



**WELCOME**



# EU Tax Matters

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# Agenda

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- Updates - EU Tax Provisions
- DAC 7
- DAC 8
- ATAD III
- Public CBC
- BEFIT

# Updates - EU Tax Provisions

Measure	Applicable to:	Aim	Expected Timing
DAC 7	EU Digital platform operators	Ensure that sellers who generate income from goods or services via online platforms pay their fair share of taxes	31 January 2024 – deadline for first reporting by platform operators – 2023 for data collection  EG. Trolley, TaxBit  Q4 2023 – updates to list of data required
DAC 8	Crypto-asset services providers and issuers, as well as for e-money institutions	Ensure that EU rules stay in line with the evolving economy and include other areas such as crypto-assets and e-money. Establish a uniform transparency within the Member States and disclosure requirements for crypto-asset services providers and issuers, as well as for e-money institutions in order to ensure fair taxation.	Commission adoption and public Feedback closed  The new reporting requirements on crypto-assets, e-money and central bank digital currencies will enter into force on 1 January 2026, i.e. transpose into domestic legislation by 31 Dec 2025

# Updates - EU Tax Provisions

Measure	Applicable to:	Aim	Expected Timing
Tax Evasion & Aggressive tax planning in the EU – tackling role of enablers	Just consultation at the moment to determine whether need for EU action	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 the potential policy responses.	Consultation process closed 12 October 2022  Commission adoption due
EU Directive on Pillar 2	Corporates with revenues in excess of €750 million	Avoid race to the bottom (minimum effective tax rate)	Agreed in late 2022 – required introduction of domestic legislation in EU from 2024 for income inclusion rule and 2025 for Under Taxed Payment Rule – refer to RMCG slides
Digital Levy	Would apply to companies that earn profits from the digital economy	This initiative aims to introduce a digital tax to address the issue of fair taxation of the digital economy.	Shelved – US Pressure

# Updates - EU Tax Provisions

Measure	Applicable to:	Aim	Expected Timing
Public Country by Country Reporting	MNE's and standalone entities with a consolidated revenue over EUR 750 million for each of the last two consecutive financial years to publicly disclose certain information – same as standard CBC threshold	Greater tax transparency and supplementing already agreed upon methods of sharing information.	<p>Transposed into EU States law - 23 June 2023</p> <p>Reporting requirements apply on/after 22 June 2024 (could be earlier - domestic legislation)</p> <p>Report needs to be published within 12 months of the balance sheet year end</p>
Withholding Taxes	All EU Jurisdictions	The withholding tax initiative aims to provide Member States with the information to prevent tax abuse in the field of withholding taxes and, at the same time, accommodate a swift and efficient processing of the requests for a refund and/or a relief at source procedures of the excess taxes withheld.	<p>Draft Directive published</p> <p>Commission adopted – Feedback stage recently closed</p>

# Updates - EU Tax Provisions

Measure	Applicable to:	Aim	Expected Timing
ATAD III – misuse of shell entities	Corporates with minimal or no substance in their country of residence	To ensure that legal entities and legal structures in the EU without a substantial business presence will not benefit from tax advantages.	17 January 2023 EU Parliament approved amended version
Debt-equity Reduction Allowance (DEBRA)	Taxpayers that are subject to corporate tax in one or more Member States, including a permanent establishment in one or more EU Member State(s) of an entity that is tax-resident in a third country – n/a=financial undertakings	Would address the bias in most tax regimes towards using debt as a financing option. A company is generally entitled to deduct interest costs attached to debt financing from taxable profits, but not the costs related to equity financing.	Proposed to apply from 1 January 2024

# Updates - EU Tax Provisions

Measure	Applicable to:	Aim	Expected Timing
BEFIT	Mandatory for groups operating in EU with annual combined revenue of at least €750 million	<ul style="list-style-type: none"><li>- Common rules to compute the tax base at entity level</li><li>- Aggregation of the tax base at EU group level</li><li>- Allocation of the aggregated tax base</li></ul> <p>Overall aim of making it easier for multinationals to do business in the EU</p>	<p>12/09/2023 – Commission proposed new single set of rules to determine tax base of group.</p> <p>Feedback open until 11/12/2023</p> <p>Expected to apply from 1 July 2028</p>

