

Ministry of Finance published explanatory notes to the provisions concerning MDR

February, 2019

In brief

On January 31st 2019, the Ministry of Finance published explanatory notes ("Explanations") regarding Polish Mandatory Disclosure Rules ("MDR"). As a rule, compliance with Explanations should give taxpayers protection similar to the one provided by individual tax rulings. However, Explanations do not constitute a source of law.

MDR Explanations will greatly affect the practice of applying MDR regulations. General issues related to the purpose of regulation are discussed in the document as well as more detailed interpretation on a number of specific issues is given. The Explanations were presented on 102 pages. Ministry of Finance announced that Explanations may be amended.

Selected issues explained by the Ministry of Finance:

Deadline for reporting tax schemes

MF introduces the principle that "delays in the fulfilment of reporting obligations under MDR provisions will not result in negative consequences for obliged entities, provided that these obligations will be properly fulfilled by 28 February 2019."

In addition, delay resulting in fulfilment of the above-mentioned obligations in March or April 2019 will be treated as a minor case (less severe sanctions).

White list

Examples of services not triggering reporting obligations are presented in the document. These are for example: Employee's Capital Pension Schemes (PPK), Employee Pension Schemes

(PPE), Individual Retirement Account (IKE), Individual Retirement Insurance Account (KZE). MDR reporting will also not apply to benefits gained from the R&D Relief or Innovation Box.

MDR reporting obligation will neither arise in the case of services indicated by the Ministry of Finance such as e.g. calculation of tax, tax training or support in tax proceedings.

The Ministry of Finance informed, however, that the above-mentioned services may be part of the reportable tax scheme under certain conditions

Promoter

The Ministry of Finance confirmed that the entity providing specific services as well as employees undertaking key decisions regarding these services should be considered promoters.

In case of individuals cooperating with entity on B2B basis: "Self-employed persons should not be considered promoters if they do not have the same independence typical to business relationship (B2B)". Such persons may be however treated as supporters.

Transitional provisions

The MF warned that "combining activities concluded after the border date with previous activities, in order to avoid the obligation to inform about tax schemes (...) will not exclude the obligation to provide information on the tax scheme, if the activities concluded after the border date can be considered as a tax scheme."

The obligation to implement MDR procedure

The Ministry of Finance strictly interpreted the provisions regarding the

obligation for some promoters to implement the formal MDR procedure.

Entities from capital groups benefiting from tax advisory services may also be required to implement a formal MDR compliance procedure if, for example, other entities in the same capital group also benefit from results of these services (p. 97)

The formal MDR procedure must also be implemented by entities employing natural persons, who act as promoters in relation to e.g. related parties of their employer (p. 97).

The Ministry of Finance emphasized that lack of a mandatory MDR compliance procedure can result in sanctions up to 10 mPLN.

Due diligence

There are some practical difficulties in fulfilling supporter's obligations who "has or should have doubts" as to whether the certain activity is related to the tax scheme.

The potential supporter should assess on the basis of information possessed, whether the event in which support is given can constitute a tax scheme - "if (...) there is information

leading to supporter's potential doubts as to whether the arrangement constitutes a tax scheme, it should be included in the assessment".

Acting via proxy

Information on tax schemes may be submitted by a proxy who can also sign a document (file). Still, in some cases (reporting by beneficiary on MDR-3 form), additional signatures from authorised persons (e.g. all board members) are required.

Let's talk:

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