



# Professional Practice Solutions

**It's the little details that make a big difference**

I just wanted to highlight that Poland has already enacted its rules and reporting is now required within a 30-day window. You should note that:

- The law is extra-territorial and can require non-Polish intermediaries to disclose in Poland; and
- Penalties are steep: up to €3.6 million can be charged to the firm and there are also personal liabilities for individuals (up to 720 days salary).

If you have any queries or would like to discuss further, please let me know.

Kind regards

**Jane**

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## **DAC 6 (EU Mandatory Disclosure Rules) and Corporate Criminal Offence (CCO)**

### **DAC 6 (EU Mandatory Disclosure Rules)**

I thought it may be useful to send a reminder about the new EU Mandatory Disclosure reporting requirements relating to certain cross-border transactions. These have arisen following the publication by the EU of an amendment to the Directive on Administrative Co-operation (DAC 6) last May and will apply regardless of the outcome of Brexit.

Please [click here](#) to access a one-page schedule which summarises the impact of this amendment, including an indication of the type of transaction likely to be caught. **It should be noted that the rules apply to any reportable transaction where the first step is implemented after 25 June 2018.**

There are two aspects from your firm's perspective that you need to consider:

1. The firm's internal cross-border arrangements, e.g. payments between international offices; and
2. Application of the intermediary rules when providing advice to clients.

It should be noted that these rules do not just apply to 'tax advice' but can apply more broadly to any legal or general advice if it relates to a reportable transaction.

At present, we have no wording other than the Directive itself. The UK has to implement domestic legislation by the end of 2019 but, as yet, we have no guidance or local law, not even in draft. This makes the area very uncertain as the Directive is extremely broad in scope; it should therefore be interpreted prudently.

Even though the first report is not due until 31 August 2020, as it applies retrospectively to reportable transactions implemented any time after 25 June 2018, we recommend that actions are taken now to make the process more manageable as administration and risk management are likely to be complex. You should also ensure you are considering the processes to put in place to capture information required to satisfy the ongoing reporting requirements which come into force on 1 July 2020; again specific information will need to be disclosed but this time within 30 days of the relevant date.

If the 2020 submission and subsequent reports are not full, complete and correct, it is likely that penalties will be incurred. No guidance on this has been issued to date as the penalty regime is being left to the Member States but the Directive does require penalties to be effective, proportionate and dissuasive. It remains to be seen whether HMRC will choose to adopt the same level of penalties as for DoTAS which can reach £1m for non-disclosure or late disclosure. In any case, non-compliance by intermediaries is likely to severely impact on the intermediary's relationship with HMRC.

If you require more detailed information on the EU MDR requirements, please [click here](#).

It is important for firms to ensure that their in-house teams, as well as relevant client-facing professionals, are aware of the implications of these regulations. KPMG can assist with this process by providing targeted training and briefing materials, performing a risk assessment and assisting you in developing a governance structure. If you would like more information on the EU MDRs and about how KPMG can help you, please let me know.

### **Corporate Criminal Offences (CCO)**

The 2017 Criminal Finance Act introduced new rules, effective from 30 September 2017, such that where someone acting on behalf of an entity (e.g. an employee or contractor) is found to facilitate tax evasion by a third party, the entity is exposed to a possible criminal conviction, an unlimited fine and significant reputational damage. The rules are known as the Corporate Criminal Offences.

In January 2019, the Law Society published an updated CCO practice note which can be found at [Law Society CCO practice note](#).

The practice note specifically aims to assist solicitors in England and Wales in understanding the law, assessing their risks, and implementing relevant and appropriate compliance measures. It recognises that the CFA 2017 brings a risk of criminal liability to solicitors' firms, not just for their employees' actions, but for the actions of others with whom they are associated. It includes examples of scenarios which may be faced.

Given the rules have been live for over a year, it is expected by HMRC that a documented risk assessment will have been completed and positive steps taken to ensure 'reasonable' CCO procedures are in place – [click here](#) for some further information. We have designed cost effective solutions which minimise the use of internal resource; please let me know if you would like to discuss these further.

Kind regards,

**Jane Crotty**

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