# DAC 7 Updates - Background

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- EU states had until 31 December 2022 to transpose the DAC 7 directive into domestic law. Missed deadline initially – 13 EU States
- Extend the scope of the existing provisions on exchanges of information and administrative cooperation between the member states - requires digital platforms to collect and report information on the income realised by sellers offering certain services
- A Digital Platform = software, including websites and mobile applications, that allows sellers to connect to other users to carry out a relevant commercial activity
- Exclusion - Platforms that only allow for the processing of payments, users to list or advertise, or that redirect or transfer users to a platform
- Lots of uptake from software providers who are stepping into the gap of this legislation to automate the process – Taxbit etc.
- Massive burden on platform operators and suppliers – data protection issues re obtaining and retaining info?
- Fines for non compliance – agreed a national level legislation e.g.. Ireland - €19,035 incorrect info & €2,535 per day where return not made



# DAC 7 Updates – Who is it relevant to?

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- Relevant activities for the purposes of the Directive include:
  - Rental of immovable property, residential, commercial and parking spaces (Airbnb, Booking.com)
  - Provision of personal services (can be carried out either online or offline, by an individual or collectively on behalf of an entity, after being facilitated by the platform) (TaskRabbit)
  - Sale of goods (eBay, Amazon)
  - Rental of a mode of transport (GoCar)
- Examples of personal services include – delivery, transportation, tutoring, legal/accounting tasks
- Activity must be carried out for consideration and may be cross-border **or** domestic.
- Rules are designed to:
  - assist tax authorities to identify situations where taxes (in particular VAT and income tax) should be paid, and
  - reduce the administrative burden on platforms by standardising the reporting requirements in each Member State and requiring reporting in only one EU Member State (similar to VAT OSS)
- Non-EU platform operators must also comply with DAC7 if they facilitate “relevant activities” of sellers who are residents in the EU or they rent out immovable property located in the EU
- Out for specifically mentioned Excluded Sellers under certain thresholds and government entities



