



## PwC's EU Direct Tax Group

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# EU Direct Tax Newsalert

## Changes to scope of DAC 6 in Gibraltar

On 21 January 2021 the Gibraltar Competent Authority for the exchange of information for tax purposes, announced that Gibraltar is limiting the scope of reporting under DAC6. Following the approach recently adopted in the UK, reporting in Gibraltar will be limited to cross-border arrangements falling within Category D hallmarks (CRS avoidance arrangements and opaque offshore structures).

Regulations have been enacted to amend the Income Tax Act 2010 and the changes take effect from 1 January 2021.

### Background

Gibraltar exited the EU together with UK on 31 January 2020 and the subsequent transitional period ended on 31 December 2020.

Similarly to the recent UK announcement, the Gibraltar Competent Authority has stated that Gibraltar will be aligning its reporting requirements to OECD standards.

### Changes to DAC6 legislation

The DAC6 rules are contained in the Income Tax Act 2010. The legislation has been amended to remove Hallmarks A, B, C and E. References to "Member State" have been replaced with a new definition of "relevant State" which includes a Member State of the European Union, Gibraltar or the United Kingdom.

The effect of the changes is that reporting requirements for cross border arrangements falling within Hallmarks A, B, C and E have been removed. Reporting obligations in relation to Hallmark D broadly remain unchanged.

### Reporting requirements – Spain

The Gibraltar Competent Authority has stated that the reporting obligations in respect of Spain may be realigned with EU DAC6 Directive requirements in the future. This is a result of Gibraltar's

potential reporting obligations under the proposed Tax Treaty with Spain.

### Timing

The changes to the scope of DAC6 reporting apply with effect from 1 January 2021. As there was no requirement to make a disclosure before this date, in practice this means that no reports will be required to be made under Hallmarks A, B, C and E regardless of when the cross-border arrangement was implemented.

### Submitting a report

The Government of Gibraltar's portal for the exchange of information does not yet have functionality for DAC 6 reporting and consequently there is no facility allowing for the upload of XML files in accordance with the relevant schema.

Where a report is required to be made under Hallmark D, it can be submitted to the Gibraltar Competent Authority by email until such time as the portal becomes functional. Submissions by email are required to be made in XML format and conform to the relevant schema.

### Practical implications

The changes to the DAC6 legislation are likely to reduce the level of reporting required in Gibraltar.

Intermediaries or taxpayers intending to rely on a report being submitted in Gibraltar to satisfy their own reporting obligations may need to review their position in light of the changes announced.

