the group only. Members have raised concerns that it could be difficult and time-consuming to decipher the changes to details previously reported that

would need to be notified, instead of annually reporting the current details of the MNE group. Indeed, such an exercise could result in creating additional costs rather than reducing the administrative burden for taxpayers.

4. DAC6

DAC6 provides for the disclosure and the automatic exchange of information relating to potentially harmful cross border tax arrangements. Compliance with the reporting requirements under DAC6 is a significant administrative burden for taxpayers and their advisers.

In considering possible amendments to the DAC6 reporting requirements, we would urge the Commission to take the following factors into account:

- The feedback we have received from our members is that the broad scope of the DAC6 hallmarks requires taxpayers and intermediaries to make a significant number of disclosures of transactions that are clearly commercial in nature. This results in an unnecessary compliance burden and cost for taxpayers and their advisers, which would not appear to align with the objective of the DAC of tackling aggressive tax planning.

- In the period since the proposal for DAC6 was first put forward by the Commission, a range of initiatives have been implemented across EU Member States such as Public CbCR, the Pillar Two Minimum Tax Directive and the Anti-Tax Avoidance Directives (ATAD). Where a potential tax advantage has already been addressed because of one of these initiatives, this should negate the need to report the transaction under DAC6.

- DAC6 requires the reporting of arrangements which are often already known to tax authorities as a result of other reporting obligations such as transfer pricing documentation, exchange of tax rulings etc.

Taking the above factors into account, we believe the reporting requirements under DAC6 place a disproportionate compliance burden on taxpayers and their advisers and therefore, the continued necessity for these reporting obligations should be reviewed.

We would strongly urge that a key objective of any proposed amendments to DAC6 should be to ensure that reporting requirements are appropriately targeted and do not place a disproportionate burden on taxpayers and their advisers.

It is important to note that the costs associated with DAC6 are not solely one-off costs and that compliance with DAC6 remains a substantial ongoing cost for taxpayers and tax advisers. For tax advisers, IT systems must be maintained and updated and constant training and retraining of staff at all levels is required to ensure familiarity with the DAC6 rules and the internal process which the firm has put in place to comply with DAC6.

The cost of compliance with DAC6 varies from case to case. A detailed review of the transaction must be carried out to determine if a reporting obligation arises. This means that costs arise irrespective of whether a disclosure is ultimately made.

5.1 Timeframe for reporting

DAC6 requires intermediaries to report in-scope cross-border arrangements to the relevant competent authorities within a 30-day timeframe. This is an extremely short timeframe within which tax advisers must assess whether a transaction falls within the scope of the broad and complex hallmarks set out in the Directive.

The short timeframe for reporting can potentially lead to over-reporting of arrangements that do not fall within the scope of the rules as there is insufficient time to fully consider the application of the rules to the transaction. The short timeframe also increases the likelihood of duplicative reporting where there are multiple intermediaries involved in the same cross-border transaction as an intermediary can only rely on existing disclosures where they have evidence that the same information has been reported in another Member State.

There may be uncertainty establishing the correct date from which the 30-day reporting requirement commences given the difficulties interpretating when an arrangement is “ready for implementation” or “made available for implementation.” The narrow reporting timeframe means that in many cases, information on arrangements must be filed before the arrangement is implemented or is fully implemented. In some cases, the reportable arrangement may not ultimately proceed at all or steps in the arrangement may be amended prior to implementation.

In our view, it would be preferable if the focus of the reporting requirements were on transactions that have been implemented. This would help reduce duplicative reporting while also increasing the quality of information reported.

We believe that extending the timeframe for reporting from 30 days to 90 days would ensure that tax advisers have sufficient time to fully consider whether an arrangement meets the criteria for disclosure under the DAC6 rules. This would help to reduce the incidence of duplicative reporting where there are multiple intermediaries involved in the same reportable cross-border transaction.

In addition, we consider granting the taxpayer that has the full knowledge of the cross-border arrangement, an option to be the sole reporter in situations where there are multiple intermediaries involved and not just in cases where legal professional privilege applies, would also help to reduce duplicative reporting.

5.2 Minimising reporting of arrangements that have a clear commercial purpose

Transactions with a clear commercial purpose can often be reported under the broad scope of the DAC6 hallmarks. To reduce the reporting of purely commercial transactions, the Commission could consider providing confirmation that certain specified transactions do not give rise to a DAC6 reporting obligation. For example, confirmation could be given that transactions such as a liquidation, a cross-border merger, or availing of a relief which is clearly provided for in the national law of a jurisdiction, do not give rise to a reporting requirement.

In addition, consideration should be given to extending the “main benefit test” to all applicable hallmarks to ensure only arrangements which are primarily designed to obtain a tax advantage outcome which is not in line with the policy intent, are reported.

