International Bar Association

IBA London 2023

Capital Markets & Tax Conference

How to ride the waves of EU tax developments?

12th Annual IBA Finance & Capital Markets Tax Conference – 16 January 2023 - London

Agenda

1. Introduction
2. Pillar 2 in the EU
3. DEBRA, BEFIT (Business in Europe: Framework for Income Taxation)
4. Unshell Directive Proposal
5. Withholding Tax Recoveries
6. Tax Enablers Consultation (SAFE)
7. Practical experiences DAC 6

Introduction

Andrew Quinn
Maples Group Dublin

Partner

Tax

+353 1 619 2038

+353 86 804 7336

andrew.quinn@maples.com

Karin Spindler-Simader
Wolf Theiss Vienna

Consultant
Tax

+431 51510 5419

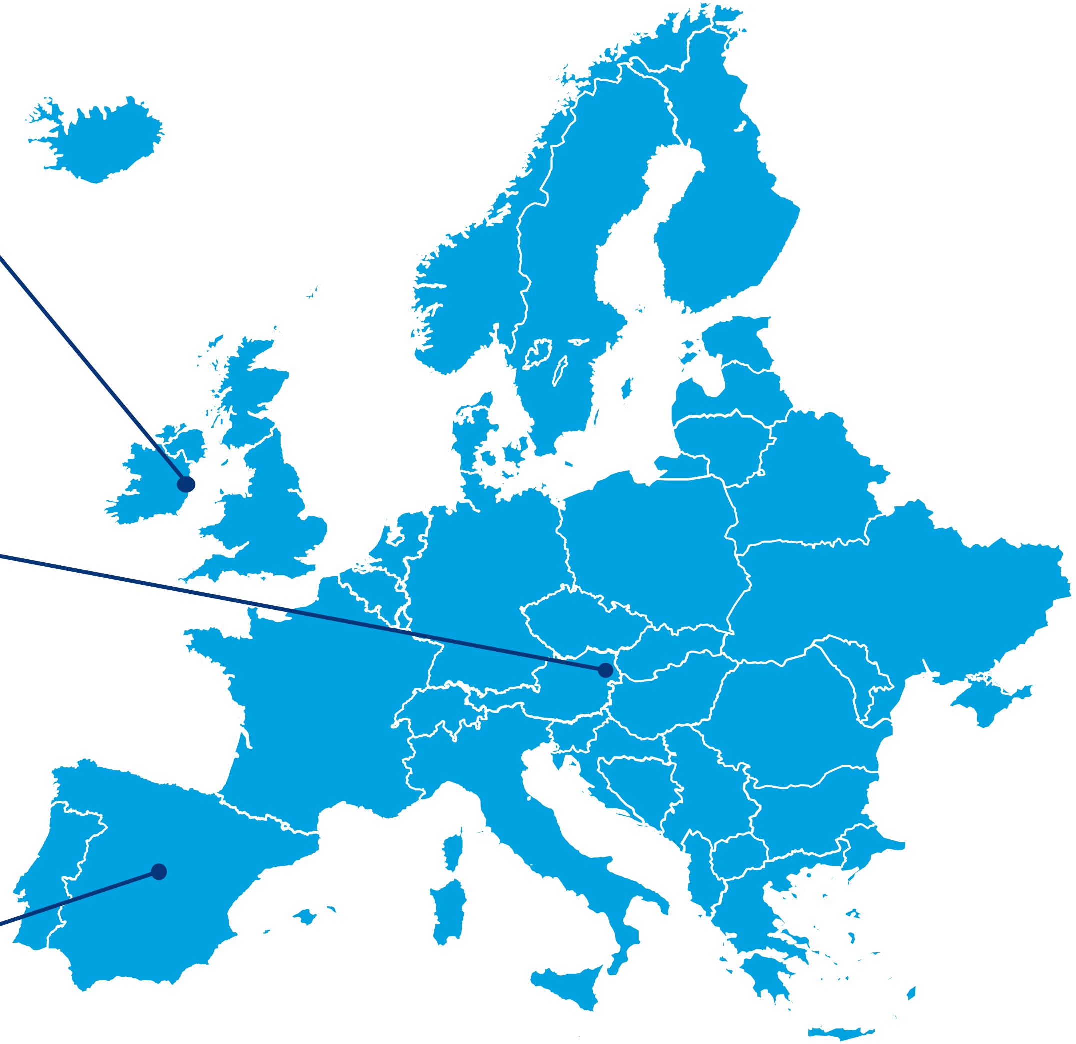
karin.spindler-simader@wolftheiss.com

Mariana Díaz-Moro Paraja
Gómez-Acebo & Pombo Madrid

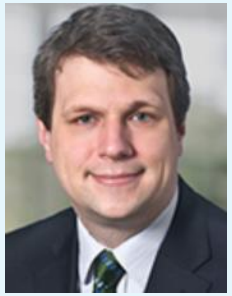
Partner
Tax

+34 91 582 91 00

mdiazmoro@ga-p.com



Introduction



Michael Orchowski
Sullivan & Cromwell London

European Counsel

Tax

+44 20 7959 8900
orchowskim@sullcrom.com

Marco Ottenwälder
Poellath Frankfurt

Counsel

Tax

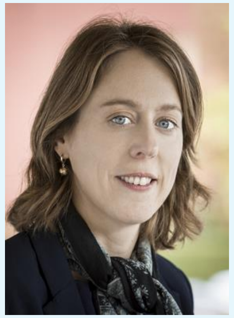
+49 (69) 247047-28
marco.ottenwaelder@pplaw.com

