

**Consultation on the implementation of
Mandatory Disclosure Rules for
CRS Avoidance Arrangements
and
Opaque Offshore Structures**

1. Purpose:

- 1.1. On 21 December 2018, the States of Jersey gave a political commitment to the EU Code of Conduct Group (Business Taxation) (the 'Code Group') that it would introduce a mandatory disclosure regime (MDR).
- 1.2. The purpose of this consultation is to help inform the implementation of this commitment. A similar commitment was given by the other Crown Dependencies with whom we will cooperate in developing our approaches.
- 1.3. The responses will play a significant role in shaping the eventual form of Jersey's MDR.

2. Background

- 2.1. On 21 December 2018, the States of Jersey gave a political commitment to the Code Group that it would introduce a mandatory disclosure regime (MDR).

"Jersey will also introduce legislation before 31 December 2019 to implement mandatory disclosure rules aligned to international work on the Common Reporting Standard."

- 2.2. This commitment was given in response to a June 2018 scoping paper from the Code Group which raised the issue of introducing MDR as a "further transparency measure" for "2.2 jurisdictions" (including Jersey) which were involved in the Code Group's work on cooperative jurisdictions and economic substance.
- 2.3. On 13 July 2018, the States of Jersey confirmed that they would introduce a mandatory reporting regime by 31 December 2019. Similar commitments were made by Guernsey and the Isle of Man.
- 2.4. The intention is to implement these commitments in a manner which allows for consistency of treatment across the three Crown Dependencies.
- 2.5. The information reported under the mandatory reporting regime will be exchanged by Revenue Jersey with relevant jurisdictions where Jersey has the legal ability to do so.

3. Outline Proposals and consultation questions

3.1. The MDR model being proposed

- 3.2. There are two recognised models available for this purpose.
These alternative models are:
- The EU model of MDR which includes, amongst its obligations rules for the reporting of Common Reporting Standard ('CRS') Avoidance Arrangements and Opaque Offshore Structures, and is contained within the amendments to the Directive on Administrative Cooperation, known as 'DAC 6',
 - The OECD model entitled 'Model Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures'.
- 3.3. The preference of the Government of Jersey is to implement MDR based on the OECD model, referred to hereafter as the "Model Rules".
- 3.3.1 It is expected that MDR based on the OECD model will also be the preference in the other Crown Dependencies.
- 3.4. This is because:
- 3.4.1. These Model Rules reflect the international consensus in this area.
- 3.4.2. The Model Rules are an OECD product. As such, Jersey can take part in discussions as to their future development.

The relevant documentation can be found at

<https://www.oecd.org/tax/exchange-of-tax-information/model-mandatory-disclosure-rules-for-crs-avoidance-arrangements-and-opaque-offshore-structures.pdf>

<http://www.oecd.org/tax/exchange-of-tax-information/international-exchange-framework-for-mandatory-disclosure-rules-on-crs-avoidance-arrangements-and-opaque-offshore-structure.pdf>

Question 1. Preliminary indications from industry support the Government of Jersey's preferred option to introduce the OECD Model Rules. We would welcome views or general comments on whether this option can be successfully implemented in Jersey.

3.5. Intermediaries operating in Jersey

- 3.6. Revenue Jersey expects, and the Model Rules require, disclosure in two areas, CRS Avoidance Arrangements ('Arrangements') and Passive Offshore Vehicles in Opaque Structures ('Structures').
- 3.7. The disclosure is required to be made by an Intermediary, which can be either a Promoter or Service Provider.

3.8. A Promoter is any person who is responsible for the design or marketing of the Arrangement or Structure to be disclosed

Question 2. – To what extent is it likely that promoters are operating in Jersey for the purposes of this MDR regime?

3.9. A Service Provider is any person engaged to provide assistance or advice on the design, marketing, implementation or management of a Structure or Arrangement, and who would be reasonably expected to know that it was a Structure or Arrangement.

Question 3. – The Government of Jersey expects that all tax advisers¹ and entities regulated by the JFSC that provide services, should based on the information they could reasonably be expected to hold, be able to identify a Structure or Arrangement for these purposes .

a) Is this a reasonable expectation ?

b) Are there other service providers operating in Jersey (whether regulated or non-regulated) that would also be likely to fall within the scope of MDR. If so, which sectors are these service providers operating within ?

4. Operation of the Model Rules in Jersey

4.1. Intermediaries will need to consider the Model Rules if, within their work for clients, they become aware of Common Reporting Standard ('CRS') Avoidance Arrangements or Passive Offshore Vehicles that are held through Opaque Structures.

4.2. The Model Rules define how to identify these situations and, where the rules apply. They will require details to be disclosed to Revenue Jersey within a short time frame.

