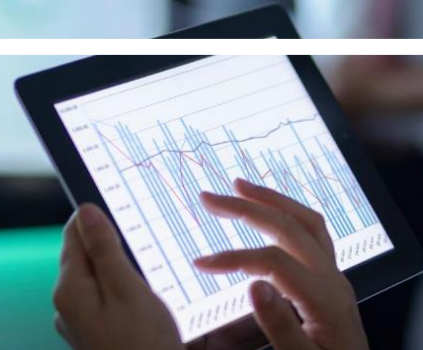


# DAC6 Webcast

## How to control DAC6?



Mark van Daalen, Femke van Dijk, Wybe Mebius, Robert  
Jan Meindersma, Arne Schnitger, Hein Vermeulen  
**11 June 2020**

# Agenda

1. Welcome and introduction
2. Potential deferral DAC6 reporting deadlines
3. Hallmarks examples
4. International perspective
5. Next steps
6. Closing



# Poll

## Welcome and introduction

### Question:

How would you describe your current DAC6 status?

1. Not aware
2. Aware
3. Determining impact on organisation
4. Designing processes and controls
5. Ready for the first DAC6 report



# Poll

## Welcome and introduction

### Answer:

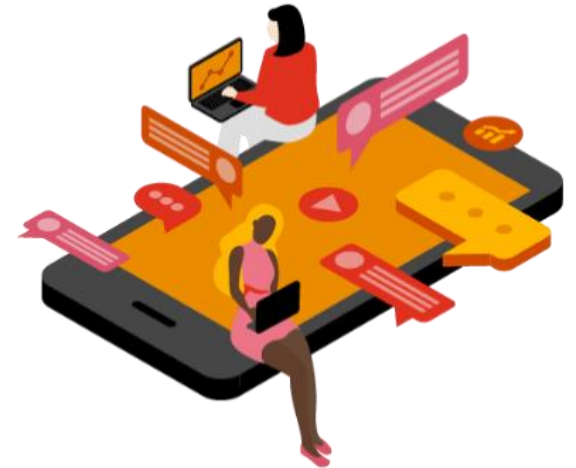
How would you describe your current DAC6 status?

1. Not aware
2. Aware
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4. Designing processes and controls
5. Ready for the first DAC6 report

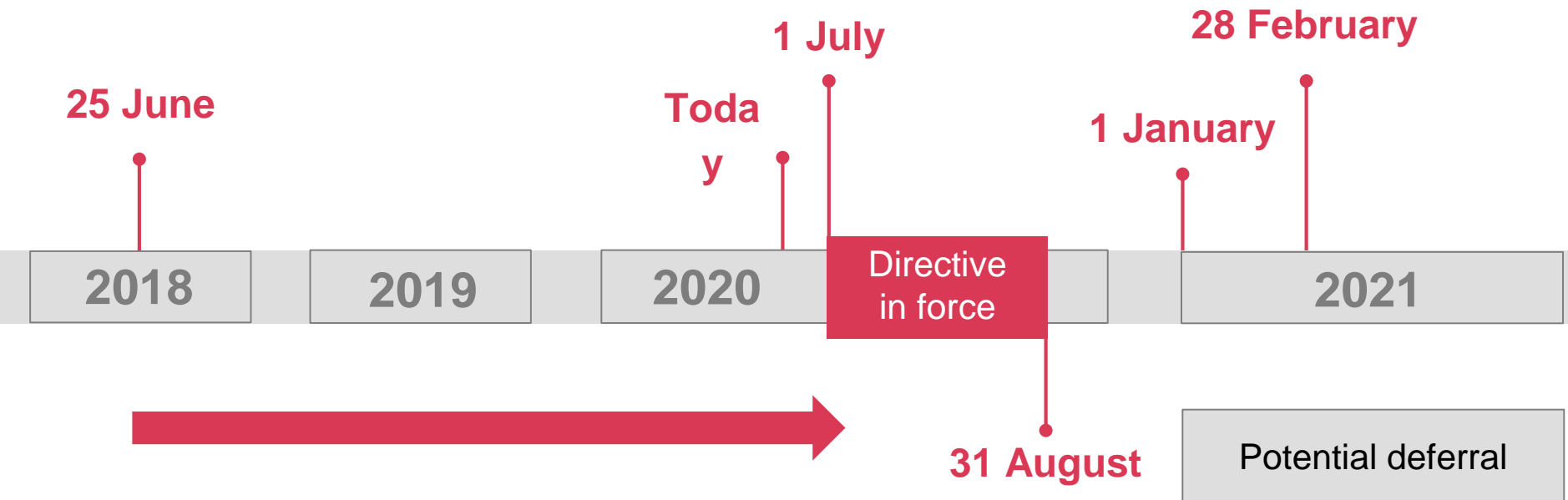


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# Potential deferral DAC6 reporting deadlines



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# Methodology to assess arrangements

## Questions

1. Is there an **arrangement**?
2. Is the arrangement **cross-border**?
3. Is there **EU nexus**?
4. Which **hallmark** is met?
5. Is the **Main Benefit Test** met?
6. Who is **relevant taxpayer**?
7. Who will **report**?

