

# EU Mandatory Disclosure Regime for cross-border transactions



The new EU mandatory disclosure rules have now been published and will come into force on 25 June 2018. Make sure you understand what these rules mean for you.

## Summary

- The mandatory disclosure rules require disclosure to tax authorities of **cross-border arrangements** entered into by taxpayers which fall within certain **hallmarks**.
- These **hallmarks are very broadly-defined** and many commercial transactions will be within the scope of the rules.
- **Relevant reportable cross-border arrangements** involving an EU territory will need to be disclosed to the relevant national tax authority within the required timeframe. The obligation falls to the taxpayer where there is no EU based intermediary or where legal and professional privilege applies.
- The **disclosures are shared between the tax authorities** of all Member States quarterly.
- **Transitional rules will apply from 25 June 2018. Reportable cross-border arrangements implemented between that date and 30 June 2020 will need be disclosed**, either by an intermediary or by the relevant taxpayer.

June 2018 - June 2020

2018/2019

July 2020 onwards

31 August 2020

The Directive will come into force on 25 June 2018.

**Transitional rules** will apply, and reportable cross-border arrangements implemented between then and 30 June 2020 will be discloseable. These transactions need to be disclosed in 2020.

Member States will be required to transpose the rules into domestic law. HMRC are expected to consult on enabling legislation in 2018, and on the detailed regulations in 2019. So the final requirements will not be known until that time.

On 1 July 2020 the full regime must be in place. Disclosures will then need to be made within 30 days of advice being given, or the first step of transactions being implemented.

Reportable cross-border arrangements implemented during the transitional period (between 25 June 2018 and 30 June 2020) must be disclosed by 31 August 2020.

## Why are these rules important?

- Information about the transaction, the taxpayer, the values and associated parties will need to be disclosed to tax authorities. (See box opposite.)
- The transitional rules will apply to transactions where a first step is taken after 25 June 2018, so taxpayers and advisers will need to keep records from that date to support disclosures.
- The hallmarks are very broad, and many commercial transactions could fall within them. Taxpayers and their advisers will need to decide whether the hallmarks apply whenever they are involved with a cross-border transaction. (See overleaf for more detail on the hallmarks.)
- In many cases the obligation to disclose falls directly on the taxpayer.
- There is the risk of penalties for non-compliance with the rules; as yet the level of penalties has not been confirmed.

## What Information needs to be disclosed

The disclosable information required by the Directive includes:

- Taxpayer names, place and date of birth (for individuals), residence
- Taxpayer identification numbers
- Details of relevant associated persons
- A description of the arrangements
- The date on which the first step was or will be made
- The value of the transaction

## Key facts

### 1. What is the scope of the rules?

The EU mandatory disclosure rules will apply to cross-border arrangements, either involving more than one Member State, or concerning a Member State and a third country.

### 2. What arrangements are reportable?

A hallmark has to be met for the cross-border arrangement to be reportable. There are five broad categories of hallmarks covering different types of arrangements.

### 3. What are the hallmarks?

The hallmarks are set out in the box opposite. Some only apply where the “tax main benefit test” is met - this means that there must be a connection between the arrangement and obtaining a tax advantage. However some have no such requirement and so are potentially much broader in application.

### 4. Who needs to make the disclosure?

- i) When there is an intermediary (such as an adviser or service provider) based in an EU Member State, that intermediary will be required to make the disclosure.
- ii) Where there is more than one intermediary involved in the arrangement, all intermediaries are required to report the arrangement - unless they have proof that the required information has already been filed.
- iii) Where an intermediary is subject to legal professional privilege under the law of their Member State, the reporting obligation passes to other intermediaries, or to the relevant taxpayer.
- iv) If no intermediary is required to report the transaction, the obligation passes to the taxpayer. This is likely to apply if arrangements are implemented without taking external advice, where advice is taken outside the EU, or when advisors are subject to legal professional privilege.

### 5. What difference will Brexit make?

HMRC have made it clear that the UK Government is intending to introduce these measures. Therefore you need to prepare for the introduction of these rules now.

## The hallmarks

### Hallmarks which are subject to the tax main benefit test

- **Generic hallmarks** - These are confidentiality, premium fee and standardised tax arrangement hallmarks.
- **Specific hallmarks with a tax main benefit** - This includes acquiring a loss making company, converting taxable income into capital gains or exempt income, and circular or offsetting transactions.
- **Specific hallmarks related to cross border transactions** - Deductible cross-border payments, where the recipient is resident in a state whose corporate tax rate is zero or "almost zero" (not defined), or the receipt is exempt or the payment benefits from a preferential tax regime.

### Hallmarks not subject to the tax main benefit test

- **Specific hallmarks related to cross border transactions** - Deductible cross-border payments, where the recipient is resident nowhere, or is resident in a State which is included in an EU or OECD list of uncooperative tax jurisdictions; deductions for depreciation on the same asset are claimed in more than one jurisdiction; double tax relief is claimed in more than one jurisdiction; or there is a transfer of assets and there is a material difference between the consideration in the two jurisdictions.
- **Specific hallmarks concerning automatic exchange of information and beneficial ownership** - These apply even if a tax advantage is not the main benefit, and include structures involving holding companies and trusts, whereby the identity of the beneficial owners are made “unidentifiable”.
- **Specific hallmarks concerning transfer pricing** - There are three hallmarks: a. arrangements involving unilateral safe harbour rules; b. Arrangements involving the transfer of hard-to-value intangibles; and c. Cross-border transfer of functions / risks / assets which result in the EBIT of the transferor to fall to less than 50% of what it would have been if the transfer had not been made.

## How can PwC help?

- More detailed information on these rules can be found in our frequently asked questions briefing document.
- We can assist you in meeting your reporting obligations.
- For further information, please speak to your normal PwC contact.

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