4.3. The Model Rules provide 7 hallmarks as to what constitutes a CRS Avoidance Arrangement. The existence of one of these hallmarks will require the Arrangement to be disclosed but only if it is reasonable to conclude that the intention of the Arrangement is to circumvent the CRS (' the reasonable to conclude test').

4.4. The Model Rules define a Passive Offshore Vehicle and set out 5 hallmarks of an Opaque Structure. Again, an opaque structure must be reported, but

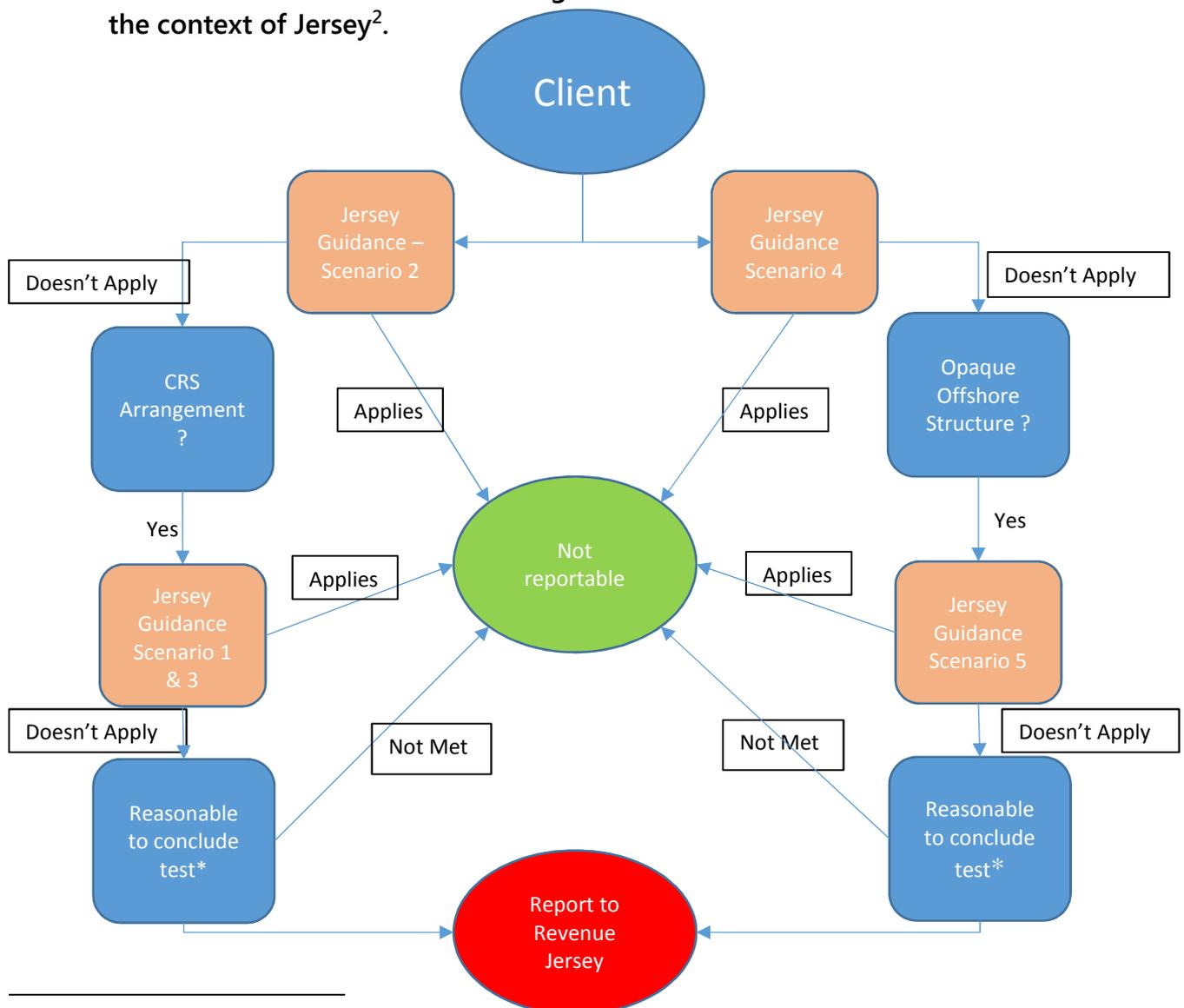
¹ Including accountants, lawyers and other tax advisers

only if the intermediary believes that it is reasonable to conclude that the intention of the structure is to obscure beneficial ownership.

4.5. Revenue Jersey Guidance

4.6. The Government of Jersey will produce guidance which will explain the operation of the Model Rules, when it is expected that MDR disclosures will be made, and will confirm specific situations and sets of circumstances in which MDR disclosure is not required. This will focus disclosures on situations which the Model Rules are intended to address and will provide certainty and clarity to industry in Jersey.

