

Mandatory Disclosure Rules (MDR) enter into force in Poland as of 1 January 2019

December 2018

In brief

The new MDR law in Poland transposes 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 („DAC6 Directive”), which entered into force on 25 June 2018, to the Polish tax system.

Detailed information

The Polish MDR legislation has much wider scope compared to DAC6 Directive and includes extended definition of reportable tax arrangements to comprise not only cross-border but also domestic tax arrangements. There is also wider definition of covered taxes including VAT (with respect to the domestic tax arrangements)

The Polish MDR legislation significantly accelerates the entry into force date (1 January 2019 instead of 1 July 2020 as laid down in the Directive).

Tax arrangements subject to the reporting obligation include:

- cross-border arrangements within the meaning of DAC6 Directive

other arrangements, including also domestic arrangements.

Polish MDR legislation listed 24 hallmarks (as opposed to 15 from DAC6) indicating potential risk of tax avoidance, . Only 11 out of them require existence or suspicion of tax benefit, the remaining ones require reporting in any case.

Scope of reporting obligation

Polish MDR regulation require the reporting of:

- cross-border tax schemes, in relation to which the first activity related to their implementation was made after 25 June 2018;
- domestic tax schemes, in relation to which the first activity related to their implementation was

made after 1 November 2018.

In the above case the reporting obligation was postponed until 30 June 2019.

Reporting obligation regarding tax schemes shared or implemented after January 1, 2019 arises within 30 days from the date the scheme is shared or implemented.

Significant doubts occur in regards to applying MDR regulations in practice, e.g. who has the status of promoter, which arrangements should be reported or whether intermediary should investigate other arrangements than those given him by the taxpayer.

Polish MDR regulations are unclear in many aspects. There is neither practice nor

official guideline explaining how Polish MDR legislation should be interpreted. Consultations with Polish Ministry of Finance have just began and it is expected that the guideline will be issued early 2019.

Failure to report or other non-compliance may be connected with fines:

- **up to PLN 10m** with respect to entity being a promoter,
- **up to PLN 20m** with regard to individuals responsible for such non-compliance.

Taxpayers whose revenue or costs exceed the amount of PLN 8m in the previous tax year may be obliged to

introduce an internal procedure regarding fulfillment of obligations resulting from the implementation of DAC6 until the end of 2018, otherwise they risk a penalty in the amount up to PLN 2m.

Let's talk

In case of any doubts and questions related to above information please contact with persons indicated below:

dr Sławomir Krempa

Partner

tel. +48 22 746 68 74

slawomir.krempa@pl.pwc.com

Robert Jurkiewicz

Partner

+48 519 507 080

robert.jurkiewicz@pwc.com

Agata Oktawiec

Director

+48 22 746 4864

agata.oktawiec@pwc.com

Michał Jagielski

Senior Manager

tel: +48 519 506 698

michal.jagielski@pwc.com

Michał Malkiewicz

Senior Manager

+48 519 50 4605

michal.malkiewicz@pwc.com