

Poland passes 2019 tax reform including Mandatory Disclosure Rules

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Executive summary

On 26 October 2018, the upper house of the Polish Parliament (the Senate) passed the draft bill introducing far-reaching changes to the Polish tax law, including Mandatory Disclosure Rules (MDR).

The bill includes amendments to the scope of reportable tax arrangements and deadlines for reporting as compared to the scope described in EY Global Tax Alert, [Poland to implement Mandatory Disclosure Rules as of 1 January 2019](#), dated 9 October 2018.

In order for the new law to be in force as of 1 January 2019, the legislative process must be finalized by the end of November 2018, which requires assent of the Polish President and publication in the official Journal of Law. Based on the current legislative stage, it is expected that this deadline will be met.

Detailed discussion

Background

The above changes transpose the Council of the European Union (EU) 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), which entered into force on 25 June 2018, to the Polish tax system.

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 EU tax authority. This disclosure regime applies to all taxes except value added tax (VAT), customs duties, excise duties and compulsory social security contributions.¹ Cross-border arrangements will be reportable if they contain certain features (hallmarks). The hallmarks cover a broad range of structures and transactions.

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

The key differences of the Polish MDR legislation as compared to the Directive are set forth below. The Polish MDR legislation will have a wider scope and earlier reporting requirements than what is required by the EU.

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 (with respect to the domestic tax arrangements)
- ▶ Like the Directive, reporting will apply to cross-border arrangements where the first step of implementation takes place after 25 June 2018. Additionally, reporting will apply to the domestic tax arrangements where the first step of implementation occurs after 1 November 2018

Additionally, each individual/company/entity implementing/using reportable tax arrangement or obtaining a tax benefit resulting from this arrangement might be potentially required to report this fact to the tax authorities.

Reporting deadlines

Under the Polish MDR legislation, the cross-border tax schemes implemented after 25 June 2018 until 1 January 2019 are reportable before 30 June 2019 by the intermediaries and before 30 September 2019 by the taxpayers (if intermediaries will not report).

The domestic tax schemes implemented after 1 November 2018 until 1 January 2019 are reportable before 30 June 2019 by the intermediaries and before 30 September 2019 by the taxpayers (if intermediaries will not report).

This is significantly 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 customized for the client, the intermediary covered by LPP must inform the client that there is a reportable arrangement (and report to the tax authority that the client was informed respectively).

Management signatures

MDR information regarding implemented/used reportable tax arrangement or obtained tax benefit resulting from this arrangement must be signed by each member of the Management Board of the reporting entity.

Penalties

Intermediary entities or those employing intermediaries or actually paying them remuneration, whose revenues or costs exceeded in the year preceding the financial year the equivalent of PLN8m [approx. €1.85m] are obliged to introduce and use an "internal procedure" for MDR.

In the event of failure to meet the above obligation, the tax authorities may impose a financial penalty in the amount not exceeding PLN2m [approx. €463k].

Monetary penalties in specific situations (for not complying with MDR obligations) can amount up to PLN10m [approx. €2.3m], in particular in the cases stipulated in the new (draft) wording of the Polish Fiscal Code.

With respect to intermediaries and taxpayers, in specific cases which relate to failure to comply with the reporting obligation or delayed complying, the additional substantive monetary penalties amounting up to PLN20,160,000 [€4.7m] can apply.

In the case of conviction of fiscal offenses related to not complying with the reporting obligations, the court may additionally prohibit the conducting of specific business activities.

Next steps

Due to the scale and significance of the regulations adopted by the Parliament, 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.

Endnote

1. DAC6 sets out a minimum standard. Member States can go further (i) introduce reporting for purely domestic arrangements and / or (ii) extend the scope of taxes covered.

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