MANDATORY DISCLOSURE RULES: WHAT HAPPENS NEXT?

Mandatory Disclosure Rules (MDR) came into force across the EU in 2020. Now that most of the initial round of reporting has been completed, how will tax authorities make use of this information and what are your ongoing reporting obligations?

The 2020 Mandatory Disclosure Rules (MDR) were intended to increase transparency around tax aggressive border arrangements. While a small number of EU Member States accepted information last year, most reporting deadlines were pushed back to early 2021, owing to the impact of the Covid-19 pandemic.

Sifting through the huge amount of information submitted as part of the initial round of reporting will be no easy task for European tax authorities. Reports made in January and February this year, or in 2020 where required in Germany, Poland and Finland, were to cover an extended 'look back' period, dating back to 25 June 2018.

While amassing this information for submission would have been difficult for intermediaries and companies alike, the scale of their challenge is likely to pale in comparison to that facing the tax authorities, which have the unenviable task of trawling through and analysing a vast amount of data.

There are questions around how those authorities are going to handle the MDR data. The information that's being submitted isn't along the same lines as FATCA, CRS or VAT reporting, where you're mostly examining numbers and names, which are easy to cross-check. With MDR, in addition to disclosing the names of the entities and intermediaries involved, you are required to provide a written explanation of the structure in question and why you are reporting it, which is submitted in free text.

The consequence of this style of reporting is that systematically or programmatically scanning and cross-referencing this data may not be easily achievable. It will be significantly harder, and most likely costlier, for the relevant authorities to undertake any kind of automated analysis of the information that has been provided. It's not clear how well prepared the tax authorities in Europe, or indeed elsewhere around the world, are to manage this additional burden.

In jurisdictions such as Luxembourg, which is a small country but one where more than 100,000 entities are registered, the resources dedicated to reviewing all this information will have to be significant.

We'll eventually see some changes, perhaps even some harmonisation, once the tax authorities have exchanged information and made progress with analysing this information on the underlying tax structures of companies operating across Europe. But this will take time and the exchange of information between different authorities may prove difficult due to differences in the information reported in each country.

Ongoing obligations and local complexity

While we wait to see some outcomes from the initial round of reporting, disclosure on new cross-border arrangements (CBA) must continue in earnest. For some, the burden of continuous reporting will be greater than for others.

Intermediaries, or the relevant taxpayers themselves where no intermediary is involved, are obliged to maintain continuous reporting of cross-border arrangements. Importantly, reporting is required within 30 days of identifying any new reportable CBA. For large multinationals, or companies or individuals who are involved in a lot of cross-border activity, this could mean reporting quarterly, or even monthly.

While reporting is usually done by the intermediary involved in implementing the CBA, this responsibility can shift to the relevant taxpayer, where the intermediary does not have access to all information which would allow to make out the specific arrangement. This includes a company with an EU presence, even if it is headquartered outside the EU.

In order to remain compliant with this regulation the options are to either maintain proper governance and establish robust internal processes yourself, or to find an external party who can do this for you, so that potential new reportable CBAs can be monitored and identified in real time.

What's important is that intermediaries and relevant taxpayers make sure that they're aware of what's in scope with MDR, as the penalties for failing to report the right information on time can be hefty. This, of course, depends on the jurisdiction and tax authority in question, because the EU directive did not provide definite fines, so there's a lot of variation in how each EU Member state has enacted this in local legislation."

These different interpretations and implementations of the Directive mean that there is no one definitive standard across the EU that businesses are required to meet when reporting. While all countries share the same basic requirements, certain authorities have expanded their scope to include supplementary information that extends to other areas, such as in Poland, where MDR reporting also requires some VAT-related information to be filed.

With penalties for failing to report new CBAs within the 30-day window ranging from up to €10,000 in France, to €870,000 in the Netherlands, those who are ultimately responsible for MDR reporting will want to make sure they get it right.

Talk to us

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For the most complex international structures we can act as your central point of co-ordination – a trusted partner easing the administrative burden of MDR reporting. Find out more about how we can support your business with our global entity management services.

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