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DAC-6 - reporting requirements for UK intermediaries are narrowed post-Brexit

DAC-6 (or The Directive on Administrative Cooperation) is an EU wide disclosure regime initially announced back in June 2017 to take effect from June 2018. The provisions are designed to prevent cross border tax avoidance schemes by introducing mandatory reporting, allowing EU tax authorities to share information about such schemes with its counterparts within other members states.

The rules are complex and received wide scale caution from across the tax sector on announcement. Of course, the UK already has similar rules in place for the disclosure of tax avoidance schemes, and many considered these to be sufficient in the context. With the UK leaving the bloc on 31 December, many had predicted that DAC-6 would be withdrawn shortly afterwards.

What has changed?

The UK government has confirmed that although DAC-6 will not be completely revoked, it will be heavily curtailed, such that many of the provisions which will apply across the EU members states, will not apply in the UK.

In summary, reporting under the regulations will continue, but will only be required for a limited period of time, and only for certain arrangements. This change will significantly reduce the reporting burden placed on many UK companies as a result of the onerous provisions laid down by the EU Commission.

In due course, the government will consult on a new UK-specific regime, following which, it is likely that DAC-6 will be repealed in the UK in its entirety.

What types of arrangement now need to be reported?

Broadly speaking, for an arrangement to be reportable under the DAC-6 provisions, it needed to meet the following:

- Be a cross-border arrangement, concerning more than one EU member state, or an EU member state and a third country, and
- Fall within on or more 'hallmarks' set out within the regulations.

The hallmarks are based upon characteristics commonly seen in tax avoidance arrangements, with no fewer than 19 of these hallmarks included within the rules.

However, following the recent exit from the EU, a change in legislation will mean that only a select few of the Hallmarks will need to be considered. These specific hallmarks concern arrangements which undermine reporting requirements under agreements for the automatic exchange of information, and arrangements designed to conceal beneficial ownership involving offshore entities and structures with no real substance.

It is important to note that UK companies with branches, agencies or employees in EU jurisdictions may still be within the DAC-6 reporting requirements implemented elsewhere in Europe. In this case, intermediaries should still consider all Hallmarks to check if there is a reporting requirement within an EU member state.

Who is required to report?

DAC-6 is primarily aimed at intermediaries, such as law firms, accountants, banks, and financial advisors, who are required to submit notifications where arrangements fall within the reporting regulations.

However, taxpayers will themselves need to report where there is no intermediary, or where the intermediary has legal and professional privilege.

Reporting deadlines

Whilst the scope for reporting requirements has changed, the reporting deadlines remain the same. The first reporting deadline under DAC-6 come into force on 30 January 2021.

It is important to note that the reporting obligations apply to arrangements where the first step was entered into on or after 25 June 2018, meaning that a backlog of historical reports may need to be made.

Arrangements which become reportable on or after 1 January 2021 must be reported as normal using the HMRC portal within 30 days of the first step being taken.

Penalties

Incorrect reporting could lead to penalties.

There is a one-off penalty of £5,000, with potential daily penalties of up to £600 per day in serious cases.

If you have any queries about the changes to DAC-6, please get in touch with our experts, who will be able to assist.