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Anti-Hybrid Rules

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# Introduction of EU Mandatory Reporting (DAC6)
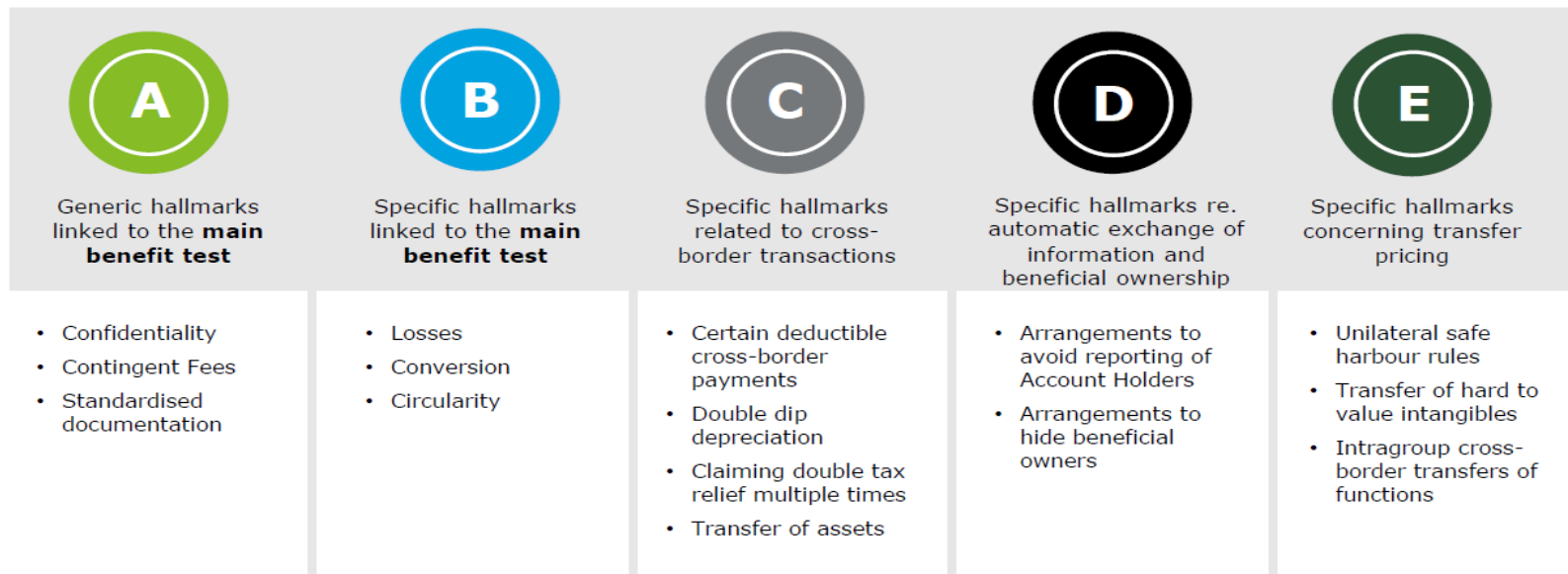## High Level Overview

The **goal** of the implementation of DAC 6 is to **provide the tax authorities of EU member states with information** to enable them to promptly react at an early stage against harmful tax practices.

DAC 6 imposes **the obligation to disclose** reportable cross border arrangements **(RCBA's)** on EU Intermediaries. However, where no Intermediary is involved or is not required to perform the reporting of the reportable cross border arrangement, **a reporting obligation exists for the relevant taxpayer.** As such, any cross-border arrangements going back as far as 25 June 2018 should be considered.

Certain hallmarks are only engaged if a main benefit test (MBT) is met; MBT is defined as follows:

> **"That test will be satisfied if it can be established that the main benefit or one of the main benefits which, having regard to all relevant facts and circumstances, a person may reasonably expect to derive from an arrangement is the obtaining of a tax advantage"**

**Hallmarks - a high level summary**

| A | B | C | D | E |
|---|---|---|---|---|
| Generic hallmarks linked to the **main benefit test** | Specific hallmarks linked to the **main benefit test** | Specific hallmarks related to cross-border transactions | Specific hallmarks re. automatic exchange of information and beneficial ownership | Specific hallmarks concerning transfer pricing |
| • Confidentiality<br>• Contingent Fees<br>• Standardised documentation | • Losses<br>• Conversion<br>• Circularity | • Certain deductible cross-border payments<br>• Double dip depreciation<br>• Claiming double tax relief multiple times<br>• Transfer of assets | • Arrangements to avoid reporting of Account Holders<br>• Arrangements to hide beneficial owners | • Unilateral safe harbour rules<br>• Transfer of hard to value intangibles<br>• Intragroup cross-border transfers of functions |

# Introduction of Anti-Hybrid Rules
Effective for payments made from 1 January 2020

Anti-hybrid rules apply to certain types of transactions and broadly aim to prevent taxpayers from exploiting "mismatch outcomes" by exploiting differences in countries' tax systems by obtaining a double deduction for the same expense or by not taxing the income which has been deducted for tax purposes elsewhere. Where a mismatch outcome arises, the rules operate to deny a deduction for the relevant payment.

**Group structures should be reviewed to understand whether the anti-hybrid rules apply.**

| Mismatch outcomes include the following: | |
|---|---|
| Double deduction mismatch outcome | This will apply to transactions between associated entities, where, at a high level, it would be reasonable to consider that there is a double deduction arising in respect of a payment. |
| Permanent establishment deduction without inclusion mismatch outcome | This mismatch will arise where a payment is deducted in the payer country but not included within the payee country(deduction without inclusion) and this is attributable to:<br><br>• the payment being made to a disregarded PE,<br>• differences in the allocation of payments between head office and a PE or between two or more PEs, or<br>• where the payment is between the head office and PE with the payment being disregarded under<br>• the laws of the payee country. |
| Financial instrument deduction without inclusion mismatch outcome | The rules seek to counteract a deduction being taken for cross-border payments where such payment is not being included by the payee country for tax purposes due to a difference in the characterisation of the instrument itself or of the payments made under the instrument between the two countries. |
| Payment to a hybrid entity deduction without inclusion mismatch outcome | This outcome will arise where a deduction is taken in the payer country for a payment without a corresponding amount being included in the payee country and this is attributable to differences in the allocation of payments to a hybrid entity between the country in which the hybrid entity is established and where the relevant participator is established. |
| Payment by a hybrid entity deduction without inclusion mismatch outcome | This outcome will arise where there is a deduction in respect of a payment in a payer country without a corresponding amount being included in the payee country and this is attributable to the payment being disregarded under the laws of the payee country |
| Imported mismatch outcome | An "imported mismatch" may arise where a payment by an Irish entity directly/indirectly funds a foreign arrangement which would itself give rise to a mismatch outcome if it was considered under Irish hybrid legislation. This would be relevant in respect of transactions between entities that are associated enterprises. |

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