# DAC 7 Updates – Requirements of Platforms

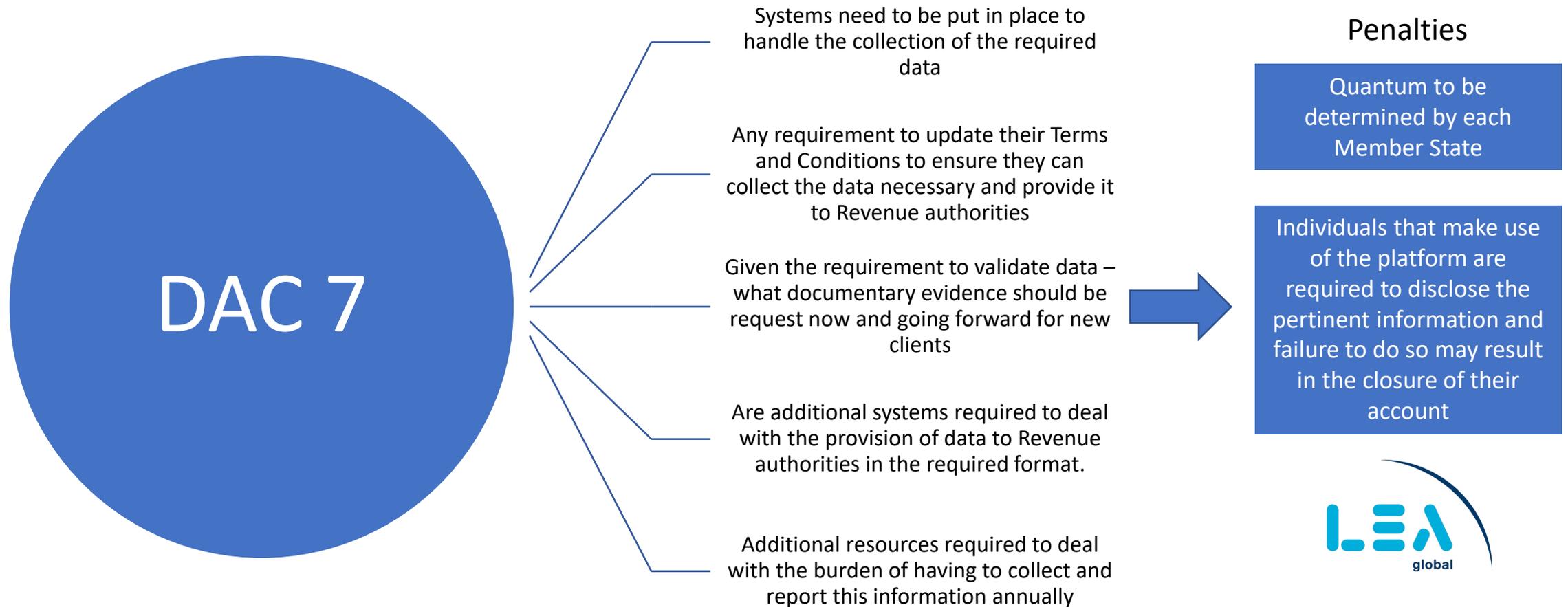
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- Reportable information to be submitted to relevant EU state – by 31 January of the year following the calendar year in which the seller has been identified
- Non-EU platform operators must generally register with a member state of choice and report to that state.
  - Relieved from reporting in the EU if equivalent information is already exchanged under an agreement between the country in which the operator is located and a member state.
- Certain information in relation to each reportable seller to be reported, including:
  - Name, address, tax registration number
  - Bank account number
  - Total remuneration paid in the period
  - Number of relevant activities where remuneration received
  - Any fees, commissions or taxes withheld/charged
- The operator must verify the information in line with DD procedures by 31 December of the reporting period – VIES checker?
- The reporting platform operator must provide a copy of the information to each individual reportable seller before it is reported to the relevant competent authority.



# DAC 7 – Other Considerations & Penalties

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# DAC 8 – Crypto & E-money Intermediaries

- 1 January 2026
- Introduces uniform disclosure requirements for e-money and crypto intermediaries (e.g. crypto exchanges)
- Objectives:
  - increased visibility
  - enhance tax compliance in the digital economy
  - assist tax authorities identify circumstances where tax may be due from persons deriving income and gains from crypto assets and e-money.
  - Improve cooperation across tax administrations
  - Keep compliance costs to a minimum - common EU reporting standard



# DAC 8 – Crypto & E-money Intermediaries

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## Why is this new DAC required?

- Lack of information and knowledge about crypto currencies and e-money
- Decentralised and lack of robust regulatory framework
- Leading to loss of tax revenue – evasions, avoidance or purely taxpayers are unaware of the tax implications

## Directive – pertinent points

- Covers “operators” who regulated entities based in the EU or entities based outside the EU (where reportable users use the service) that provides crypto products
- Excluded Persons – stock exchange listed entities, government entities, central banks, financial institutions (other than investment entities) etc.
- Left to each respective country to determine penalties for non compliance

## Imposition of significant information gathering requirements

- Could they be too onerous for some already existing parties?
- Required data retention policy updates
- Security for such data retained
- Manpower to assist with collection and processing

# ATAD III - Misuse of Shell Companies

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- “shell entity” – “entities lacking minimum economic substance, that do not perform any actual economic activity, and that can be misused for tax avoidance or evasion purposes”
- Directive focuses on ‘risk’ entities with limited substance
- Result - denial of tax benefits and the obligation to declare in the tax return whether certain substance requirements are met.
- Wide support for objectives – additional technical work required i.e. agreement on something to do be done just not what that something looks like
- Aim to have political alignment in November ECOFIN Meeting
- Still on the agenda
- Note amendments being made constantly – subject to change