Susanne Schreiber
Baer & Karrer in Zurich

Partner

Tax adviser, Attorney-at-law

+41 58 261 52 12
+41 79 139 51 38
susanne.schreiber@baerkarrer.ch

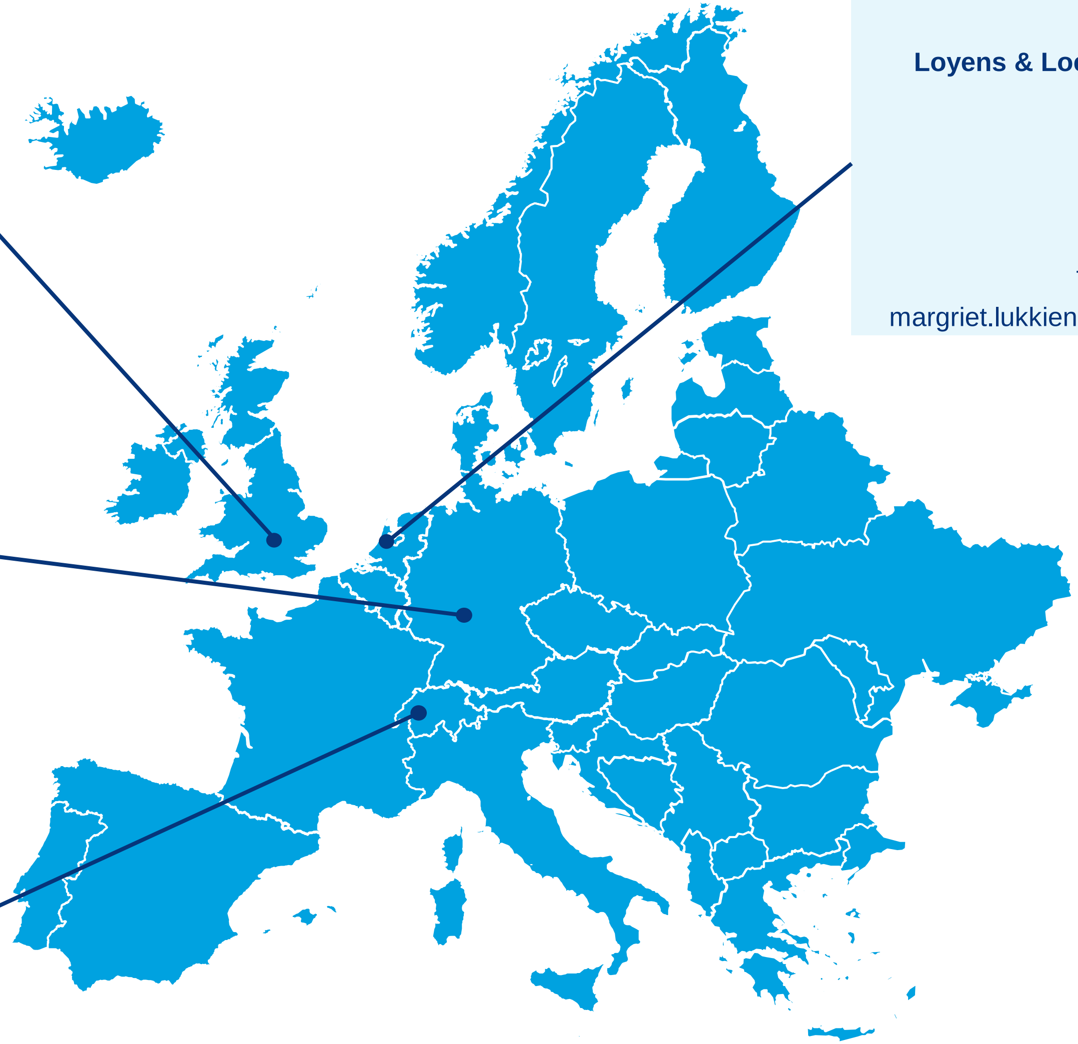


Margriet Lukkien
Loyens & Loeff in Amsterdam

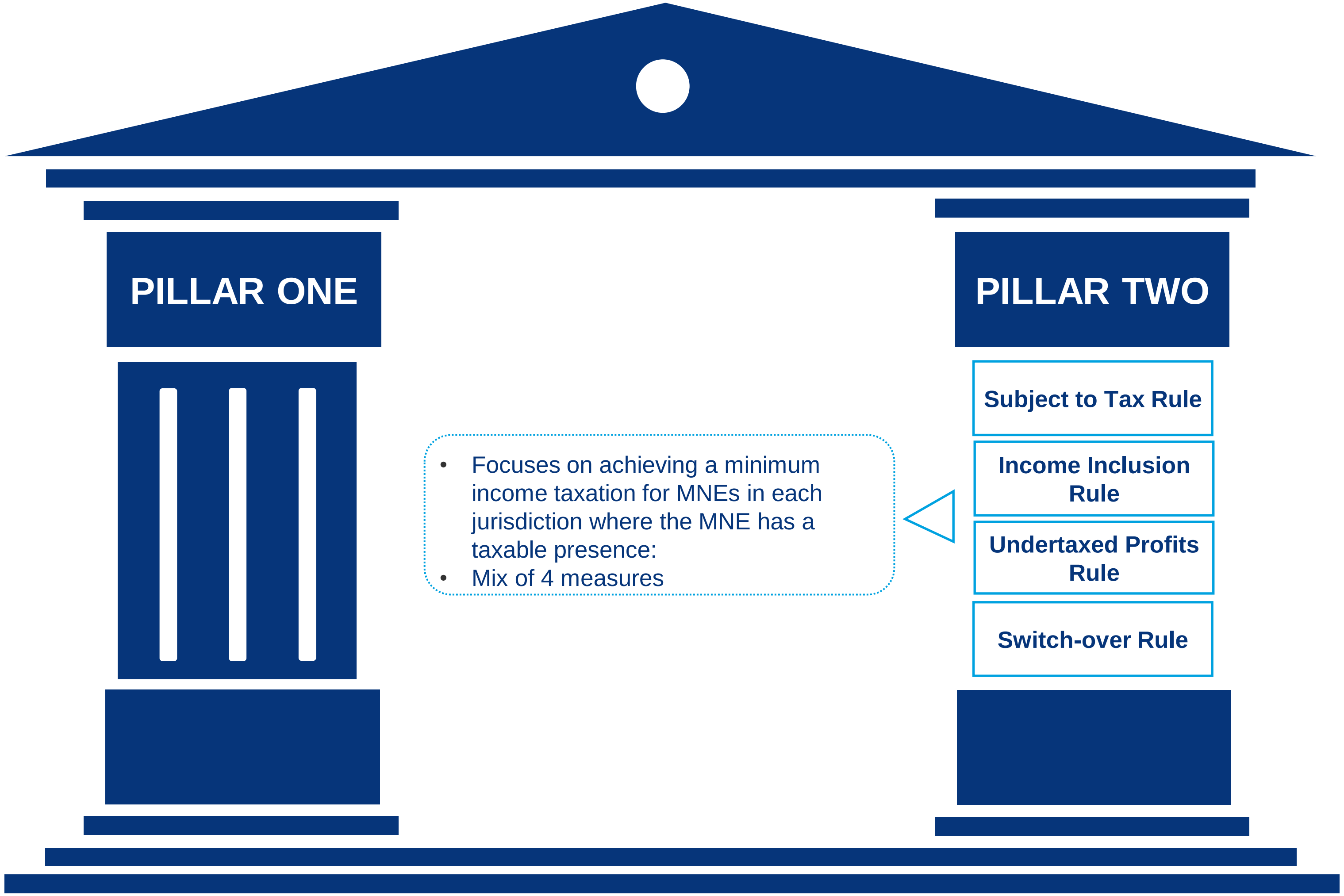
Partner

Tax adviser

+31 20 578 54 18
+31 6 10 90 15 42
margriet.lukkien@loyensloeff.com



Pillar 2 – key development in the EU



Pillar 2 – key development in the EU

Achieving a Global Minimum Taxation
in each jurisdiction an MNE has presence

GloBE rules

Income Inclusion Rule (IIR) 2

Income inclusion at parent level of constituent entities taxed below the **15%** minimum rate in their jurisdiction.

Undertaxed Profits Rule (UTPR) 3

This is a **secondary** rule applied by the other group jurisdictions as backstop to the IIR.

Switch-over Rule (SOR)

Switch-over from exemption to credit method to support effective application of GloBE rules.

Subject to Tax Rule (STTR) 1

Source taxation for “mobile payments” subject to an adjusted nominal rate below **9%.**

Pillar 2 – key development in the EU

Key points from the Model Rules

- Minimum **ETR** of **15%** for **IIR & UTPR**; minimum **nominal rate** of **9%** for **STTR**
- **€ 750m global turnover threshold** confirmed *but* countries may optionally apply the IIR to MNEs headquartered in their jurisdiction even if they do not reach the € 750m turnover threshold
- Carve-out for international shipping income and *de minimis* jurisdictions where GloBE revenue < EUR 10M and GloBE income < EUR 1M

- **Substance-based carve-out** based on payroll and tangible assets (likely to be useful only for low-margin operations)

- Target entry into force: OECD aims for end **2023**, EU deadline end of 2023

Pillar 2 – key development in the EU

- After several postponements, the European Commission released its proposal for a Pillar Two Directive within the EU on 22 December 2021. The proposed EU rules are largely in line with the OECD Pillar Two rules.

- On 15 December 2022, the Council of the EU formally adopted the Pillar Two Directive at EU level. EU Member States have to transpose the Pillar Two Directive into their national laws before 31 December 2023.

- The Pillar Two Directive rules generally apply in respect of fiscal years beginning from 31 December 2023, with the exception of the Undertaxed Profit Rule which would apply for fiscal years beginning from 31 December 2024.

Pillar 2 – state of play in the EU Member States

- How are the different EU Member States dealing with the implementation of the Pillar 2 Directive?
- Feasibility of the deadline of 31 December 2023
- Timing of when draft legislation is available