## Main Benefit Test

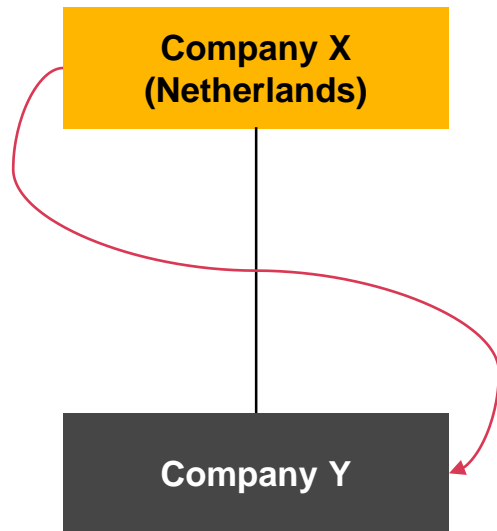
Is obtaining a **tax advantage** the main purpose (or one of the main purposes) of the arrangement?

- EC 2012 Recom. aggressive tax planning
- Apply **comparison test**
- NL guidance: disregard tax laws
- No tax advantage, no arrangement
- No tax advantage, different arrangement
- Tax advantage according to policy intent



# Poll

DAC6 Example: Capitalization of an interest-free loan within the group

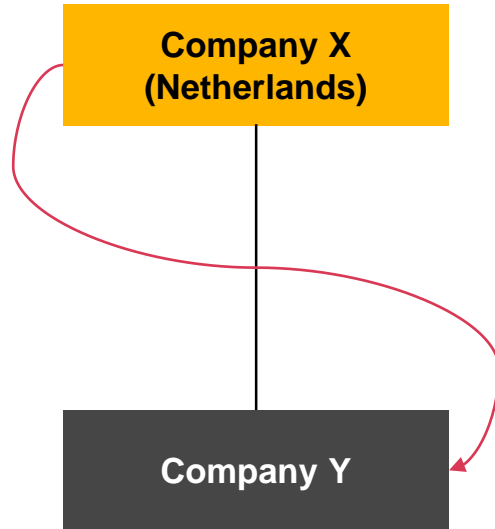


## Question:

Does this capitalization fall under the scope of B2, converting income into capital which is taxed at a lower level or exempt from tax?

1. Yes
2. No

# DAC6 Example: Capitalization of an interest-free loan within the group

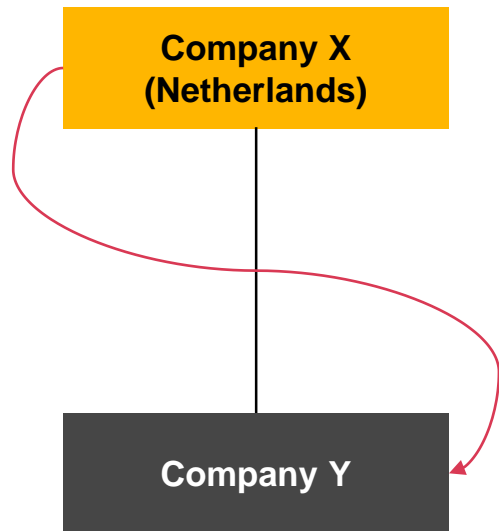


## Assessment questions

1. Arrangement? Yes
2. Cross-border? Yes
3. EU-nexus? Yes
4. Income converted into a category which is taxed at a lower level or exempt from tax? Yes, B2
5. Is the MBT satisfied?

# Poll

DAC6 Example: Capitalization of an interest-free loan within the group

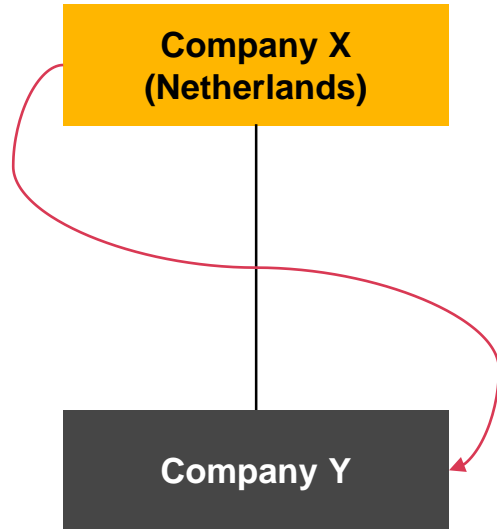


**Answer:**

Does this capitalization fall under the scope of B2, converting income into capital which is taxed at a lower level or exempt from tax?

1. Yes
2. No

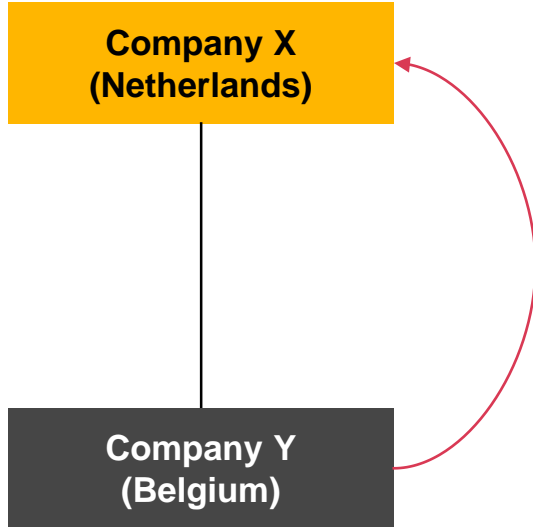
# DAC6 Example: Capitalization of an interest-free loan within the group



What if interest is not imputed in jurisdiction of creditor?

