

INTERNATIONAL TAX SERVICES

Managing your DAC6 obligations



Mandatory disclosure under DAC6

Guidance by BDO

The DAC6 Directive obliges intermediaries and taxpayers to report information on certain cross-arrangements. As the reporting obligation is implemented differently in the EU Member States and non-compliance may result in severe penalties, it is vital for intermediaries and taxpayers to manage their reporting obligation carefully.

In this document, we discuss the main elements of the Directive and how the Directive might affect you as an intermediary or a taxpayer. After elaborating in more detail on the functioning of the Directive, we provide some tips and tricks for managing your reporting obligation.

BDO employs some of the most knowledgeable DAC6 experts in the field, who are always on top of new developments regarding DAC6 legislation, both in the Netherlands and in the other EU Member States, with a dedicated DAC6 team in the various BDO Member Firms. BDO can offer you a full scope of services in order to become, and stay, DAC6 compliant.

About DAC6

Background

The changes to the Directive on Administrative Cooperation (DAC6) entered into force on 25 June 2018. All arrangements that were implemented, ready for implementation, or of which the first step in the implementation has been made in the period after that date, are subject to the reporting obligations under DAC6. The requirements are set out in more detail below. Arrangements that were put into place before 25 June 2018 do not have to be reported.

Reporting obligation

A reporting obligation exists when:

- ▶ It concerns an arrangement
- ▶ Which is cross-border
- ▶ Which contains at least one of the Hallmarks

Arrangement

The term “arrangement” is not defined, and could encompass everything, from a regular transaction to an elaborate tax planning structure. It is therefore hardly conceivable that a transaction would not be reportable because it would not be an “arrangement”.

Cross-border

The arrangement has to be cross-border. This means that at least one EU Member State must be involved, and also another EU Member State or a third country. This involvement in another state could be through a subsidiary, through a permanent establishment, or even without a taxable presence in the other state, by performing an activity there.

Hallmarks

There is only a reporting obligation if the cross-border arrangement also contains at least one of the Hallmarks. These Hallmarks are listed in Annex IV of the DAC6 Directive. The Hallmarks are characteristics or features of cross-border arrangements that present an indication of a potential risk of tax avoidance. Some of these Hallmarks are linked to the so-called “main benefit test”, which means that the arrangement will not be reportable if, having regard to all relevant facts and circumstances, the main benefit or one of the main benefits which a person may reasonably expect to derive from an arrangement is not the obtaining of a tax advantage.

However arrangements that are not set up with the aim of avoiding taxes, could also be reportable based on one of the Hallmarks, as not all Hallmarks are subject to the main benefit test. One example of this is the Hallmark that states that a cross-border arrangement is reportable when it concerns the transfer of hard-to-value intangibles.

Reporting under DAC6

Who has to report?

The primary reporting obligation lies with intermediaries. An intermediary is defined as any person that designs, markets, organises or makes available for implementation or manages the implementation of a reportable cross-border arrangement. The notion of intermediary is broad and covers accountants, advisors, lawyers, banks, etc. In principle, all intermediaries involved are obliged to report an arrangement, except when the intermediary has proof (in accordance with national law) that the same information has already been reported by another intermediary, the reporting obligation would breach legal professional privilege or the intermediary in question is a non-EU intermediary.

In certain cases, the reporting obligation shifts from the intermediary to the relevant taxpayer. The relevant taxpayer is obliged to report information on the arrangement when no intermediary is involved, the reporting obligation would breach the intermediary's legal professional privilege, the intermediary is a non-EU intermediary and it is not registered with a professional association related to legal, taxation or consultancy services.

What should be reported?