- Implementation as part of existing tax rules like a corporate income tax act versus a separate Pillar Two act

Pillar 2 in Switzerland

- Implementation per 1 January 2024
- Constitutional provision to allow interim ordinance re minimum taxation rules (to be replaced by ordinary law at a later stage) → Confirmed by parliament (both chambers) on 16 Dec 2022
- Public vote in June 2023
  - Constitutional change, art. 129a, 197 no. 15 Federal Constitution
  - Federation may implement regulations re market country taxation and minimum taxation, considering international standards and master provisions → covering Pillar 1 and Pillar 2
  - Possibility to apply a federal top up tax ("Ergänzungssteuer") in the difference between minimum tax rate and effective tax rate
  - Top up tax in case of undertaxed foreign countries primary at the level of the top domestic (Swiss) entity, secondary at the level of all domestic (Swiss) entities
  - No deduction of top up tax as income tax deductible expense
  - Revenue from top up tax will be split 75% to cantons, 25% to the federation, cantonal part will be reflected for national tax equalisation
  - Enforcement by cantonal tax authorities, under supervision of the Federal Tax Administration

Pillar 2 in Switzerland

- Minimum taxation ordinance ("Mindestbesteuerungsverordnung"), draft based on art. 197 No 15 Federal Constitution
  - Covers: domestic top up tax and international top up tax (i.e. for undertaxed constituent entities outside of Switzerland)
  - Application of OECD / IF Pillar 2 model rules, 14 December 2021, considering the commentary and respective rules of the OECD / G 20
  - <u>Domestic top up tax</u>:
    - based on EUR 750 m consolidated revenue, unless top entity applies a lower threshold
    - Calculation on the basis of model rules art. 5.1. – 5.6
  - <u>International top up tax:</u>
    - Application and calculation based on income inclusion rule, art. 2.1 – 2.3 model rules with respect to foreign constituent entities, in case of (i) a Swiss top entity or (ii) another Swiss entity for whose income no foreign IIR is applicable.
    - Application and calculation based on art. 2.4. and 2.5 model rules (undertaxed payments rule) with respect to foreign income with a foreign top entity, if at least one constituent entity is taxable in Switzerland and no foreign IIR applies to this foreign income
    - Calculation on the basis of model rules art. 5.1. – 5.6
  - Allocation of domestic top up tax according to stand alone accounts of Swiss constituent entities and if applicable, according to intercantonal allocation rules
  - Allocation of international top up tax (for UTPR) according to art. 2.6. model rules