# Poll

## DAC6 Example: Round-tripping

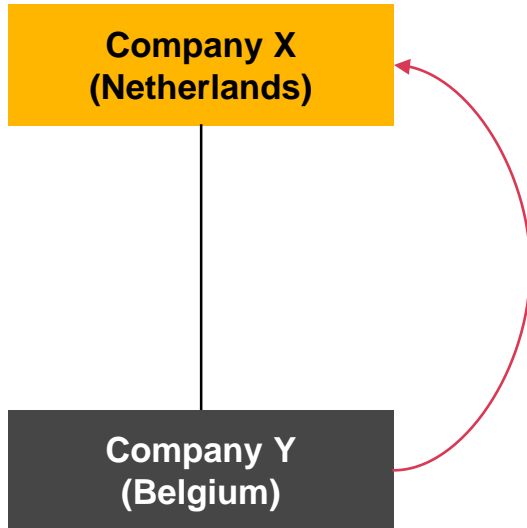


### Question:

Could a dividend payable by a subsidiary to its parent company fall under the scope of hallmark B3, circular transactions resulting in round-tripping?

1. Yes
2. No

# DAC6 Example: Round tripping

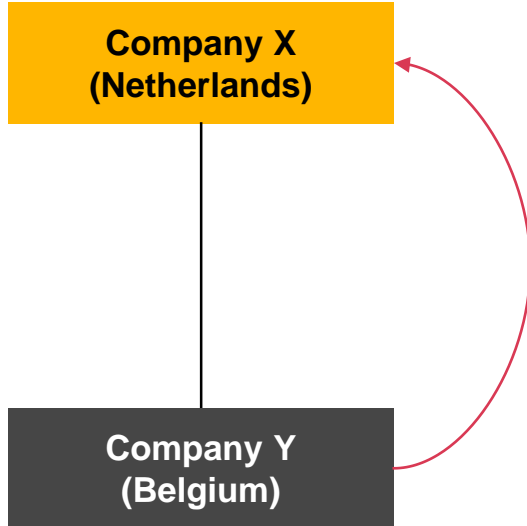


## Assessment questions

1. Arrangement? Yes
2. Cross-border? Yes
3. EU-nexus? Yes
4. Circular transaction resulting in the round-tripping of funds? Yes, B3
5. Is the MBT satisfied? Hallmark B3 is connected to the MBT

# Poll

## DAC6 Example: Round tripping



### Answer:

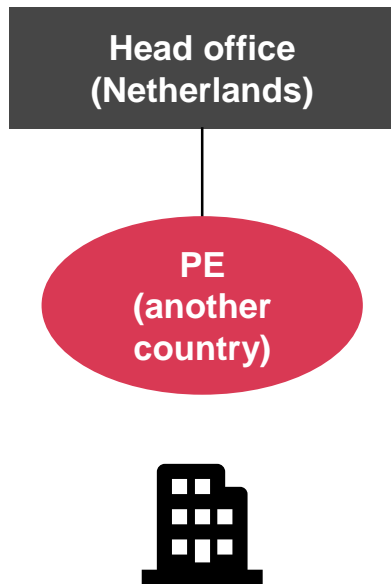
Could a dividend payable by a subsidiary to its parent company fall under the scope of hallmark B3, circular transactions resulting in round-tripping?

1. Yes
2. No

# Poll

## DAC6 Example: Deduction for the same depreciation on an asset

Relief of double taxation by credit



-/- Deduction for depreciation claimed at the level of the PE

### Question:

Does the deduction for depreciation fall under hallmark C2, deductions for the same depreciation on an asset claimed in more than one jurisdiction?

1. Yes
2. No



# DAC6 Example: Deduction for the same depreciation on an asset

Relief of double taxation by credit

Head office  
(Netherlands)

PE  
(another country)

-/- Deduction for depreciation claimed at the level of the PE



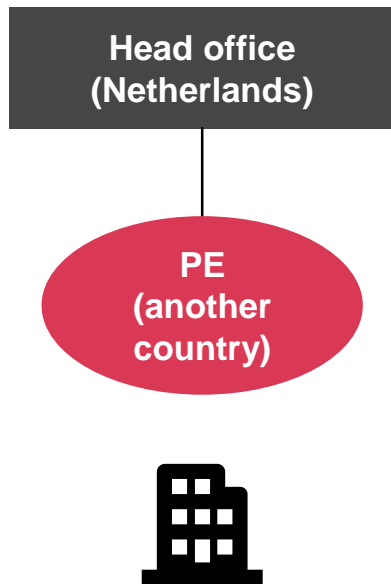
## Assessment questions

1. Arrangement? Yes
2. Cross-border element? Yes
3. EU-nexus? Yes
4. Are deductions for the same depreciation on an Asset claimed in more than one jurisdiction? No
5. Is the MBT satisfied? N/A

# Poll

## DAC6 Example: Deduction for the same depreciation on an asset

Relief of double taxation by credit



-/- Deduction for depreciation claimed at the level of the PE

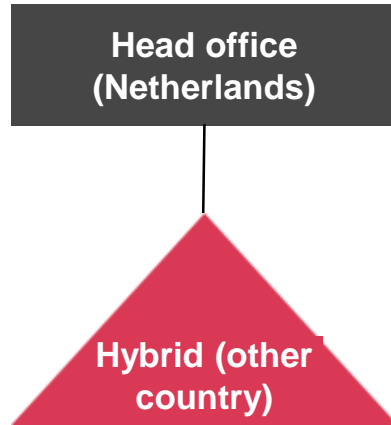
**Answer:**

Does the deduction for depreciation fall under hallmark C2, deductions for the same depreciation on an asset claimed in more than one jurisdiction?

