

Additional Information / FAQ DAC6 Tracker – Questions

1 Intermediary, Client and Introduction

How does the DAC6 Tracker work?	
Background	The aim of the DAC6 Tracker is to record every arrangement that is obliged to be reported. The user has the possibility to test all his arrangements by means of the questions of the DAC6 Tracker and afterwards receives the result directly whether the arrangement in question is a notifiable arrangement. For consultants, the DAC6 Tracker starts directly after the service entry. All services provided can then be tested in the DAC6 Tracker. The verification of the service is recorded and can be used as evidence in case of an audit by the tax authorities. Finally, the report can be recorded and generated for each arrangement under obligation to report.
1. Step	In order to start a question run for an arrangement, in a first, preparatory step, all persons concerned must be entered in the menu under "Legal entities and individuals", whether intermediary, clients, subsidiaries, etc. The persons are tested directly during the registration process by means of questions as to whether they themselves are under an obligation to report. As soon as all persons are entered, the respective arrangements can be recorded.
2. Step	In a second step, each individual arrangement can be recorded in the menu under "Arrangements" and then tested using the smart question catalogue. The first 5 questions each relate to the general category of the arrangement. <ol style="list-style-type: none"> 1. Cross-border transactions 2. Financial products 3. Asset structure 4. Leasing 5. Transfer pricing <p>As soon as one of these questions is answered "Yes", the system automatically proceeds to specific questions for that category.</p> <p>If it is not one of the above categories, general questions are then asked to determine whether the arrangement is subject to an obligation to report. The system guides through all relevant questions.</p> <p>When all questions for the arrangement have been answered, the system will report whether the arrangement is notifiable and which of the DAC6 hallmarks are affected. The verification of the arrangement is stored in the DAC6 Tracker for documentation purposes and can be adjusted, rerun or changed at any time at a later date.</p>
3. Step	In the menu under "Reports", all the data for each arrangement under a reporting obligation can be entered. The DAC6 Tracker then provides a report in pdf format for submission of the notification to the relevant authority. For reports in Germany, the DAC6 Tracker also provides the XML data record, which can be imported directly.
Who is intermediary?	
Question: X.1	An intermediary is any person who conceives, promotes, organises or provides for the implementation of a cross-border arrangement which is subject to the obligation to report or who manages the implementation of such an arrangement. This term also means any person who, having regard to the relevant facts and on the basis of the information available, knows or ought reasonably to know that he has provided assistance or advice in relation to the

	<p>implementation of a notifiable cross-border arrangement. Any person has the right to provide evidence that he did not know or could not reasonably have known that he was involved in a notifiable cross-border arrangement. To that end, the person concerned may rely on all relevant facts and circumstances and available information and his or her relevant expertise and understanding.</p>
<p>What is considered an affiliated company?</p>	
<p>Y.4</p>	<p>A person who is connected to another person in at least one of the following ways:</p> <ul style="list-style-type: none"> (a) A person is involved in the management of another person to the extent that he can exercise significant influence over that other person; (b) a person participates in the control of another person through a holding company which holds more than 25% of the voting rights; (c) a person holds an interest in the capital of another person through a right of ownership which directly or indirectly exceeds 25% of the capital; (d) a person is entitled to at least 25% of the profits of another person. <p>Where more than one person has an interest in the management, control, capital or profits of the same person, as referred to in points (a) to (d), all the persons concerned shall be deemed to be connected undertakings. Where the same persons referred to in points (a) to (d) participate in the management, control, capital or profits of more than one person, all the persons concerned shall be deemed to be related undertakings.</p> <p>For the purposes of this point, any person who, in respect of voting rights or capital holding in an undertaking, acts in concert with another person shall be treated as if that person held an interest in all the voting rights or capital of that undertaking held by that other person. In the case of indirect holdings, compliance with the requirements referred to in point (c) shall be determined by multiplying the proportion of the holding in the subordinate undertakings. A person holding more than 50% of the voting rights is deemed to hold 100% of the voting rights. A natural person, his spouse and his relatives in the ascending or descending line are treated as a single person;</p>
<p>What are professional associations?</p>	
<p>X.4</p>	<p>Registration in a public register or professional association for legal, tax or advisory services. This includes both professional organisations whose membership is compulsory (e.g. professional associations) and professional organisations whose membership is voluntary (e.g. interest groups).</p>
<p>Examples of confidentiality clauses</p>	
<p>X.6 Y.8 Question 7.2</p>	<p>It covers those agreements which prohibit the user or any other party involved in tax arrangements from disclosing the tax advantage conveyed by the tax arrangements to other intermediaries or the tax authorities, including those covered by the reporting obligation.</p> <p>e.g.</p> <ul style="list-style-type: none"> • non-disclosure agreements • special agreement concerning the forwarding of data, e.g. in the AGBs • etc
<p>What is a performance-related fee?</p>	
<p>X.7 Y.9 Question 7.1</p>	<p>Any fee, which in whole or in part, in any way is dependent on success. The success component can be structured in various ways, both in terms of the definition of success and its impact on the fee. For example, a fixed amount can be agreed which is owed solely or in addition to other fee components when a certain success occurs. The performance-related</p>

