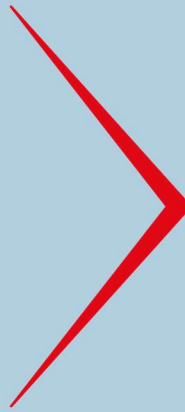


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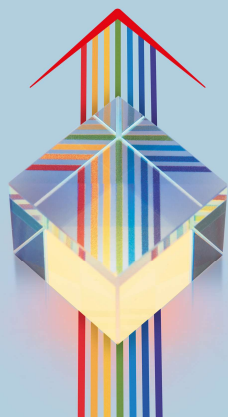
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EU DAC6 Mandatory Disclosure Regime (MDR)

19 January 2021

PRESENTED BY:

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Presenters



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EU DAC6 Mandatory Disclosure Regime (MDR)

Tuesday, 19 January 2021



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Agenda

- 1 Welcome and objectives
- 2 Summary of EU DAC 6
- 3 Definitions and main terms of the directive
- 4 Timeline
- 5 HMRC announcement
- 6 Implications and practical next steps
- 7 Q&A
- 8 Wrap-up and thanks

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Summary of EU Mandatory Disclosure Regime

Summary of EU DAC 6

New arrangement
The EU has issued a directive that requires intermediaries (including EU-based tax consultants, banks and lawyers) and, in some situations, taxpayers to report certain cross-border arrangements (reportable arrangements) to the relevant tax authority in the EU. **Yes**

Covered taxes
This disclosure regime applies to all taxes except value-added tax, custom duties, excise duties and compulsory social security contributions. **Yes**

Cross-border arrangement
Cross-border arrangements will be reportable if they contain certain features (hallmarks). **Yes**


Hallmarks
The hallmarks cover a broad range of structures and transactions. Some of the hallmarks will only trigger reporting requirements when they also fulfil the main benefit test. **Yes**

Reporting intermediary
The primary reporting obligation lies with the intermediary. Where intermediary is outside the EU or exempt from disclosing because of legal professional privilege, the obligation to disclose falls on another intermediary.* **No**

Reporting taxpayer
If none of above, the obligation to disclose will be on the relevant taxpayers.* **Yes**

Identify relevant information
The disclosure includes details of relevant taxpayers and other affected persons and the cross-border arrangement in question. **Yes**

* Penalties will apply to intermediaries and relevant taxpayers if no disclosure is made where a tax authority deems it should have been made. The level of penalties will vary from country to country but will be significant.


