



EU Mandatory disclosure requirements — State of play and practical insights for financial services companies

18 March 2019

... with you today



Raluca Enache
Senior Manager
EU Tax Centre
KPMG in the Netherlands
T: +31 88 909 1465
E: enache.raluca@kpmg.com



Jeanette Cook
Senior Manager
Operational Taxes
KPMG in the UK
T: +44 117 905 4277
E: jeanette.cook@kpmg.co.uk



Paul Freeman
Banking Tax
KPMG in the UK
T: +44 (0) 20 7694 4121
E: paul.freeman@kpmg.co.uk.com



Mark Semple
Banking Tax
KPMG in the UK
T: +44 (0) 20 7311 1850
E: mark.semple@kpmg.co.uk

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Notes on CPE and polling questions

Continuing professional education (CPE) credits

North America

- We require that participants are registered, logged in and take part in at least four of the five polling questions and participate in at least 50 of the 60 minutes to qualify for CPE credits for today's webcast.

Outside North America

- We encourage you to participate in the questions, as you may be eligible for continuing education credits in your local jurisdiction.

Polling questions

- Polling questions will appear as we proceed through the presentation.
- As mentioned, in order to receive the CPE credit, we require that those participants take part in at least four of the five polling questions and participate in at least 50 of the 60 minutes to qualify for CPE credits for today's 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, someone from KPMG may reply via phone or email.
- 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. Feel free to complete the survey, as your comments are very valuable to us.

EU Mandatory disclosure requirements

Agenda



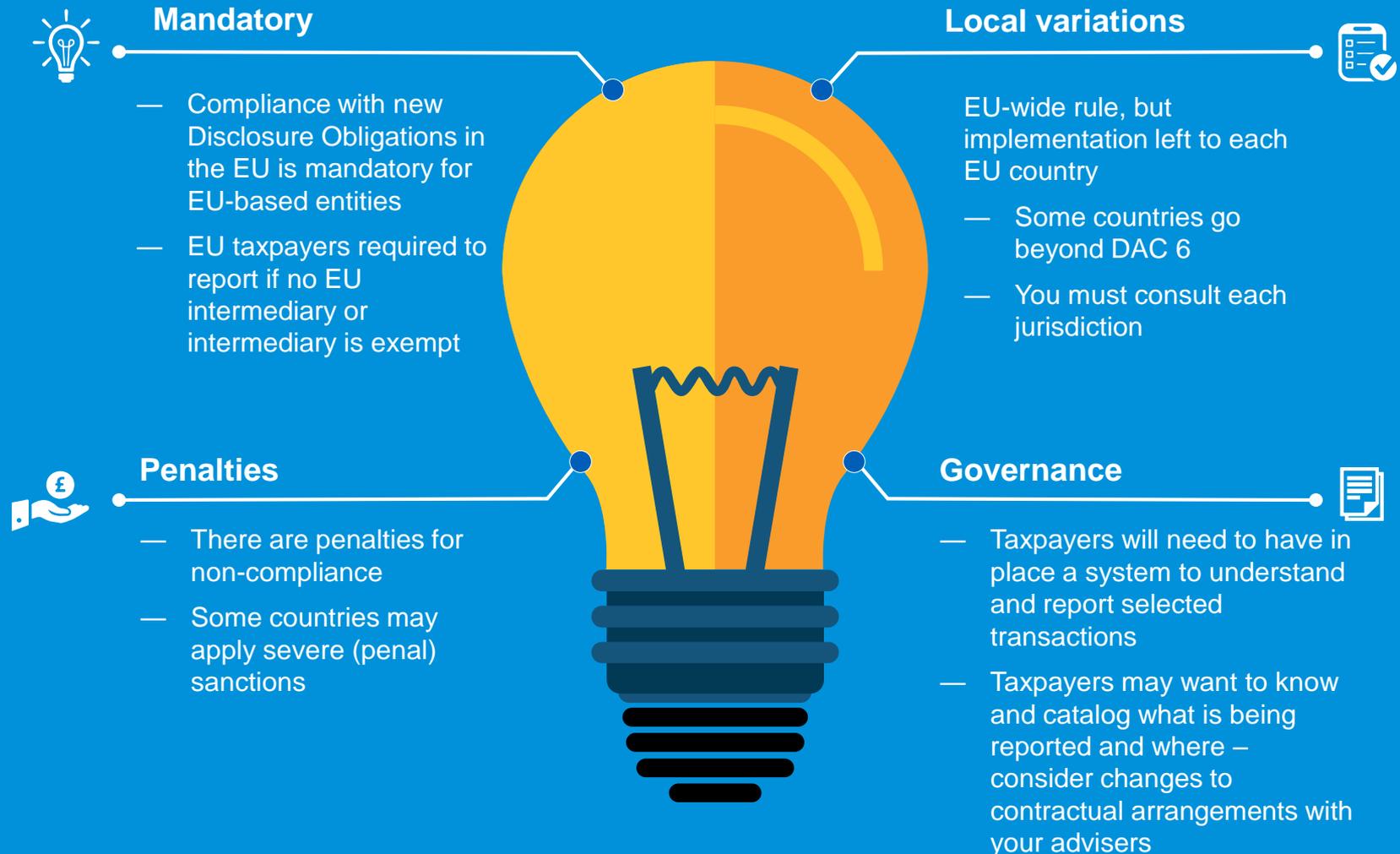
- 1 **Big Picture Implications**
- 2 **Background and Basics**
- 3 **Local Implementation:
State of Play**
- 4 **Implications for Financial
Services**
- 5 **Practical considerations in
complying with MDR**
- 6 **How Can KPMG Help?**



I. Big Picture Implications for You

Mandatory disclosure requirements for intermediaries and relevant taxpayers

Critical Implications for You



Mandatory disclosure requirements for intermediaries and relevant taxpayers

How could a financial institution be within scope?

As a relevant taxpayer or other person likely to be affected by the reportable cross-border arrangement

- If a relevant taxpayer or other person likely to be affected by the reportable cross-border arrangement then a financial institution could be named in disclosure by intermediaries.
- If a relevant taxpayer a financial institution may also have a secondary obligation to make disclosure if there are no intermediaries (e.g. 'in house' arrangements) or intermediaries are exempted from disclosure by legal professional privilege.

As an intermediary (primary definition)

- If a financial institution designs, markets, organizes or makes available for implementation, or manages the implementation, of a reportable cross-border arrangement, then it may be required to make disclosure as an intermediary.

