

Poland defers MDR deadlines for cross-border and other tax arrangements

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Executive summary

The Polish Tax Code was supplemented with regulations imposing an obligation to report tax arrangements - the mandatory disclosure rules (MDR) regulations on 1 January 2019.

The Polish MDR regulations implement the European Union (EU) Directive 2018/822 of 25 May 2018 on the mandatory disclosure and automatic exchange of cross-border tax arrangements (the Directive or DAC6) and also impose further reporting requirements.

As the Polish legislation goes beyond the minimum standard set forth 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).

In June 2020, new MDR legislative developments in Poland introduced a deferral of MDR deadlines for cross-border and other tax arrangements.

The key highlights of the newly issued MDR developments in Poland are described below.

Detailed discussion

1. Re-submission of MDR reports for cross-border tax arrangements

The new law amending Polish MDR regulations entered into force as of 1 July 2020 (New law¹). This New law was announced as draft in February 2020 and is described in a prior EY Global Tax alert:¹

Among other changes, it introduces an additional obligation **to report all cross-border tax arrangements - even if already reported under the existing MDR regime** - where the first implementation step regarding the arrangement took place between **26 June 2018 and 30 June 2020**. This means, in particular, that cross-border tax arrangements already reported to the tax authority will need to be reported again. The obligation to “re-submit” the report applies only to cross-border tax arrangements; other tax arrangements are excluded.

According to the New law, Tax Arrangement Numbers (TANs) issued in relation to cross-border tax arrangements reported before 1 July 2020 shall be annulled by operation of law.

The obligation to re-submit (or report) cross-border tax arrangements shall apply to **all entities** with a reporting obligation, i.e., all relevant taxpayers and intermediaries, **including service providers**.

In practice, a service provider may be obligated to re-submit (or report) if no promoter or beneficiary reports the cross-border tax arrangement where the first implementation step regarding the arrangement took place between 26 June 2018 and 30 June 2020 (prior to the enactment of this New law, service providers did not have an obligation to report arrangements relating to the transitional period of 26 June 2018 to 31 December 2018).

If the tax arrangement has been reported to the tax authorities by 30 June 2020 - the obligation to re-submit the report should fall upon the entity that previously provided this information to the National Fiscal Administration.

Based on the New law, the relevant deadlines for “re-submission” of MDR reports are:

- ▶ For the promoter - 31 July 2020
- ▶ For the relevant taxpayer (beneficiary) - 16 August 2020
- ▶ For the service provider - 31 August 2020.

However, these re-submission deadlines have been postponed in a separate regulation as described in Section 2 (Deferral of deadlines for submission of MDR reports) below.

Other legislative changes

The New law regarding MDR enacted in June 2020 also provides for the following:

- ▶ As of 1 July 2020, the updated MDR forms/schemas (published by the Ministry of Finance) must be used for all reporting (on-going and retrospective); it is possible that the schemas may be subject to further amendments.
- ▶ The New law contains changes that are intended to ease the MDR-3 form signing process (i.e., the form required when the beneficiary made any actions in a tax arrangement in a given reporting period or derived a tax advantage from that arrangement). As a result, the MDR-3 form shall be signed by:
 - A natural person - in the case of a taxpayer who is a natural person
 - A person authorized by a foreign entrepreneur to represent him/her - in the case of a taxpayer who is a foreign entrepreneur having a branch operating in the territory of the Republic of Poland
 - A person authorized for representation - in the case of other taxpayers
- ▶ The domestic list of non-cooperative jurisdictions is, for the purposes of the application of the C1 hallmark, extended by the EU list of non-cooperative jurisdictions. Prior to this amendment the Polish MDR rules referred only to the Polish domestic list of non-cooperative jurisdictions. This amendment shall apply both to future and retrospective reporting.
- ▶ By virtue of the New law, the Minister of Finance may extend the deadlines related to the exchange of information on reportable cross-border arrangements with other countries, taking into account the period of validity of the epidemic threat and state of epidemic in connection with COVID-19 and the effects caused by them or the content of the arrangements made in this respect by the EU, the Organisation for Economic Co-operation and Development or the countries participating in the automatic exchange of such information.

