



HALLMARKS OF POTENTIAL TAX AGGRESSIVE ARRANGEMENTS

Reportable arrangements are potential tax aggressive cross-border arrangements. Cross-border arrangements are those which involve either more than one EU country or an EU country and a third country. There is no definition of “potential tax aggressive arrangements.” Instead the MDR Directive issued Hallmarks.

These are defined as arrangements involving either more than one EU country or an EU country and a third country and contain at least one of sixteen hallmarks that have been divided into five main categories:

- ➔ Generic hallmarks linked to the main benefit test
- ➔ Specific hallmarks linked to the main benefit test
- ➔ Specific hallmarks related to cross-border transactions
- ➔ Hallmarks related to AEOI circumvention and opaque structures
- ➔ Specific hallmarks related to transfer pricing

Any cross-border arrangement or series of arrangements that fulfill at least one of the following 16 Hallmarks has to be reported. Those 16 Hallmarks are in six main categories.

Generic hallmarks linked to the main benefit test Category A (MBT)	Specific hallmarks linked to the main benefit test Category B (MBT)	Specific hallmarks related to cross-border transactions Category C (MBT)	Specific hallmarks related to cross-border transactions Category C (No MBT)	Hallmarks related to AEOI circumvention and opaque structures Category D (No MBT)	Specific hallmarks related to transfer pricing Category E (No MBT)
Confidentiality clause not to disclose how it could secure a tax advantage (A1)	Acquisition of a loss-making company and using its tax losses to reduce tax liability (B1)	Deductible cross-border payments to an associated enterprise [C1] <ul style="list-style-type: none"> • subject to no tax / zero tax / almost zero tax (C1.b-i) • subject to full exemption (C1.c) • subject to a preferential tax regime (C1.d) 	Deductible cross-border payments to an associated enterprise [C1] <ul style="list-style-type: none"> • not resident for tax purposes in any jurisdiction (C1.a) • or tax resident in an EU blacklisted non-cooperative jurisdiction (C1.b-ii) 	Arrangements to circumvent reporting AEOI on financial accounts (FATCA-IGA and CRS) (D1)	Use of unilateral (one-sided) safe-harbor rules on transfer pricing (E1)
Intermediary to receive a success fee that is fixed to the tax advantage (A2)	Conversion of income into capital or other revenue with more beneficial tax treatment (B2)		The same asset is subject to deductible depreciation in more than one jurisdiction (C2)	Opaque offshore arrangements to disguise the UBO (D2)	Transfer of Hard-To-Value Intangibles (E2)
An arrangement using standardized documentation, available for multiple taxpayers (A3)	Circular transactions using interposed entities without commercial functions resulting in round-tripping of funds (B3)		Multiple claims of double taxation relief on the same income or capital (C3)		Intragroup restructure with the transfer of functions, risks or assets resulting in significant profit shift (50%) (E3)
			Transfer of assets with a material difference in the price used for tax purposes (C4)		

Main Benefit Test

Some of these Hallmarks (in red above) are further subject to the “Main Benefit Test.” Main Benefit Test is regarded as largely satisfied if the expected main advantage or one of the main advantages of the arrangement is the obtaining of a tax benefit. Each EU member state may have a different interpretation of the Main Benefit test.

Note: Above information is based on the EU Directives DAC6. Each EU member state is allowed to deviate in local Laws and Guidance from the EU Directive with regards to interpretations, type of taxes, penalties, etc.

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