As an intermediary (secondary definition)

- If a financial institution **'knows or could reasonably be expected to know'** that it has undertaken to provide, directly or by means of other persons, aid, assistance or advice with respect with respect to designing, marketing, organizing, making available for implementation or managing the implementation of a reportable cross-border arrangement, then it may be required to make disclosure as an intermediary.

Particularly relevant when considering the institution's own tax position.

Particularly relevant where an institution is providing tax advice, or making available a financial product or structure with tax benefits.

Potentially relevant where an institution is involved in a reportable transaction: how the "knowledge" test is applied will therefore be key to determining the scope of the reporting obligations.

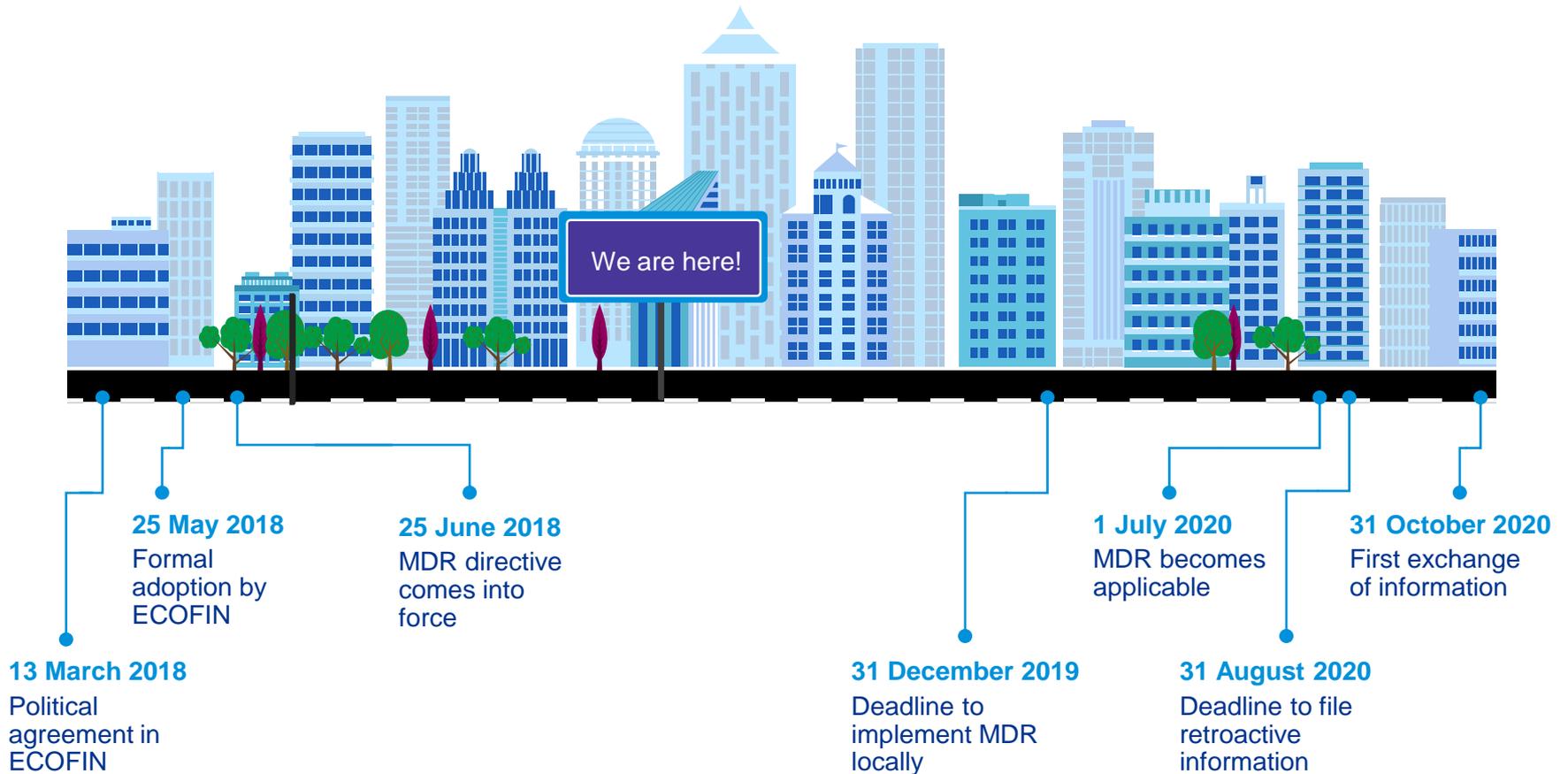
Internal processes must be able to capture all three scenarios