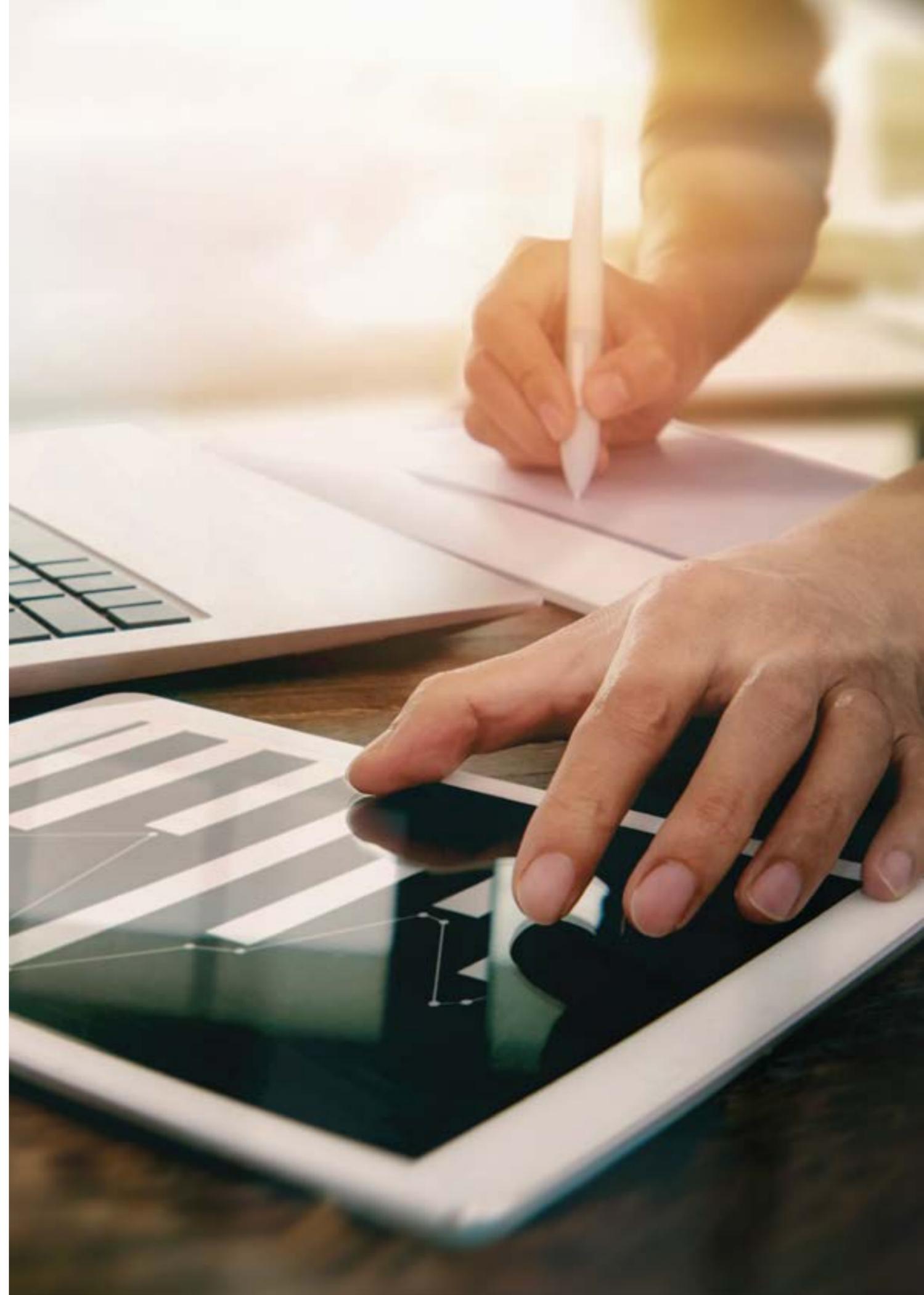
The intermediary or relevant taxpayer has to provide, among other things, a summary of the content of the reportable cross-border arrangement, including a reference to the name by which it is commonly known, if any, and a description in abstract terms of the relevant business activities or arrangements. An intermediary only has to report what he knows, there is no additional research obligation. However, in multiple Member States there is an additional obligation to report on other involved intermediaries, when the intermediary who reported did not report all the required information.

When to report?

