Next steps
Although intermediaries will not be required to submit their first reports until 31 August 2020, the requirement to identify and disclose reportable cross-border arrangements from 25 June 2018 means that those who fall within the definition of intermediary need to start capturing and recording all potentially reportable cross-border arrangements now. As domestic legislation and guidance is finalised, intermediaries will need to revisit the arrangements they have recorded as potentially reportable and determine whether they are indeed reportable.

How can EY help?

<table>
<thead>
<tr>
<th>Requirement</th>
<th>How EY can support</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal entity analysis</td>
<td>Assist with the performance of the legal entity analysis to determine whether an entity is an intermediary with respect to any of its business activities</td>
</tr>
<tr>
<td>Impact assessment</td>
<td>Undertake an impact assessment to determine the potential scope of the MDR hallmarks and appropriately target various lines of business or service offerings</td>
</tr>
<tr>
<td>Record potentially reportable cross-border arrangements</td>
<td>Implement and deploy our EY developed MDR tool which is an evaluation tool and repository for potentially reportable cross-border arrangements</td>
</tr>
<tr>
<td>Training</td>
<td>Work with those identified as intermediaries to identify the training needs of the business and deploy training appropriate for different groups of personnel depending on their role</td>
</tr>
<tr>
<td>MDR technical review</td>
<td>Provide technical support to assess and review arrangements and determine whether they are likely disclosable and refine this assessment once local legislation and guidance comes into effect</td>
</tr>
</tbody>
</table>

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EU Mandatory Disclosure Regime (MDR)
Understanding the elements of MDR compliance and how to prepare...
What is MDR?

The Council of the European Union (EU) has introduced a directive aimed at boosting transparency to tackle what it sees as aggressive cross-border tax planning. The directive, which entered into force on 25 June 2018, requires ‘intermediaries’ to report transactions and arrangements that are considered by the EU to be potentially aggressive. If there are no intermediaries which can report, the obligation will shift to the taxpayers. Following the reporting of the arrangements, the information about the arrangements will be automatically exchanged between Member States.

When does it apply from?

Cross-border reportable arrangements where the first step of implementation is taken from the date of entry into force of the directive (25 June 2018) will have to be reported by 31 August 2020.

The deadline for Member States to adopt and publish new rules to comply with the directive is 31 December 2019. During the transition period ending in December 2020, the United Kingdom (UK) will be required to implement the rules before the UK leaves the EU (assuming a transition period ending in December 2020).

On 6 July HMRC introduced powers in the Finance Bill 2018–2019 to enable it to implement the directive in secondary legislation. Consultation on the details of the UK implementation, including draft legislation and guidance, is expected to take place in the first half of 2019.

Who has the obligation to report?

The primary disclosure obligation is on ‘intermediaries’ (i.e., any person that designs, markets, organises or makes available for implementation, or manages the implementation of the reportable cross-border arrangement who is in the EU, it also includes anyone in the EU who knowingly advises or helps with the above). If the intermediary is protected by legal professional privilege, then the obligation to disclose is transferred to another intermediary (where relevant), and if not, then to the taxpayer.

What arrangements are reportable?

Any cross-border arrangement or series of arrangements that fulfils at least one of the hallmarks has to be reported. For the purposes of the directive, cross-border arrangements are those which concern either one or more Member State or a Member State and a third country.

The hallmarks can be divided between those for which the main benefit test must be satisfied as a gateway criterion before the hallmark will give rise to a reporting obligation, and those which by themselves will give rise to a reporting obligation.

In summary, the hallmarks apply to the following arrangements:

- To which a confidentiality clause is attached
- Where the fee is fixed by reference to the amount of the tax advantage derived or whether a tax advantage is actually derived
- That involve standardised documentation which does not need to be substantially customised for implementation
- Where a loss-making company is acquired to use losses to reduce its tax liability
- Which convert income into capital or other categories of revenue which are taxed at a lower level
- Which include circular transactions resulting in the round-tripping of funds
- Which include deductible cross-border payments which are, for a list of reasons, not fully taxable where received (e.g., recipient is not resident anywhere, zero or low tax rate, full or partial tax exemption, preferential tax regime, hybrid mismatch)
- Where the same asset is subject to depreciation in more than one jurisdiction
- Where more than one taxpayer can claim relief from double taxation in respect of the same item of income in different jurisdictions
- Where there is a transfer of assets with a material difference in the amount treated as payable in consideration for those assets in the jurisdictions involved
- Where there is a transfer of assets with a material difference in the amount treated as payable in consideration for those assets in the jurisdictions involved
- Which involve a non-transparent legal or beneficial ownership chain that does not carry on substantive economic activity and the beneficial owners are made unidentifiable
- Which involve the use of unilateral safe harbour rules
- Which involve the transfer of hard-to-value intangibles
- Restructuring resulting in significant profit shifts (50%) following the transfer of functions and/or risks and/or assets between associated enterprises
- Made unidentifiable
- Not carried on substantive economic activity and the beneficial owners are made unidentifiable
- Which include deductible cross-border payments which are, for a list of reasons, not fully taxable where received (e.g., recipient is not resident anywhere, zero or low tax rate, full or partial tax exemption, preferential tax regime, hybrid mismatch)
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The following flowchart is intended to help businesses assess whether any of their arrangements fall within the scope of the MDR and require disclosure.

The term ‘arrangement is not specifically defined in the Directive. In theory, it could include anything from the sale of goods, travelling to an EU country for business purposes or the transfer of assets between jurisdictions. A ‘cross-border arrangement’ concerns more than one Member State, or a Member State and a third country, where one of the following conditions is met:

- Participants not resident in same jurisdiction
- Participants structurally resident is more than one jurisdiction
- Arrangement forms part of a business of a permanent establishment of one or more participants
- One or more participants in the arrangement carry on an activity in another jurisdiction without creating a permanent establishment or becoming resident
- Arrangement has potential impact on an automatic exchange of information/identification of beneficial owners

- Does this a ‘cross border arrangement’? (i.e., a transaction, series of transactions, structure or scheme)
- Has the first step of implementation in relation to the arrangement occurred on/after 25 June 2018?
- Does the arrangement fall within the ‘main benefit test’? (i.e., was the main benefit, or one of the main benefits, of the arrangement to obtain a tax advantage)
- The arrangement was made available for implementation
- The arrangement was made ready for implementation
- The first step of implementation was undertaken, whichever occurs first
- Notwithstanding, intermediaries who provided aid, assistance or advice to report arrangements within thirty days beginning on the day after they provided such aid, assistance or advice