

Poland: New Form MDR-3 to be submitted by management boards by early 2020 for fiscal year 2019

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Executive summary

The Polish Mandatory Disclosure Rules (MDR) regulations, which require reporting of tax arrangements by promoters/beneficiaries/service providers, also provide for periodic reporting obligations for the entities using tax arrangements subject to MDR (i.e., the beneficiaries). Specifically, management board members of Polish entities whose fiscal year corresponds to a calendar year may be required to file a separate Form MDR-3 by March 2020 with respect to corporate income tax (CIT)-based tax arrangements. Furthermore, in some cases, the applicable deadline for submission of Form MDR-3 may fall on an earlier date, depending on the taxes covered under the arrangement.

According to the Polish Tax Code, a beneficiary who made any actions in a tax arrangement in a given reporting period or derived a tax advantage from that arrangement shall file an information return (Form MDR-3) with the Director of the National Tax Administration Office, within the deadline for filing a tax declaration for that reporting period. Form MDR-3 includes in particular the amount of the tax advantage derived from the tax arrangement, if the beneficiary derived such advantage in a given reporting period.

These reporting obligations are incumbent on the beneficiary, regardless of whether the tax arrangement the beneficiary was using or is using was reported in the past by that beneficiary.

The obligation to sign Form MDR-3 rests with all members of the board and there is no possibility to grant a proxy.

Failure to comply with the obligations may result in significant sanctions.

Detailed discussion

On 1 January 2019, the Polish Tax Code was supplemented with Chapter 11a - Mandatory Disclosure Rules, implementing the European Union (EU) Directive 2018/822 of 25 May 2018 on the mandatory disclosure and automatic exchange of cross-border tax arrangements (referred to as DAC6 or the Directive), and also introducing further reporting requirements.

A detailed explanation of the scope of the Polish MDR rules and the applicable reporting deadlines is included in EY Global Tax Alerts, [Poland passes 2019 tax reform including Mandatory Disclosure Rules](#), dated 1 November 2018 and [Poland publishes official tax guidelines on the Mandatory Disclosure Rules](#), dated 2 April 2019.

The requirements of the Polish MDR regulations are broader than the requirements of the Directive and impose obligations on Polish and non-Polish intermediaries and relevant taxpayers to report certain tax arrangements to the Polish Director of the National Fiscal Administration.

According to article 86j of the Tax Code a beneficiary who made any actions in a tax arrangement in a given reporting period or derived a tax advantage from that arrangement shall file information with the Director of the National Tax Administration Office, within the deadline for filing a tax declaration for that reporting period, which includes in particular, a tax arrangement number (where available) and also the amount of the tax advantage derived from the tax arrangement, if the beneficiary derived such advantage in a given reporting period. Other information may also be required.

These obligations are incumbent on the beneficiary, regardless of whether the tax arrangement the beneficiary was using or is using was properly reported in the past by

that beneficiary. The obligation to submit Form MDR-3 may arise also when the entity has already correctly submitted Form MDR-1 in connection with the given tax arrangement.

While the practice is still developing, in general, in the case of entities whose tax year corresponds to the calendar year, with respect to tax arrangements concerning CIT, the obligation set out above should be met by submitting Form MDR-3 within the deadline for submission of the annual CIT declaration (CIT-8), i.e., by the end of March 2020. In the case of tax arrangements concerning withholding tax or personal income tax, the applicable deadlines for meeting the obligation may potentially be even shorter, i.e., end of January 2020. Furthermore, in some cases, the applicable deadline for submission of Form MDR-3 may fall on even an earlier date.

It is worth noting that, in accordance with the current regulations, Form MDR-3 should be signed by all members of the board (via ePUAP or Qualified Electronic Signature) - there is no possibility of granting a power of attorney for this purpose.

Next steps

In the light of the above, the following actions should be considered:

- ▶ If Form MDR-1 was submitted in the past (e.g., by a beneficiary or a promoter), it should be evaluated whether, in connection with the given reported tax arrangement, there is now an obligation to submit Form MDR-3 in respect of the tax year just ended (or any other relevant reporting period). The scope of reporting and (if applicable) the amount of tax benefit obtained in connection with this arrangement in a given year/period should also be established.
- ▶ In addition, regardless of the above, entities should ensure that no other tax arrangements have been made which are yet unreported or which should be reported in the near future.

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