1. Yes
2. No

# DAC6 Example: Deduction for the same depreciation on an asset

Relief of double taxation by credit



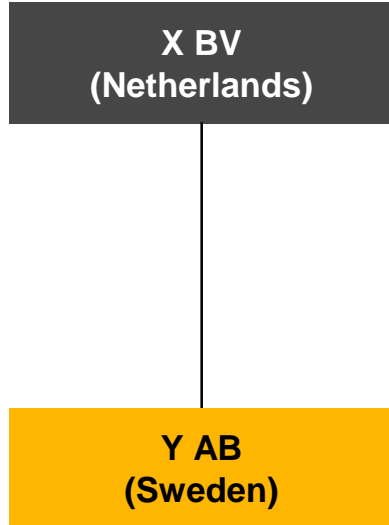
-/- Deduction for depreciation claimed at the level of the Hybrid



## What if the PE is a Hybrid?

# Poll

## DAC6 Example: recharge of salary costs



### Question:

Could the recharge of salary costs fall under hallmark C3, relief from double taxation claimed in more than one jurisdiction?

1. Yes
2. No

# DAC6 Example: recharge of salary costs



## Assessment questions

- |   |     |
|---|-----|
| 1. Arrangement?   | Yes |
| 2. Cross-border?  | Yes |
| 3. EU-nexus?  | Yes |
| 4. Relief from double taxation claimed in more than one jurisdiction? | No  |
| 5. Is the MBT satisfied?  | N/A |

# Poll

## DAC6 Example: recharge of salary costs



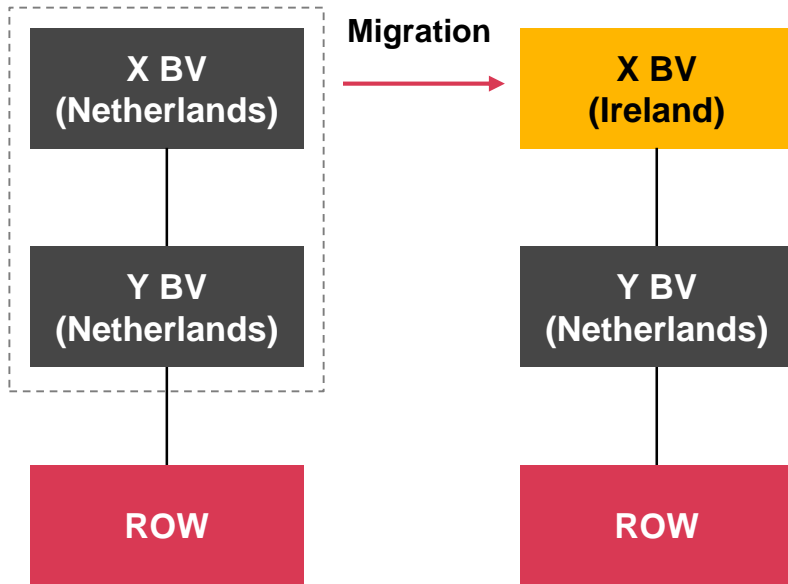
**Answer:**

Could the recharge of salary costs fall under hallmark C3, relief from double taxation claimed in more than one jurisdiction?

1. Yes
2. No

# Poll

## DAC6 Example: Migration of place of management and control



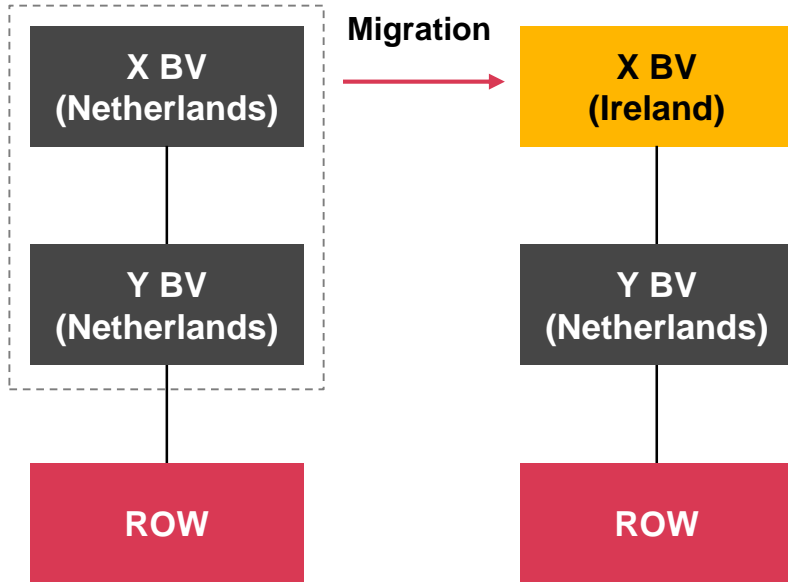
 Dutch CIT fiscal unity

### Question:

Does the migration fall under hallmark C4, material difference in the amount being treated as payable for the assets in involved jurisdictions?