2. Deferral of the deadlines for submission (including re-submission) of MDR reports for cross-border tax arrangements

On 30 June 2020 a regulation was published that postpones MDR reporting deadlines relating to cross-border tax arrangements, including the above described “re-submission” of MDR reports (the Regulation). The Regulation entered into force as of the date of publication.

Re-submission of MDR reports

The deferred deadlines for “re-submission” of MDR reports for cross-border tax arrangements (including those already reported under the existing MDR regime) where the first implementation step regarding the arrangement took place between 26 June 2018 and 30 June 2020 are extended as follows:

- ▶ For the promoter - 31 December 2020
- ▶ For the relevant taxpayer (beneficiary) - 31 January 2021
- ▶ For the service provider - 28 February 2021

On-going reporting

The Regulation also provides for a deferral of the on-going MDR reporting/notification deadlines established in the *Polish Tax Ordinance Act* with respect to cross-border tax arrangements. The deferral of deadlines relates to certain MDR obligations which are triggered under the original Polish MDR legislation by 31 December 2020 (provided, in practice, the deadlines related to the MDR obligation have not expired before 31 March 2020).

The deferral provisions specify that the new time limit runs from 1 January 2021 and shall apply to the following situations which occur by 31 December 2020:

- ▶ A cross-border tax arrangement was made available, prepared for implementation or the first implementation activity was taken - in case of certain deadlines and obligations applicable to promoters and beneficiaries.
- ▶ The service provider raised doubts (or should have raised doubts) or noticed (or should have noticed) that the tax arrangement in relation to which he/she acts as a service provider is regarded or could be regarded as a cross-border tax arrangement - in the case of certain deadlines and obligations applicable for service providers.
- ▶ The service provider that directly or indirectly provided help, support or advice on the development, organization or implementation of the cross-border tax arrangement - in the case of certain deadlines and obligations applicable for service providers.

As indicated above, these deferral provisions only apply if the original deadline for the MDR obligation in question did not expire before the date of entry into force of this Regulation (taking into account the suspension of deadlines under the *Anti-Crisis Acts* enacted due to COVID-19, i.e., in practice, the deferral will not apply to deadlines which expired before 31 March 2020).

The Regulation also introduces a deferral of certain additional deadlines relating to submission of the MDR-3 form (submitted by the beneficiary obtaining a tax benefit resulting from that tax arrangement or in the case of performing any activity being part of tax arrangement) and the MDR-4 (submitted by intermediaries with respect to making a marketable cross-border tax arrangement available for the beneficiary) - which generally are postponed until 30 April 2021.

3. Deferral of general MDR deadlines for other (non-cross-border) tax arrangements

On 22 June 2020, the President signed another special bill related to the COVID-19 status in Poland (*Anti-Crisis Act 4.0*) which also includes some developments regarding Polish MDR rules. In the case of tax arrangements - other than cross-border, the MDR deadlines set forth in the *Polish Tax Ordinance Act* do not start, and if commenced, are suspended from 31 March to the 30th day following the date of cancellation of the epidemic emergency status and the epidemic status announced in connection with COVID-19.

Nonetheless, all activities performed by the Head of the National Tax Administration, promoters and service providers (supporters) are effective.

Next Steps

Given that the new legislation provides a significant change to the Polish MDR regulations and increased reporting obligations, required parties need to take steps to identify cross-border tax arrangements taking place after 26 June 2018 and prepare for submission/re-submission of MDR reports and on-going MDR reporting. **The deadlines are deferred but reporting in accordance with the original deadlines is possible and recommended.** Furthermore, service providers should revisit their retrospective reporting obligations. All entities should review their arrangements (reported or not reported so far) in the view of the new list of non-cooperative jurisdictions for tax purposes.

Endnote

1. See EY Global Tax Alert, [Poland / MDR reports for cross-border tax arrangements must be re-submitted to the National Fiscal Administration in 2020](#), dated 17 February 2020.

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