# ATAD III – Step 1 (A)

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- Consider carve outs (“safe harbour”) provided for specific entities, such as:
  - Companies owned by listed groups;
  - Owned by EU-regulated companies;
  - Holding companies with no/limited cross border parts to their business (e.g. purely domestic operation with BO’s tax resident in that jurisdiction)
- Where “carve outs” met there is no need to self assess
- If not exempt then qualified as a “risk” company and “gateways” to be used to consider whether entity is an empty shell.
- Exemption in relation to at least five full time employees removed from latest draft

# ATAD III – Step 1 (B)

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- An EU resident vehicle will come into scope of ATAD 3 if it passes three “gateways”
- Consider these gateways:
  - more than 75% (changed to 65% under amendment) of revenues in the preceding two tax years are passive income, including dividends and capital gains on shares, interests and royalties; (amendment proposed see later slide)
  - more than 60% (changed to 55% under amendment) of relevant income is from cross-border activities or is passed to foreign entities; and (amendment proposed see later slide)
  - the entity has outsourced (clarified it means to a third party) the administration of day-to-day operations and decision-making on significant functions for the preceding two tax years (amendment proposed see later slide)
- First two requirements can be measured the final gateway is open to interpretation – important a definition of outsourcing is provided
- Should all three gateways be met, the entity should declare in its tax return whether they meet the minimum substance indicators and provide documentary evidence in this respect
- If only meet some or none of the gateways – low risk – no reporting

# ATAD III – Step 2

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- If a “risk” company per Step 1
- Then must report on substance in the entity’s tax return – “substance indicators”
- They will need to confirm whether these criteria are met and provide backup documentation:
  - Entity has a premises available for exclusive use, amendment included shared use of premises by entities if the same group
  - Entity has at least one bank account in the EU and relevant income be received through that account
  - Entity has at least one director and/or the majority of relevant employees resident close to activities
    - Director must be resident in EU or close by
    - Authorised to make decisions re income generating activities
    - **Actively and independently use that authorisation – requirement removed**
    - **Not be an employee or director non associated entities – requirement removed**
- Documentary evidence, such as:
  - Address and property type
  - Details of directors



# ATAD III – Step 3

- Prescribes appropriate assessment of information on substance indicators reported in second step
- Entity considered “risk” entity under Step 1 and does not meet the criteria/reporting requirements under Step 2 is considered a “shell company”

Carve out – Step 1(A)	Avoided all Gateways - Step - 1(B)	Sufficient documentary evidence provided and agreement with Revenue authorities - Step 2	Status
✓	✗	N/A	Not Shell Company
✗	✓	N/A	Not Shell Company
✗	✗	✓	Minimum Substance - Not a shell company for that tax year
✗	✗	✗	Shell Company per Revenue Authorities (option for rebuttal)

# ATAD III – Step 4

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- Entity has a chance under Step 4 to prove, with additional documentation, that it shouldn't be considered a shell company (rebuttal test):
  - Commercial reasons for setting up
  - Why no bank account required and no premises
  - Why no management or employees
  - Details of resources entity uses to perform activities
  - Documentation to show its nexus to jurisdiction it claims residence
- Reviewed by Revenue authorities where entity resident
- Revenue authorities given 9 month time limit – if no response rebuttal considered accepted
- successful rebuttal can remain valid for up to five years from the time the decision is issued

# ATAD III – Step 5

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- Also possible to avoid being considered a “shell company” if it can be proven no tax benefit/motive (exemption test)
- Need to provide evidence to allow a review by the tax authority to compare tax liabilities of group with/without the inclusion of the otherwise considered “shell company”
- entity can apply for an exemption, initially for one year –potential extension for a further five-years - circumstances of the entity do not change

# ATAD III – Tax Consequences

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- If considered a shell company:
  - deny granting of tax residence cert (or provide with warning)
    - denial would mean no access to reliefs like Parent Subsidiary or access to tax treaties
  - “look through” approach adopted of the BO – such that Member State of shareholder taxes payments received by shell entity as if they were received directly by the shareholder
    - Same applies if shareholder resident in a different member state
  - Above look through rule does not affect any tax the shell company will have to pay itself in the country where it is resident
  - Penalties – at least 2% and 4% of entity’s annual revenue – failure to comply/making false declaration re substance.