4.7. The guidance will provide examples to demonstrate the application of each of the hallmarks to practical situations. The guidance will also discuss the meaning of “reasonable to conclude” and give example scenarios of circumstances where the Government of Jersey assumes it is reasonable to conclude that there is not an Arrangement or Structure to be disclosed in the context of Jersey².



² These areas are discussed in detail later in the consultation.

*see meaning in 4.3

- 4.8. This consultation seeks views on the circumstances which should be set out in the guidance as being excluded from reporting.

Question 4. - Do you agree that this is a suitable way to provide guidance on these areas? If not, then please indicate what alternative approaches could be taken.

5. The Disclosure Requirement

- 5.1. Revenue Jersey envisions that disclosures will be made electronically.
- 5.2. The disclosure process will ensure that the details provided are accepted and processed in line with the potential sensitivity of such data, and in accordance with obligations such as the Data Protection (Jersey) Law 2018.
- 5.3. A high level summary of the information sought in the disclosure is below, however the information is to be provided to the extent that the Intermediary has knowledge of it.
- 5.4. Details on persons in relation to the disclosure to include
- 5.4.1. The Intermediary making the disclosure
 - 5.4.2. Any Client in respect of the Arrangement or Structure
 - 5.4.3. If different, the actual user of the Arrangement or Structure
- 5.5. Details of the Arrangement or Structure
- 5.5.1. A description of the structure or arrangement and its features
 - 5.5.2. The jurisdiction (s) where the Structure or arrangement was made available for implementation.
- 5.6. Revenue Jersey plan to meet with representatives of industry, as the guidance is developed for input into the development of the disclosure process.

6. Scenarios where disclosure is not required

- 6.1. The Guidance will refer to circumstances where the Government of Jersey believe it would always be possible for a Service Provider to come to a 'reasonable to conclude' position. This Guidance would not be relevant for promoters, to the extent that they operate in Jersey.

6.2. 'Reasonable to conclude' circumstances in relation to CRS Arrangements

6.3. The purposes of outlining these circumstances is to ensure that a Service Provider will be able to quickly and confidently assess their obligation to make disclosures in certain circumstances. If the arrangement falls outside these prescribed circumstances, that does not necessarily mean it has to be disclosed. In those circumstances, the Service Provider should apply the "reasonable to conclude" test from first principles to the arrangement to determine if it is disclosable.

6.4. Scenario 1 – Exchange of CRS data between Jersey and other jurisdictions

6.4.1. Where assets are being moved to or from Jersey to a jurisdiction with which Jersey could exchange CRS data, then it is reasonable to conclude that this transfer is not being made to circumvent CRS reporting.

6.5. Scenario 2 - the cumulative value of funds in the arrangement is less than £10,000.

6.5.1. The legal and administrative costs mean it would be highly unlikely that this arrangement was being undertaken to circumvent CRS reporting requirements. (It should be noted that multiple instances for the same client would be treated as one arrangement).

6.6. Scenario 3 - Revenue Jersey is also considering listing certain asset types which are excluded from CRS reporting (for example, real estate) to make explicit that the non-reporting of these arrangements is not a circumvention of CRS.

6.6.1. Certain asset types require no CRS reporting. Simply investing funds in these assets does not circumvent the policy intentions behind CRS and is not an arrangement that would have to be disclosed. Such a list would provide clarity to Service Providers at the outset and ensure that resources are not wasted considering detailed arrangements.

Question 5. – Do you agree that these exclusions are highly unlikely to remove arrangements from disclosure that could be designed to circumvent CRS reporting?

Question 6. – Would it be reasonable to extend these CRS exclusions to any other sets of circumstances without undermining the policy intent of the Model Rules?

7. 'Reasonable to conclude' circumstances in relation to Passive Offshore Vehicles held through Opaque Structures.

7.1. The purpose of outlining these circumstances is to ensure that a Service Provider can quickly and confidently assess whether the structure in question is a Passive Offshore Vehicle held through an Opaque Structure that must be disclosed under the Model Rules. If the structure falls outside these prescribed circumstances, that does not necessarily mean it has to be disclosed. In those circumstances, the Service Provider should apply the "reasonable to conclude" test from first principles to the arrangement to determine if it is disclosable.

7.2. Scenario 4 - any company which is within the scope of Jersey's economic substance legislation [Taxation (Companies - Economic Substance) (Jersey) Law 2019] can be considered not to be a 'Passive Offshore Vehicle'

7.2.1. A Passive Offshore Vehicle does not carry on substantive economic activity supported by adequate staff, equipment, assets and premises where it is tax resident. Companies that are subject to Jersey's economic substance law are already subject to this test and therefore it is reasonable to conclude that they will not fall within this description.

