

## Poland publishes official tax guidelines on the Mandatory Disclosure Rules

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### Executive summary

On 1 January 2019, the Polish Tax Code was supplemented with Chapter 11a - Mandatory Disclosure Rules (MDR), implementing the European Union (EU) Directive 2018/822 of 25 May 2018 on the mandatory disclosure and automatic exchange of cross-border tax arrangements (referred to as DAC 6 or the Directive), and also introducing further reporting requirements.

The requirements of the Polish MDR regulations are significantly broader than the requirements of the Directive. The Polish rules impose obligations on Polish and non-Polish intermediaries and relevant taxpayers to report certain tax arrangements to the Polish Director of the National Fiscal Administration.

The Polish reporting deadlines (starting from January 2019) are significantly earlier than the DAC 6 reporting deadlines and the Polish MDR has a wider scope of reportable tax arrangements. A detailed explanation of the scope of the Polish MDR rules and the applicable reporting deadlines is included in EY Global Tax Alert, [Poland passes 2019 tax reform including Mandatory Disclosure Rules](#), dated 1 November 2018.

On 31 January 2019, the Polish Ministry of Finance published official detailed guidance (The official tax guidelines) regarding the interpretation of the Polish MDR. The guidance provides some clarity on the interpretation of the complexities of the Polish legislation and sets out how the Polish tax authorities anticipate the reporting process to operate.

## Detailed discussion

### Extended scope of Polish MDR Rules

As stated above, the requirements of the Polish MDR regulations are significantly broader than the Directive. The Polish legislation extends the scope of taxes (including *inter alia* Value Added Tax) in addition to all other taxes covered by the Directive.

The Polish definition of “reportable arrangements” also includes non-cross-border tax arrangements in addition to cross-border arrangements (defined in accordance with the Directive). The Polish regulations also contain an extended catalogue of hallmarks, introducing specific hallmarks in addition to the Directive’s hallmarks A-E.

The reporting obligation for tax arrangements can apply to entities acting as promoters, beneficiaries or service providers, including those entities not resident, established or managed in the territory of Poland.

### Official Tax Guidelines published by the Polish Ministry of Finance

#### General information

The main purpose of the official tax guidelines, issued on 31 January 2019, is to provide explanations and practical tips for intermediaries and relevant taxpayers who are expected to have a reporting obligation (obliged persons or entities).

According to the Polish Tax Code, taxpayers who act in accordance with the official tax guidelines in a given settlement period should be afforded the same level of protection that would apply in the case of obtaining a tax ruling (in principle, full protection).

The guidelines are based on the conclusions and comments submitted during public tax consultations conducted by the Ministry of Finance from December 2018 to January 2019.

The guidelines may be further supplemented in the future with new areas and comments. An assessment of how the Polish MDR regime works in practice will influence the direction of possible changes and developments.

#### Extension of reporting deadlines

The official tax guidelines grant an alleviation of the statutory reporting deadlines for an initial period. According to the guidelines, any delays in meeting the statutory reporting

deadlines for MDR obligations will not result in negative consequences for obliged entities, provided that these obligations are properly performed by 28 February 2019.

If the delayed reporting obligations are not met by the statutory deadlines or by 28 February 2019 but are correctly performed in the period between 1 March 2019 to 30 April 2019, these delays will be treated as cases of minor importance (potentially subject to fines for fiscal offenses).

### General scope of the guidelines

The MDR official tax guidelines seek to cover an extensive range of areas. The following sets out the main areas of complexity covered by the guidance:

- ▶ General information about scope and purpose of the MDR regulations and details on transitional provisions.
- ▶ Explanations on how tax arrangements, marketable tax arrangements and cross-border arrangements should be understood and interpreted.
- ▶ Definitions and information how concepts of promoter, beneficiary and service provider should be understood and interpreted.
- ▶ Deadlines of providing information about tax arrangements - with respect to different entities obligated to report, also in the view of legal professional privilege in place.
- ▶ Interpretation and examples of general, specific and other specific hallmarks.
- ▶ Parts of tax arrangement information and ways of submitting to the tax authorities - in the view of the official MDR forms published by the Ministry of Finance.
- ▶ Tax arrangement’s number (TAN)
- ▶ Entities required to introduce an internal MDR procedure and its purpose.
- ▶ The catalogue and explanation of penalties in case of non-complying with MDR provisions.

## Next steps

Due to the scale and significance of the already enacted Polish MDR regulations, Polish and non-Polish intermediaries and taxpayers who have Polish nexus or operations in Poland, should review their policies and strategies for identifying and reporting tax arrangements within the statutory deadlines.

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