EU Mandatory Disclosure Regime – an update on the state of play and lessons learnt so far

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… With you today

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Topics for discussion

Agenda

1. Introduction
2. Practical lessons learnt so far — Austria, Finland & Germany
3. Cooperation among tax authorities — the Fiscalis programme
4. MDR implementation state of play: EU and beyond
5. Q&A

Administration

Polling questions

- Polling questions will appear as we proceed through the presentation.
- In order to receive the certificate of attendance, we require participants to take part in at least five of the six polling questions.
- If you qualify for the certificate of attendance, it will be sent to you following the webcast.

Attendee questions

- You may submit questions in the *Ask a question* button on the left. We will answer as many questions as we can during Q&A. If we are unable to answer your question during the webcast, someone from KPMG may reply via phone or email following the webcast.
- For technical issues, please use the *Question Mark* button in the upper-right hand corner of the media player.

Your feedback

- When the webcast is over, the webcast player will automatically refresh to display an exit survey.
- We should be very grateful if you would complete the survey, as your comments are very valuable to us.

Extended timeline – optional

Optional deferral

Member States could choose to apply MDRs according to the initial timeline or defer the reporting deadlines for up to six months

25 June 2018

Effective date and start of retroactive period

31 December 2019

Transposition deadline

1 July 2020

MDRs became applicable — remains unchanged

1 January 2021

Latest start of reporting trigger (30-days)

28 February 2021

Deadline for look-back period reporting

30 April 2021

First periodic reporting of marketable arrangements

Look-back period

Arrangements the first step of which was implemented between the effective date [June 25, 2018] and the date of application [July 1, 2020]

Practical lessons learnt so far

Christopher Plott

Antti Leppänen

Claus Jochimsen

Practical lessons learnt so far — Austria

Retroactive reporting was due before 31 October. Now, reporting within 30 days

- Number of reports filed?
- Filing patterns?
  - Intermediaries or taxpayers?
  - Most common hallmarks?
- Quality of reports — any feedback?
- Any technical problems?
- Penalties?

Practical lessons learnt so far — Finland

- Retroactive reporting was due by 31 August 2020
- Ongoing reporting within 30 days

- Number of reports filed?
- Filing patterns?
  - Intermediaries or taxpayers?
  - Most common hallmarks?
- Quality of reports — any feedback?
- Any technical problems?
- Penalties?

Practical lessons learnt so far — Germany

- **Retroactive reporting was due by end of August 2020**
- **Ongoing reporting (due from 1 July 2020) within 30 days**

- Number of reports filed?
- Filing patterns?
- Intermediaries or taxpayers?
- Most common hallmarks?
- Quality of reports — any feedback?
- Any technical problems?
- Penalties?

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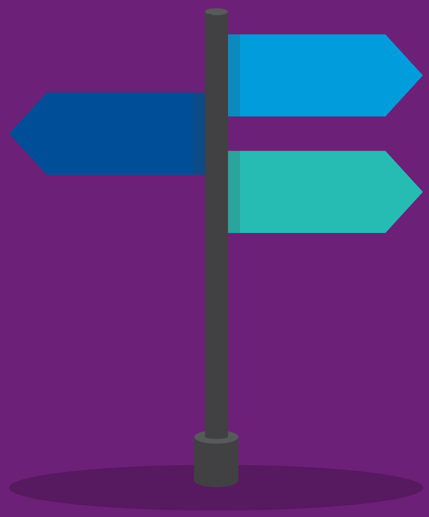
Cooperation among tax authorities — the Fiscalis programme

Valérie Robbertz

Willem-Jan van Veen



MDR Implementation – state of play

Raluca Enache

Local implementation – Guidance

1

Final local guidance available

- Austria
- Belgium
- Croatia
- Denmark
- Finland
- France
- Ireland*
- Italy
- Netherlands
- Poland
- Romania*
- Slovenia
- Sweden*
- UK*

* Guidance still evolving.

2

Draft local guidance available

- Estonia
- Germany (already applicable)
- Lithuania

3

Local guidance not publicly available

- All other member states
- Draft guidance under discussion with stakeholder in a number of EU jurisdictions (e.g. Cyprus, Portugal).

Reporting options

Manual data entry

1

— Paper forms

— Manual data entry to tax authority online portal — e.g. Austria, Denmark

File upload

2

— Manual file upload (e.g. XML) — e.g. Finland, France, Luxembourg

End-to-end

3

— End-to-end interface — e.g. Germany, the UK

Mandatory Disclosure Rules in Mexico

Applies to

- **Cross-border arrangements**: list of specified features, no main benefit test.
- That generate, or have the potential to generate, a tax benefit (direct or indirect) in Mexico.

Reporting requirement for

- **Taxpayers** (tax residence or PE in Mexico) that realize a Mexican tax benefit.
- Mexican **Tax Advisors**. Note that advice provided by non-Mexican tax advisors that share a trademark or trade name with a Mexican resident advisor is presumed to be provided in Mexico.