II. DAC 6: Background and Basics

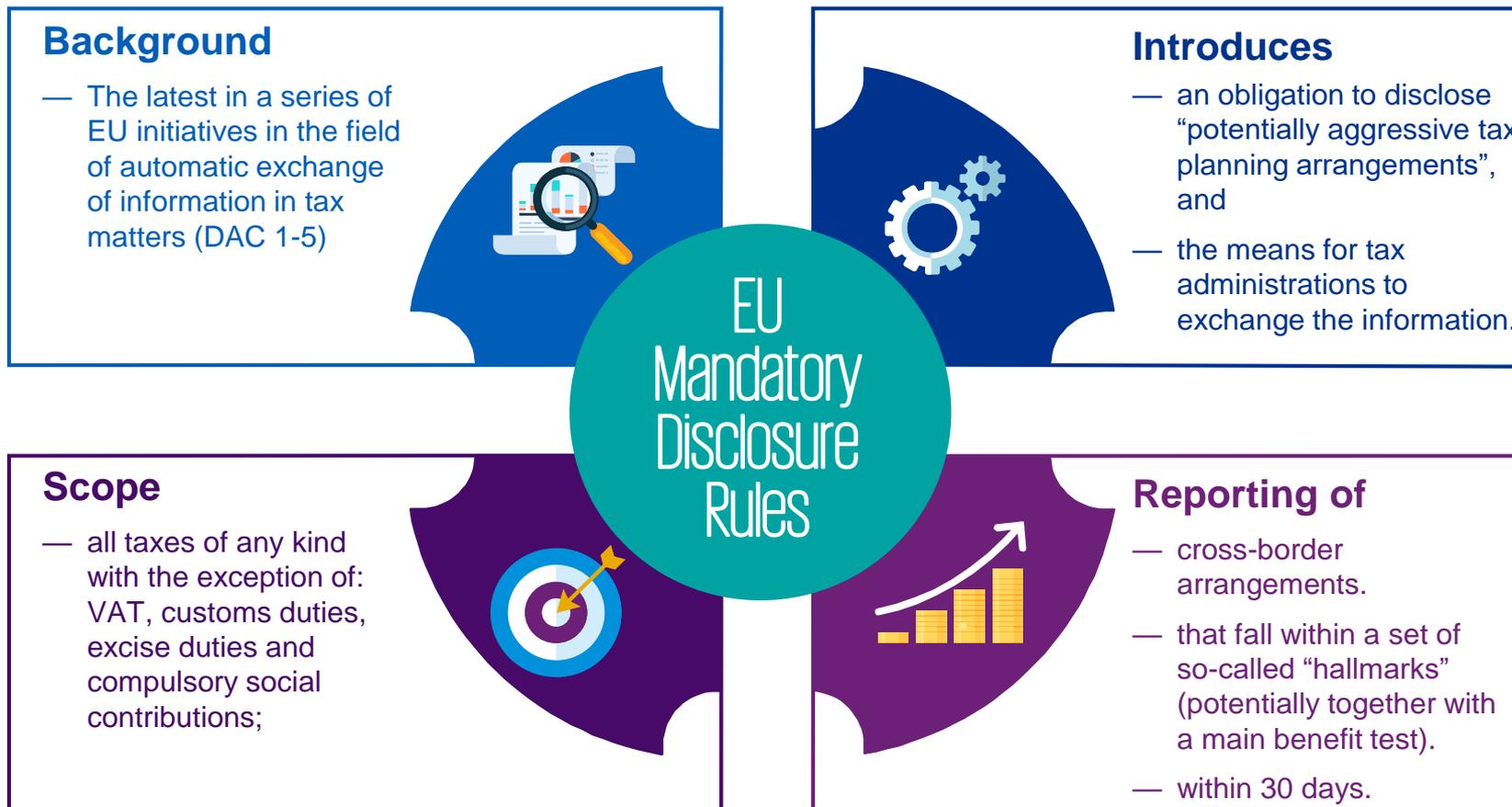
Mandatory disclosure requirements for intermediaries and relevant taxpayers

Timeline



Mandatory disclosure requirements for intermediaries and relevant taxpayers

DAC 6 in a nutshell



Mandatory disclosure requirements for intermediaries and relevant taxpayers

Some considerations for entities based outside the EU

No legal obligation on non-EU intermediaries and taxpayers, but consider impact on EU operations



-
- **Taxpayer:** Any person to whom a reportable cross-border arrangement is made available for implementation. EU taxpayers **required to report** if no EU intermediary or intermediary is exempt.
 - Do you implement **cross-border arrangements** involving **EU-based affiliates**?
 - Some countries apply the EU rules even if benefit of the arrangements is a tax advantage in a non-EU jurisdiction
-



III. DAC 6 Local Implementation: state of play

Mandatory disclosure requirements for intermediaries and relevant taxpayers

EU-wide developments



European Commission

- working on Implementation Regulation.
- Unique identification number to be assigned to each reported arrangement.
- No further interpretation guidelines.

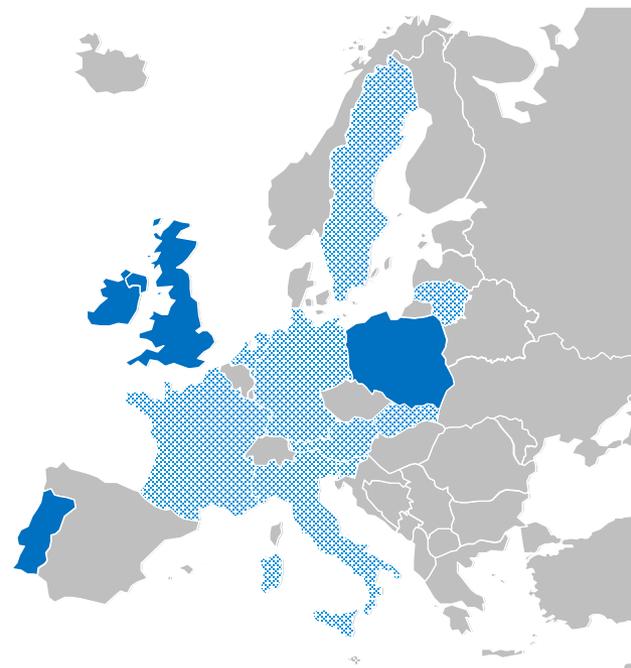
TAX3 Committee:

- Several MEPs have called on all Member States to extend the reporting obligation to purely domestic cases.

Mandatory disclosure requirements for intermediaries and relevant taxpayers

Local implementation – highlights

- **Austria:** draft legislation expected in April–June 2019. Limited to cross-border and direct taxes. Legal professional privileges upheld, however, advisors may still file information on reportable cross-border arrangements if they are authorized by their clients. Penalty could be up to 50,000 euros (EUR).
- **France:** first draft recently circulated for comments – deadline March 29, 2019. The major part of the draft mirrors the Directive.
- **Germany:** official legislative process has not started, but two unofficial drafts were under discussion. A revised draft bill was presented by the German legislator on 30 January 2019. This third draft bill includes a reporting obligation for domestic arrangements. Penalty up to EUR25,000 for incomplete or late reporting is being considered.
- **Italy:** legislative decree expected by end of March, followed by a second decree on hallmarks and guidelines (expected June 2019). Administrative penalty ranging from EUR2,000 to EUR21,000. The cross-border arrangement is to be considered as reportable even when the tax benefit arises in a third state — if effective exchange of information with Italy, provided that at least one of the participants is resident in Italy.
- **Lithuania:** draft law published end of November 2018.
- **Netherlands:** public consultation on draft law January 2019 — bill expected end of June. Up to intermediary to decide on 'potential' aggressive arrangements (avoidance of double taxation not reportable). The firm, not the individual advisor, has reporting obligation.
- **Poland:** MDRs apply as of 1 January 2019. Significantly broader scope (includes domestic arrangements and VAT). Criminal penalty for failure to report or inform the taxpayer of up to approx. EUR4.6 million. Discussions on implementation guidelines ongoing.
- **Slovakia:** draft MDR implementation bill subject to comments. Expected to be approved by Government in March 2019. Legal professional privilege upheld.
- **Slovenia:** draft MDR implementation bill subject to public consultation by 20 January 2019.
- **Sweden:** the Swedish MDR Committee has presented its draft proposal to the Swedish government on 15 January 2019. Certain domestic arrangements may be included.