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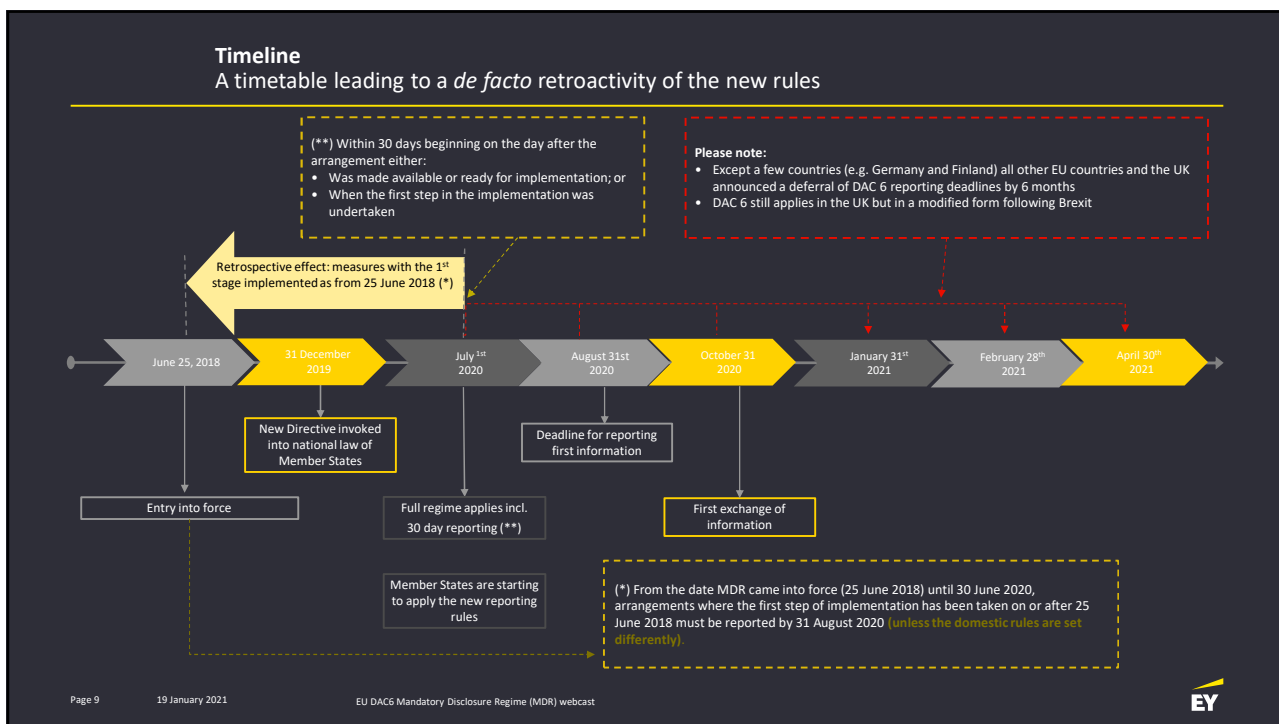
Definitions of the main terms of the Directive

Hallmarks - General overview

A	B	C	C	D	E
<ul style="list-style-type: none"> ▶ Confidentiality clause (A.1) ▶ Success fees (A.2) ▶ Standardised structure and/or documentation (A.3) 	<ul style="list-style-type: none"> ▶ Acquisition of a company with losses and use of its losses outside the business of the acquired company business (B.1) ▶ Conversion of income into capital/income categories benefiting from more favourable tax treatment (B.2) ▶ Round-tripping of funds using entities without substance (B.3) 	<ul style="list-style-type: none"> ▶ Deduction of cross-border payments made to associated companies subject (when received) to a corporation tax rate of zero or almost zero or benefiting from a total exemption or preferential tax regime ((C.1(b)(i), C.1(c), C.1(d)) 	<ul style="list-style-type: none"> ▶ Payments to an associate company not resident in any tax jurisdiction or in a blacklisted jurisdiction (C.1(a), C.1(b)ii) ▶ Depreciation of the same asset in more than one jurisdiction (C.2) ▶ Multiple claims of relief for double taxation (C.3) ▶ Transfers of assets with a significant difference in the price used for tax purposes (C4) 	<ul style="list-style-type: none"> ▶ Circumvention of EU legislation or any equivalent agreement concerning the automatic exchange of information on financial accounts (D.1) ▶ Use of legal ownership chains making it impossible to identify beneficial owners (D.2) 	<ul style="list-style-type: none"> ▶ Use of unilateral transfer pricing safe harbors (E.1) ▶ Transfers of (rights to) hard to value intangibles (E.2) ▶ Transfer of functions and/or risks and/or assets between associated companies resulting in significant profit shifts (50% of EBIT) (E.3)
Main tax benefit test					

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HMRC announcement dated 31 December 2020

Good morning

You will no doubt be aware that negotiations between the UK and the EU on a Free Trade Agreement (FTA) have now concluded, and so I wanted to provide an update on what it means for DAC 6.

- Reporting under DAC 6 will still be required for a limited time, but only for arrangements which meet hallmarks under category D, in line with the UK's obligations under the FTA.
- In the coming year, the UK will consult on and implement the OECD's MDR as soon as practicable, to replace DAC 6 and transition from European to international rules.