	<p>fee component can also consist of a percentage of success or failure. As a special case of this, a certain share in the process profit or a share in the loss is also conceivable.</p>
<p>Examples of standardised documents</p>	
<p>X.8 Y.10 Question 7.3</p>	<p>Arrangements which can be used in the same way in a large number of other cases (standardisation). Standardisation can relate to both the (external) documentation and the (internal) structure of the arrangement. This includes contracts or other documents relevant to the design, e.g. mandate-related documents, which are prepared for users in the form of samples without any significant adjustments to the individual case. Essential are adaptations in form or presentation which, when viewed as a whole, no longer make the documentation appear as uniform in terms of content, i.e. arrangement.</p> <p>There are numerous examples of standardised documents. If these are used in isolation, no tax reference is to be assumed:</p> <ul style="list-style-type: none"> - Model contracts for standardised structures - Expenses regulations - Standard statutes - Cash Pool Agreements - Establishment of companies or communities - Lending activities - Issuing of licences, - Posting of employees, - Agreement on services, e.g. for the settlement of payments and securities transactions, - Adjustment of continuing obligations which are made exclusively to maintain the foreign custom - Standard leases (e.g. finance leases for fixed assets) <p>As soon as further (partial) steps are added and a tax connection of the standard process is established, the arrangement becomes reportable!</p>
<p>What is a standardised structure?</p>	
<p>Question 7.4</p>	<p>A standardised structure is a fiscal, planned connection of several legal or factual steps which are intended to bring about a certain fiscal legal consequence. This can be assumed as a rule if a conscious sequencing or interaction of partial legal steps is chosen to achieve the objective. For example, if a transaction is structured by a number of successive steps without this leading to a change in the economic content of the transaction. A structure can also be present if no independent economic purpose is pursued, but only the tax advantage is in the foreground.</p> <p>The structure of an arrangement is standardised if, irrespective of its external form, its content is structured in such a way that it can be used in the same way in a large number of other cases without any substantial adjustment of the structure. Essential are such adaptations of the structure that change the content of the tax structure in question.</p>
<p>What are legal confidentiality obligations?</p>	
<p>X.9</p>	<p>Refuse to disclose what you have been entrusted or have become aware of in your capacity as a lawyer, patent attorney, notary public, tax adviser, auditor, tax representative or sworn auditor (professional secrets), i.e. secrets relating to your mandate</p>
<p>Main Benefit Test - When is a tax benefit available?</p>	

