

# DAC6 - UK Position Changes at the Eleventh Hour

5 January 2021

Whilst the UK was expected to apply DAC6<sup>1</sup> (and the relevant UK legislation was in place), the position has now changed unexpectedly, following the UK's Brexit deal with the EU. The reporting rules that will now apply in the UK are significantly less onerous than DAC6 and are likely to result in fewer transactions being reported. However, the position in the EU remains unchanged. DAC6 may therefore remain relevant for taxpayers who do business in (or have advisors in) the EU.

## In more depth

DAC6 is the EU's new mandatory disclosure regime. It requires intermediaries (and, in some cases, taxpayers) to report information, where they play a role in cross-border arrangements that (i) involve one or more of the countries that has implemented DAC6, and (ii) meet certain hallmarks.

The first reports under DAC6 are required by the end of January 2021. The sting in the tail is that, once live, the reporting requirement looks backwards; it can capture arrangements implemented on or after 25 June 2018. Whilst DAC6 may be aimed at tackling aggressive tax planning, it is widely drawn and the reporting obligation may capture transactions which have no underlying tax-related motivation.

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<sup>1</sup> DAC6's full title is Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements: the text of DAC6 is available [here](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018L0822).  
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## What has happened in the UK?

It was originally intended that, notwithstanding Brexit, the UK would be one of the countries which applied DAC6. This position had been maintained over many months by the UK authorities and implementing legislation had been put in place to enshrine the DAC6 rules in UK domestic law. Intermediaries and taxpayers had also put significant resources into being ready to comply with the rules, once live. However, as part of the recently-concluded free trade agreement between the UK and the EU, the UK's position on DAC6 has changed. The UK has instead undertaken to apply, as a minimum standard for the exchange of information on cross-border tax planning, the OECD's mandatory disclosure rules ("MDR"). The MDR is significantly narrower in scope than DAC6.

## What does that mean in practice?

For a limited, transitional period the UK will apply some, but not all, of its legislation implementing the DAC6 rules. Most of the "hallmarks" used by DAC6 to determine whether or not a transaction is reportable have been switched off in the UK, with only a subset ("Category D hallmarks"<sup>2</sup>) remaining. The intention is that only those arrangements that would be caught by the MDR will be reportable under the transitional version of the DAC6 rules.

Broadly, only those arrangements which:

- undermine existing reporting or exchange of information requirements; or
- involve the use of offshore structures or entities without substance, and are designed to obscure the true beneficial ownership of those structures or entities,

will be reportable. This is significantly more narrow, and easier for intermediaries and taxpayers to apply, than the position under the original, un-amended UK legislation implementing DAC6. It is worth noting that the timelines for reporting arrangements which do

fall within the Category D hallmarks remain unchanged.

In the longer term, the UK will bring forward legislation that is specifically designed to implement the MDR and its international (rather than EU) standards on tax transparency, and will repeal the UK's transitional version of the DAC6 rules. This is expected to happen at some stage in 2021.

Taxpayers should also note that whilst the position in the UK has changed radically in the past few days, the position in the EU has not. Cross-border arrangements that involve the UK and an EU member state may still be reportable in that member state. This means that, for taxpayers who do business in both the EU and the UK, the focus on DAC6 has shifted away from the UK but its potential relevance still remains.

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<sup>2</sup> The hallmarks referred to in category D of Part II of the Annex to DAC6.