1. Yes
2. No

# DAC6 Example: Migration of place of management and control



 Dutch CIT fiscal unity

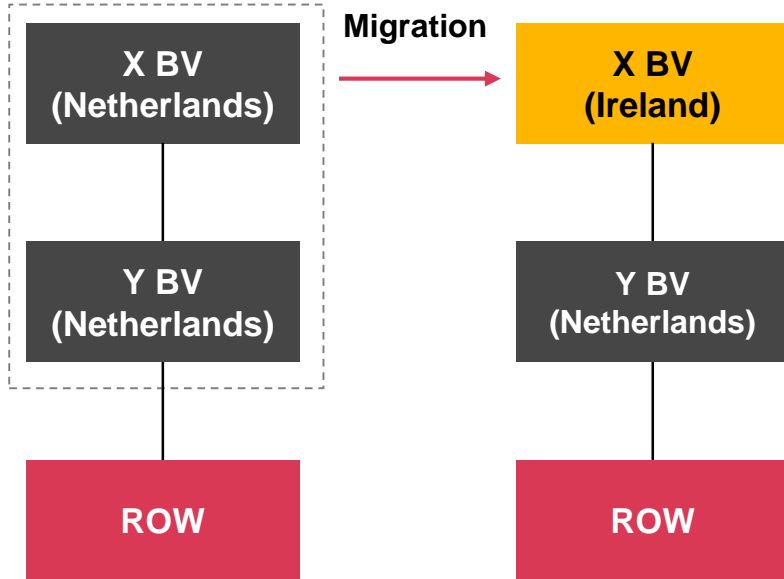
## Assessment questions

1. Arrangement? Yes
2. Cross-border? Yes (or no?)
3. EU-nexus? Yes
4. Migration considered transfer of assets? No
5. Is the MBT satisfied? N/A



# Poll

## DAC6 Example: Migration of place of management and control



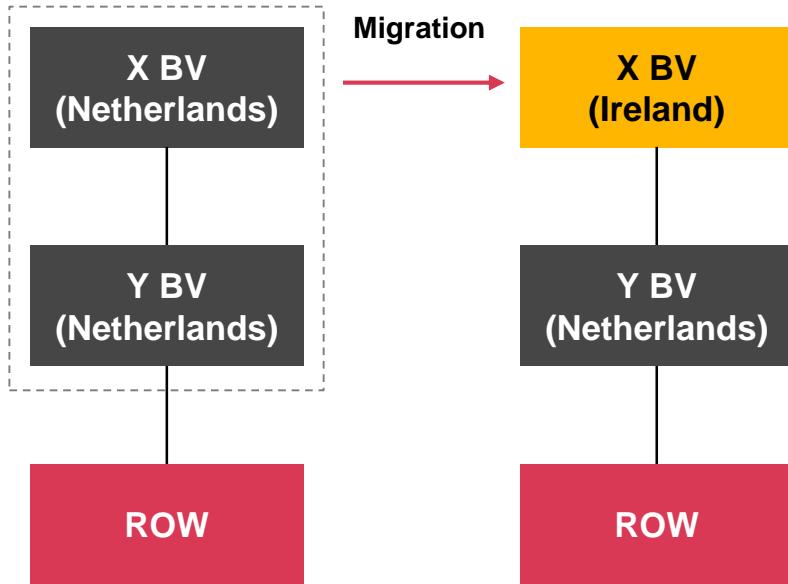
 Dutch CIT fiscal unity

**Answer:**

Does the migration fall under hallmark C4, material difference in the amount being treated as payable for the assets in involved jurisdictions?

1. Yes
2. No

# DAC6 Example: Migration of place of management and control



 Dutch CIT fiscal unity

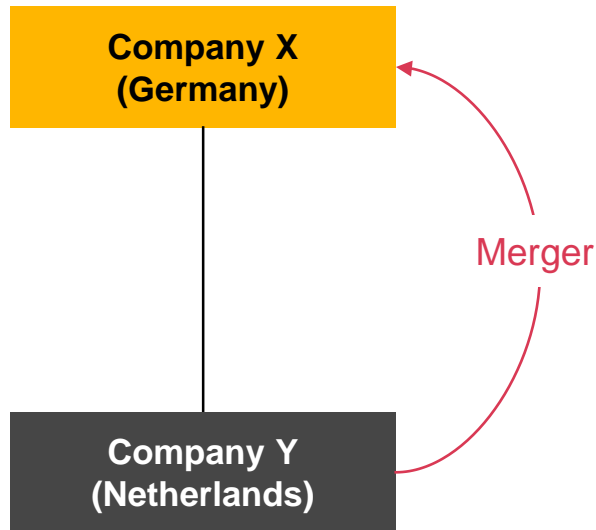
Could hallmark E3, transfer of functions, risks, assets leading to a decrease of more than 50% of projected annual EBIT in the next 3 years, be relevant?