<p>2.1.1 2.3.1.1 2.3.2.1 2.11.1 2.12.1 2.13.1 3.1.2.1 3.1.3.1 3.1.4.1 3.1.5.1 5.2.1 5.3.1 5.7.1 5.8.1 5.16.1 5.17.1 5.18.1 7.1.2 7.2.1 7.3.1</p>	<p>Definition of the main benefit test (relevance test) - German interpretation:</p> <p>A tax advantage is deemed to exist if through tax planning</p> <ul style="list-style-type: none"> • taxes should be refunded, • tax refunds should be granted or increased, • tax claims should be eliminated or reduced, • the accrual of tax claims is to be deferred to other tax periods or to other taxable dates. <p>Tax claims should be eliminated or reduced if, for example, the aim of cross-border tax planning is to reduce the tax burden on costs in different tax jurisdictions, with the result that these costs are taxed twice.</p> <p>The creation of tax claims is prevented if limited tax liability is avoided through cross-border tax structuring (e.g. DBA blocker arrangement).</p> <p>A tax advantage also exists if the tax advantage is to be achieved exclusively in another EU Member State or in a third country.</p> <p>It is irrelevant whether the tax advantage, which is to be achieved with cross-border tax structuring ultimately, materialises.</p>
<p>When is one of the main advantages of an arrangement to obtain a tax advantage?</p>	
<p>2.1.1 2.3.1.1 2.3.2.1 2.11.1 2.12.1 2.13.1 3.1.2.1 3.1.3.1 3.1.4.1 3.1.5.1 5.2.1 5.3.1 5.7.1 5.8.1 5.16.1 5.17.1 5.18.1 7.1.2 7.2.1 7.3.1</p>	<p>If a prudent third party can reasonably expect, taking into account all material facts and circumstances, that the main advantage or one of the main benefits of an arrangement is the obtaining of a tax advantage. This is not the case if it is sufficiently documented that there are predominantly non-tax (in particular economic) reasons for structuring the transaction which cause the tax advantage to take a back seat. However, it is not sufficient to record only significant non-tax advantages. Rather, it must be documented that the tax advantage is not the main advantage of the arrangement. This is particularly the case if the tax advantage is only a reflex or a marginal phenomenon. For documentation purposes, appropriate evidence can be provided, in particular through company correspondence, memos or resolutions.</p>

What is an asset structure?	
Z.1.3	<p>By an international asset structure we mean the structuring of private assets by means of at least one legal form or corporate form. Legal forms or corporate forms can be of different nature in this understanding: foundations, trusts, personal companies, sole proprietorships, legal entities, AGs, Holdings Anstalt etc.). In order to answer this question in the affirmative, there should be at least one legal form or corporate form which is not within the jurisdiction of the tax residence of the person concerned.</p> <p>For every change or adjustment, as well as for every establishment of such an international asset structure, this question must be answered in the affirmative and any obligation to report under DAC6 must be clarified in detail with the follow-up questions.</p>
What is covered by "buying a loss-making company"?	
Question 2.1	<p>Acquisitions of loss-making companies are arrangements whereby a party involved in the arrangement systematically takes inappropriate legal action to acquire, directly or indirectly, a loss-making company, to terminate the principal activity of that company and to use its losses to reduce its tax burden, including the transfer of the losses to another tax jurisdiction or the use of those losses at a later date.</p>
What is a non-transparent chain of owners?	
Question 2.2.1	<p>In the case of a non-transparent asset structure, due to the interposition of several beneficial owners who do not carry out any significant activity (e.g. holding companies, foundations, etc.), it is not directly recognisable who the true beneficial owner of the asset structure is.</p>
What are circular transactions?	
Question 2.3 Question 5.6	<p>In the case of circular transfers of assets, it is essential that at least two transactions are carried out and that the value of the assets concerned is returned to the original taxpayer on completion of the transactions. For such transactions, the transfer of the economic allocation for a so-called legal second is sufficient. It is also essential that the transactions follow a scheduled sequence.</p>
What are the hallmarks of a financial account within the meaning of Section 19 No. 18 of the Act on Exchange of Information on Financial Accounts?	
Question 2.4 Question 5.9	<p>A financial account is an account managed by a financial institution. A financial account comprises a deposit account, a custody account and</p> <ul style="list-style-type: none"> a) in the case of an investment undertaking, equity and debt investments in the financial institution Notwithstanding the foregoing, the term financial account does not include equity and debt investments in an entity which is considered to be an investment undertaking solely because it is acting for or on behalf of a client for the purpose of investing or managing financial assets deposited with a financial institution other than that entity on behalf of a client <ul style="list-style-type: none"> aa) provides investment advice; or bb) manages assets, b) in the case of a financial institution other than those referred to in point (a), equity and debt participations in the financial institution c) surrenderable insurance contracts and pension insurance contracts issued or administered by a financial institution