Pillar 2 in Switzerland

- Critical points
  - Use of additional fiscal revenues by cantons / federation in a way that is not detrimental for Pillar 2, e.g. qualified refundable tax credits
  - Allocation mainly to low tax cantons, re-allocation with national tax equalisation
  - Determination of GloBE-basis and differences / choices under Swiss GAAP and domestic tax rules

Pillar 2 in the UK and the US

- Timing of Pillar 2 rules in the UK

- Interaction of Pillar 2 rules with US tax rules
  - It can be expected that US GILTI in its current version would not qualify as IIR.
  - How to take taxes paid under the US GILTI rules into account as taxes paid under CFC rules for Pillar Two purposes

BEFIT (1/3)

- 2011 First CCCTB proposal
- 2015 BEPS initiatives
- 2016 Relaunch CCCTB
- 18 May 2021 Relaunch CCCTB as BEFIT
- 14 Sep 2022 State of the Union address (von der Leyen)
- 13 Oct 2022 Beginning of consultation
- 26 Jan 2023: (Postponed) End of Consultation
- Mid March 2023: Publication of consultation results
- July 2023 onwards: Drafting EU Directive BEFIT

BEFIT: Business in Europe: Framework for Income Taxation
= Single Corporate Tax Rulebook (Common Tax Base) and Formulary Apportionment of Profits

(1) EU Commission: Particularly problematic in the region, where the single market for goods and services is undermined by 27 different tax codes. That raises costs for business and reduces potential growth and investment, as well as creating loopholes and complexities.

(2) According to the EU BEFIT will (18 May 2021):

  (1) Create a common rulebook for cross-border operating groups of companies, reducing barriers to cross-border investment,

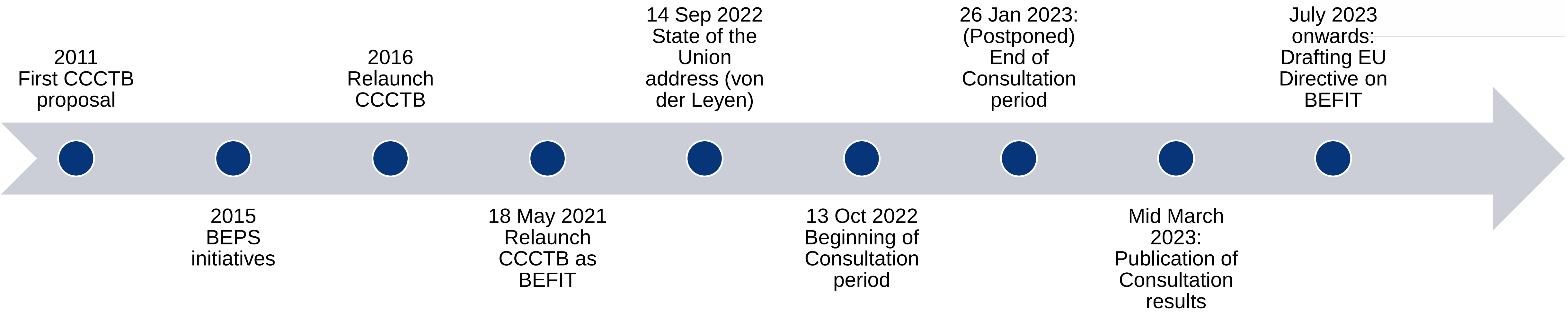
  (2) Reduce red tape and cut compliance costs in the Single Market; lessening the administrative burden on tax authorities and taxpayers,

  (3) Combat tax avoidance, and support job creation, growth, and investment,

  (4) Provide a simpler and fairer way to allocate taxing rights between Member States,

  (5) Ensure reliable and predictable corporate tax revenues for Member States.

BEFIT (2/3)



BEFIT: Business in Europe: Framework for Income Taxation
= Single Corporate Tax Rulebook (Common Tax Base) and Formulary Apportionment of Profits

(3) Generally, builds on ideas and technical work of Pillar 1; however Pillar 1 (OECD) formula for allocating taxing rights would exist in parallel with existing tax systems, while BEFIT shall replace current national rules of the member states.

(4) Companies that operate in multiple EU countries would calculate a single set of profits for the EU, with those profits then allocated to countries depending on factors including per-country sales, assets, intangible assets and labor costs

(5) Expect objections from smaller EU countries that might lose out from the apportioning of taxation rights because of their smaller customer bases; Commission would have to overcome the challenge of securing unanimity among member states, which it requires on taxation.

BEFIT (3/3)

Ongoing Consultation

(1) Call for evidence
   (1) Key Objectives:
      (1) Increase the resilience of businesses by reducing the complexity of tax rules and the compliance costs faced by EU businesses operating across borders;
      (2) Remove obstacles to cross-border investment and make the single market a more attractive location for international investment;
      (3) Create an environment conducive to fair and sustainable growth by paving the way for administrative simplification; and
      (4) Provide sustainable tax revenue, which is particularly important in the current challenging economic climate.
   (2) Building Blocks:
      (1) (Current) Policy Options:
      No Action at EU Level (“status quo”) vs. EU Action (Improving the current legislation by means of a directive)
      (2) Scope: Groups with consolidated global revenues exceeding EUR 750 million vs. Broader Scope; sectoral aspects to be considered
      (3) Tax Base Calculation: Limited Tax Adjustments vs. Comprehensive Set of Rules
      (4) Allocation of Profits-Formula: Incorporation vs. No Incorporation of intangible assets
      (5) Allocation of Profit to Related Entities Outside the Group: Keep current TP rules vs. Simplified approach
      (6) Administration: One of the key goals of BEFIT is to reduce compliance and administrative costs for taxpayers and Member States, so the design of this building block will require careful consideration.