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# DAC6 Example Netherlands - Germany Merger

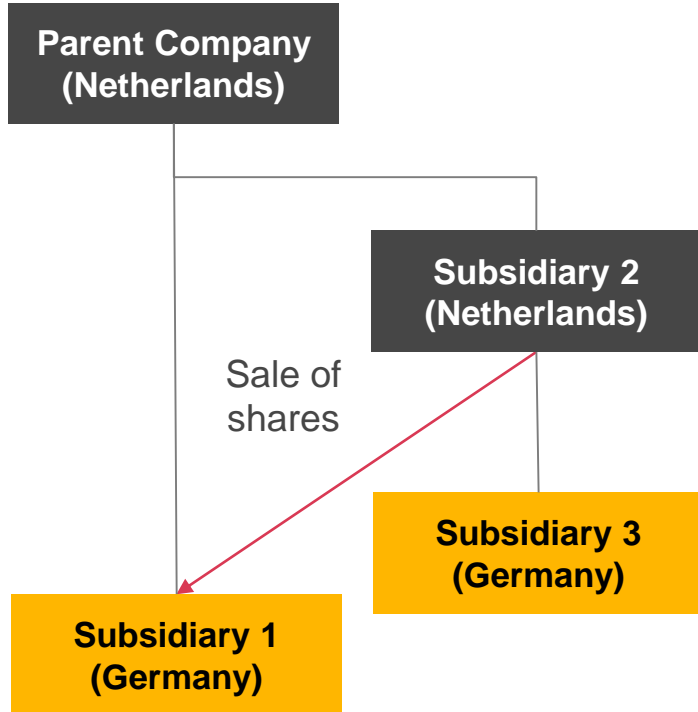


## Assessment questions

1. Arrangement?
2. Cross-border?
3. EU-nexus?
4. Transfer of hard-to-value intangibles, E2/ transfer of functions, risks, assets leading to a decrease of more than 50% of projected annual EBIT in the next 3 years, E3?
5. Is the MBT satisfied?
6. Decrease of more than 50% of projected annual EBIT in the next 3 years

NL	DE
Yes	Yes
Yes	Yes
Yes	Yes
?	Yes
N/A	N/A
?	?

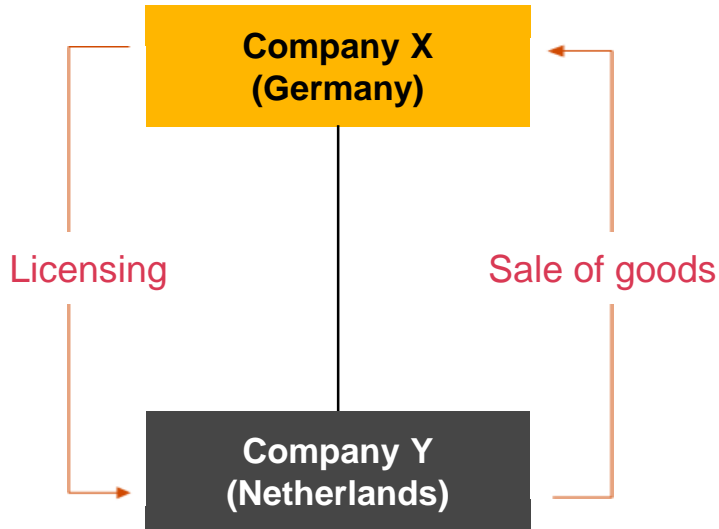
# DAC6 Example Netherlands - Germany Transfer



## Assessment questions

Assessment questions	NL	DE
1. Arrangement?	Yes	Yes
2. Cross-border?	Yes	Yes
3. EU-nexus?	Yes	Yes
4. Transfer of functions, risks, assets leading to a decrease of more than 50% of projected annual EBIT in the next 3 years, E3?	?	Yes
5. Is the MBT satisfied?	N/A	N/A
6. Decrease of more than 50% of projected annual EBIT in the next 3 years	?	Yes

# DAC6 Example Netherlands - Germany B3

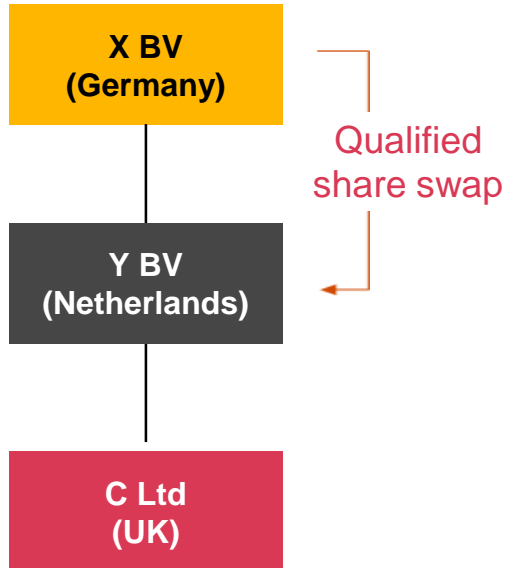


## Assessment questions

	NL	DE
1. Arrangement?	Yes	Yes
2. Cross-border?	Yes	Yes
3. EU-nexus?	Yes	Yes
4. Circular transaction resulting in the round-tripping of funds, B3?	?	Yes
5. Is the MBT satisfied?	?	?

# DAC6 Example Netherlands - Germany

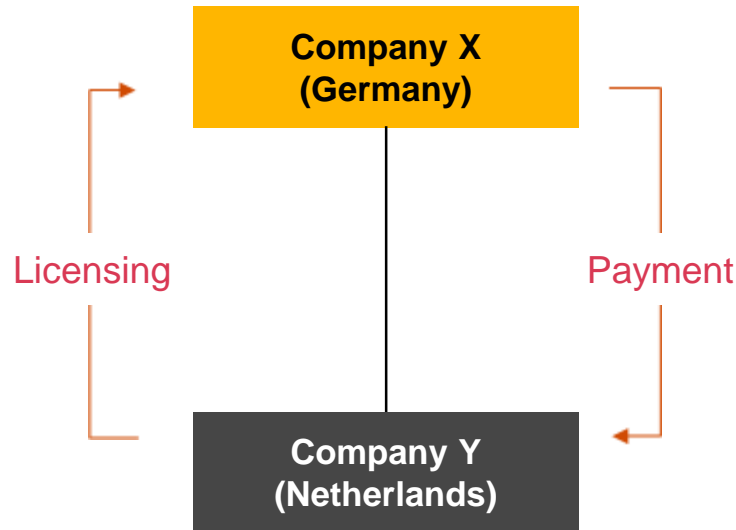
## Transfer of shares



### Assessment questions

	NL	DE
1. Arrangement?	Yes	Yes
2. Cross-border?	Yes	Yes
3. EU-nexus?	Yes	Yes
4. Transfer of assets material difference in amount being treated as payable, C4?	?	Yes
5. Is the MBT satisfied?	N/A	N/A