The text of the FTA, which is available [here](#) states 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 (a) the exchange of information...concerning... potential cross-border tax planning arrangements". The reference to OECD rules on exchange of information on cross-border arrangements is a reference to the OECD's model Mandatory Disclosure Rules (MDR). Therefore, under the terms of the FTA, the UK must not reduce the level of protection in its legislation below the level of protection afforded by the OECD's MDR.

While the UK has not implemented MDR in its domestic legislation as at the end of the transition period, the rules in SI 2020/25 provide a 'level of protection' which in certain respects is equivalent to that in the OECD's MDR, and in other respects goes beyond the MDR.

As you will be aware, SI 2020/25 was drafted to transpose Council Directive (EU) 2018/822 more commonly known as DAC 6. DAC 6 will cease to apply to the UK at the end of the transition period (11pm GMT on 31 December 2020). At that point, the UK will no longer be obliged to implement DAC 6.

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HMRC announcement dated 31 December 2020

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Consequently, the Government has decided to legislate for changes to SI 2020/25, to restrict reporting only to those arrangements, which would be reportable under the OECD's MDR. This means that only those arrangements which meet hallmarks under Category D of DAC 6 will need to be reported in the UK after the end of the transition period.

The Government has also amended the regulations to ensure the rules work correctly after the end of the transition period, including ensuring that references to EU member States refer to the UK or an EU member State after the end of the transition period.

The regulations have now been laid before Parliament and you can find them here: <https://www.legislation.gov.uk/uksi/2020/1649/contents/made>. The changes will come into effect from 31 December 2020. While I do appreciate that this gives limited time for businesses to prepare for and implement these changes, as the amendments maintain the effect of the rules as they were during the transition period, but narrow the scope of what has to be reported, we anticipate that these changes will be manageable.

In the coming year, the government will repeal the legislation implementing DAC 6 in the UK and implement the OECD's MDR as soon as practicable, in order to transition to international, rather than EU standards on tax transparency. The government will consult on draft legislation to introduce MDR in due course.

HMRC will be updating the reporting guidance at IEIM600000 et seq to reflect the changes to the legislation. I will provide an update on the reporting platform shortly."

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Implications and practical next steps

Implications

- 1 Limited scope and reporting in the UK
- 2 This may have the effect of displacing the reporting responsibility to another EU based intermediary
- 3 Likewise, this may also place increased reporting responsibilities on the relevant taxpayer

Next steps

- 4 There is a need to review governance models potentially via a revisit of the impact assessment
- 5 User adoption, communication and training will need to be updated
- 6 Increased awareness of the OECD model

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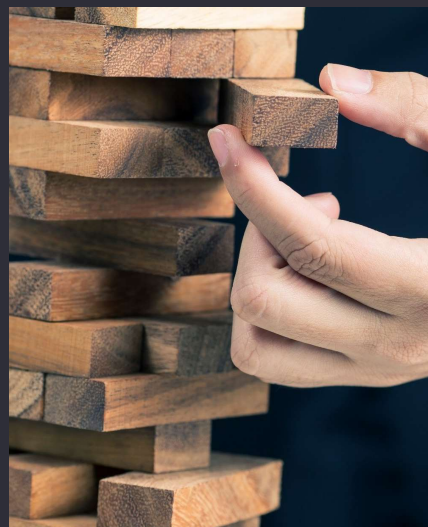


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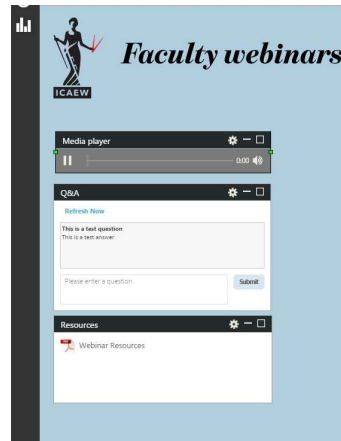
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