(2) Only 11 written feedbacks (*on 10 January 2023*)

DEBRA (1/3)

18 May 2021
Communication on Business Taxation for the 21st Century

14 June to 12 July 2021
Feedback on Roadmap

1 July 2021 to 7 Oct 2021
Public Consultation

11 May 2022
Proposal for a Council Directive (DEBRA)

13 May to 29 July 2022
Commission Adoption

Until 31 Dec 2023
Transposition into Member States‘ national law

1 January 2024
Enter into Force?

DEBRA: Debt-Equity Bias Reduction Allowance
= Rules on a Debt-Equity Bias Reduction Allowance AND limitation of deductibility of interest for CIT purposes

(1) EU Commission: Initiative is part of the EU strategy on business taxation, which aims to ensure a fair and efficient tax system across the EU, and contributes to the Capital Markets Union, making financing more accessible to EU business and promoting the integration of national capital markets into a genuine single market.

(2) EU Commission: In order to remove possible tax related distortions among Member States, it is necessary to lay down a common framework of rules to address the tax related debt equity bias across the Union in a coordinated manner.

(3) EU Commission: To effectively address the tax-related debt-equity bias in a manner sustainable for the Union’s public finances, an allowance for equity financing should be accompanied by a limitation on the deductibility of debt financing costs.

(4) Only Belgium, Cyprus, Italy, Malta, Poland, and Portugal currently (2022) provide equity allowances.

DEBRA (2/3)

International Bar Association

DEBRA: How it is supposed to work

(1) Scope: Taxpayers that are subject to corporate income tax in one or more Member States, including permanent establishments in one or more Member States of entities resident for tax purposes in a third country;
Carve Outs of few financial undertakings (amongst others credit institutions, investment firms, AIF, AIFM, UCITS management company, crowd-funding / crypto-asset service provider, …)

(2) Allowance on (Net) Equity for ten tax years (optional?)

  (1) Generally: (net equity 31 Dec 2024 ./. net equity 31 Dec 2023) x
  10-year risk-free interest rate for the relevant currency (provided by European Insurance and Occupational Pensions Authority)
  + risk premium of 1% or 1.5% (SME); adjustable by the European Commission if certain conditions are met.

  (2) ‘equity’ means, in a given tax period, the sum of the taxpayer’s paid-up capital, share premium accounts, revaluation reserve and other reserves and profit or loss brought forward

  - Also Internal Equity Financing (i.e., retention of profits) included

  (3) ‘net equity’ means the difference between the equity of a taxpayer and the sum of the tax value of the taxpayer’s participation in the capital of associated enterprises and the taxpayer’s own shares;

  - Tax balance equity?
  - In case of negative net equity, a negative allowance shall be considered for ten years (differs from interest deductions on loans) considering different notional interest rates

  (4) Limited to 30% of the taxpayer's earnings before interest, tax, depreciation and amortisation (“EBITDA”), carry forward for 5 years

  - Up to 60% of (tax?) EBITDA deductible as capital cost (notional interest up to 30%, loan interest up to 30%);
  - determination of EBITDA in different Member States?

DEBRA (3/3)

DEBRA: How it is supposed to work

(3) Anti-Abuse
  (1) Non-consideration of the increase in equity capital regarding certain transactions, however, exculpation opportunity if there are valid economic reasons for certain transactions;
  (2) In case of a contribution in kind or investment in an asset, value of the asset is taken into account for the calculation of the base of the allowance only where the asset is necessary for the performance of the taxpayer’s income-generating activity; if the asset is other than shares, market value shall be considered,
  (3) Double deduction shall be avoided in case of reorganizations.

(4) Limitation on Interest Deduction (additional to ATAD)
  (1) Generally: Deduction of borrowing interest up to an amount (a) corresponding to 85% of such costs incurred during the tax period. If such amount is higher than the amount (b) determined in accordance with Article 4 ATAD, the taxpayer shall only be entitled to deduct the lower of the two amounts in the tax period.
  (2) Carry forward / back of the difference between the amount (a) and (b) in accordance with Article 4 ATAD

(5) Monitoring / Reporting

Unshell Directive Proposal (“ATAD 3”)

Commission proposal from December 2021

- Planned timing: adoption by Member States by 30 June 2023, effective from 1 January 2024, but with retroactive effect due to look-back period of two years;
- The ECON proposes effective date from 1 January 2025; seems more realistic
- Several options to amend the proposal are still being considered by the EU member states

Seven-step test:

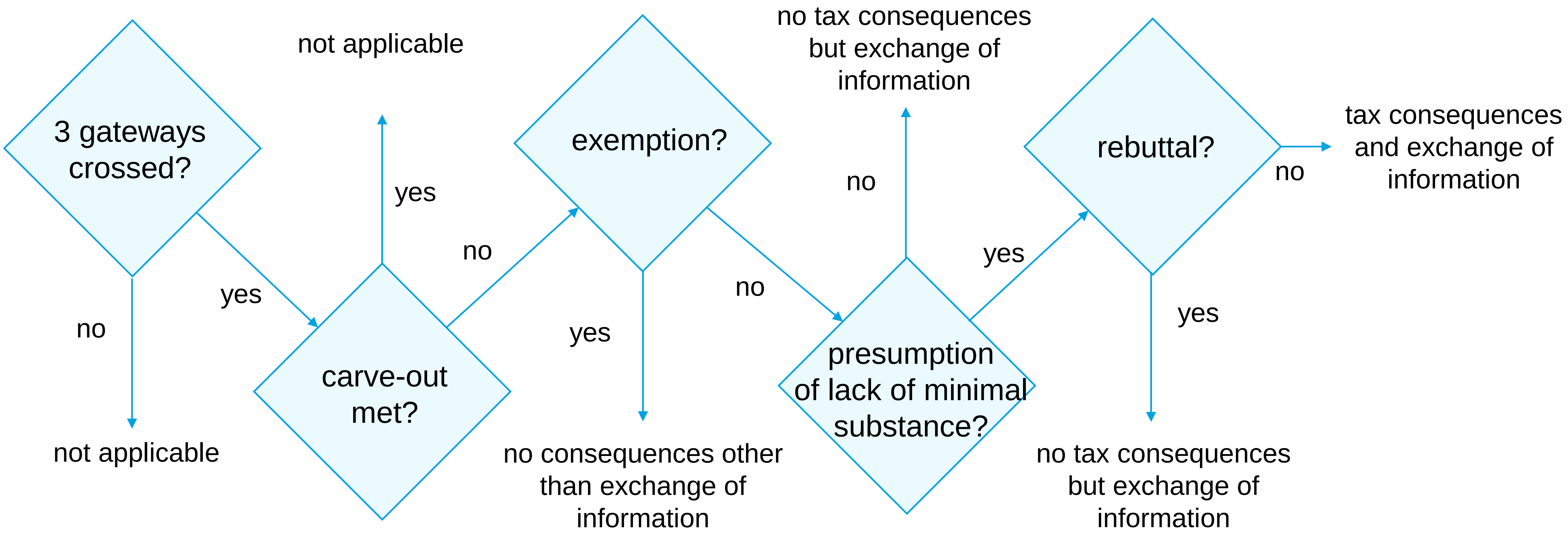
(1) Undertakings that should report;
(2) Reporting;
(3) Exemption for lack of tax motives;
(4) Presumption of lack of minimal substance for tax purposes;
(5) Rebuttal;
(6) Tax consequences; and
(7) Exchange of information

Tax consequences:

- Denial of a tax residence certificate;
- Denial of benefits under double tax treaties;
- Denial of benefits under the Parent/Subsidiary Directive and under the Interest/Royalty Directive;
- Pass-through taxation at the level of shareholders.

Unshell Directive Proposal - Flowchart

Substance test and consequences



Unshell Directive Proposal

Undertakings that should report - three gateways

(1) Passive income

- More than 75% passive income; OR
- More than 75% of the book value consists of immovable property and certain movable property; OR
- More than 75% of the book value consists of shares

(2) Cross-border activities

- 60% threshold

(3) Outsourcing of day-to-day operations and the decision-making on significant functions

Unshell Directive Proposal

Reporting in annual tax return with documentary evidence / Presumption

Substance indicators

- Own premises or premises for its exclusive use;
- Own and active bank account; and
- One or more qualifying directors OR a majority of qualifying employees

Unshell Directive Proposal

Exemption for lack of tax motives / Rebuttal

<u>Exemption</u> upon request from the obligations of the Unshell Directive (for one and a maximum of another five years):

- Sufficient and objective evidence that interposition does not lead to a tax benefit
- Information on the structure of the group and its activities and a comparison of the tax burden with/without the intermediation of the reporting entity.

<u>Rebuttal</u> of presumption of lack of minimal substance for tax purposes (for one and a maximum of another five years)

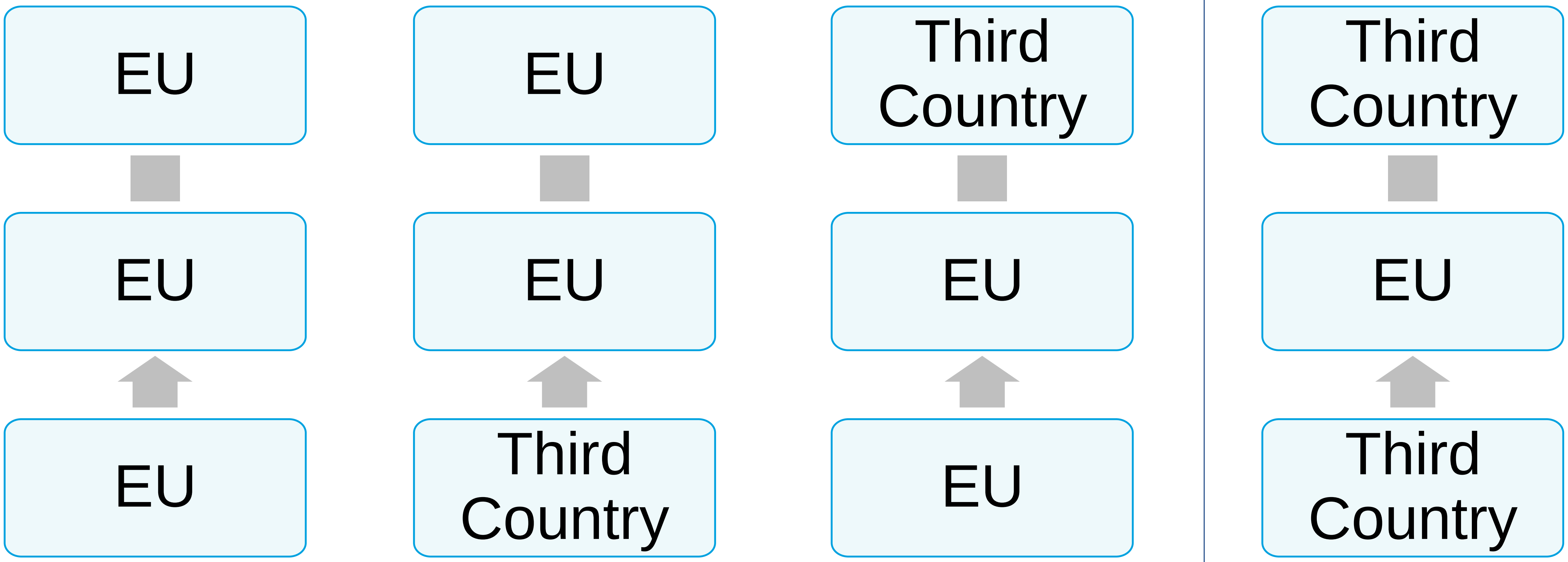
Unshell Directive Proposal

Discussions in practice include the following

- Two year look back period for the gateways: threshold to be exceeded in each of the two years or average?
- Tax credits:
  - Is there a credit for taxes levied by the source state of the income?
  - Is there a credit for taxes levied by the residence state of the (shell) company and does this depend on whether the source state is an EU MS?