From 1 January 2021 it will be necessary to start reporting, both on new arrangements and arrangements that were implemented, ready for implementation, or of which the first step in implementation has been made in the period from 25 June 2018 onwards. The deadline for reporting on the arrangements in the lookback period is 28 February 2021. For new arrangements the deadline is 30 days after the date that either the arrangement has been implemented, has been made ready for implementation or when the first step in implementation has been made. Whichever of these three events occurs first, determines the date on which the 30-day period will commence.

Compliance with DAC6

In view of the substantial fines that may be imposed by Member States for non-reporting, it is important for intermediaries and taxpayers to be compliant with their DAC6 reporting obligations. Fines vary between Member States in the range from EUR 5,000 to EUR 5,000,000. This means that for each cross-border arrangement it is necessary to determine whether the arrangement is reportable and, if so, who is subject to the reporting obligation for that arrangement. Furthermore, for each arrangement the exact scope of the reporting obligation in the Member States concerned will have to be ascertained, as this may differ substantially from one Member State to another.



In control with BDO's DAC6 tool

Compliance through BDO's DAC6 tool

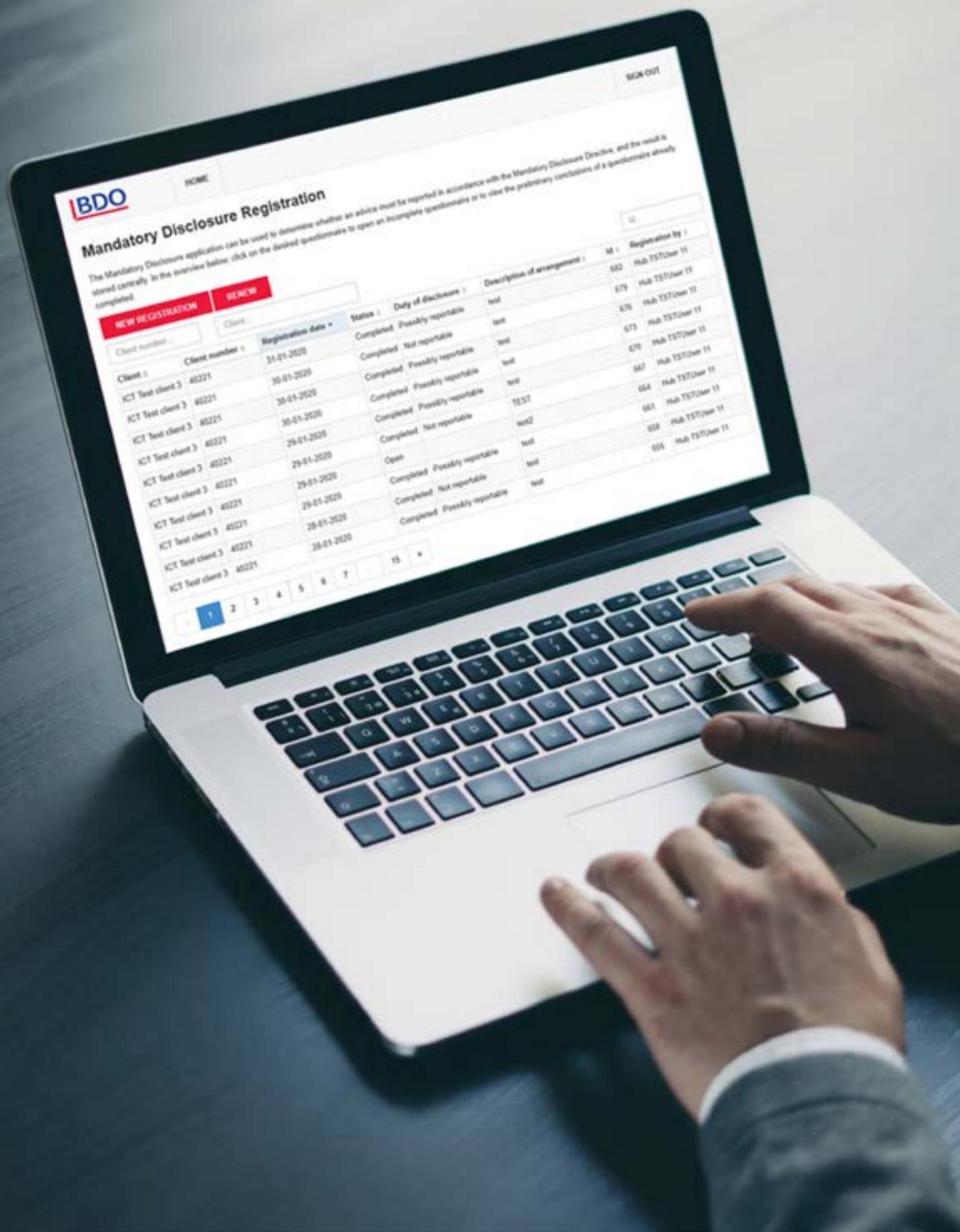
BDO has developed a DAC6 tool, which assists intermediaries and relevant taxpayers in identifying the DAC6 reportability of their arrangements through an intuitive questionnaire, based on Member State specific information; to keep an overview of their reporting obligations; and to help compile the information regarding the arrangement into a report. BDO's DAC6 tool is fully suitable for facilitating reporting by both intermediaries and taxpayers. It has a clear interface and a comprehensive layout.

