

## DAC 6 and the D Hallmarks

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HMRC's consultation period for DAC 6 ended on 11 October. Professional service providers, including EFI, and leading UK bodies representing the financial services industry have responded to the consultation. Of key concern is that many aspects of the legislation still require clear guidance from HMRC to successfully implement the Directive. Whilst HMRC's approach to consult on this guidance is warmly welcomed, it is unlikely to be available until early 2020.

Due to the short timeframes until the reporting regime commences in 2020 and to achieve compliance within the provisions of DAC 6, Promoters, Service Providers and Intermediaries affected need to:

- assess the business impact of this legislation;
- develop policies and compliance processes;
- devise training and communications for colleagues responsible for identifying reportable cross border arrangements;
- determine the risk appetite for any potential under or over reporting including any associated GDPR concerns; and
- decide on the approach to the reporting process.

It is understood that many Financial Institutions (“FIs”) are adopting a “wait and see” approach until the publication of HMRC guidance. This is in the hope that they will be considered Service Providers and not Intermediaries. However, the purposely wide drafting of the Directive may still bring them within scope. This may create challenges given the short compliance and reporting timeframes involved. In addition, the retrospective nature of the legislation requiring reporting of schemes implemented since 25 June 2018, poses additional challenges - particularly as these must be reported by 31 August 2020.

Taking appropriate steps now would put FIs in a better position to comply when HMRC guidance is finally published. Organisations will need to consider the risk to their business and decide how much effort to invest now compared with a “wait and see” approach.

### **What could FIs be doing now?**

- Identify any “cross border arrangements” in existence since 25 June 2018 and examine these for the presence of hallmarks to identify any that are reportable; and based on Directive requirements start to gather reportable information that can be collected now;
- Review product sets – the “substantially similar” to a financial account definition contained in hallmark D1 is a broader definition than the CRS, therefore FIs will have to identify any “at risk” products which may be caught. While the CRS contains a list of excluded accounts, no such list yet exists for DAC6 purposes and even then, any list would still be subject to the excluded product not being used as part of a reportable cross border arrangement;
- Identify IT builds required – linkage between customer data sets (where the customer has multiple relationships with the FI) and systems (Sanctions/AML/KYC and AEOI reporting); review GDPR limits/impacts on information sharing;
- Process reviews – timing and the 30-day reporting window; interaction between teams e.g. front office referrals to AML/KYC teams and Service Level Agreements.
- Communication and training needs – identify who in the organisation is affected or responsible and the appropriate levels of training required. Develop training materials based on the Directive to be refined once HMRC guidance is available.
- Review legal terms and conditions including any contractual provisions for customer notifications of tax residence information;
- Identify operating jurisdictions which have not yet implemented CRS in anticipation of HMRCs guidance; and

- In view of the interaction with the D hallmarks, review FATCA and CRS policies and processes: identify and remediate any FATCA/CRS gaps in due diligence, information collection and reporting processes as implemented in practice.

### **How EFI can help?**

EFI has subject matter experts that have already been involved in discussions with HMRC and are available to assist in all aspects of compliance and reporting for DAC 6, CRS/FATCA, AML/KYC and Financial Crime areas. Please [visit our website](#) for more information.

Alternatively, please [contact us](#) to arrange an informal discussion or for further details of our services and how we can add value to your organisation and meet these challenges in a risk focussed and cost- effective manner.

Co-authored by Mark Gilmartin and Jayne Newton.