Unshell Directive Proposal

Consequences – Examples for discussion



Unshell Directive Proposal

Discussions in practice / Comparison to Swiss withholding tax refund requirements

<u>Requirements for Swiss withholding tax refund of foreign recipient</u>

- Allocation of income to recipient / beneficial ownership
- Tax residency of recipient
- Substance requirements, depending on ultimate owner (e.g. listed entity, personal holding, fund) one or two criteria must be fulfilled
  - Balance sheet substance (minimum equity, 30% for participation)
  - Infrastructure / Personal substance (qualified workforce, office space)
  - Functional substance (e.g. holding with two substantial entities in foreign countries)
- No abuse
  - Old reserves (acquisition of Swiss entity with distributable, non business required assets from non-treaty entitled shareholder)
  - liquidation by proxy (similar to old reserves, but partial / full liquidation of such Swiss entity upon acquisition → higher basis for Swiss WHT)
  - international transposition (sale to (wholly owned) Swiss entity)
  - extended international transposition (acquisition via Swiss entity with ic loans / capital contribution reserves without sound business reasons → denial of WHT refund between Swiss target and Swiss acquisition company)

- Unshell implications: denial of tax residency certificate → possibility to show tax residency with different means towards Swiss Federal Tax Administration (since unshell requirements are not relevant for Swiss WHT refund)

Withholding Tax Recoveries

New EU system to avoid double taxation

<u>Aim:</u>

- Introduction of an EU-wide system for withholding tax relief on dividend and/or interest payments and a system for the exchange of information and cooperation among tax authorities

<u>Legal Act:</u>

- EU-Directive based on Art. 115 TFEU

<u>Procedure thus far:</u>

- End of September 2021: Publication of an information paper by the EU-Commission (”*Inception Impact Assessment*“) concerning the procedures for withholding tax relief for dividend and/or interest payments on investments made in the source country by a non-resident investor
- Feedback period: 28.09.2021 – 26.10.2021 (33 responses)
- Consultation period: 01.04.2022 – 26.6.2022 (approx. 1,700 responses)

<u>Implementation:</u>

- Commission Adoption was initially planned for Q4/2022.
- Question is what the new timing is

Withholding Tax Recoveries

Proposal of different options in “Inception Impact Assessment”:

Option 1: **Improvement of withholding tax refund procedures:**

- Current procedures shall become easier, faster and more transparent and thus more efficient,
- e.g. by establishing the same digitalised procedures for withholding tax EU-wide

Option 2: **Establishment of a fully-fledged common EU relief at source system:**

- Implementation of a standardised, EU-wide system for withholding tax relief at source in order to ensure correct taxation at the time of payment

Option 3: **Enhancement of the existing administrative assistance framework to verify entitlement to double tax convention benefits:**

- Mandatory information exchange of beneficial owner-related information on an automated basis in order to ensure a correct taxation of non-resident investors

Tax Enablers Consultation (SAFE)

International Bar Association

Public consultation launched by the European Commission

Consultation period: 6 July 2022 – 12 October 2022. 60 valid feedback instances received

Why?: to collect views from stakeholders on the role of enablers that contribute to tax evasion and aggressive tax planning + the magnitude of the problem + the need for EU action and potential policy responses

Target audience /expected stakeholders' groups to answer:

(1) Member states / public authorities
(2) Business associations (including those representing persons that provide services of a tax nature)
(3) Non-governmental / civil society organisations
(4) Individuals
(5) Academia

Objective: 'to improve a regulatory framework for tax intermediaries', through a legislative proposal to tackle the role of 'Enablers' (Securing the Activity Framework of Enablers – SAFE)

Indicative timing for the Commission's adoption of a proposal: April 2023.

Tax Enablers Consultation (SAFE)

3 policy options that the Commission is considering:

<u>Option 1</u>: Requirement for all enablers to carry out dedicated due diligence procedures

+ Prohibition from assisting in tax evasion and aggressive tax planning
+ Carry out a test to check any arrangement / scheme
+ Maintain records of these due diligence procedures

<u>Option 2</u>: Prohibition to facilitate tax evasion and aggressive tax planning combined with due diligence procedures and a requirement for enablers to register in the EU

+ Prohibition from assisting in tax evasion and aggressive tax planning
+ Dedicated due diligence procedures
+ Enablers that provide advice or 3 services of a tax nature to EU taxpayers or residents should register in an EU Member State

<u>Option 3</u>: Code of conduct for all enablers

+ Requirement for all enablers to follow a code of conduct

Tax Enablers Consultation (SAFE)

Questions submitted:

1. *Please provide reasons for which you consider that the EU should take action to enhance the fight against tax evasion and aggressive tax planning by addressing the role of enablers?*

2. *In determining aggressive tax planning for the purposes of this proposal, several factors should be taken into account?*

3. *In your opinion, are monetary penalties an adequate means to appropriately sanction and deter enablers from facilitating tax evasion and aggressive tax planning? If not, please describe any other enforcement mechanism (e.g. other type of sanctions or compliance measures against enablers that market, sell or otherwise promote tax evasion or aggressive tax planning) that you consider appropriate and effective for EU and non-EU enablers*

Tax Enablers Consultation (SAFE)

International Bar Association

Open issues:

- This initiative will interact with others recently introduced (ATAD + DAC 6 + AML + Whistle blowers)
- Enablers *vs* Intermediaries
- *Tax evasion* and *aggressive tax planning* definitions
- Transactions within the scope (EU / non-EU / single Member State?)
- EU based enablers / non-EU based?
- Taxes covered
- Increase in the compliance obligations for tax advisers
- Monetary penalties and others
- Other?