# DAC6 Example Netherlands - Germany Licenses



## Assessment questions

	NL	DE
1. Arrangement?	Yes	Yes
2. Cross-border?	Yes	Yes
3. EU-nexus?	Yes	Yes
4. Payment related to preferential tax regime, C1d?	No	Yes
5. Is the MBT satisfied?	N/A	?

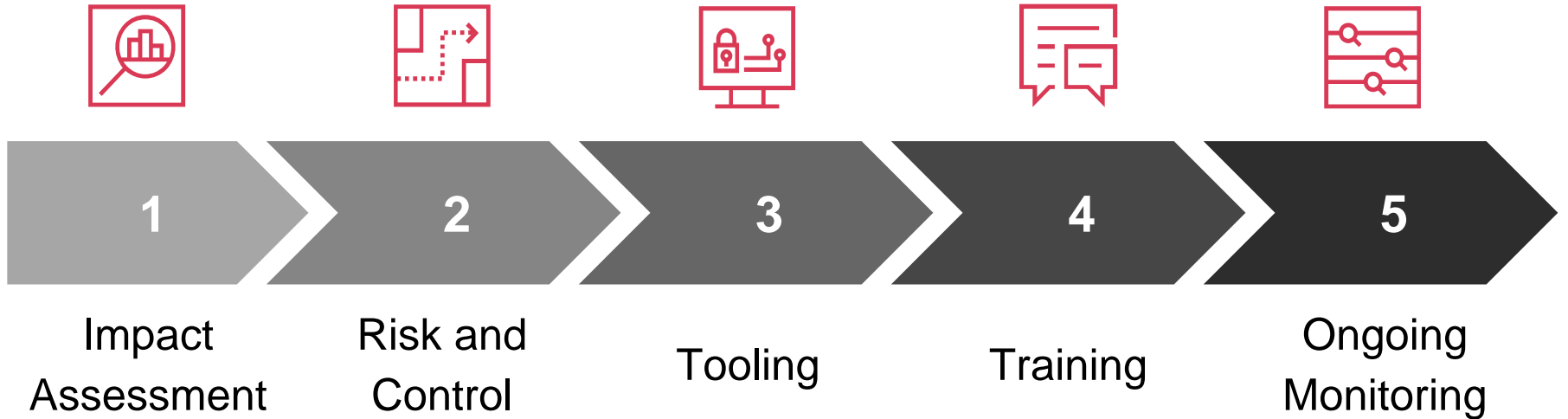


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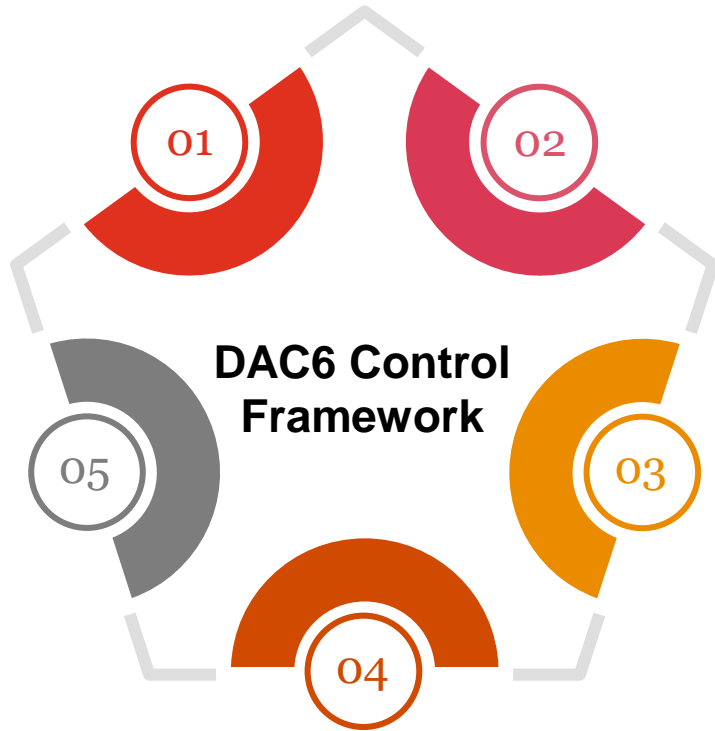


