

Poland: MDR reports for cross-border tax arrangements must be re-submitted to the National Fiscal Administration in 2020

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Executive summary

On 5 February 2020, a government draft bill was submitted to the Polish Parliament to amend MDR provisions that have been in force in Poland since 1 January 2019. According to the draft bill, the **cross-border tax arrangements** to be reported by 31 March 2020 by all obliged entities, i.e., promoters/beneficiaries/service providers **must be re-submitted** to the tax authorities in the amended Mandatory Disclosure Rules (MDR) form, which will be published by the Ministry of Finance.

In addition, Tax Arrangement Numbers (TAN) issued for cross-border arrangements before 1 April 2020 will be annulled by virtue of the new law.

The draft bill also includes amendments to the scope of reporting obligations for service providers. The text of the proposed regulations imposes an obligation on **service providers to report retrospectively cross-border tax arrangements** (under the existing MDR regime service providers did not have a retrospective reporting obligation for the period between 26 June 2018 and 31 December 2018).

According to the legislator, the introduction of the draft bill results from a necessity to align the existing Polish MDR regime with European Union (EU) requirements under the EU Directive on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive). The bill is expected to enter into force as of 1 April 2020.

Detailed discussion

Resubmission of MDR reports for cross-border tax arrangements

Existing MDR regime

On 1 January 2019, the Polish Tax Code was supplemented with regulations imposing an obligation to report tax arrangements – the MDR regulations. The Polish MDR regulations implement the EU Directive 2018/822 of 25 May 2018 on the mandatory disclosure and automatic exchange of cross-border tax arrangements (the Directive) and also impose further reporting requirements.

As the Polish legislation goes beyond the minimum standard comprised in the Directive, two types of tax arrangements are recognized under the Polish Tax Code: (i) the so-called “cross-border tax arrangements” (consistent with the EU Directive); and (ii) other tax arrangements (which are not covered under the Directive).

The Polish MDR rules enacted on 1 January 2019 apply an analogous reporting process with respect to both cross-border tax arrangements and other tax arrangements (i.e., the same scope of information is reported for both types of arrangements under the Polish rules and the same numbering format applies irrespective of whether the tax arrangement qualifies as a cross-border arrangement or it falls under the other category of tax arrangements).

Further, Polish MDR rules refer currently to the domestic list of non-cooperative jurisdictions (the list is included in a Decree issued by the Ministry of Finance).

Proposed amendments

Currently, the Polish Parliament is examining the draft bill, which provides far-reaching amendments to MDR regulations applicable in Poland as of 1 January 2019 (*the Sejm Paper no. 208*). In the opinion of the legislator, the introduction of the draft bill results from a necessity to consistently implement the Directive with respect to the mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements. Specifically, the proposed regulations aim to adjust to EU standards: (i) the scope of information reportable on cross-border tax arrangements; (ii) the MDR forms used in the reporting process; and (iii) alignment with the EU list of non-cooperative jurisdictions for the purposes of application of specific hallmark C1 (i.e., covering the jurisdictions listed in the EU list).

The draft bill introduces an obligation **to re-submit a report for cross-border tax arrangements (even if already reported under the existing MDR regime)** by promoters/beneficiaries/service providers where the first implementation step regarding the arrangement took place between **26 June 2018 and 31 March 2020**. The obligation to re-submit the report applies **only to cross-border tax arrangements**; other tax arrangements are excluded.

The process of re-submission shall be performed using the **updated MDR forms**, which are to be published by the Ministry of Finance by 1 April 2020. Importantly, the obligation to re-submit the MDR report should apply **irrespective of whether the cross-border tax arrangement was previously reported to the Polish tax authorities**. In practice – if the tax arrangement has been reported to the tax authorities by 31 March 2020 – the obligation to re-submit the report should fall upon the entity that previously provided this information to the National Fiscal Administration.

In addition, according to the text of the proposed regulations, **TANs issued in relation to cross-border tax arrangements reported before 1 April 2020 shall be annulled by operation of law**. Moreover, different numbering formats shall apply to cross-border tax arrangements from 1 April 2020 onwards. Namely, cross-border tax arrangements will be marked with TAN and a newly introduced NZSPT number (i.e., a number related to a cross-border tax arrangement assigned by the Polish tax authorities for the purpose of automatic exchange of cross-border tax arrangements).

According to the draft bill, the relevant deadlines for re-submission of MDR reports regarding cross-border tax arrangements with the first implementation step taking place before 31 March 2020 are:

- For the promoter – 31 May 2020
- For the beneficiary – 30 July 2020
- For the service provider – 31 August 2020

Changes to the reporting obligations of service providers during the transitional period

Existing MDR regime

The Polish MDR rules enacted on 1 January 2019 impose an obligation to report tax arrangements retrospectively for the specified period before the MDR rules entered into force (i.e., before 1 January 2019). Namely, the retrospective reporting obligation currently applies to promoters and beneficiaries (but not to service providers) with respect to

cross-border tax arrangements dated from 26 June 2018 (where the first implementation step took place between 26 June 2018 and 31 December 2018) and to other tax arrangements dated from 2 November 2018 (where the first step implementation step took place between 2 November 2018 and 31 December 2018).

Proposed amendments

According to the draft bill, the obligation to report cross-border tax arrangements retrospectively shall apply to **all entities** with a reporting obligation **(including service providers)** with respect to **cross-border tax arrangements where the first implementation step took place between 26 June 2018 and 31 December 2018 (i.e., before the date that MDR**

regulations came into force in Poland). The above means the extension of retrospective reporting obligation on service providers with respect to cross-border arrangements.

Next steps

Given that the draft bill provides a significant change to the Polish MDR regulations, required parties need to take steps to identify cross-border tax arrangements taking place after 25 June 2018 and prepare for re-submission of MDR reports. Furthermore, service providers should revisit their retrospective reporting obligations.

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