Tax Enablers Consultation (SAFE)

UK Enablers Legislation:

- Builds on the “DOTAS” and “POTAS” rules.
- Took effect on 16 November 2017.
  - Additional penalties applicable to structures with a non-resident promoter introduced in 2022.
- Allows HMRC to impose penalties on *enablers* of *defeated*, *abusive* tax arrangements.
- “Enablers” include designers, managers, marketers, enabling participants and financial enablers.
- Arrangements are “abusive” if they “cannot reasonably be regarded as a reasonable course of action in relation to the relevant tax provisions, having regard to all the circumstances”.
  - (Intentionally), the same standard as for the UK GAAR.
- An arrangement is “defeated” if it is finally counteracted (either by HMRC or the taxpayer).
- Applicable to a significant number of UK taxes, including income tax, corporation tax, national insurance, CGT, stamp duty land tax and inheritance tax, but not VAT.
- How do these UK rules relate to the SAFE and to DAC6?

Practical experiences DAC 6

A Quick Reminder – What is DAC6?

- DAC6 (Council Directive (EU) 2018/822) provides for mandatory reporting by EU based intermediaries to their national tax authority of potentially aggressive tax planning arrangements
- Information then shared between the tax administrations of the EU Members States
- Broadly, the scope of DAC6 is any cross-border tax arrangement which concerns at least one EU Member State
- Applies to cross-border tax ‘arrangements’ which reflect one of the “hallmarks”
- The “hallmarks” are broken down into **five main categories**, some of which require a tax avoidance motive and must satisfy the Main Benefit Test, while others are absolute
- In some cases, the reporting obligation passes to the taxpayer, but the **primary responsibility** rests with the ‘**intermediary**’
- DAC6 implementation effective as per **1 July 2020**, but with a look-back period
- The DAC6 reporting deadline is generally **within 30 days** of the earlier of the date an arrangement is made available or ready for implementation or the first step in the implementation is undertaken.
- Penalties for non-compliance vary between the EU member states.

Practical experiences DAC 6

International Bar Association

Developments since the implementation of DAC6

Brexit

- The UK is no longer subject to DAC6 **since 31 December 2020**
- The UK has since replaced DAC6 with OECD rules on tax transparency

Legal Professional Privilege and DAC6 Rules – Recent European Court of Justice (CJEU) Judgment

- On **8 December 2022** the CJEU released its judgement which annulled certain aspects of DAC6 which required an intermediary who is a legal professional to notify other intermediaries involved where a reporting obligation arises.
  - Violation of attorney-client privilege
- This judgement followed from the decision of the Belgian Constitutional Court on **15 September 2022** in which the Court referred to the CJEU the question of DAC6's compatibility with certain provisions of the Treaty on the Functioning of the European Union (TFEU), the European Convention on Human Rights (ECHR), and the Belgian Constitution, where they relate to the right to privacy and a fair trial.
  - The concern was that reporting certain tax arrangements under the EU Directive would infringe upon the legal rights of "intermediaries" under the Rules of Procedure of the Court of Justice in Belgium and elsewhere in the EU. The Court found that the obligation to DAC6 notification obligation infringes the right to respect for communications between a lawyer and his or her client.
- What is the key impact of the CJEU judgment?

Practical experiences DAC 6

Developments since the implementation of DAC6

Compliance and software tools used by advisors

- The duty to report within 30 days leaves a very short timeframe for ongoing reporting – therefore, systems and processes are critical
- Also systems are important to the compliance process and the “awareness” test
- Many organisations have made changes to their reporting systems and implemented staff training or invested in new IT software in order to comply with DAC6

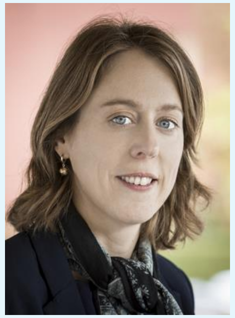
Compliance interventions and local technical guidance by EU Member State tax authorities

- Tax authorities have continued to update their guidance on DAC6
  - For example: most recently in November 2022 Irish Revenue provided guidance to deal with situations where a company that is not tax resident has a tax nexus with its place of incorporation, as well as various other administrative measures (such as Revenue’s power of enquiry extending to AML records)
- What have different EU member states done with all the DAC6 information received?

Chair and panellists

Margriet Lukkien
Loyens & Loeff in Amsterdam

+31 20 578 54 18
+31 6 10 90 15 42
margriet.lukkien@loyensloeff.com



Andrew Quinn
Maples Group Dublin

+353 1 619 2038
+353 86 804 7336
andrew.quinn@maples.com

Michael Orchowski
Sullivan & Cromwell London

+44 20 7959 8900
orchowskim@sullcrom.com

Karin Spindler-Simader
Wolf Theiss Vienna

+431 51510 5419
karin.spindler-simader@wolftheiss.com

Marco Ottenwälder
Poellath Frankfurt

+49 (69) 247047-28
marco.ottenwaelder@pplaw.com

Mariana Díaz-Moro Paraja
Gómez-Acebo & Pombo Madrid

+34 91 582 91 00
mdiazmoro@ga-p.com

Susanne Schreiber
Baer & Karrer in Zurich

+41 58 261 52 12
+41 79 139 51 38
susanne.schreiber@baerkarrer.ch