# ATAD III – Information Exchange

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- All information collected in Step 2 subject to automatic information exchange
- Member States must make info available within 30 days of tax return being filed
- Directive leaves it to Member States themselves to decide on penalties for non compliance – >5% of turnover

# Summary Decision Chart



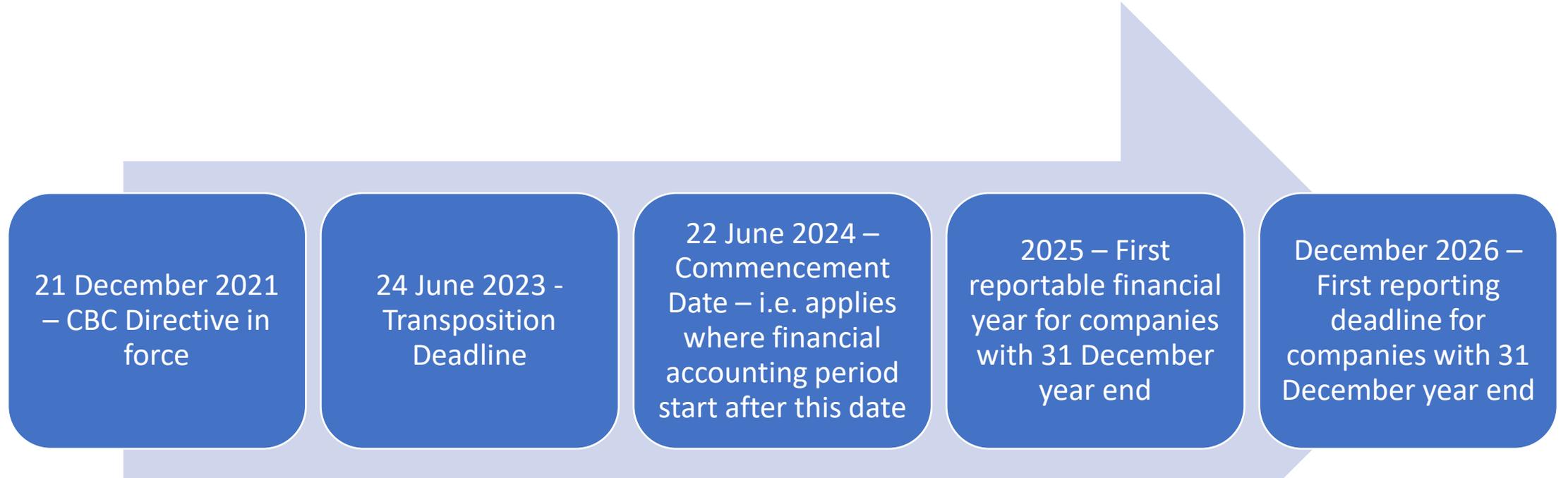
# Public CBC Reporting - Background

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- Similar to CBC reporting – additional element of publicly reporting data
- Consolidated revenue over EUR 750 million for each of the last two consecutive financial
- Reporting requirement applies to both EU-based and foreign enterprises, which are active in an EU Member State and at least one other tax jurisdiction,
- Where the ultimate parent is outside the EU, a medium or large subsidiary in the EU (and in certain circumstances a branch in the EU), will be required to publish their parent's report if it can obtain the information – reasons if not available required
- If a subsidiary or branch of a non-EU headquartered company exceeds a revenue of €750m for each of the last two consecutive financial years, it will be subject to individual reporting requirements.
- Statutory auditors have a requirement to confirm whether a company falls within the scope of the rules and, if so, whether the report was published in accordance with the provisions of the Directive.

