

## Swedish Tax Committee proposes Mandatory Disclosure Regime

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### Executive summary

On 15 January 2019, a commission of inquiry set up by the Swedish Government handed over its proposal to implement European Union (EU) rules regarding a Mandatory Disclosure Regime (MDR) to the Swedish Government. The proposal expands the scope of the EU rules to also include domestic arrangements. The proposal will be subject to consultation and therefore may be amended. However, if implemented as is, the Swedish MDR legislation will not have a wider scope compared to the EU rules with respect to the taxes that will be covered. In addition, the Swedish MDR will align with the EU rules regarding reporting deadlines. The legislation is anticipated to be finalized during 2019.

### 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>1</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 meet 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 30 June 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. Sweden intends to implement the reporting obligation as of 31 July 2020.

The key differences between the proposed Swedish MDR legislation and the Directive are set forth below.

### Different scope of reporting

The proposed Swedish 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.
- ▶ Like the Directive, reporting will apply to cross-border arrangements where the first step of implementation takes place on or after 25 June 2018. However, domestic arrangements will only be subject to reporting where the triggering event has occurred after 30 June 2020.

### Reporting deadlines

- ▶ Under the commission's proposal, reportable domestic arrangements where the triggering event has occurred after 30 June 2020, must be reported as early as by 31 July 2020.

Tax arrangements commencing after 30 June 2020 are reportable within 30 days after the day when the scheme is: (i) available for the Client; (ii) when the first step of implementation was carried out; or (iii) when the intermediary started rendering its services (this requirement is slightly different to the wording of the Directive), whichever is sooner. Consequently, an arrangement made available for the Client as of 1 July 2020 will have to be reported by 31 July 2020. This date aligns with the first reporting date as set out in the EU Directive. It can, nevertheless, be noted that this will require arrangements (domestic as well as cross-border), where one of the above triggering criteria occurs between 1 July 2020 and 31 July 2020, to be reported to the tax authorities prior to the reporting of the cross-border arrangements occurring between 25 June 2018 and 30 June 2020 (as stipulated by the EU Directive).

### Legal professional privilege (LPP)

The Swedish draft legislation includes reference to LPP. The LPP exemption will only apply to lawyers that are members of the Swedish Bar Association. However, even such members of the bar must disclose their own identity and which hallmark or hallmarks have been met by the specific arrangement to make it reportable. In this instance the taxpayer can either withdraw the confidentiality requirement to allow the intermediary to report in full or make the disclosure themselves.

### No signature needed

It is proposed that the information filed with the tax agency does not need to be signed by the reporting entity.

**As required by the EU Directive**, fiscal penalties may be imposed if the reporting is not complete and/or reported late.

The proposal suggests a reporting fee of SEK7,500 for the relevant taxpayer or SEK15,000 for an intermediary, should there be late, incorrect or incomplete reporting.

If the delay to report exceeds 60 days beyond the reporting date, the reporting fee will be SEK25,000 for the relevant taxpayer or SEK50,000 for an intermediary. If the reporting is done as part of a business carried out, the fee will instead be:

- ▶ SEK25,000 for the relevant taxpayer or SEK50,000 for an intermediary, if the turnover of the business from the previous financial year is below SEK15 million.
- ▶ SEK50,000 for the relevant taxpayer or SEK100,000 for an intermediary, if the turnover of the business from the previous financial year is at least SEK15 million but below SEK75 million.
- ▶ SEK100,000 for the relevant taxpayer or SEK200,000 for an intermediary, if the turnover of the business from the previous financial year is at least SEK75 million but below SEK500 million.
- ▶ SEK250,000 for the relevant tax payer or SEK500,000 for an intermediary, if the turnover of the business from the previous financial year is at least SEK500 million.

If the financial year is shorter or longer than 12 months, the amounts should be adjusted proportionally.

The reporting fees do not apply to cross-border arrangements implemented during the so called transition period, 25 June 2018 - 30 June 2020.

### Next steps

Taxpayers and intermediaries who have operations in Sweden should review their policies and strategies for logging and reporting arrangements so that they are ready to report by 31 July 2020.

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### Endnote

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.

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