- MDR/similar disclosure regimes already in place
- MDR implementations at draft or consultation stage

Mandatory disclosure requirements for intermediaries and relevant taxpayers

Local implementation spotlight on the Netherlands



December 19, 2018 internet consultation: proposal aligned with DAC 6.

Highlights of points clarified:



Intermediaries:

- it is the firm — not individual advisors, that has a reporting obligation.
- do not have a due diligence obligation and will only be required to report based on the information that is available to them.
- required to decide whether an arrangement is “potentially” aggressive.



The main benefit test:

- should be interpreted to mean that structures set up to avoid double taxation should not be reportable.
- refers also to tax advantage in non-EU Member States.

Mandatory disclosure requirements for intermediaries and relevant taxpayers

Local implementation — spotlight on Poland



Basics

- **Cross-border arrangements within the meaning of DAC6, but also:**
 - Domestic arrangements, including those related to VAT and excise duties — subject to “qualifying taxpayer” test
- **Legal professional privilege may apply**
- **“Promoters” based outside of the EU also targeted**



Penalties

- **Non-fulfilment of reporting obligation** in the correct manner will constitute a criminal offence and will be subject to a fine of up to approx. EUR 4.6 million.
- **Administrative fine** of up to EUR 2.3 million for qualifying promoters that fail to implement an internal MDR procedure.



Timeline

- **Entered into force on January 1, 2019** — transitional period for 2018 arrangements.
- **Guidelines published on January 31, 2019.**



IV. Implications for Financial Services

Activities undertaken by Financial Services business may cause them to be intermediaries.



Financial Services

- **Primary definition (“promoters”):**

- Provision of financial products/arrangements with actual/perceived tax benefits (e.g. EIS, stock loans, leasing arrangements, life products,...)
- Provision of tax advice/structuring (e.g. M&A, structured finance,...)

- **Secondary definition (“service providers”):**

- Provision or supporting the provision of finance required for a reportable arrangement
- Implementing financial transactions which form part of a reportable arrangement

Case Study 1 – Stock Lending



Essential to understand local reporting approaches to know which jurisdictions' approaches to the tests need to be considered...

Main Benefit Test?

- A stock lending arrangement might be entered into for various reasons — in some scenarios these might include tax
- Does this mean that the MBT is met, not met, or needs to be assessed on the particular circumstances of a given loan?



Standardized documentation? (A.3)

- Does the hallmark capture the use of industry standard documentation?
- How much individualization is required for an arrangement to cease to be based on standardized documentation or a standardized structure?



Conversion of income? (B.2)

- Is there a conversion of income into a category of income taxed at a lower level or exempt from tax?



Case Study 2 – Provision of finance



Essential to understand local reporting approaches to know which jurisdictions' approaches to the tests need to be considered...

Which definition of “intermediary”?

- If providing finance structured in a way to deliver tax benefits the lender is likely to be a “promoter”
- More commonly the concern is whether the lending may be funding a reportable arrangement as a “service provider”



Is the “knowledge” test met?

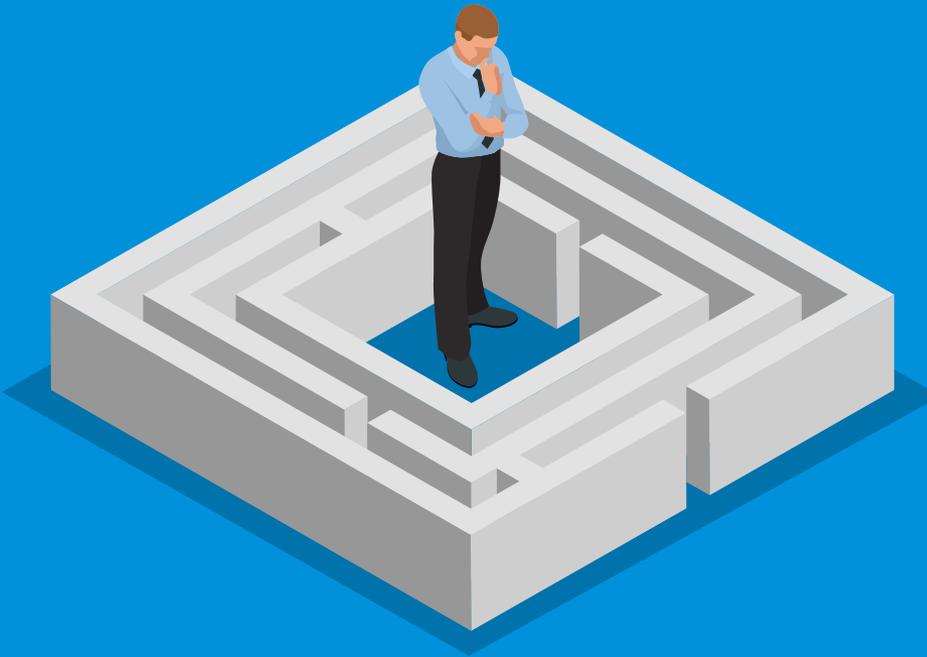
- Can the lender “be reasonably expected to know” that they are providing aid or assistance to the implementation of the reportable arrangement?
- What information is available to the lender? Do they know what they know?
- Is there any additional information that the lender could reasonably be expected to have?
- Is investigation required?
- What can the lender reasonably be expected to infer from the available information?





V. Practical considerations in complying with MDR

The challenge



The scope will vary across jurisdictions, i.e. an arrangement may not be reportable in one Member State but may in another

Waiting for certainty on the rules could leave too little time to successfully implement a practical solution

Financial penalties for non-compliance vary, but can be very high — there could also be reputational consequences

The timeline for implementation can vary and the approach in each Member State will take time to develop

Mandatory disclosure requirements for intermediaries and relevant taxpayers

What you should consider doing now



Assess your situation

- Perform an analysis of known business or corporate functions to identify potential transactions that may be reportable
- Assess the impact on potential products and services offered by each business area
- Determine whether changes to contractual arrangements (e.g. with external providers) needed



Anticipate and organise for compliance

- Leverage existing governance frameworks
- Design and implement specific policy framework (incl. controls and training) across the business
- Consider who will have review and sign-off capabilities and whether they have the right skills, or require training
- Consider merits of using technology solutions for MDR compliance, including to help catalog potentially reportable arrangements entered into from June 25, 2018.

