



# EU tax perspectives

December 8, 2021

# ... with you today



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# Administration

## Polling questions

- Polling questions will appear as we proceed through the presentation.
- As mentioned, in order to receive the certificate of attendance, we require participants to take part in at least five of the six polling questions.
- If you qualify for the certificate of attendance, it will be sent to you following the webcast.

## Attendee questions

- You may submit questions in the *Ask a question* button on the left. We will answer as many questions as we can during Q&A. If we are unable to answer your question during the webcast, someone from KPMG may reply via phone or email following the webcast.
- For technical issues, please use the *Question Mark* button in the upper-right hand corner of the media player.

## Your feedback

- When the webcast is over, the webcast player will automatically refresh to display an exit survey. Feel free to complete the survey, as your comments are very valuable to us.

# Topics for discussion

## Agenda



- 1 Corporate taxation trends in the EU
- 2 BEPS 2.0 — the EU perspective
- 3 Beyond BEPS 2.0 in the EU
- 4 Code of conduct and state aid
- 5 Other EU Tax developments
- 6 Q&A



# Corporate taxation trends in the EU



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# Recent EU tax developments

- **Fit for 55** package
- **DEBRA**: Public consultation
- Postponement of EU own-resources package, including EU digital levy

Updates to the **EU list of non-cooperative jurisdictions**

June

July

September

October

November

- **EU Public CbC reporting**: Provisional political agreement on compromise text
- **DEBRA**: Roadmap
- **Shell entities**: Public consultation

- **EU WHT relief system** public consultation
- **EU Public CbC reporting**: Council of the EU approves compromise text
- CJEU decision on the **Belgian excess profit ruling system**

- **EU Public CbC reporting**: European Parliament adoption (published on December 1)

July–October: various CJEU rulings and AG opinions. See Appendix slides for details

# Corporate taxation trends in the EU (1/2)

## Germany

- Tightening of anti-treaty shopping rules
- Defensive measures against countries on the EU list of non-cooperative jurisdictions
- ATAD implementation (exit taxation, CFC rules, hybrid mismatches)
- Corporate Tax Act Update (i.a. introduction of option permitting the corporate taxation of commercial partnerships)

## Netherlands

- Extending the WHT scope (interest and royalties attributable to immovable property)
- Conditional exit tax of Dutch dividend withholding tax
- Tighter limitations to earnings stripping rules (limit deductibility of interest expenses to 20 percent of the EBITDA — from 30 percent)
- Proposal to increase CIT rate to 25.8 percent (from 25 percent)

## Ireland

- Commitment to increase corporate tax rate to 15 percent for MNEs within the scope of OECD BEPS 2.0 Pillar Two
- Public consultation launched on additional defensive measures for outbound payments to non-cooperative jurisdictions
- Public consultation launched on deductibility/withholding tax for outbound payments to zero-tax/no-tax jurisdictions
- Public consultation launched to examine stability and mix of the tax base
- Introduction of interest limitation rule (30 percent of EBITDA) as required under EU ATAD
- Increases in carbon tax and launch of climate action plan



# Corporate taxation trends in the EU (2/2)

## Poland

- Minimum tax for companies with a low profitability ratio
- Limitation of debt financing costs
- Changes to deductibility of depreciation in real estate companies
- Changes to capital groups (profitability requirement removed)
- Polish holding entity regime (capital gains exemption)
- Changes related to share exchanges
- Tightening of CFC rules
- Amendments to WHT collection (pay and refund mechanism)
- Introduction of hidden dividend provisions (also applicable to indirect payments) and measures against profit shifting

## Spain

- Proposal for a minimum CIT, in line with the rules under OECD BEPS 2.0 Pillar Two — generally 15 percent; 18 percent for financial companies and companies involved in hydrocarbon exploration and production; 10 percent for newly created companies
- Reform of the domestic tax haven list to align it to the EU list of non-cooperative jurisdictions
- Amendments to Spanish CFC and exit tax rules, as required under EU ATAD