The Commission’s evaluation of the DAC[3] notes that it will carefully analyse and assess the need for possible amendments to DAC6, particularly to the existing hallmarks, which could be clarified and streamlined while ensuring that the system remains robust in its objectives and not weakened by the amendments. The Commission has also stated it

[3] Report from the Commission to the European Parliament and the Council on the evaluation of Council Directive 2011/16/EU on administrative cooperation in the field of taxation, Brussels, 19.11.2025 COM(2025) 695 final

will explore the feasibility of integrating into the simplified DAC framework the principles and concepts extensively examined by Council under the former “Unshell” proposal.[4]

We would have serious concerns with any proposal to integrate the principles of the Unshell proposal into DAC6, in particular, the economic substance indicators. As we outlined in the Institute’s response[5] to the consultation by the Commission on the Unshell proposal in April 2022, the economic substance indicators contemplated in Unshell, which included an undertaking having their own premises or premises of which they have exclusive use in their Member State of residence, having full-time employees resident in, or near, the Member State where the undertaking is resident and having an active EU bank account, are arbitrary and do not consider the facts and circumstances of the businesses or industries concerned.

We consider the Commission should be cautious about setting a minimum level of substance for a company. It is not unusual for some groups to split their activities between many entities. For example, it may be the case that all employees in a group are employed in a single undertaking with a separate entity holding premises or other property. Indeed, in certain sectors, where the group borrows to fund the acquisition of a significant capital asset it is common for the financial institution to require that the asset be held in a separate entity for security purposes.

Rather than introducing new reporting requirements we would strongly urge that the Commission focuses on streamlining the existing DAC6 hallmarks to reduce the reporting of clear commercial transactions.

5.3 Main Benefit Test

The generic hallmarks under category A, the specific hallmarks under category B and points (b)(i), (c) and (d) of paragraph 1 of category C may only be considered where they fulfil the “main benefit test”. That test is satisfied if it can be established that the main benefit or one of the main benefits which, having regard to all relevant facts and circumstances, a person may reasonably expect to derive from an arrangement is the obtaining of a tax advantage.

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[4] Proposal for a Council Directive laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU

[5] https://taxinstitute.ie/wp-content/uploads/2022/04/2022-04-06-ITI-Response-to-the-European-Commission-on-the-Proposed-Directive-on-Rule-to-Prevent-the-Misuse-of-Shell-Entities-for.pdf

The main benefit test which applies for these hallmarks, is an important filter in ensuring that transactions that have a clear commercial purpose are not automatically reportable. For example, without the main benefit test, the type of retail investment which the EU is seeking to incentivise under the Savings and Investment Union initiative could be reportable under Hallmark A.3 which applies to an arrangement that has substantially standardised documentation and/or structure and is available to more than one relevant taxpayer. Similarly, without the main benefit test, cross-border pensions may also be potentially in scope of Hallmark A.3.

Another example which demonstrates the importance of the main benefit test is Hallmark C.1(d). This Hallmark applies to an arrangement that involves deductible cross-border payments between related parties where the payment benefits from a preferential tax regime in the jurisdiction where the recipient is resident for tax purposes. Without the main benefit test, a payment which benefits from an R&D Tax Credit regime in the recipient jurisdiction could potentially be in scope.

DAC6 is intended to deter aggressive tax-planning practices and contribute to the creation of an environment of fair taxation in the internal market by requiring the reporting of potentially aggressive cross-border tax-planning arrangements. Considering these objectives, we consider cross-border arrangements that satisfy a main benefit test should not trigger a reporting obligation under DAC6. Therefore, we believe it would be appropriate for the main benefit test to apply to all applicable DAC6 hallmarks.

5.4 Hallmarks

As the level of association required for parties to be considered associated enterprises for the purposes of DAC6 is only 25%, a payor may not have knowledge of the tax treatment of a payment made to a payee situated in another jurisdiction. In these circumstances, uncertainty can arise over the level of due diligence required to be taken by an intermediary or a taxpayer to ascertain whether a particular hallmark is met.

It would be helpful if confirmation could be provided that an obligation to report under DAC6 can only arise where the intermediary or a taxpayer has actual knowledge of the relevant facts, i.e., they would not be expected to undertake additional due diligence to ascertain whether a hallmark is applicable.

Hallmark C.1(a): The jurisdiction is included in a list of third-country jurisdictions which have been assessed by Member States collectively or within the framework of the OECD as being non-cooperative.

The jurisdictions included in Annex 1 of the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes are subject to change and countries may be added or removed from the list. It would be helpful to clarify the point at which this hallmark should be tested is the time that the reporting obligation is triggered.

