

## Danish Parliament enacts final MDR legislation

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### Executive summary

The Danish Government enacted final legislation, on 19 December 2019, implementing the European Union (EU) Directive on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive), see law no. 1573 of 27 December 2019. The Danish Mandatory Disclosure Rules (MDR) legislation will enter into force on 1 July 2020 and will be effective from 25 June 2018.

The final Danish MDR legislation authorizes the Minister of Taxation to issue detailed regulations on the operation of the law which was done on 27 December 2019 with the Regulation no. 1634 of 27 December 2019 (the regulation). The regulation sets forth the detailed implementation of the requirements of the Directive. The Danish MDR legislation is closely aligned with the requirements of the Directive. It is expected that further guidelines will be issued by the tax authorities in April 2020.

The key highlights of the Danish final legislation as outlined in the regulations are summarized below.

## Key Highlights

- ▶ The scope of the taxes covered under the Danish legislation is aligned with the Directive and applies to all taxes except value-added tax, customs duties, excise duties and compulsory social security contributions.
- ▶ The Danish legislation defines a reportable cross-border arrangement in line with the Directive:
  - The arrangement meets the definition of a cross-border arrangement; and
  - The arrangement meets at least one of the hallmarks A-E specified in annex IV of the Directive.
- ▶ The Danish legislation does not cover domestic arrangements and does not include any additional hallmarks compared to the Directive.
- ▶ The description of the hallmarks included in the Danish legislation follows the text of the Directive.
- ▶ Under Danish law, as in the Directive, the main benefit 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.
- ▶ The definition of an intermediary under the Danish legislation is in line with the Directive.
- ▶ An attorney may qualify as an intermediary. However, if an attorney is subject to secrecy regarding the affairs of a client (legal professional privilege), the attorney must draft and hand over the reportable information to the client and request the client to make the reporting. If the client does not prove that the information has been reported to the tax authorities, the attorney will be obliged to make the reporting within 30 days from the triggering events for reporting the cross-border arrangement, i.e.,

when the reportable arrangement is “made available for implementation,” when the reportable arrangement is “ready for implementation” or when “the first step of implementation has been made,” whichever is first. However, in this situation an attorney is exempt from the reporting obligation if this would mean that the attorney in reality would incriminate the client. Where this exemption is applied, the attorney must then inform any other intermediaries about their reporting obligation.

- ▶ Intermediaries or relevant taxpayers who must report in Denmark will have to register for MDR reporting with the tax authorities no later than eight days after the reporting obligation takes effect. The registration is completed electronically in accordance with the tax authorities’ detailed instructions or through a form, which can be obtained from the Danish tax authorities.
- ▶ There is no defined maximum penalty for failures to report, but minimum penalties ranging from DKK25,000 to DKK400,000 are expected to apply, depending on size and role of the party failing to report.
- ▶ The Danish reporting deadlines are aligned with the Directive which requires reporting to start from 1 July 2020 and exchanges between jurisdictions to start from 31 October 2020. Reports must cover arrangements where the first step is implemented between 25 June 2018 and 1 July 2020.

## Next Steps

Determining if there is a reportable cross-border arrangement raises complex technical and procedural issues for taxpayers and intermediaries. Taxpayers and intermediaries who have operations in Denmark should review their policies and strategies for logging and reporting tax arrangements so that they are fully prepared for meeting these obligations.

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