Question 2.4
Question 5.9

Financial Accounts that need to be reviewed:

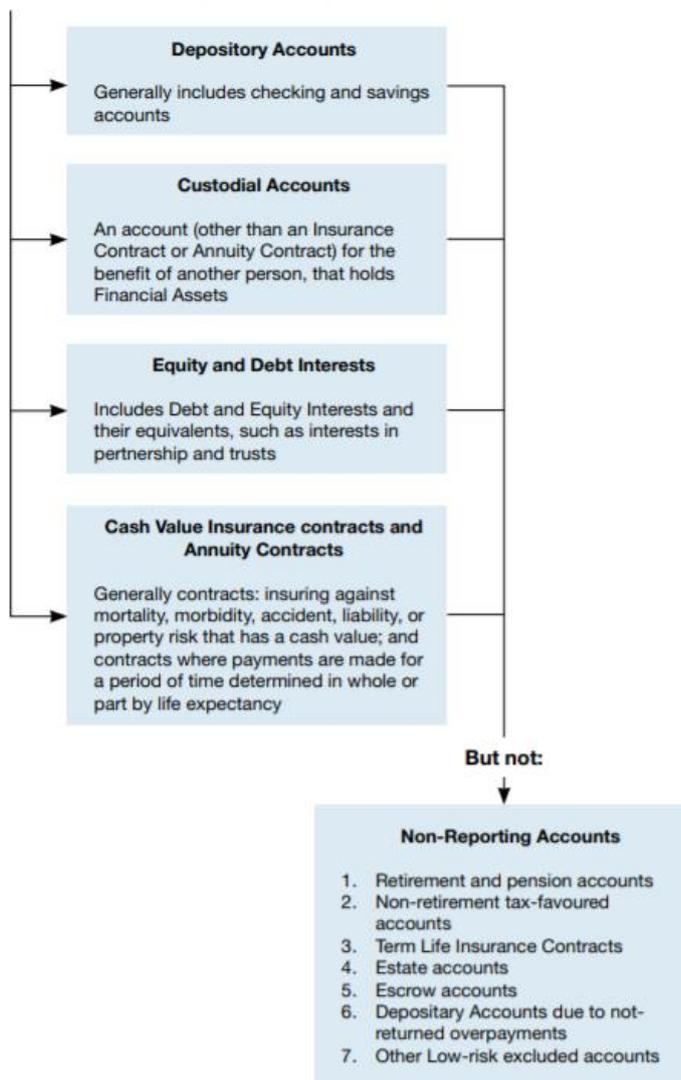


illustration source: <https://www.oecd.org/tax/exchange-of-tax-information/implementation-handbook-standard-for-automatic-exchange-of-financial-information-in-tax-matters.pdf>

Which countries are not bound to exchange information according to common reporting standards?

Question 2.5
Question 5.10

The list of activated bilateral exchanges of all states and territories can be consulted on the OECD website.
<http://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/exchange-relationships/>

What income and payments are subject to the automatic exchange of information on financial accounts?

Question 2.6
Question 5.11
Question 5.12
Question 5.13

For financial accounts that meet the requirements for custody accounts, the following payments must be reported:

- Total gross amount (before withholding tax) of interest: in particular, interest from bonds, serialised notes, serial payments, debt register balances and customer balances,
- Total gross amount (before withholding tax) of dividends, in particular distributions of profit shares, liquidation surpluses and non-cash benefits from participations of all kinds, including bonus shares, bonus nominal value increases and the like

