

Mandatory Disclosure Rules (MDR)

Support in procedure implementation and process

As of January 1, 2019, Poland implemented Council Directive (EU) 2018/822¹ in the Polish law, introducing the obligation to report to Polish fiscal authorities information on arrangements in the area of tax law (Mandatory Disclosure Rules). Not only is Poland pioneering in the European Union in this respect, but it has also decided to go beyond the scope of the EU guidelines. The European directive (DAC 6) imposes mandatory disclosure rules on a much narrower scale and only regarding cross-border transactions, whereas the Polish regulations apply to domestic arrangements as well, whereas the Polish definition of a tax scheme subject to disclosure is much more extensive.

- In the light of the amended regulations, certain entities are obliged to **disclose information about the arrangements meeting the definition of a tax scheme**. The scope of obligations is very wide, as an arrangement is construed as an **activity or a set of related activities, where at least one of the parties is a taxpayer, or which result or may result in the establishment of tax obligation or a lack thereof**.
- Importantly, one mustn't mistake activities subject to the tax avoidance clause for arrangements subject to mandatory disclosure – the scope of events subject to the latter is much broader and extends also to activities of artificial nature or those aimed chiefly at obtaining a tax advantage.
- **Mandatory disclosure applies to entities that meet the conditions to be designated a promoter, user, or intermediary**. The same entity can have different functions within different activities, and be subject to different obligations, as the above-mentioned roles are assigned to each separate arrangement.
- Mandatory disclosure in principle applies to tax schemes, where one of events resulting in the obligation to disclose information occurred on January 1, 2019 or later (which means that the 30-day deadline for some schemes has already expired!). **However, retrospective reporting was introduced** for cross-border tax schemes implemented after June 25, 2018, and for domestic tax schemes introduced after November 1, 2019. The deadline for reporting of these schemes is yet to expire on: June 30, 2019 (in the case of schemes reported by promoters), and on September 30, 2019 (in the case of schemes reported by the user, where there is no promoter, or where the promoter failed to inform the user).
- **We would like to note that a failure to submit information about a tax scheme entails severe financial penalties**. Administrative sanctions for a failure to follow mandatory disclosure rules may reach up to PLN 10 million. Additionally, the Polish penal and fiscal law provides for a fine for the same omission for the responsible natural persons, ranging from PLN 750 to 21.6 million in 2019.

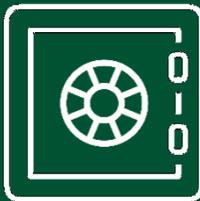
¹ Council Directive (EU) 2018/822 of May 25, 2018, amending Directive 2011/16/EU with respect to mandatory, automated exchange of information with respect to taxation of cross-border arrangements (EU Journal of Laws L. 139/2018, p. 1-13)



The above regulations apply to all entities, including local self-government units or their organizational entities, or subsidiaries, also with respect to domestic transactions.

Due to the high complexity and inconsistency of regulations concerning MDR, the interpretation of which requires over 100-page long, frequently modified explanations published by the Ministry of Finance, there are many difficulties and doubts at practically every stage of the analysis of the MDR obligation. Therefore, in order to meet the growing needs reported by our Clients performing as Users or Intermediaries, as well as Promoters, we would like to offer comprehensive support services with respect to reporting of tax schemes.

WE PARTICULARLY RECOMMEND THE FOLLOWING:

<p>Support in terms of development of internal procedure</p> 	<p>The internal procedure for counteracting a failure to meet the reporting obligation shall be implemented by entities that are promoters, employ promoters or pay remuneration to promoters, whose revenues or costs, within the meaning of the accounting regulations, determined on the basis of the books of account, exceeded the equivalent of PLN 8 million in the year preceding the financial year. This obligation applies mainly to consulting companies, but also to enterprises operating in completely different sectors, which act as a shared services centre or an outsourcing centre within a group of companies. Should such a situation arise, we offer support in developing the procedure and implementing it within the company.</p>
<p>MDR COMPLIANCE REVIEW</p> 	<p>A review of the compliance of applied procedures and activities with the regulations. Our services include verifying whether events and transactions subject to disclosure as well as the company's functions as a promoter, user or intermediary with respects to these events/transactions have been identified correctly, and whether related forms have been filled in properly.</p>
<p>TAX SCHEME DETECTOR</p>  <p>Based on our knowledge and experience, we have created our proprietary solution – the Detector of tax schemes, which assists in verifying whether a transaction/event is subject to mandatory disclosure. The detector will intuitively take you through all stages of the analysis, making sure that none has been omitted and documenting its results in the form of PDF or MS Word files, making it easier to archive the entire process.</p>	
<p>Ongoing consultations</p> 	<p>Constant support in relation to day-to-day concerns regarding the proper performance of MDR obligations. Our practice shows that identifying transactions/events subject to disclosure, determining the functions performed by the parties, as well as filling in and transfer of MDR forms together with the subsequent archiving of electronic correspondence (e.g. in connection with the Tax Scheme Number assigned by the Head of the National Revenue Administration, etc.) may cause problems.</p>



Legal representation in MDR proceedings



This services includes **representing the Client before tax and fiscal authorities as well as administrative courts** in case of a dispute regarding the lack of or incorrect MDR reporting. Due to the unclear regulations and existing concerns regarding their interpretation, we expect such disputes to become a widespread and significant threat to entrepreneurs. Services in this respect will be provided with the support of experienced lawyers from our law firm **Baker Tilly Woroszylska Legal**.

Training in terms of the practical application of MDR regulations/identifying transactions subject to disclosure



We offer **internal training at the Client's place of business**. Training might be an element of a broader implementation service or a separate project. Its detailed scope shall be adjusted to the individual needs of the Client. In general, its key part is to demonstrate the practice of applying of MDR regulations with respect to identifying tax schemes, determining whether the Client performs the function of the User, the Intermediary, or the Promoter, as well as the practical aspects of the reporting and archiving process. Training can also take place in the form of *case study*, namely solutions already existing in the company, which may lead to mandatory disclosure.

If needed, we also offer support in individually selected areas and detailed aspects regarding MDR reporting.

NOTE! This document was prepared for informational purposes only and is of a general nature. Every time before taking actions on the basis of the presented information, we recommend obtaining a binding opinion of TPA Poland experts.

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ABOUT US

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Legal services, offered since 2018 under the **Baker Tilly Woroszylska Legal** brand, have been a natural addition to our interdisciplinary services. The law firm team consists of lawyers with many years of international experience in the field of transactions, litigation and advisory.

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