Applies from

- **January 1, 2021**, for regular reporting.
- **Look-back period** — 2020 transactions and pre-2020 transactions if a tax benefit from the transaction is sustained in 2020 or thereafter.

Reporting deadlines

- **February 15, 2021**, for “look-back period”.
- **30 business days** after a triggering event.
- **20 business days** for subsequent modifications to a reportable transaction.

Consequences of failure to report

- **Taxpayers**: per missed report, from 2,100 USD + prohibition of applying the tax benefit provided for in the reportable transaction + economic penalty equivalent to an amount between 50 percent and 75 percent of the amount of the tax benefit of the reportable transaction.
- **Tax advisors**: from 4,100 to 830,000 USD per missed report.

Mandatory Disclosure Rules in Argentina

Applies to

— National arrangements (to be listed by the Federal Tax Administration).

— International arrangements: six hallmarks, incl. strategies for avoidance of PE status, double non-taxation, foreign individual holding double tax residence.

Reporting requirement for

— Taxpayers that participate in covered arrangements.

— Tax Advisors, involved either directly or through third parties.

Application dates

— **Rules already in force** — Tax Administration yet to publish certain implementing measures

— **Look-back period** — implemented between January 1, 2019 and October 20, 2020 or prior to January 1, 2019 and still in place on October 20, 2020.

Ongoing reporting deadlines

— **January 29, 2021**, for "look-back period".

— National: by the last day of the month following the end of the relevant fiscal year

— International: within **10 days** from the date on which the implementation is initiated.

Consequences of failure to report

— Aggravating circumstance in determining fines for tax evasion. Fine of USD 120 or USD 240 for formal infraction.

— Inclusion of the taxpayer in higher tax-risk categories (higher audit risk) and impact on ability to obtain e.g. tax credit certificates.

Key takeaways

- Tax administrations in the EU are working towards some level of **co-ordination**.
- Several Member States have not published **final reporting schemas**.
- You may have to **register** on the reporting platform in order to be able to file.
- **Re-filing** might be needed and tax authorities may ask for further information.
- MDR is not an EU-only issue — important to monitor developments **outside the EU**.

Q&A

Thank you for joining us

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Appendix

Practical lessons learnt so far — Austria

Austria opted for a slight deferral of the reporting obligations under DAC6 because the technical functionality was not ready on time

Experiences and feedback from the Austrian Tax Administration:	— Approximately 100 reports were filed by tax advisors so far — Number of reports by taxpayers unknown; conservative approach → few filings expected — Narrow interpretation of when a potential risk of tax avoidance is given (independent from MBT) by the Ministry of Finance — Liberal position of Austrian tax authorities regarding supporting intermediaries and what they “know or could be reasonably expected to know” about a reportable cross-border arrangement — Reports primarily concern transfer of functions (E.3) and hard-to-value intangibles (E.2), transformation of income (e.g. debt/equity swaps, B.2), transfer of assets with deviating valuation in two jurisdictions (C.4) — Electronic reporting limited to what is required by Directive; no lengthy description of fact pattern expected — Guidelines published on October 21, 2020 by the Tax Administration — Penalties are not expected in the near future

Practical lessons learnt so far – Finland

Finland did not defer the reporting obligations under DAC6

Experiences and feedback from the Finnish Tax Administration:	— Approximately 200 reports have been made so far
	— Significant part of the reports have been made be taxpayers
	— Major part of the reports concern payments to blacklisted countries
	— Quality of the reports varies: the quality of the reports made by tax advisors good
	— New guidelines will be given by the Tax Administration
	— There were some technical problems which have been resolved. Also, XML schema can probably be used later.
	— Tax Administration expects that the description is sufficient to explain why a relevant hallmark and MBT (if applicable) are met. It is not necessary to provide the relevant tax law provisions but these need to be described
	    — The Tax Administration has sent queries to some taxpayers if the description was unclear
	    — Tax Administration emphasized that the filer´s contact details need to be mentioned
	— The Tax Administration is not very willing to impose penalties during the first year

Practical lessons learnt so far — Germany

Germany decided to not defer the reporting obligations under DAC6 on very short notice

Reporting

- Technical infrastructure for reporting to the competent authority (Federal Tax Office) is live.
- Official statistics not available. Approximately 4,000 arrangements reported retrospectively (informal sources).
- Reporting for the look-back period was made online rather than through an end-to-end reporting interface.
- The German Federal Central Tax Office requested additional information to be filed, not in line with the law. This led to significant hick-ups as reports were rejected two or three days after submission, which led to non-compliance with the filing deadlines. However, no penalties were charged.
- Possible penalties for ongoing reporting. Implementing law does not stipulate penalties relating to retrospective reporting obligation.

Analysis

- Interpreting administrative guidelines still in draft.
- Ongoing discussions and alignment efforts with respect to various definitions and hallmark interpretation.
- There is a trend for taxpayers to outsource transaction reviews.

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