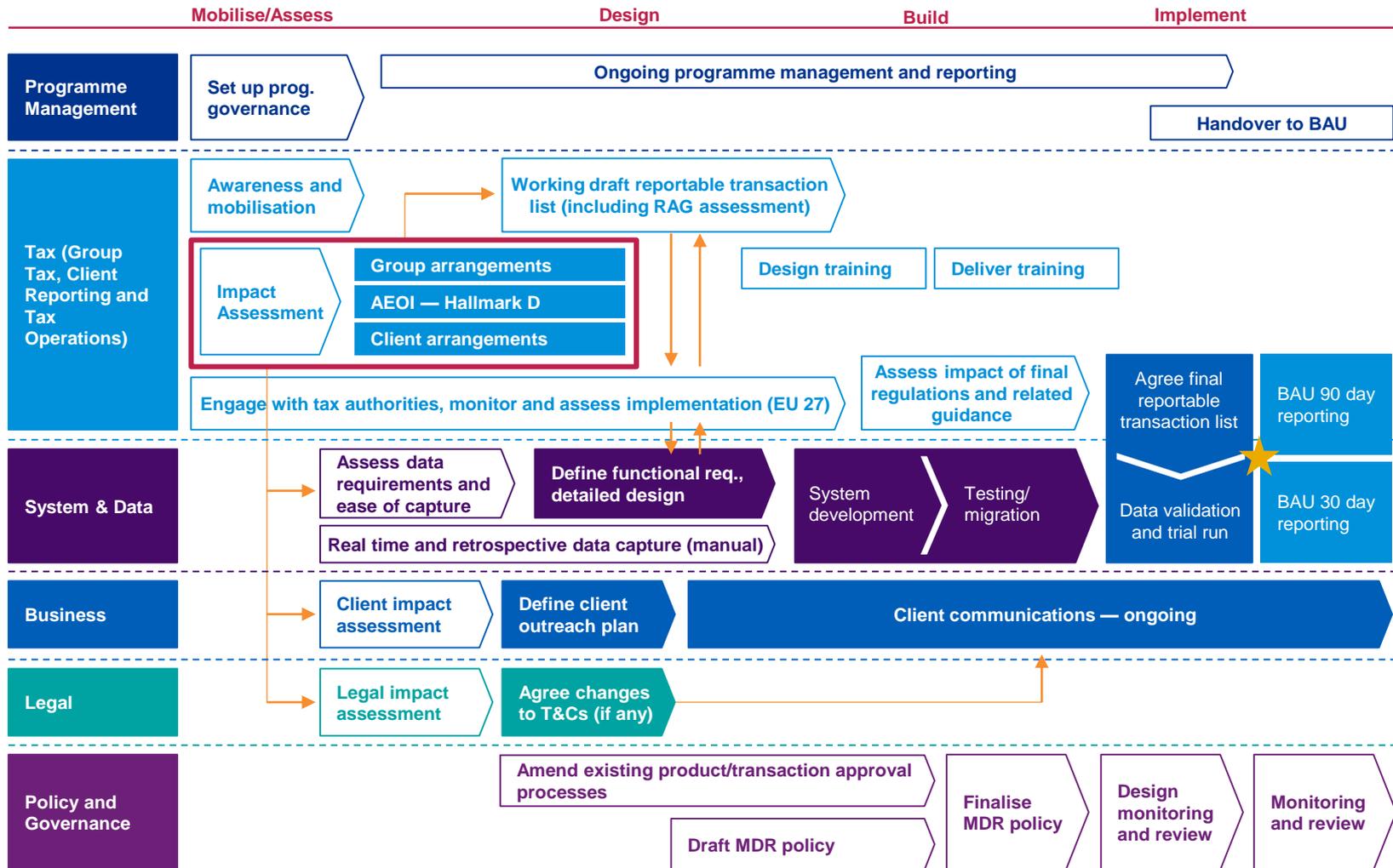


Monitor local implementation

- Monitor implementation into local tax legislation in relevant EU jurisdictions. Re-asses catalogued arrangements before the reporting deadline
- Assess whether proposed internal governance and compliance framework meets local requirements

Mandatory disclosure requirements for intermediaries and relevant taxpayers

High level implementation plan



Tasks TBD; perform only if deemed necessary e.g. based on previous tasks





VI. How Can KPMG Help

Mandatory disclosure requirements for intermediaries and relevant taxpayers

How can KPMG firms help?



Phase 2 — Evaluation workshops/initial risk assessment

Risk assess the various business functions



Phase 3 — Detailed review

Review reports of potentially reportable transactions



Phase 4 — Governance structure assistance



Phase 1 — The provision of training

Targeted training and briefing materials



Service Enabled by Technology



Phase 5 — Gap analysis for local implementation

Subsequent analysis of how each Member State has implemented MDRs

A solution..... Triage, track and report

KPMG is developing an EUMDR / DAC6 technology solution which is being designed to assist intermediaries and tax payers determine whether their organisation has any reporting obligations under these regimes, and can track the decision making process and then assist with reporting for in-scope transactions.