	<ul style="list-style-type: none"> • the total gross amount (before withholding tax) of other income derived from the assets held in the Account and paid into (or credited to) the Account (or in respect of the Account) during the calendar year or any other appropriate reporting period. • Total gross proceeds from the sale or redemption of assets deposited or credited to the account during the calendar year or any other appropriate reporting period and for which the reporting Swiss FI acted as custodian, broker, agent or other representative for the account holder. Irrespective of the activity as depository, broker, authorised representative or otherwise acting as agent on behalf of the account holder, a reporting Swiss FI is not required to report corresponding payments if they are not related to a financial account held by it or if the unity of the transaction with assets held in the financial account does not exist. <p>For financial accounts that meet the requirements for deposit accounts, the total gross amount of interest calculated on the account balance that has been paid into or credited to the account during the calendar year or any other appropriate reporting period must be reported.</p>
--	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Which legal entities exclude the reporting of an account holder under the automatic exchange of information on financial accounts?

Question 2.8
Question 5.12
Question 5.13

In principle, only financial institutions are obliged to report the account holder in the context of the automatic exchange of information on financial accounts.

The following procedure is recommended to check whether a reporting financial institution is involved:

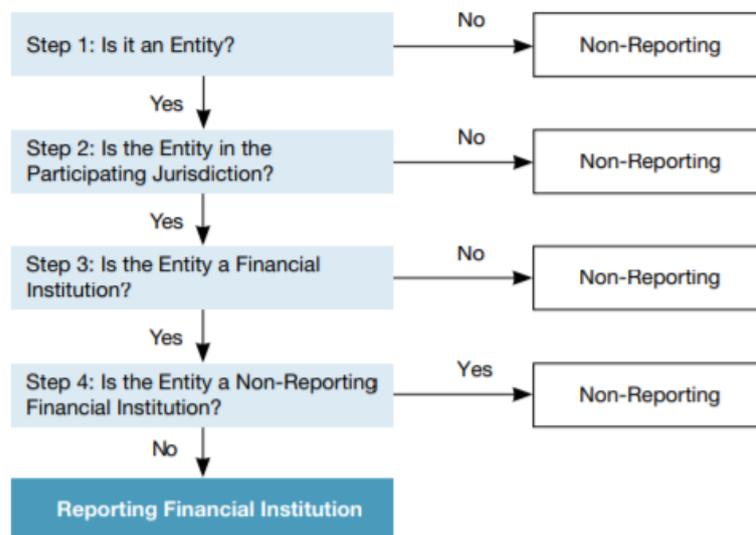


illustration source: <https://www.oecd.org/tax/exchange-of-tax-information/implementation-handbook-standard-for-automatic-exchange-of-financial-information-in-tax-matters.pdf>

What does the modification or other transfer of a source of income mean?

Question 2.11

- Examples of the modification or transfer of a source of income:
- Contribution of a claim and conversion into tax-exempt dividend income,
 - The adviser recommends that a European private client invest part of his assets in a life insurance policy that enjoys preferential tax treatment in an EU Member State.
 - Conversion of income into assets or gifts
 - Etc.

