



## Legal Alert

# Obligation to report tax schemes to the tax authorities (Mandatory Disclosure Rules)

*December 2018*

**An amendment to Poland's Tax Ordinance on reporting of tax schemes to the tax authorities enters into force on 1 January 2019. The new obligations will apply to advisers and facilitators, but also those directly applying certain tax solutions.**

Through this amendment, the parliament is making a partial transposition of Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements.

### Who has a reporting obligation?

The obligation may apply to the following individuals, legal persons, or organizational units without legal personality:

- Promoters, in particular tax advisers, advocates, attorneys at law, and staff of banks or other financial institutions, advising clients
- Participants—persons who are provided with arrangements, or where arrangements are implemented or prepared for implementation, or who have taken actions towards implementation of arrangements
- Facilitators, in particular auditors, notaries, providers of accounting services, accountants and finance directors, banks and other financial institutions, as well as their staff.

### What is subject to reporting?

The reporting obligation covers the following arrangements meeting the criteria or possessing the characteristics provided for in the act:

- Tax schemes—arrangements, meaning an action or set of related actions, including a planned action or set of planned actions, involving a taxpayer as a party, or which contribute or could contribute to the occurrence or non-occurrence of a tax obligation
- Standardized tax schemes—arrangements capable of being implemented or provided to more than one participant without modifying the essential terms, and
- Cross-border tax schemes.

### Internal procedure

The act also imposes on legal persons and organizational units without legal personality who are promoters, employ promoters, or in fact pay fees to promoters, an obligation to maintain internal procedures. This applies to entities whose revenue or costs exceeded the equivalent of PLN 8 million in the preceding financial year. Failure to comply with this obligation is threatened with a fine of up to PLN 10 million.

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## **Action plan**

It will be essential for enterprises themselves to prepare organizationally for these changes, by designating a person responsible for MDR reporting and training the responsible persons on the merits and procedures for compliance.

**Our firm can assist you in preparing internal rules and procedures, and in training staff to achieve compliance with the MDR provisions.**

It should be stressed that the reporting obligation applies to schemes for which the first action connected with implementation of the scheme occurred even before the effective date of the new regulations, namely from 25 June 2018 for cross-border schemes and from 1 November 2018 for other schemes. Simultaneously amended Fiscal Penal Code provides for a fine of up to 720 *per diem* units for failure to report tax schemes, which in 2019 would mean up to PLN 21.6 million.