
STATUTORY INSTRUMENTS

2020 No. 25

**The International Tax Enforcement
(Disclosable Arrangements) Regulations 2020**

PART 2

Reporting obligations

Application of Annex IV of the DAC: hallmarks

- 12.** In the application of Annex IV of the DAC for the purposes of these Regulations(1)—
- (a) “tax advantage” has the meaning given in regulation 2(4);
 - (b) in paragraph 4 of category C (specific hallmarks relating to transfer of assets in cross-border transactions), the amount treated as payable in consideration for the assets is the amount treated as payable for tax purposes in the jurisdictions involved;
 - (c) category D (specific hallmarks concerning automatic exchange of information and beneficial ownership) must be interpreted in accordance with the Model Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures approved by the OECD on 8 March 2018 and its commentary published in OECD (2018), Model Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures, OECD, Paris(2);
 - (d) category E (specific hallmarks concerning transfer pricing)—
 - (i) does not apply to a cross-border arrangement if the relevant taxpayer and any associated enterprise in relation to the relevant taxpayer would be exempted from the basic transfer pricing rule by Chapter 3 of Part 4 to the Taxation (International and Other Provisions) Act 2010(3); and
 - (ii) must be interpreted in accordance with the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017 published by the OECD on 10 July 2017(4).

(1) Annex IV of the DAC sets out hallmarks at least one of which must be contained in a cross-border arrangement for it to constitute a reportable cross-border arrangement; “hallmark” has the meaning given by Article 3(20) of the DAC.

(2) The Rules and commentary are available at <http://www.oecd.org/tax/exchange-of-tax-information/model-mandatory-disclosure-rules-for-crs-avoidance-arrangements-and-opaque-offshore-structures.pdf>, a hard copy is available for inspection at the offices of HMRC at 10 South Colonnade, 9th Floor, Canary Wharf, London E14 4PU.

(3) 2010 c. 8. Chapter 3 has been amended by paragraphs 2 to 5 of Schedule 2 to the Finance Act 2012 (c. 14) and paragraphs 37 and 40 of Schedule 15 to the Finance (No 2) Act 2017 (c. 32).

(4) The Transfer Pricing Guidelines are available at <http://www.oecd.org/tax/transfer-pricing/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-20769717.htm>; a hard copy is available for inspection to registered readers free of charge at the British Library in the library’s reading rooms, registration for a readers pass is also free of charge (further information can be found at the British Library’s website at <https://www.bl.uk/visit/reading-rooms>).