

## DAC6: Adieu to EU

January 5, 2021

---

On the eve of the UK's exit from the EU on 31 December 2020, the UK Government published the concise but game-changing piece of legislation, 'The International Tax Enforcement (Disclosable Arrangements) (Amendment) (No. 2) (EU Exit) Regulations 2020' (the 'Amendment Regulations'). The Amendment Regulations have the effect of removing the UK from the bulk of the significant new reporting requirements relating to mandatory disclosure of tax avoidance schemes implemented across the EU and due to come into material effect on 1 January 2021, known colloquially as 'DAC6'. The financial industry and the legal world in particular have dedicated significant resources over the course of 2020 in preparation for DAC6 and its reporting requirements for intermediaries and taxpayers. The 11th hour reprieve is both a welcome surprise and a considerable volte-face, given that the Government had previously indicated that DAC6 would continue to be enforced in the UK in harmony with the general EU implementation post-Brexit.

### Amendment Regulations Changes to DAC6

In the words of the Amendment Regulations, 'hallmark categories A, B, C and E [are] omitted'. As set out in our previous DAC6 client advisories (see "[New EU-Wide Tax Anti-Avoidance Law Introduces Sweeping Disclosure Requirements](#)" and "[UK Regulations Implementing EU Tax Anti-Avoidance Disclosure Laws Finalised](#)"), the incoming DAC6 reporting requirements revolved around five Hallmark categories, A to E, indicative of tax avoidance, which, when combined with a cross-border element, would give rise to a reporting requirement for relevant parties. However, following the Amendment Regulations, all but one Hallmark category, Hallmark D, have been removed from the UK legislation. As such, unless the matter in question is a cross-border arrangement (meaning an arrangement between the UK/EU and any other jurisdiction, whether EU or otherwise) that falls within the remaining Hallmark D, no report will need to be made to HM Revenue and Customs (HMRC) under the UK's limited implementation of DAC6, either in respect of past or future matters. Hallmarks D1 and D2 concern avoidance of other reporting obligations, such as the Organisation for Economic Co-operation and Development (OECD) Common Reporting Standard, and unidentifiable beneficial ownership. It is still the case, however, if an arrangement is cross-border for the purposes of DAC6, then an intermediary/taxpayer will need to consider all Hallmarks and check that they do not have a reporting requirement within an EU member state, even though there is no UK reporting requirement.

### What This Means for UK Taxpayers

Further guidance from HMRC is expected to be forthcoming to clarify the exact extent of reporting requirements for UK intermediaries and taxpayers. For the moment, the historic lookback period relating to DAC6 – which requires a review of all arrangements where the first step in such arrangement was taken on or after 25 June 2018 – still applies for cross-border arrangements to which either of the D Hallmarks apply. As such, work done to review historic matters from 25 June 2018 will still be relevant, though matters now need only be viewed through the prism of D Hallmarks.

It is not clear from the explanatory notes to the legislation why the Government has altered course with regards to DAC6, although the new EU/UK free trade agreement requires the UK only to avoid lowering their information exchange rules relating to cross-border tax arrangements beyond the level of the OECD mandatory disclosure regime. As the UK has, in some respects, already committed to a higher level of scrutiny on tax avoidance than

---

the EU (e.g., the UK 'DOTAS' regime), the UK is only required to bring in reporting requirements relating to Hallmarks D1 and D2 in order to comply with the new free trade agreement. This radical approach to DAC6 by the Government may indicate a shift in its approach to EU tax legislation going forward in a post-Brexit world – a careful eye should be kept on value-added tax (VAT) legislation in particular – but also that the Government recognises that the ongoing coronavirus pandemic has necessitated a more constructive and gentle approach to the implementation of onerous new requirements for businesses throughout the country.

---

## CONTACTS

For more information on the applicable DAC6 requirements, contact your Katten lawyer or either of the following:



**Charlotte Sallabank**  
+44 (0) 20 7776 7630  
[charlotte.sallabank@katten.co.uk](mailto:charlotte.sallabank@katten.co.uk)



**Kit Fowler**  
+44 (0) 20 7770 5212  
[kit.fowler@katten.co.uk](mailto:kit.fowler@katten.co.uk)

# Katten

katten.com

Paternoster House, 65 St Paul's Churchyard • London EC4M 8AB

+44 (0) 20 7776 7620 tel • +44 (0) 20 7776 7621 fax

Katten Muchin Rosenman UK LLP is a Limited Liability Partnership of Solicitors and Registered Foreign Lawyers registered in England & Wales, regulated by the Law Society.

A list of the members of Katten Muchin Rosenman UK LLP is available for inspection at the registered office. We use the word "partner" to refer to a member of the LLP. Attorney advertising. Published as a source of information only. The material contained herein is not to be construed as legal advice or opinion.

Katten Muchin Rosenman UK LLP of England & Wales is associated with Katten Muchin Rosenman LLP, a US Limited Liability Partnership with offices in:

CENTURY CITY | CHARLOTTE | CHICAGO | DALLAS | LOS ANGELES | NEW YORK | ORANGE COUNTY | SHANGHAI | WASHINGTON, DC

1/5/21