

UK mandatory disclosure rules come before Parliament; HMRC releases consultation responses

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Executive summary

On 13 January 2020, the UK Government laid the legislation (The International Tax Enforcement (Disclosable Arrangements) Regulations 2020 (Regulations)) addressing the implementation of the European Union (EU) Directive on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive) before Parliament. The UK legislation will enter into force on 1 July 2020 and will be effective from this date.

On the same day, the UK tax authority, Her Majesty's Revenue and Customs (HMRC) published a summary of responses to the consultation document which it issued last summer covering aspects of the UK Government proposed approach to DAC6 implementation. HMRC is working on detailed guidance on the UK rules which it plans to publish before the first reporting deadlines and the date the Regulations come into force on 1 July 2020.¹

Under DAC6, taxpayers and intermediaries are required to report cross-border reportable arrangements from 1 July 2020 with the first reporting deadline being 31 July 2020. However, reports will retrospectively cover arrangements where the first step is implemented between 25 June 2018 and 1 July 2020.

The UK legislation largely follows the draft legislation which was published in the summer of 2019 and was the subject of two EY Global Tax Alerts at that time.² There are a few differences of emphasis and additional clarifications on certain points from the draft legislation, as set out below.

The summary of responses to the consultation document provides more clarity on the interpretation of the UK Mandatory Disclosure Rules (MDR) legislation and how the UK Government anticipates the reporting process to operate. The UK government will continue to consult stakeholders, including many of those who responded to the consultation, to draft the detailed HMRC guidance referred to above. This is expected to provide further help to intermediaries and taxpayers, so they can meet their obligations under the Directive.

In a separate paper issued by HM Treasury, it was noted that, depending on the progress of the UK's exit from the EU, amendments may be needed to the regulations in due course. HMRC confirmed that leaving the EU will not diminish the UK's resolve to tackle tax avoidance and evasion, and HMRC will continue to work internationally to improve tax transparency.

The key highlights of the UK Regulations and the summary of responses to the consultation are summarized below.

Penalties

HMRC notes that the penalty regime has been amended to ensure it is proportionate and is flexible enough to deter non-compliance, while not unduly penalizing those who make genuine mistakes. HMRC will now have the authority to impose an initial penalty of up to £5,000 for a person who fails to comply with any of the provisions of the Regulations (in the draft regulations, this power was reserved for the First Tier Tribunal.)

HMRC may then apply to the First Tier Tribunal to seek an increase in the penalties where it considers that the penalty is inappropriately small after considering the amount of advantage gained, the fees paid, and the degree to which any failure is deliberate. HMRC will also consider the procedures maintained for the purpose of MDR compliance in determining whether an increased penalty should be sought.

Penalties will not arise if an intermediary or taxpayer can satisfy HMRC that there is a "reasonable excuse" for the failure. In considering reasonable excuse, HMRC is required to consider the compliance procedures in place to identify reportable arrangements and secure compliance with the obligations under the regulations.

UK specific reporting obligations

The UK Regulations introduce some additional reporting and notification requirements which must be met by the UK intermediary and/or the UK relevant taxpayer:

1. A UK relevant taxpayer has annual reporting obligations due on or before the filing deadline for the company's tax return, but in any case, before the 31 January of the following tax year. The Regulations have been amended as compared to the draft version so that reporting is only required in the first year that the taxpayer participates in the arrangement and in any year where there is a tax advantage.
2. The UK Intermediary or UK relevant taxpayer has the obligation to respond to a written request from HMRC to provide certain information which should help to determine the obligations arising under the Regulations, which include providing evidence that an intermediary did not "*have knowledge, possession or control of any other reportable information in relation to the reportable cross-border arrangement.*" HMRC confirmed in the responses to the consultation document that intermediaries will not be required to engage in any additional customer due diligence beyond what they would normally do in the course of their business and in compliance with their existing obligations. At the same time, the guidance will seek to ensure that the regime is workable while minimizing the risk of anyone avoiding their obligations. The timeline to provide such information as compared to the draft regulations has increased from a minimum of 14 days to 30 days.
3. HMRC will provide an arrangement reference number in relation to any reportable arrangement, and intermediaries or taxpayers must notify this number to any other UK intermediary or UK taxpayer that they know are party to the transaction.

Scope of taxes covered

The scope of the term "tax advantage" has been limited to only those EU taxes covered by the Directive, which are, however, wide-ranging. The draft regulations had previously referred to non-EU taxes, but the definition of "tax" has been amended to remove this broader definition.

The scope of the Regulations is now limited to UK intermediaries and will not apply to those without a UK connection, as intended by the Directive. The new definitions of UK intermediary and UK resident taxpayer have been introduced in the Regulations to ensure that the regulations do not apply to intermediaries without a connection to the UK, i.e., in relation to whom the United Kingdom is NOT the member State in any of paragraphs (a) to (d) of the list in Article 8ab(3) of the Directive (the intermediary is not a UK tax resident, does not have a permanent establishment in the UK, is not incorporated in or governed by the laws of the UK and is not registered with a professional association in the UK).

Next Steps

Determining if there is a reportable cross-border arrangement and, if so, where and how and when it should be reported raises complex technical and procedural issues for taxpayers and intermediaries. Taxpayers and intermediaries who have operations in the EU including the UK should review their policies and strategies for logging and reporting tax arrangements so that they are fully prepared for meeting these obligations.

A further technical Alert will be issued once HMRC's detailed guidance has been published.

Endnotes

1. See EY Global Tax Alert, [EU publishes Directive on new mandatory transparency rules for intermediaries and taxpayers](#), dated 5 June 2018.
2. See EY Global Tax Alerts, [UK publishes draft legislation and consultation paper on EU Mandatory Disclosure Regime](#), dated 24 July 2019 and [United Kingdom publishes draft proposal on Mandatory Disclosure Rules](#), dated 19 August 2019.

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EYG no. 000405-20Gbl

1508-1600216 NY
ED None

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