

# New regulations for Cross Border Transactions

## Brexit Update on DAC-6 Reporting

### Changes due to Brexit

As part of the Free Trade Agreement (FTA) signed between the UK and EU, the UK taxpayers and UK intermediaries are no longer obliged to report under the original five DAC 6 hallmarks except for Category D which is as follows:

Category D	Hallmark
D – Arrangements designed to circumvent tax reporting	Arrangements that undermine transparency reporting / automatic exchange of information between different jurisdictions.

As announced by HMRC, the UK aims to replace the EU Mandatory Disclosure Rule i.e., DAC 6 and follow international regulatory standards as set by the Organisation for Economic Cooperation and Development (OECD) in 2021.

HMRC have confirmed that the directive will only capture direct taxes of EU member states, so it would not include any arrangements put in place for VAT purposes. Indeed, they have also clarified that a transaction would not be reportable where to file a report would infringe on legal professional privilege.

### Reporting requirements

From 1 July 2020, taxpayers engaged in cross border transactions (“CBTs”) and their intermediaries will be required to disclose to HMRC details of these cross-border arrangements where they meet Category D. Due to the impact of COVID19 HMRC had deferred the first reporting date for these new measures until 2021.

The directive covers any cross-border arrangements entered into after 25 June 2018.

Cross border arrangements entered into between 25 June 2018 and 30 June 2020 will need to be reported to HMRC by 28 February 2021, whereas arrangements entered into or aborted between 1 July 2020 and 31 December 2020 will need to be reported by 31 January 2021.



Beyond 1 January 2021, any new arrangements entered into or aborted will need to be reported within 30 days of the arrangement being (i) made available or (ii) ready for implementation. If you are:

1. Currently undertaking any cross border transactions (or did so any time after 25 June 2018); or
2. Planning to set up new cross border arrangements.

It will be necessary to coordinate with any promoters or service providers to ensure your reporting obligations have been met in full.

### Tax payers & Intermediaries

Intermediaries acting on behalf of individuals or corporations undertaking CBTs will need to report these transactions to the relevant EU tax authority. The term ‘intermediaries’ draws a very wide scope, (including but not being limited to lawyers, accountants, tax advisors) generally includes any individual or firm that promotes certain cross border arrangements (“promoters”), or provides help, advice, and facilitation for the arrangements (“service providers”).

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## Penalties for failing to report

There is a fixed penalty of £5,000 for failure to comply in many cases, and daily penalties of £600 which should in principle only be charged in the instance of a serious failing, such as where the behaviour leading to the failure was deliberate. Penalties may be cancelled if there is a reasonable excuse. The possibility for the Tribunal to increase penalties up to £1 million remains in place.

## Next steps

Intermediaries and taxpayers alike will need to consider whether they are required to submit reports for any relevant CBTs.

Please get in touch with us:

1. If you think any of your cross-border arrangements may meet Category D; and
2. These arrangements have occurred or are due to be implemented in the time periods mentioned below:
  - 25 June 2018 to 30 June 2020
  - 1 July 2020 to 31 December 2020
  - 1 January 2021 and onwards

This factsheet is for general information purposes only. Professional advice should be obtained before action is either taken or refrained from as a result of information contained herein. Date created: 12.01.2021