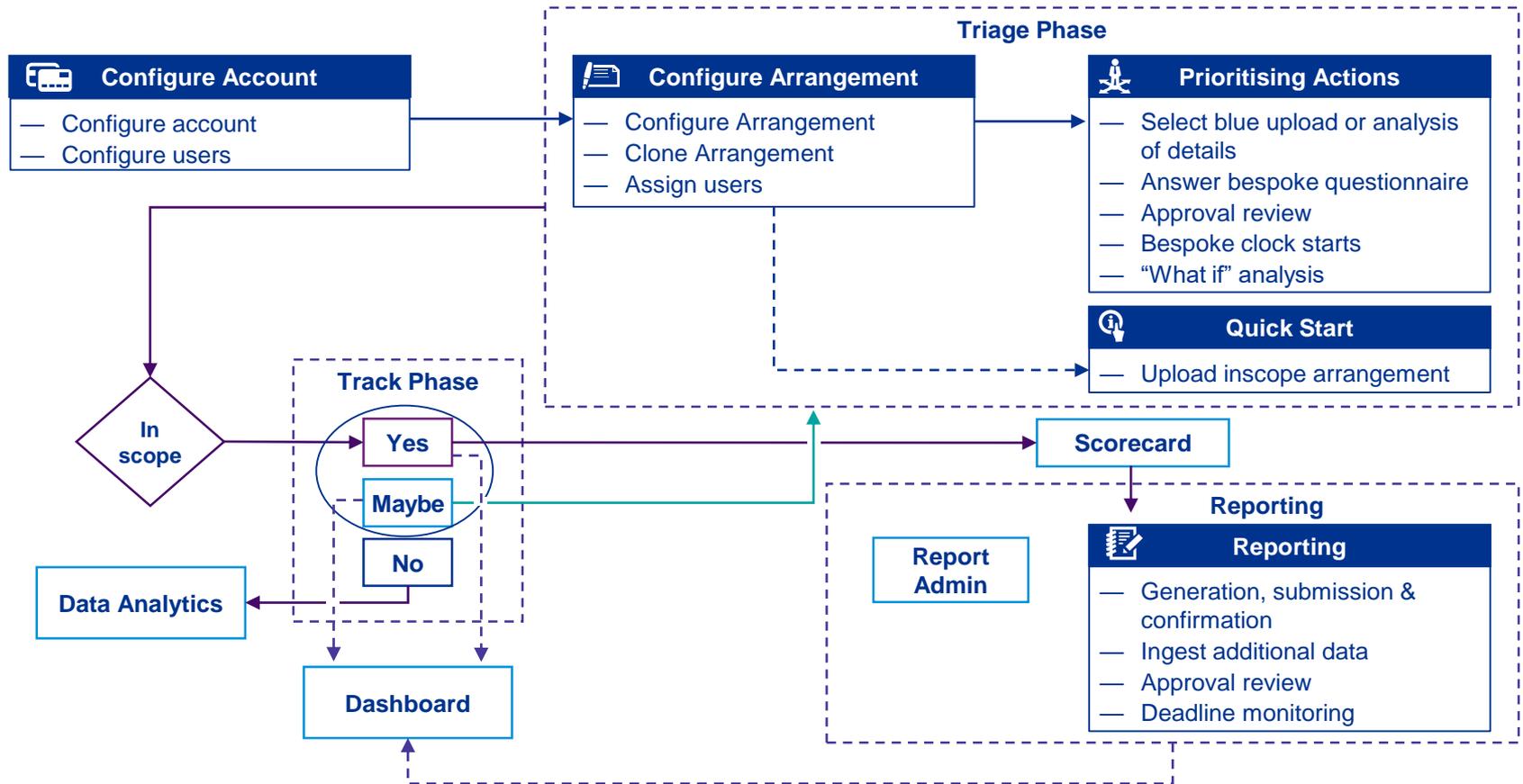
Why use a tool and not simply an excel spreadsheet?

There are a number of advantages to using a technology based solution

- The solution is being designed to provide a “smart questionnaire” which will include bespoke or jurisdiction specific questions including any domestic requirements, helping determine whether an arrangement should be reported (or where further information is required to determine this);
- A secure audit trail will show who did what and when and allow the decision making process to be evidenced;
- Management will have a centralized view of the global status that can be filtered by tax, jurisdiction, year, proximity to the reporting deadline (with clear RAG status to manage those transactions reaching their reporting deadline);
- Management information reporting and drill down analytics will help provide the ability to view or compare different data sets to identify trends or risks associated with the reporting, including assessment by:
 - arrangements reported,
 - arrangements per tax, per jurisdiction, per hallmark.
- KPMG is developing a technology solution to help support member firm clients which is expected to be available later in 2019.

Schematic of User Journey

The tool is being designed to guide the user through the legislation, dipping in and out of it, just inputting data to be validated whilst tracking the progress to the relevant deadline. There is also a means to test “what if” scenarios to see if in scope of MDR:



Dashboard

User 1
25 August 2020 12:22:39

My Tasks
 Dashboard
 Arrangements
 Reports
 History
 Configuration
 Organisation
 Arrangement

Scorecard overview

2020
All deadlines
0-10 days
11-30 days
31-60 days
61-90 days
90+ days

Germany

90+ days

United Kingdom

11-30 days

Italy

0-10 days

Greece

90+ days

Denmark

90+ days

Poland

31-60 days

prev next

Stage

Total - 13

- Not Started - 2
- Hallmark evaluation - 2
- Data Validation - 2
- Awaiting Approval - 1
- Ready for Submission - 3
- Submitted - 1
- Receipt Confirmation - 2

Proximity to deadline

Total - 13

- 0-10 days - 3
- 11-30 days - 2
- 31-60 days - 4
- 61-90 days - 0
- 90+ days - 4

Arrangement progress overview

Search:

Date Started	ID	Entity	Name	Priority	Last Updated By	Date Last Updated	Due Date	Stage	Progress	Actions
1 Aug 2020	11	Company ABC I	Arrangement Name 11	■	User 1	15 Jul 20	31 Jul 20	Hallmark evaluation	<div style="width: 100%; height: 10px; background-color: #0056b3;"></div>	▶ ↺ ↻
2 Aug 2020	1	Company ABC I	Arrangement Name 1	■	User 2	22 Aug 20	30 Aug 20	Ready for Submission	<div style="width: 100%; height: 10px; background-color: #0056b3;"></div>	▶ ↺ ↻
2 Aug 2020	3	Company XYZ I	Arrangement Name 3	■	User 1	31 Aug 20	31 Aug 20	Hallmark evaluation	<div style="width: 100%; height: 10px; background-color: #0056b3;"></div>	▶ ↺ ↻
1 Aug 2020	7	Company ABC I	Arrangement Name 7	■	User 1	1 Aug 20	3 Sep 20	Not Started	<div style="width: 100%; height: 10px; background-color: #ccc;"></div>	▶ ↺ ↻
1 Aug 2020	6	Company XYZ I	Arrangement Name 6	■	User 3	22 Aug 20	15 Sep 20	Ready for Submission	<div style="width: 100%; height: 10px; background-color: #0056b3;"></div>	▶ ↺ ↻
1 Aug 2020	12	Company ABC I	Arrangement Name 12	■	User 2	22 Aug 20	30 Sep 20	Receipt Confirmation	<div style="width: 100%; height: 10px; background-color: #008000;"></div>	▶ ↺ ↻
1 Aug 2020	13	Company XYZ I	Arrangement Name 13	■	User 1	22 Aug 20	30 Sep 20	Receipt Confirmation	<div style="width: 100%; height: 10px; background-color: #008000;"></div>	▶ ↺ ↻
2 Aug 2020	2	Company ABC I	Arrangement Name 2	■	User 3	22 Aug 20	13 Oct 20	Ready for Submission	<div style="width: 100%; height: 10px; background-color: #0056b3;"></div>	▶ ↺ ↻
2 Aug 2020	4	Company ABC I	Arrangement Name 4	■	User 1	15 Aug 20	15 Oct 20	Data Validation	<div style="width: 100%; height: 10px; background-color: #0056b3;"></div>	▶ ↺ ↻
2 Aug 2020	5	Company XYZ I	Arrangement Name 5	■	User 2	22 Aug 20	30 Nov 20	Awaiting Approval	<div style="width: 100%; height: 10px; background-color: #0056b3;"></div>	▶ ↺ ↻

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Mandatory disclosure requirements for intermediaries and relevant taxpayers

KPMG resources



- Dedicated website accessible from kpmg.com/eutax
- [Summary and observations](#)
- Recorded [WebEx sessions](#)
- [Euro Tax Flashes](#)
- Guidance from your local KPMG advisor
- Frequent contacts with regulators in EU member states

KPMG: working together with our network of EU tax law specialists throughout the European Union.