7.3. Scenario 5 - any entity that is registered with the JFSC Company Registry in Jersey or any trust administered in Jersey will be subject to stringent Anti Money Laundering legislation. If the structure in question incorporates such Jersey entities/trusts, those entities and any subsidiaries or parents would not be regarded as Passive Offshore Vehicles held through an Opaque Offshore Structure.

7.3.1. Jersey's robust Anti Money Laundering legislation ensures that details of the Beneficial Ownership of entities in Jersey must be maintained on an ongoing basis. This information is available for access by the Government of Jersey and will be provided upon request to the Competent Authorities in other jurisdictions authorities. On this basis, it is reasonable to conclude that:

- a Jersey registered or administered entity/trust, or
- a subsidiary of that entity/trust, or
- a parent with a controlling interest in the Jersey entity

will not be a Passive Offshore Vehicle held through an Opaque Structure designed to conceal Beneficial Ownership.

Question 7. - Do you agree that these exclusions are highly unlikely to remove structures from disclosure that could be designed to obscure beneficial Ownership and undermine CRS reporting?

Question 8. – Would it be reasonable to extend these exclusions to any other sets of circumstances or other specific types of structures?

8. Legacy Reporting

8.1. The Model Rules require Promoters only (not Service Providers), to disclose CRS Avoidance Arrangements (not Opaque Structures) entered into since 29 October 2014.

8.2. These only need be disclosed where the aggregate balance prior to the CRS Avoidance Arrangement was US\$1million or above.

8.3. The Model Rules do not clarify if that requires a judgement based on the expectations at that time, or the position at present of how CRS has been adopted across the world.

Question 9. - The Government of Jersey is considering the fullest interpretation, i.e. that it is based on expectations at the time rather than how CRS has developed, would this cause any specific concerns ?

9. Time limits for making a disclosure

9.1. The Guidance will discuss the time limits within which a disclosure must be made. In general, the limits set out in the Model Rules are 30 days after the services are supplied, or the structure or arrangement is implemented.

Question 10.- The political commitment given by the Government of Jersey requires MDR legislation to be in place by 31 December 2019. The Government seeks views on industry's preparedness for making the required MDR disclosures and on the appropriate commencement date for first disclosures.

10. Penalties for failures to disclose

10.1. The Model Rules outline two types of penalty regime that might be applied by jurisdictions introducing MDR - monetary and non-monetary penalties.

10.2. Suggestions for non-monetary penalties in the Rules included:

- a prohibition on Intermediaries who fail to disclose from undertaking regulated or professional services work,
- the extension of taxing time limits, and
- the publication of names.

10.3. Penalties of this nature are not common within Jersey Law, and the Government of Jersey would not seek to apply them specifically in these circumstances.

10.4. The Government of Jersey is proposing to apply monetary penalties in line penalties being introduced for failing to provide information in recent legislation, specifically in line with the penalties for failure to supply information in the recent Economic Substance Legislation.

10.5. This would be up to but not exceeding £3,000 per failure to disclose. A civil penalty with an appeal route to the Commissioners of Appeal, and subject to an appeal process in line with the Income Tax law (Jersey) 1961.

Question 11. - Is this the correct penalty regime and do you believe this approach will discourage non-compliance in a balanced way?

11. Further Feedback

Question 12. - We would invite you to provide any further feedback on the concepts within this consultation.

12. Respondent details

Question 13. - Please provide the name (and contact details) of the firm / company / individual who is responding:

Question 14. - Are you answering this consultation on your own behalf, or on behalf of another body?

Question 15. - Would you be directly affected by the Model Rules as an Intermediary, and if so as a Promoter or Service Provider?

Question 16. - Would you be directly affected by the Model Rules as the user/member of what might be caught as an Arrangement or Opaque Structure under the Model Rules?

13. Thank you

13.1. Please could you send your feedback by the 1st November 2019 to Tax.policy@gov.je Message Title :“MDR consultation”

13.2. Or via post to Tax Policy Unit – MDR consultation
 19-21 Broad Street
 St Helier
 Jersey
 JE2 3RR

Feedback on this consultation

We value your feedback on how well we consult or seek evidence. If you have any comments on the process of this consultation (as opposed to the issues raised) please email communications.unit@gov.je

How we will use your information

The information you provide will be processed for the purpose of consultation. The Comptroller of Taxes will use your information in accordance with the Data Protection (Jersey) Law 2018 and the Freedom of Information (Jersey) Law 2011. We may quote or publish responses to this consultation but we will not publish the names and addresses of individuals. If you do not want any of your response to be published, you should clearly mark it as confidential. Confidential responses will be included in any summary of statistical information received and views expressed.