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Seemingly unaware how toothless MDR is, advisors prepare to warn UK non-doms of Mandatory Disclosure Rules penalties if they try avoid CRS...

 **Mark Morris**
CRS and CARF expert. No, truly.

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MDR (EU DAC6) is the most useless OECD BEPs action since sliced bread.

Most countries in the world did not implement MDR because it was not a minimum BEPS action. (God knows why not?). MDR requires intermediaries designing, marketing or supplying structures which avoid CRS, on one opaque designed to hide beneficial owner to report the structure and their clients. MDR's fatal flaw is that the intermediary must report to the avoidance structure to their tax authorities. However if no intermediary is reporting due to the generous exemptions (legal privilege of lawyers or intermediaries from a non participating country), then the user of the avoidance structure must self-report. What a joke.

- Read my article [Adoption of Mandatory Disclosure Rules for CRS avoidance arrangements & opaque structures a flop. Useless with key exemptions and no OECD peer review](#)

- The OECD list of participating MDR partners, one notices only 18 countries have signed the MCAA regarding MDR.
- I seriously question the validity of this OECD supplied list as only a handful of EU members are indicated as signing the MCAA regarding BEPS (eg. Lithuania in March 2024?)
- The fatal flaw of MDR is a promoter/designer/introducer from outside the MDR participating jurisdiction list and promotes/advises/supplies CRS avoidance schemes from outside the MDR jurisdiction is not a reporting / reportable person.
- Noteworthy, lawyers globally, are exempt from MDR due to legal privilege.
- Read "European Court of Justice is about to re-confirm the legal privilege of lawyers, who will thus be exempt from AEOI/MDR/AML/KYC reporting obligations."

- Before the European Court of Justice delivers its ruling, the Advocate General issues a non-binding legal opinion. On 30 May 2024, the Advocate General to the European Court of Justice Juliane Kokott [published her legal opinion on the case](#). She agreed with the law firm. In essence, the Advocate General considered that lawyers should enjoy legal professional privilege (aka a right to secrecy) not just when they are defending a client in court, but also when they are hired by the wealthy to create companies and other investment structures.

So what does the OECD decide must be done when all intermediaries are exempted from MDR reporting?

- The backup alternative is that if there is no intermediary to report due to exemptions, then, get this folks, the user of the avoidance scheme must self-report under threat of "bigly" penalties.
- Brilliant idea to rely on a self-dob in.

MDR went nowhere fast

- Norway:** a Norwegian Official Report ("NOU") was published proposing to introduce mandatory disclosure rules in Norway. The NOU was subject to a public consultation process which closed on December 2, 2019. The proposal is largely in line with DAC6 but includes certain adjustments and exemptions. Norway, has continuously delayed legislation. It is not yet clear when the introduction of mandatory disclosure rules in Norway will be finalized.
- Israel:** Made noises in 2019 about MDR but subsequently opined their own laws were sufficient. Income tax and VAT disclosure regulations published in 2006 require taxpayers to disclose certain transactions that are considered to be "tax planning." Taxpayers are required to disclose certain tax positions and tax opinions obtained after 1 January 2016.
- Hong Kong:** Will monitor the progress of MDR. The IRD will keep under review the question of how disclosure rules could be translated into domestic legislation.
- Japan:** The government is discussing whether a mandatory disclosure rule and a GAAR need to be introduced. There is an existing disclosure rule in the Certified Public Tax Accountant Law but because the disclosure is voluntary rather than mandatory, it is not often used.
- Canada:** Legislated MDR but it has nothing to do with CRS.
- Singapore:** "How do you spell MDR, and what is it?"
- Mexico** has its own MDR, not quite about CRS.
- New Zealand:** No major reforms have been signalled in this area, but Inland Revenue has begun issuing an annual international tax questionnaire to multinational entities.
- Turkey:** The current wording of the draft tax procedures code would shift the burden of proof to the taxpayer where a tax loss is incurred in the context of a tax planning arrangement. The concepts of "tax planning" and "aggressive tax planning" still are under discussion.
- Brazil** drafted the MDR law but was roundly rejected by parliament as it was incompatible with its fundamental freedoms (whatever that means)

OECD made a big issue of MDR: End of tax secrecy, game over!

Scary penalties (Not)


Will OECD pressurise countries to implement MDR?

- Easy to answer: Nope
- The OECD Global Forum on transparency and exchange of information for tax purposes is the sole organization to pressurise countries to join international tax initiatives such a CRS, MDR, BEPs, etc.
- But looky, looky here. The OECD Global Forum on Transparency and AEOI for Tax purposes couldn't give two shits to peer review if countries join MDR.
- For example, here is the Global Forum's peer review of Switzerland, who told OECD to f-off regarding MDR. Not a peep about BEPS Action 12 MDR because its not a minimum standard.

Conclusion

- The global adoption of MDR for CRS avoidance is going nowhere [since the EU](#) introduced DAC 6.
- The only non-EU/EEA/UK and its territories/dependencies countries to legislate MDR are Columbia, Costa Rica and South Africa.
- Liechtenstein and Switzerland gave the finger to the BEPs 12 Action and Hong Kong will monitor the situation (lol)

===== END =====

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