Questions?





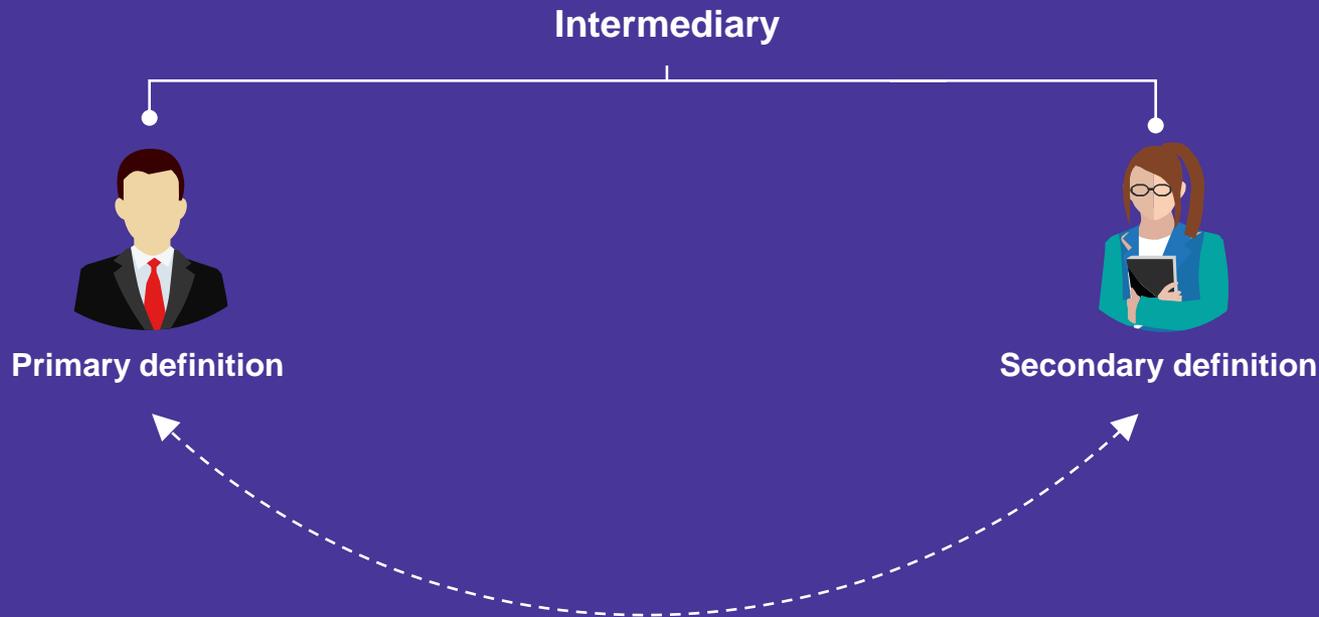
Appendix slides

Mandatory disclosure requirements for intermediaries and relevant taxpayers

Who can qualify as an intermediary?

Definition 1: any EU-established or resident person that designs, markets, organizes or makes available for implementation or manages the implementation of a reportable cross-border arrangement.

Definition 2: Intermediary also includes “any person that [...] knows or could be reasonably expected to know that they have undertaken to provide aid, assistance or advice with respect to [...] a reportable cross-border arrangement.”.



Mandatory disclosure requirements for intermediaries and relevant taxpayers

Hallmarks with main benefit test



General hallmarks (A)

A.1 The taxpayer undertakes to comply with a confidentiality condition

A.2 Contingent fee

A.3 Standardized documentation (including standard forms) is used



Specific hallmarks (B)

B.1 Acquisition of loss making company, discontinuation of main activity and using losses

B.2 Conversion of income into a category taxed at a lower level / exempt

B.3 Circular transactions resulting in the round-tripping of funds



Cross-border transactions (C1)

Deductible payments to a related party:

- b) i. If the recipient is tax resident in a jurisdiction with no CIT, or 0% (or almost 0%) CIT rate
- c) If the payment benefits from a full exemption from tax
- d) If the payment benefits from a preferential tax regime

Main benefit test: the main benefit or one of the main benefits which, having regard to all relevant facts and circumstances, a person may reasonably expect to derive from an arrangement is the obtaining of a **tax advantage**

Mandatory disclosure requirements for intermediaries and relevant taxpayers

Hallmarks with no main benefit test



Cross-border transactions (C)

C.1 Deductible payments to a related party which is:

- a. Not tax resident in any jurisdiction
- b. ii. Resident in a black-listed country (EU/OECD)

C.2 Deduction of the same depreciation on asset in multiple jurisdictions

C.3 Double tax relief claimed in multiple jurisdictions

C.4 Transfer of assets with significant differences in valuation



Automatic exchange of information and BO (D)

D.1 Circumvention of reporting obligation on automatic exchange of financial account information

D.2 Legal structure lacking substantive economic activity where beneficial owners are unidentifiable



Transfer pricing (E)

