

UK Government announces approach to UK MDR post UK-EU Brexit Agreement

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Following the end of the Brexit transition period on 31 December 2020, the United Kingdom (UK) Tax Authority, HMRC, has advised that:

- ▶ Reporting in the UK under the European Union (EU) mandatory disclosure rules (DAC6 or the Directive) will still be required for a limited time, but only for arrangements which meet hallmarks under category D (undermining reporting obligations or obscuring beneficial ownership).
- ▶ In the coming year, the UK will consult on and implement the Organisation for Economic Co-operation and Development's (OECD) Mandatory Disclosure Rules (MDR) as soon as practicable, to replace DAC6 and transition from EU to international rules.

The challenge for business will be to assess the implications of the changes and in particular the need to continue to report transactions under the EU Directive and any obligations to report an arrangement in an EU Member State rather than the UK as previously expected. Although the UK announcement is a relaxation in the scope of the UK rules, the change in the UK's approach may cause significant short-term disruption to existing reporting plans and there is limited time to prepare for this.

As reported last week, the text of the Agreement reached by the UK and the EU on 24 December 2020 (the UK-EU Trade and Cooperation Agreement (TCA), 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.”

HMRC has confirmed that the reference to OECD rules on exchange of information on cross-border arrangements is a reference to the OECD’s model MDR. Therefore, under the terms of the TCA, the UK must not reduce the level of protection in its legislation below the level of protection afforded by the OECD’s MDR. However, it is under no obligation to retain the EU Directive which was brought into UK law by SI 2020/25 with effect from 1 July 2020 (but which applied to arrangements where the first step of implementation was on or after 25 June 2018). The reporting obligations under DAC6 were however deferred by six months to recognize the impact of COVID-19. This meant no reporting deadlines arose before the end of the transition period.

The impact on the UK MDR

The UK’s position is that while the UK has not implemented the OECD MDR in its domestic legislation as at the end of the transition period, the rules in SI 2020/25 (which were brought in to implement DAC6) 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.

HMRC has confirmed that DAC6 will cease to apply to the UK at the end of the transition period and from that point, the UK will no longer be obliged to implement DAC6. Accordingly, 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 DAC6 will need to be reported in the UK after the end of the transition period. This is the case for both arrangements entered into before the end of the transition period and arrangements entered into going forward. We understand that there will be updates to HMRC’s IT systems to facilitate the changes.

As a reminder, Hallmark D1 applies to arrangements that undermine reporting obligations (such as Common Reporting Standard requirements) and Hallmark D2 applies to arrangements that obscure beneficial ownership (see IEIM 545000 for more details).

The Government has also amended the UK 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 making the changes are the International Tax Enforcement (Disclosable Arrangements) (Amendment) (No. 2) (EU Exit) Regulations 2020 have now been laid before Parliament and the changes came into effect from 31 December 2020.

In the coming year, the Government plans to repeal the legislation implementing DAC6 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 the OECD MDR in due course. HMRC will also be updating its guidance starting at IEIM600000.

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EYG no. 000042-21Gbl

1508-1600216 NY
ED None

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