3 Cross-border transactions and 4 Leasing

When does a country have a tax rate of 0% or close to 0%?	
Z.3.1.2	<p>A tax rate of 0% or close to 0% exists when a tax jurisdiction</p> <ul style="list-style-type: none"> • Neither corporation tax, profit tax nor any other comparable tax is levied or • Although a corporation tax or a tax comparable to corporation tax is levied, the nominal tax rate is close to zero percent. A tax rate of "close to zero percent" exists if it is less than or equal to 4 percent.
Z.3.1.2.1 Z.3.1.3.1 Z.3.1.4.1 Z.3.1.5.1	<p>A tax advantage is deemed to exist if the tax structure</p> <ul style="list-style-type: none"> • taxes should be refunded, • tax refunds are to be granted or increased, tax claims are to be eliminated or reduced,* • to prevent the accrual of tax claims,** • the accrual of tax claims is to be deferred to other tax periods or to other taxable dates. <p>*Tax claims are to be eliminated or reduced if, for example, the arrangement is aimed at reducing the tax burden on expenses in different tax jurisdictions - resulting in double taxation.</p> <p>**The creation of tax claims is prevented in particular if the cross-border tax structuring avoids a tax liability without there being any economic reasons for this. On the other hand, a choice of legal form or location based on economic considerations does not prevent tax claims from arising.</p> <p>A tax advantage also exists if the tax advantage is to be achieved exclusively in another EU Member State or in a third country. It is also irrelevant whether the tax advantage which is to be achieved ultimately materialises. No tax advantage is obtained if any tax advantages in one territory are offset by corresponding additional tax burdens in the same territory which are directly related to this tax advantage, or if the additional tax burdens outweigh the additional tax burdens on balance.</p>
Which countries are considered non-cooperating?	
Z.3.1.3	<p>On the one hand, non-cooperative tax jurisdictions are defined as countries and territories that do not meet the standards adopted by the EU Member States with regard to transparency, fair tax competition or the implementation of the OECD's measures against the reduction and shifting of profits (BEPS). The second is countries and territories that do not meet the OECD's transparency standards. The list of tax jurisdictions classified as non-cooperative is regularly updated by the European Union. The latest version of the list is available at https://ec.europa.eu/taxation_customs/tax-common-eu-list_en#heading_3</p>
When is a payment considered fully tax exempt?	
Z.3.1.4	<p>The basis for a tax exemption is that the tax jurisdiction in which the payee is established does not include the payments in the tax base. This is the case in particular where</p> <ul style="list-style-type: none"> • the income corresponding to the expenditure cannot be taxed there under national law, in particular because it is not taxable or materially exempt or because the taxpayer is personally exempt, or • there are other reasons why actual taxation of the income is not levied (e.g. due to a waiver by waiver of tax).

	If there is no taxation as a result of loss compensation or deduction due to other negative income, no tax exemption is to be assumed.
What is a preferential tax regime?	
Z.3.1.5	<p>Preferential arrangements generally exist when certain industries, sectors or revenue are given preferential tax treatment compared with the rest of the economy or with other categories of revenue. It is sufficient if there is a low level of taxation which differs from the standard taxation. Examples of preferential arrangements are, in particular, those developed by the Forum on Harmful Tax Practices (FHTP) of the Organisation for Economic Cooperation and Development (OECD) in accordance with the recommendations of BEPS Action Point 5 (assessed tax regime). It is irrelevant whether these are classified as "harmful" by the FHTP or not. Consequently, cross-border tax arrangements relating to preferential arrangements which are in conformity with BEPS Action Point 5 of the OECD must also be notified. An overview of the results of the FHTP's audits is regularly published on the Internet and can be found on the OECD website. The list can be accessed via the following links: https://www.oecd.org/tax/oecd-releases-latest-results-on-preferential-regimes-and-new-results-on-noor-only-nominal-tax-jurisdictions.htm and https://www.oecd.org/tax/beps/harmful-tax-practices-peer-reviewresults-on-preferential-regimes.pdf This list is not exhaustive and can only be used as an indication of the existence of preferential arrangements.</p>
When is there a significant difference in the valuation of assets in the countries concerned?	
Z.3.3 Z.4.2	<p>Basics:</p> <p>There is a notification requirement for arrangements in which a transfer or transfer of assets is assessed differently for tax purposes in two participating jurisdictions. These may be cross-border transfers or transfers of assets. However, domestic transfers or transfers may also be affected (e.g. in cross-border permanent establishment situations in the case of conversion/contribution of a part of a business into a corporation or partnership). Valuation differences may exist both at company and shareholder level. The departure of a natural person holding shares in a capital company and the resulting differences in the valuation of the shares in the country of arrival and departure may also be covered by this regulation.</p> <p>Definition of a significant difference:</p> <p>If the difference in the valuation of the transferred or transferred asset is more than 10 per cent of the value taken as a basis for taxation at the time of the transfer or transfer and amounts to at least 100,000 euros, or the difference in valuation exceeds 500,000 euros, it is material and fulfils the characteristic.</p>
When can depreciation be claimed in more than one country?	
Z.3.4 Z.4.1	<p>Example of depreciation in more than one country:</p> <p>The consultant advises a European company (lessee) which leases a vehicle from a company in Switzerland (lessor). Both companies are allocated the vehicle in their balance sheets on the basis of their respective national legal systems, which allows both companies to depreciate the vehicle.</p> <p>This characteristic does not cover cases where the multiple use results from the application of the additional tax. The same applies if the multiple use results for a taxpayer from the application of the credit, deduction or flat-rate method or from the remission of the domestic tax due on the foreign income in order to avoid double taxation.</p>

