

## Poland to implement Mandatory Disclosure Rules as of 1 January 2019

---

### **NEW!** EY Tax News Update: Global Edition

EY's new Tax News Update: Global Edition is a free, personalized email subscription service that allows you to receive EY Global Tax Alerts, newsletters, events, and thought leadership published across all areas of tax. Access more information about the tool and registration [here](#).

Also available is our [EY Global Tax Alert Library](#) on ey.com.

---

### Executive summary

The Government of Poland, on 25 September 2018, introduced a draft bill of corporate tax reforms including legislation to implement the European Union (EU) Mandatory Disclosure Rules (MDR).<sup>1</sup> The Polish draft legislation is going through the formal legislation process and therefore may yet change, but if implemented the Polish MDR legislation will have a wider scope and earlier reporting requirements in comparison to what is required by the EU. The legislation is anticipated to be finalized in early November.

### Detailed discussion

#### Background

The Council of the European Union Directive 2018/822 of 25 May 2018 amending Directive 2011/16/EU with respect to mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (the Directive), entered into force on 25 June 2018.<sup>2</sup> The Directive requires intermediaries (including EU-based tax consultants, banks and lawyers) and, in some situations, taxpayers to report certain cross-border arrangements (reportable arrangements) to the relevant tax authority in the EU. This disclosure regime applies to all taxes except value added tax (VAT), customs duties, excise

duties and compulsory social security contributions. Cross-border arrangements will be reportable if they contain certain features (hallmarks). The hallmarks cover a broad range of structures and transactions.

The primary reporting obligation lies with the intermediary. Where the intermediary is outside the EU or exempt from disclosing because of legal professional privilege, the obligation to disclose falls on another intermediary or, if none, the relevant taxpayers. The disclosure includes details of relevant taxpayers and other affected persons and the cross-border arrangement in question. For arrangements of which the first step of implementation is taken between 25 June 2018 and 1 July 2020, disclosures must be filed by 31 August 2020. From 1 July 2020, disclosures must be made within 30 days beginning on the day after the arrangement either:

- ▶ Was made available
- ▶ Was ready for implementation

Or

- ▶ When the first step in the implementation was undertaken

Intermediaries providing aid, assistance or advice should report within 30 days beginning on the day after they provided such aid, assistance or advice.

EU Member States are to adopt and publish national laws required to comply with the Directive by 31 December 2019. Poland, as one of the first EU Member States to issue draft MDR legislation, intends to implement the reporting obligation as of 1 January 2019.

The key differences of the draft Polish MDR legislation to the Directive are set forth below.

### Extended scope of reporting

The Polish legislation extends the scope of the reporting required under the Directive to include:

- ▶ An extended definition of reportable tax arrangements to comprise not only cross-border but also domestic tax arrangements
- ▶ A wider definition of covered taxes including VAT and transactions with a tax reporting or deferred benefit
- ▶ Like the Directive, reporting will apply to arrangements where the first step of implementation takes place after 25 June 2018. Each company/entity implementing/using reportable tax arrangements may be potentially required to report in addition to their tax advisors

### Reporting deadlines

Under the Polish MDR legislation, tax schemes implemented between 25 June 2018 to 1 January 2019 are reportable **before 31 March 2019**. This is 17 months earlier than the deadline of 31 August 2020 required by the EU Directive.

Tax arrangements commencing after 1 January 2019 are reportable within **30 days after the day when the scheme is: (i) available for the Client, (ii) ready for implementation, or (iii) started, whichever is sooner. Consequently, an arrangement made available for the Client as of 1 January 2019 will have to be reported by 31 January 2019 (i.e., 18 months earlier than required by the EU Directive).**

### Legal professional privilege (LPP)

The Polish draft legislation includes reference to LPP and will apply to tax or legal advisors and attorneys. LPP will not apply to "marketable arrangements" (arrangements that can be easily rolled-out to many recipients) where the intermediaries will be expected to report MDR information on a no-name-basis. Where the planning is bespoke to the client, the intermediary covered by LPP must inform the client that there is a reportable arrangement. In this instance the client can either withdraw the confidentiality requirement to allow the intermediary to report or make the disclosure themselves. It must be noted that, there are also plans for allowing public prosecutors to release advisors from confidentiality commitments that may allow the authorities to terminate the LPP in the future.

### Management signatures

MDR information provided to tax authorities must be signed by each member of the Management Board of the reporting entity.

**As required by the EU Directive**, fiscal penalties may be imposed if the MDR information is not complete or reported late. At this stage there is no information on the size of the penalties.

### Next steps

Taxpayers and intermediaries who have operations in Poland should review their policies and strategies for logging and reporting arrangements so that they are ready to report in early 2019.

## Endnotes

1. For background on MDR, see EY Global Tax Alert, [EU publishes Directive on new mandatory transparency rules for intermediaries and taxpayers](#), dated 5 June 2018.
2. Ibid.

---

For additional information with respect to this Alert, please contact the following:

### **EY Doradztwo Podatkowe Krupa sp. k., Warsaw**

- ▶ Mateusz Pociask      mateusz.pociask@pl.ey.com
- ▶ Radosław Krupa      radoslaw.krupa@pl.ey.com
- ▶ Tomasz Rolewicz      tomasz.rolewicz@pl.ey.com
- ▶ Andrzej Broda      andrzej.broda@pl.ey.com

### **Ernst & Young LLP, Polish Tax Desk, New York**

- ▶ Sylwia Migdal      sylwia.migdal1@ey.com
- ▶ Joanna Pachnik      joanna.pachnik1@ey.com

### **Ernst & Young LLP, Polish Tax Desk, London**

- ▶ Marta Kedziorska      marta.kedziorska@uk.ey.com

#### About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit [ey.com](https://ey.com).

© 2018 EYGM Limited.  
All Rights Reserved.

EYG no. 011244-18Gbl

1508-1600216 NY  
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.

**[ey.com](https://ey.com)**