



PwC's EU Direct Tax Group

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EU Direct Tax Newsalert

Scope of DAC6 in the UK is reduced following Brexit

On 31 December 2020, the UK Government announced that the scope of reporting under DAC6 would be limited to cross-border arrangements under the category D hallmarks (which relate to CRS avoidance and opaque ownership structures). Intermediaries and relevant taxpayers in the UK will not need to report arrangements under Hallmark categories A, B C and E (unless category D was also met).

Regulations enacting the change have already been made, and are effective from 1 January 2021.

Background

Following the referendum vote in June 2016, the UK ceased to be a member of the EU on 31 January 2020. However, under the transitional agreement between the UK and the EU, which ran until 31 December 2020, the UK was treated as a member state for the purposes of the law of the UK, the EU and all Member States.

Regulations implementing DAC6 had been implemented in the UK; however, as mentioned above, these were amended so that from 1 January 2021 disclosures are only required when the category D hallmarks were met.

The changes follow the EU/UK Trade and Cooperation Agreement, which requires that "[a] Party shall not weaken or reduce the level of protection provided for in its legislation at the end of the transition period below the level provided for by the standards and rules which have been agreed in the OECD at the end of the transition period, in relation to ... the exchange of information ... concerning ... potential cross-border tax planning arrangements".

Following on from the OECD BEPS Action 12 Final Report, the OECD subsequently agreed and published model MDR rules, which are broadly equivalent to the D hallmarks.

HMRC have also confirmed that the UK will consult on and implement the OECD's Mandatory Disclosure Rules during 2021, which will replace the surviving parts of DAC 6 in UK domestic law.

Timing

The UK tax authority (HMRC) has confirmed that reports only need to be made where hallmarks under category D apply to the arrangement, regardless of when the arrangement was entered into. This means that arrangements which meet hallmarks under Category E, for example, would not be reportable to HMRC, even if the arrangement was entered into before the amendments came into effect.

As it was not possible to make a disclosure before 1 January 2021, no reports under the other hallmarks will be made.

Implications where arrangement disclosable in an EU Member State

There will be situations where arrangements were expected to be disclosable both in the UK and in one or more EU Member States.

If intermediaries or relevant taxpayers in EU Member States were expecting to rely on a disclosure by an intermediary in the UK, to satisfy their own reporting obligations under DAC6, they will need to consider the implications of the UK announcement.

In many cases the intermediary or relevant taxpayer will be required to make a disclosure themselves. Given that such disclosures are likely to be due in January Or February 2021, early action is required.