The DAC6 tool is under continuous development in light of changes in EU legislation and case-law and in the reporting requirements in all Member States. New versions of the tool will be provided through updates. BDO has a dedicated DAC6 helpdesk; our substance-matter experts are available for any questions regarding the DAC6 tool that may arise.

Furthermore, upon request BDO can provide additional advice regarding reportability of certain arrangements. All reports are systematically stored, after which they can be searched, exported and shared through determined communication channels with tax authorities. Reports can be prepared in various formats (Excel, XML, etc.). Furthermore the tool guarantees security of data with a user-rights mechanism, proper Chinese wall and confidentiality measures, stored on a Dutch server.

Experience BDO's DAC6 tool

A demonstration of the DAC6 tool will allow you to experience its intuitive use. It is possible to license the standard version of the DAC6 tool for all Member States, or only for a select number of Member States. The license fee includes a tailor-made set up of the standard version based on an unlimited number of users and reportable arrangements, full access to updates of the DAC6 tool, where applicable, and helpdesk support with the functioning of the DAC6 tool. Upon request, it is possible to customise the DAC6 tool to your requirements or provide additional services around the governance of the DAC6 tool.



More information?

Should you have any questions or require more information, please contact us via our global [service page](#).

RETHINK – NAVIGATING THE NEW REALITY

It is accepted that the world will change as a consequence of COVID-19 and businesses need to imagine this 'new reality' as early as possible - and rethink how they will be positioned in it.

RETHINK is BDO's global framework encouraging a broad rethink around original business models and commercial assumptions. It can be used to manage business priorities, address issues and leverage thinking, acting as an extra dimension for strategic level consideration and discussion, regardless of where in the cycle an organisation sits, or the measures already taken.

The 3 stages of the model are REACT, RESILIENCE & REALISE:

- How to REACT to the crisis: ensuring that measures are taken to secure business survival in the short term
- How to build RESILIENCE throughout the prevailing business environment: safeguarding vital elements of a company where necessary
- How to look forward to REALISE the future benefits of sensible business decisions, taken calmly and pragmatically.

There are no simple answers – and so these three stages can be considered separately - to help organisations manage their business priorities and address the issues they are facing in the 'here and now' - or as a part of an overarching roadmap to help manage the COVID-19 impact over the medium- to long-term.

Companies will need to anticipate critical changes that will impact their business operations and value chain and above all, the Rethink model is a framework for re-evaluating the future. It provides a practical approach through which BDO partners can work with our clients to assess the issues they are likely to face throughout the COVID-19 pandemic and help them plan to recover and optimise operations in the short to medium term, in an effort to achieve some form of normality.

This publication has been carefully prepared by BDO.

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