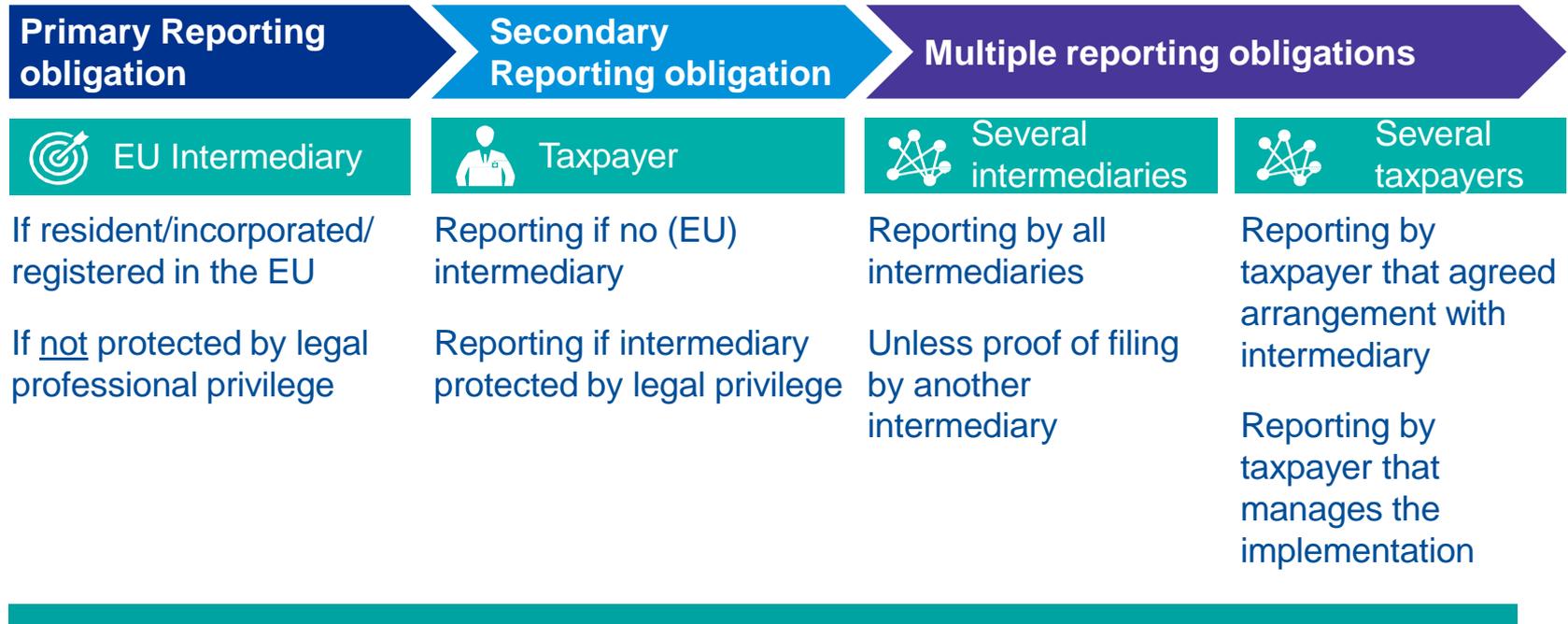
E.1 Unilateral safe harbor rules

E.2 Transfer of hard-to-value intangibles

E.3 Transfer of functions/risks/assets resulting in EBIT decrease >50% during the next 3 years

Mandatory disclosure requirements for intermediaries and relevant taxpayers

Who should disclose the information?



Mandatory disclosure requirements for intermediaries and relevant taxpayers

What should be disclosed?

- Identification of intermediaries and taxpayers (including their names) *
- Hallmarks applicable
- Summary of the reportable arrangements *
- Date of implementation
- National tax provisions applicable
- Value of the transaction
- Other EU Member States involved or concerned
- Persons in other EU Member States likely to be affected *

- *Information not accessible to the EU Commission



! Information that is within *knowledge, possession or control*.

Mandatory disclosure requirements for intermediaries and relevant taxpayers

When should information be disclosed?

**Intermediaries/
taxpayers:** within
30 days, beginning on:

- the day after the reportable cross-border arrangement is made available for implementation to that relevant taxpayer, or
- is ready for implementation by the relevant taxpayer, or
- when the first step in its implementation has been made in relation to the relevant taxpayer,

whichever occurs first.

**Intermediaries under
secondary definition**
(point 21 of article 3,
second paragraph):

- within **30 days** beginning on the day after they provided, directly or by means of other persons, aid, assistance or advice.

Mandatory disclosure requirements for intermediaries and relevant taxpayers

Local implementation — Other EU jurisdictions (B-G)

Belgium	Draft law expected during the course of 2019 — most likely after October elections. Professional privilege being considered, but a final decision has not been made yet.
Bulgaria	Draft law expected during the course of 2019.
Croatia	Implementation process expected to start during the course of 2019.
Cyprus	The Ministry of Finance will have draft legislation ready for consultation shortly (was expected February 2019, but likely first weeks of March) and will start working on the implementation guidelines. MDR sub-committee created (chaired by KPMG).
Czech Republic	Draft legislation expected in late March 2019. Based on informal discussion, expectation is that: <ul style="list-style-type: none"> — Czech implementation will generally be in line with DAC6. — Legal professional privilege will be upheld. Where waiver applies, tax advisers will be required to inform the taxpayer of reporting obligation. — Fines: EUR 20k penalty on intermediaries for failure to inform taxpayer, EUR 50k for taxpayers that fail to report.
Denmark	Timeline of implementation process not yet known. First draft will most likely be published after June elections.
Estonia	Draft law expected during the course of 2019.
Finland	The Ministry of Finance has announced it is preparing for the implementation process. Draft law expected during summer 2019. May follow Swedish implementation.
Greece	Discussions with Ministry of Finance, however timeline of implementation process not yet known yet.

Mandatory disclosure requirements for intermediaries and relevant taxpayers

Local implementation – Other EU jurisdictions (H-U)

Hungary	Timeline of implementation process not yet known.
Ireland	Draft law expected during the course of 2019, most likely towards the end of the year.
Latvia	Draft Law expected during the course of 2019.
Lithuania	Currently only draft legislation transposing the core provisions of the DAC6 directive (2018/822/ES) into the Lithuanian Law on Tax Administration is available as one single article with the clauses authorizing the Lithuanian tax authorities to set the implementation rules. These provisions are general ones which would only establish the requirement for intermediaries/taxpayers to report certain cross-border arrangements. Based on the draft, they would generally mirror the text of the directive. The detailed reporting rules (timelines, the right of intermediaries to a waiver due to legal professional privilege, hallmarks applicable, volume of information etc.) are yet to be prepared by the tax authorities. No officially published draft is currently available.
Luxembourg	Draft law expected during the course of 2019.
Malta	Interested constituted bodies have provided comments to the Revenue authorities. Draft legislation expected during the course of 2019.
Portugal	Draft law expected during the course of 2019.
Romania	Draft legislation expected in the summer of 2019 and discussion during autumn Parliament session.
Spain	December 11, 2018: the Spanish Tax Authorities launched a public consultation for the transposition of the DAC6 into national legislation, without publishing draft legislation. Unclear whether professional privilege for lawyers will be upheld.
UK	Draft law and guidance for public consultation expected in the first half of 2019.



Thank you



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