Hallmark C.1(d): Deductible payment to preferential regime

This hallmark applies to an arrangement that involves deductible cross-border payments between related parties where the payment benefits from a preferential tax regime in the jurisdiction where the recipient is resident for tax purposes.

We consider that a preferential tax regime is too broad a concept as it could include tax measures such as a participation exemption or the R&D Tax Credit. It would be preferable if the reporting requirement was confined to tax regimes that have been assessed as harmful or potentially harmful by the OECD or the EU Code of Conduct Group.

Hallmark E.1: An arrangement which involves the use of unilateral safe harbour rules

We understand that this hallmark can result in the reporting of transactions which are uncontroversial and are clearly commercial in nature. To reduce the reporting of such transactions, the Commission could consider providing a list of unilateral safe harbours which do not give rise to a reporting requirement under Hallmark E.1.

Hallmark E.3: An arrangement involving an intragroup cross-border transfer of functions and/or risks and/or assets

This hallmark requires the reporting of an arrangement involving an intragroup cross-border transfer of functions and/or risks and/or assets, if the projected annual earnings before interest and taxes (EBIT), during the three-year period after the transfer, of the transferor or transferors, are less than 50% of the projected annual EBIT of such transferor or transferors if the transfer had not been made.

EBIT is not defined in the Directive and we understand from members that there can be divergent interpretations of EBIT as accounting rules differ across Member States.

In addition, we understand that this hallmark can result in the reporting of normal commercial transactions such as group reorganisations or liquidations. The reporting of straightforward commercial transactions is an unnecessary compliance burden and cost for taxpayers and advisers. As a result, we consider that this hallmark should be eliminated.

If the Commission is of view that the hallmark should be retained, at a minimum, the hallmark should be amended to include a main benefit test. The Commission could also consider providing confirmation that certain specified transactions do not give rise to a reporting obligation. For example, confirmation could be given that transactions such as a liquidation or a cross-border merger are not reportable.

5. DAC7

DAC7 requires the reporting by platform operators of sellers that carry out activities involving the sale of goods for consideration. Sellers that carry out less than 30 activities involving the sale of goods and for which the total amount of consideration paid or credited does not exceed €2,000 during the reporting period are exempt from reporting.

In our view, the current exemption threshold for the sale of goods should be increased to exclude more low-value sellers from the DAC7 reporting obligations as this would help ensure reporting under DAC7 targets higher risk transactions.

It would also be helpful if the method for filing a nil DAC7 return across jurisdictions could be aligned. Sometimes, it is necessary for the platform operator to correct a DAC7 report when new information becomes available after the filing date. Consideration could be given to standardising the report to be filed in such cases.

Simplification of the due diligence obligations on reporting platform operators would be welcome as these can be quite onerous. We understand from our members that it can be difficult for platform operators to obtain the required information from the seller which is necessary to comply with their DAC7 reporting obligations.

6. EU Tax Identification Number

The Call for Evidence notes that to improve the identification of taxpayers reported under the DAC, the Commission's policy options will be informed by the outcomes of the current study on the feasibility of introducing a common identifier and its associated verification mechanisms (i.e. an EU TIN). Last November, the Institute met with the researchers appointed by the Commission to undertake this feasibility study to give our members' feedback on the operation and potential impact of an EU TIN on Irish taxpayers.

In our feedback to the Commission's researchers, we shared our members' views of the potential options for the introduction of an EU TIN including the challenges and advantages associated with each option under consideration by the Commission. We highlighted concerns that an EU TIN could impose a substantial additional burden on reporting financial institutions by requiring them to collect and re-paper existing self-certifications to reflect the new TINs and to update their corresponding reporting data accordingly.

Should an EU TIN be introduced as a mandatory component of the DAC, we believe from a DAC2 perspective, it would be necessary to have appropriate transitional provisions to ensure financial institutions are not required to obtain updated self-certifications from potentially hundreds of account holders.

7. Conclusion

The Draghi Report[6] highlighted the impact of the regulatory burden on sustainable competitiveness and the need for simplification. While we recognise the role of the DAC in tackling aggressive tax planning, it is important that reporting obligations under the DAC do not place a disproportionate administrative burden on businesses. The Institute strongly supports the Commission's goal of reducing administrative burdens by 25% overall and 35% for SMEs, without lowering standards.[7]

In considering possible amendments to the DAC, we urge the Commission to streamline the existing reporting requirements to help reduce the administrative burden for

[6] The Future of European Competitiveness: Report by Mario Draghi, September 2024
[7] Commission Work Programme 2026

taxpayers and their advisers. We strongly believe that a key focus should be to ensure that any unnecessary reporting requirements for taxpayers and intermediaries are removed taking into account the significant changes to the tax policy landscape since DAC6, in particular, was first proposed, following the implementation of Public CbCR, the Pillar Two Minimum Tax Directive and ATAD.