5 Financial products

What are financial products?	
Question 5.1	<p>Examples of financial products:</p> <p><u>Credit institutions/building societies</u></p> <ul style="list-style-type: none"> - Sight deposits (on current accounts or call money accounts) - Time deposits, fixed-term deposits - Savings deposits - Savings bonds - Pfandbriefe - Certificates - Building loan agreements <p><u>Swaps</u></p> <ul style="list-style-type: none"> - Interest rate swaps - Equity Swaps - Currency swaps <p><u>Options</u></p> <ul style="list-style-type: none"> - Stock options - Interest rate options - Currency Options - Options on commodities <p><u>Insurance policies with investment character</u></p> <ul style="list-style-type: none"> - Endowment insurance - unit-linked life insurance - Hybrid Products <p><u>Funds</u></p> <ul style="list-style-type: none"> - open-ended investment funds (equity, bond and mixed securities funds), - closed-end investment funds - Money market funds - Fund savings plan - Real estate funds - Ship funds - Hedge funds - alternative investment funds <p><u>Non-banking companies</u></p> <ul style="list-style-type: none"> - Shares - Convertible Bonds - Corporate Bonds - Reverse convertibles - Profit Participation Certificates - Venture capital - Participatory loans - alternative investments <p><u>States and subnational authorities</u></p> <ul style="list-style-type: none"> - Government Bonds - Sovereign wealth funds - Municipal bonds - Municipal bonds - State Bonds - Citizen loans
Question 5.2	

What is the EU Directive 2015/849?	
Question 5.5	The EU Directive 2015/849 is the so-called Money Laundering Directive The full text of the Directive can be found at the following link: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L0849&rid=2
When has the arrangement undermined the due diligence process or eroded or exploited certain weaknesses in the compliance processes of certain banks or states?	
Question 5.14	This includes the inclusion in the cross-border arrangement of those jurisdictions with inappropriate or weak anti-money laundering enforcement arrangements or with weak transparency requirements for legal persons or legal arrangements. In assessing the extent to which weaknesses in the above sense exist in the respective tax jurisdictions, the results of the Global Forum's review of the implementation of and compliance with the standards for automatic exchange of information and exchange of information upon request may be used.

6 Transfer pricing

What are unilateral safe harbour rules?	
Question 6.1 Question 5.4	This includes cases where there is no independent determination of the appropriate transfer price, but where lump sums are applied (regardless of whether they are accepted by the tax authorities or the OECD). For example, the simplification rule of the BMF regarding a profit mark-up of 5 to 10 percent for routine services using the cost mark-up method.
What are intangible assets that are difficult to value?	
Question 6.2	The term hard-to-value intangible assets includes intangible assets or rights to intangible assets for which there are no sufficiently reliable benchmarks at the time of their transfer or conveyance and for which, at the time of the transaction, the forecasts of expected cash flows or the income expected to be derived from the transferred intangible asset or the assumptions underlying the valuation of the intangible asset are highly uncertain, making it difficult to foresee the ultimate outcome of the intangible asset at the time of the transfer or conveyance. Example: A consultant advises a Liechtenstein company that plans to acquire newly developed brands from a group company based in an EU Member State. There are no reliable benchmarks for the brands and future cash flows are very uncertain.
What are cross-border transfers of assets, functions or risks between related companies?	
Question 6.3	Example: The consultant advises a corporation based in an EU member state on the relocation of functions to Switzerland. A condition for the obligation to report is that the expected annual EBIT of the transferor(s) during a period of three years after the transfer is less than 50 percent of the annual EBIT that would have been expected without the relocation.