# Roadmap to DAC6 compliance



**Project management**

# DAC6 control framework



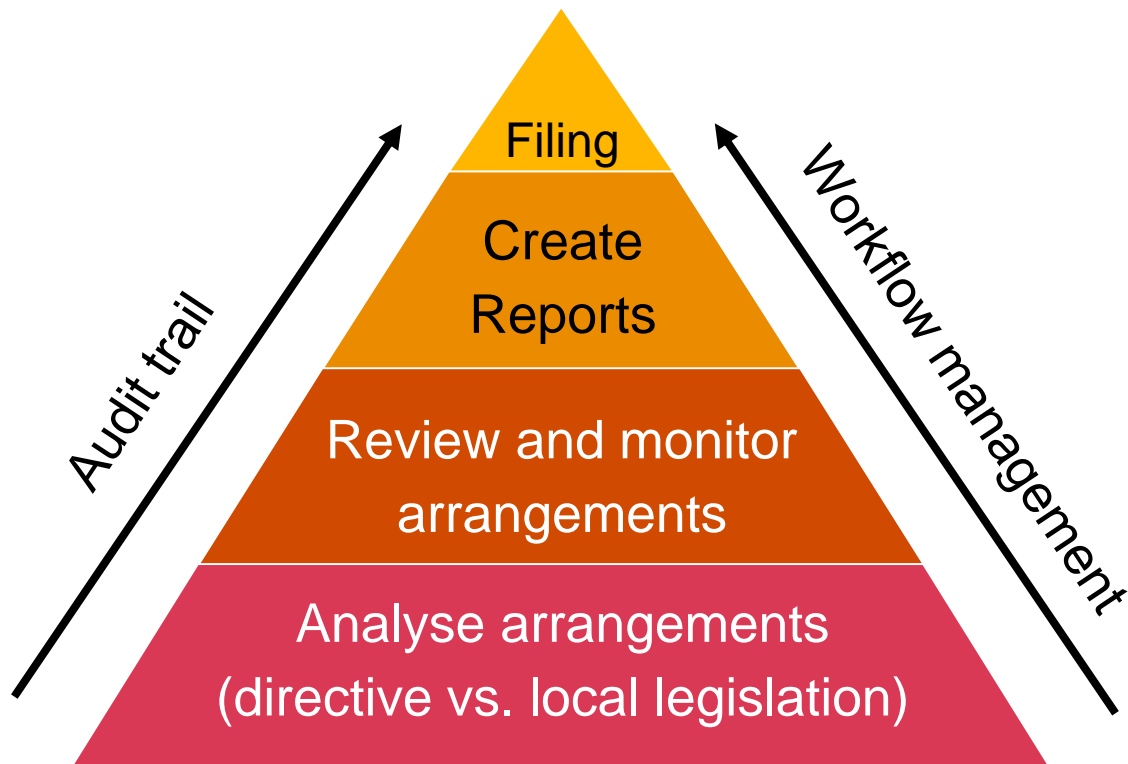
1. Communication
2. Policy
3. Risk Management
4. Procedures
5. Record Keeping

# Poll

Why would you like to control what intermediaries report about your organisation?

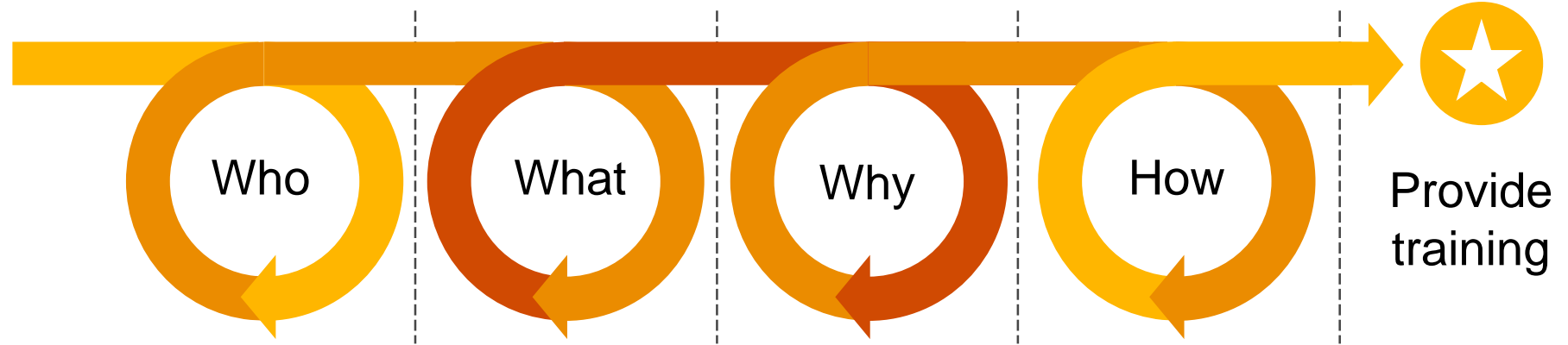
- A) To ensure consistent reporting across jurisdictions
- B) Local tax authorities might start a tax audit based on the report
- C) Taxpayer knows best
- D) DAC6 reports are managed as any other tax report/filing
- E) None of the above

# DAC6 Tooling / Reporting infrastructure



# DAC6 Training

## DAC6 technical & tool training



# Monitoring and continuous improvement

01

Evaluate process and identify improvements

02

Controls testing and monitoring

03

Annual review of 'standard arrangements'

# Agenda

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# Closing

1. Questions
2. View this webcast at a later stage
3. We keep you informed about DAC6 guidance  
<https://www.pwc.nl/nl/dienstverlening/tax/belastingnieuws.html>
4. 'State of Tax' Webcast series continues  
<https://www.pwc.nl/en/evenementen/webcast-series-state-of-tax.html>
5. Evaluation



# Thank you

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