

## DAC 6: Update and Risk Management Recommendations

Fresh questions have been asked about DAC 6 due to COVID-19's impact and an ongoing lack of guidance on compliance.

DAC 6 refers to EU Council Directive 2018/882/EU, which provides for mandatory disclosure rules for intermediaries in respect of cross-border arrangements bearing the hallmarks of aggressive tax planning.

The UK is legally obliged to adopt the directive on 1 July 2020. [Regulations implementing the directive](#) went to parliament on 13 January 2020.

DAC 6 provides for an initial one-off reporting deadline in August 2020 for arrangements implemented between 25 June 2018 and 1 July 2020. Thereafter, a 30-day rolling window for reporting new arrangements will apply.

Failure to meet these requirements and deadlines may result in financial penalties and consequential reputational damage. A fixed penalty of £5,000 for failure to comply applies in most cases. A daily penalty of £600 could be charged for a serious failing, for example, where the failure was deliberate.

Yet some firms' ability to comply has arguably been harmed by disruption caused by COVID-19 – and the fact that guidance on compliance is not due to be published until June 2020.

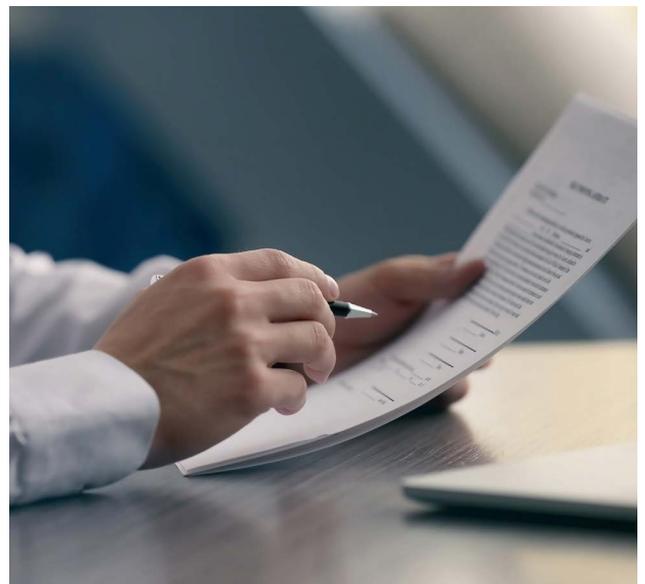
### Ongoing uncertainty

The Law Society recently asked HM Revenue & Customs (HMRC) whether it would consider deferring DAC 6's commencement dates in the UK. At the end of March, HMRC stated that it was carefully considering whether DAC 6's implementation would be delayed in light of COVID-19. We understand that no final decision has been made to date.

HMRC has indicated that it will provide guidance on compliance, but the guidance is not expected to be ready until June 2020.

The rules will more likely affect solicitors who advise on transactions generally – even if there is no tax avoidance – if certain "hallmarks" point towards potential tax avoidance.

Firms have raised concerns that compliance could put them in breach of legal professional privilege (LPP). However, the regulations have been amended to ensure disclosures that would breach LPP do not have to be made. In this situation, and in line with DAC 6, the obligation to report should, in principle, be passed to another intermediary or relevant taxpayer to whom LPP does not apply.



## Preparation

### In preparation for the new regulations, we recommend firms:

- Identify post-25 June 2018 transactions that are potentially affected by the hallmarks, and determine whether reporting will be required later in the year.
- Consider what technology is available for future transactions to capture arrangements that require reporting.
- Commence training to raise internal awareness: various eLearning resources are available that advise on DAC 6 and its implications.
- Ensure clients are made aware of and kept up-to-date with the regulations.
- Instigate monitoring procedures to ensure fee-earners record and report relevant reportable arrangements. Consider updating internal audit forms.

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