

REMINDER - DAC6 IS COMING

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The new rules requiring dealmakers to report certain transactions to the tax authority kick in by 30 January 2021. Penalties for failing to comply can be heavy.

For a brief recap, we summarise what needs to be done (and why).

WHAT IS “DAC 6”?

It’s an EU Directive which requires disclosure of “reportable cross-border arrangements” to the relevant EU Tax Authority. The information disclosed will then be exchanged with all other EU Tax Authorities.

Is this still relevant after Brexit?

Yes. The UK was required to implement DAC 6 during the transition period and counts as an EU Member State for this purpose. The Government has indicated that the rules will continue to apply as intended once the transition period ends.

Who has to comply?

Primarily, anyone who is an “intermediary”. This is anyone who arranges, organises or puts together a deal – so as well as lawyers and accountants, this can also catch private equity houses, funds and so on. If there is no “intermediary”, the compliance burden falls on the taxpayer.

When is this relevant?

The UK regulations implementing DAC 6 came into force on 1 July 2020 and the first reports must be filed by 30 January 2021. The regime has a retrospective effect for cross-border arrangements where the first step was implemented on or after 25 June 2018.

What do we need to do?

In short: prepare for reporting. Non-compliance carries the risk of material penalties. Where a business has a reasonable excuse for non-compliance any penalties may be mitigated – this could include having implemented reasonable internal procedures to ensure compliance.

In more detail, what should we do?

The level of impact (and the amount of work required to set up appropriate compliance) for private equity houses and funds depends on their individual structure, target investors and types of deals. By way of broad guidance, the following should be considered when rolling out new procedures and a risk-based approach should be adopted:

- **Allocation of resource:** who will be responsible for ensuring compliance? What input, and in what form, will be required from front office or other functions?
- **Training:** have you taken steps to raise internal awareness of the regime and procedures? Has training been rolled out?
- **Identification of historic transactions:** have you completed a retrospective audit of transactions where the first step was implemented on or after 25 June 2018 and determined whether these are reportable? A full audit trail should be maintained.
- **Scoping new transactions:** have you conducted an exercise to identify the types of transactions in which you are frequently involved and which are **likely** to be reportable? This will assist with meeting your real-time reporting obligations from January 2021.
- **Identification of intermediaries:** which other intermediaries are typically involved in your transactions? How will you co-ordinate responsibility **where** there are multiple intermediaries? Will terms of engagement need to be amended?
- **DAC6 policy:** many of the above points could be **collated** together into a DAC6 policy. This could either be a standalone policy or could leverage off existing tax risk policies.

KEY CONTACTS



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Getting in touch

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