# Public CBC Reporting

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# Public CBC Reporting - Requirements

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- Can publish on its website using a common template or can publish on EU Member State's central register
- Filing within 12 months of balance sheet date
- A multinational group will be required to file a public CBCR report where it has an EU subsidiary that exceeds at least two of the following three criteria:
  - balance sheet total: €4,000,000;
  - net turnover: €8,000,000; or
  - average number of employees during the financial year: 50.
- Exemptions:
  - Relevant entity only has presence in one single EU Member State
  - Already subject to similar reporting requirements



# Public CBC Reporting – Details to Publish

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- Information such as the following to be included within the report:
  - name of the relevant undertaking, the financial year concerned, the currency used
  - where applicable, a list of all subsidiary undertakings in the EU and subsidiaries listed on the EU blacklist or grey list
  - a brief description of business activities;
  - number of full-time employees;
  - details of revenues, profits or loss before income tax and accumulated earnings;
  - amount of income tax accrued during relevant financial year; and
  - amount of income tax paid on a cash basis.
- Companies which come within the scope of the Directive will have to publicly disclose this information separately for each EU Member State in which they operate,
  - as well as any non-EU Member States included in the EU list of non-cooperative jurisdictions, known as the EU “blacklist” and those countries that have been included for two consecutive years in the EU “grey list”

# Public CBC Reporting – Details to Publish

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- Companies may be able to defer disclosing one or more specific items of information for five years, provided they clearly disclose the deferral and give a reasoned explanation for it in the report. This deferral is expected to apply where the disclosure of such information would be seriously prejudicial to the commercial position of a company.
  - N/a to grey list or black list jurisdictions



# Public CBC Reporting

## Black List

- American Samoa
- Anguilla
- Bahamas
- British Virgin Islands
- Costa Rica
- Fiji
- Guam
- Marshall Islands
- Palau
- Panama
- Russia
- Samoa
- Trinidad and Tobago
- Turks and Caicos Islands
- US Virgin Islands
- Vanuatu

## Grey List

- Albania
- Armenia
- Aruba
- Belize
- Botswana
- Curaçao
- Dominica
- Eswatini
- Hong Kong,
- Israel
- Jordan
- Malaysia
- Montserrat
- Qatar
- Seychelles
- Thailand
- Turkey
- Vietnam

# BEFIT - Business in Europe: Framework for Income Taxation

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- Very new – published 12 September
- Aim:
  - make it easier for businesses to operate in EU – “business friendly”
  - Reduce compliance costs
  - Free up resources for them to invest and create jobs
- Follows Pillar 2 re effective minimum tax rate
- Effect c. 4,000 companies and cut tax compliance costs between 32% and 65%
- Common Consolidated Corporation Tax Base resurrected



# BEFIT - Business in Europe: Framework for Income Taxation

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- Scope:
  - Groups with annual turnover > €750 million but limited to those EU entities that meet a 75% ownership test
  - If the ultimate parent outside the EU - BEFIT would only apply if the revenues of the BEFIT group within the EU exceed:
    - 5 per cent of the total group revenues or
    - account for at least €50 million in combined revenue in two or more of the last four years
  - BEFIT group - the ultimate parent company should hold, directly or indirectly, at least 75% of the ownership rights in the qualifying group company or in the head office of a qualifying permanent establishment. Shares must be held continuously throughout the fiscal year.
  - Option to apply it if business wishes even if not required
- Tax Base determined based on pre determined adjustments across group entities



# BEFIT - Business in Europe: Framework for Income Taxation

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- Tax Base determined based on pre determined adjustments across group entities
- Individually determined tax base would be aggregated at the level of filing entity – cross border offset.
- Allocation of positive tax base –
  - First seven years – based on baseline allocation % (taxable result of BEFIT group member/total taxable result of BEFIT group)
  - Subject to change on allocation formula

# Documentation requirements

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- Rules targeting larger MNE's
- Making EU a more expensive place to do business?
- Opportunities for software providers
- Paper paper paper





Thank you