# BEPS 2.0 — The EU perspective



**Robert van der Jagt**

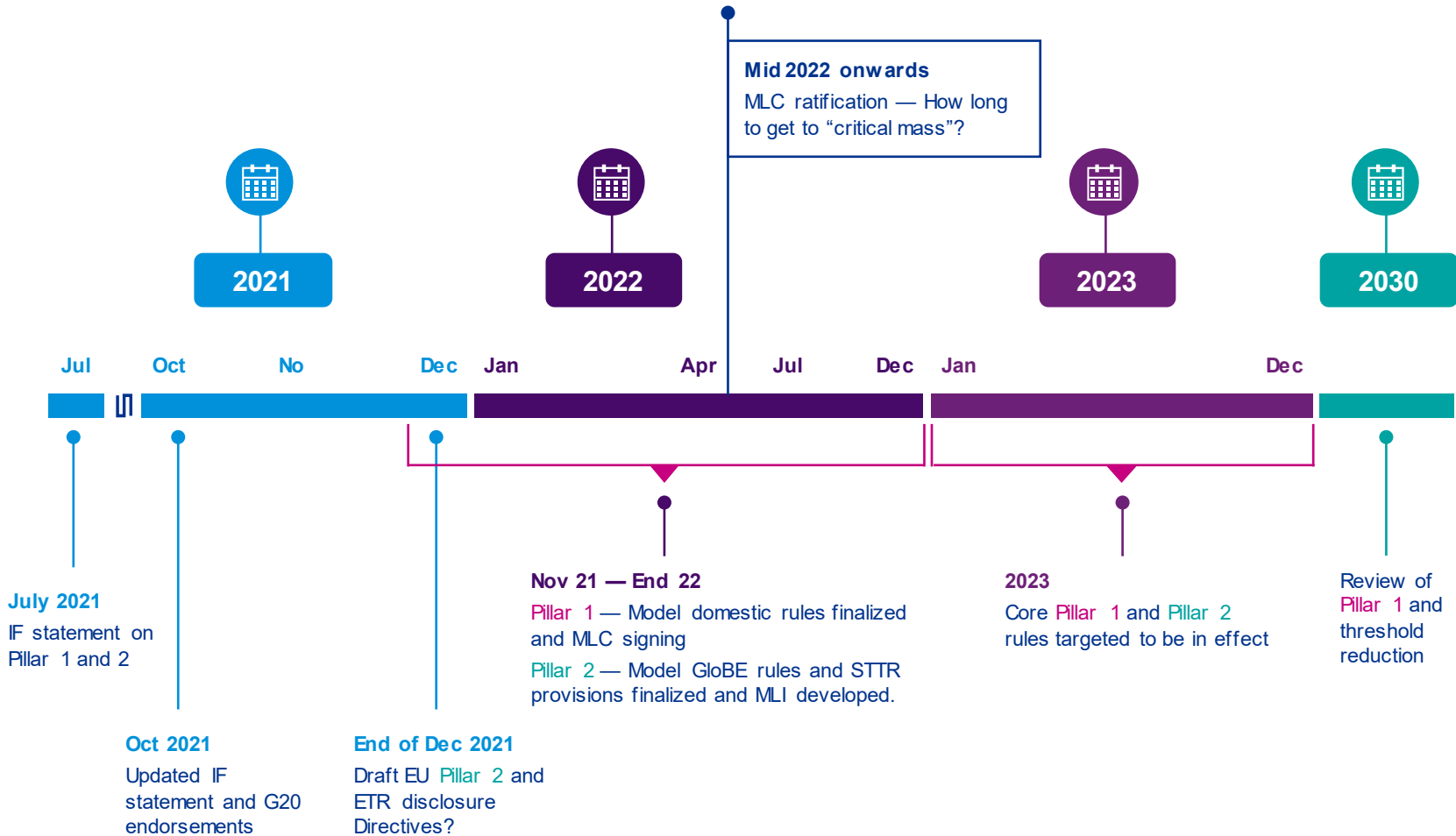
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# P1 and P2 combined timeline



# What if BEPS 2.0 does not become reality at IF level?

## EU response if international agreement is not reached...

- Unilateral DSTs or EU digital levy?
- EU digital PE?
- EU minimum tax?
- Recast of EU Interest and Royalties Directive?
- EU Market access levy?
- Other taxes as EU own resources?





# Beyond BEPS 2.0 in the EU

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# European Commission communication: Business Taxation for the 21<sup>st</sup> Century (1/3)

## ETR Disclosure



### Status:

Proposal expected end of  
2021/Q1 2022

### What is known so far:

- annual publication of the effective corporate tax rate of certain large companies with operations in the EU
- based on the methodology in Pillar 2

## Shell entities



### Status:

Public consultation — closed.  
Possible date for proposal:  
December 22

### What is known so far:

- The issue: The use of legal entities with no or minimum substance and no real economic activities by taxpayers operating cross-border in order to reduce their tax liability.
- The proposed solution:
  - Define common substance requirements for legal entities and arrangements operating in the EU
  - Deny tax benefits to legal entities and arrangements which do not meet the substance requirements
  - Equip tax administrations with new targeted instruments to prevent, identify and penalize abusive practice of shell entities

# European Commission communication: Business Taxation for the 21<sup>st</sup> Century (2/3)

## DEBRA



### Status:

Public consultation — closed.  
Proposal expected in Q1 2022

### What is known so far:

- The issue: Tax induced debt-equity bias (asymmetric tax treatment of the costs which are linked to financing via debt, as compared to those linked to financing via equity).
- The objective: The creation of a harmonized tax environment that places debt and equity financing on equal footing across the EU.
- Initiative could be designed in one of two ways:
  - disallowing the deductibility of interest payments, or
  - creating an allowance for equity by enabling the tax deductibility of notional interest for equity on: (i) all corporate equity; (ii) new corporate equity; or (iii) financial capital (financial debt + equity) to also replace the tax deduction of interests

**+ anti-abuse provisions.**

# European Commission communication: Business Taxation for the 21<sup>st</sup> Century (3/3)

## BEFIT



### Status:

Work in progress.  
Proposal expected in 2023

### What is known so far:

- The issue: The lack of a common corporate tax system within the EU represents a competitive disadvantage for the EU Single Market compared to third country markets.
- The objective: moving towards a common tax rulebook and providing for fairer allocation of taxing rights between member states.
- Design: BEFIT would consolidate the profits of the EU members of multinationals into a single tax base, to be subsequently allocated to member states using a formula that will replace current transfer pricing rules. The formula would give weight to sales by destination, assets (including intangibles) and labor (personnel and salaries). Once allocated, profits would be taxed using the common principles of an EU corporate tax base.



# Code of conduct and state aid



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# EU list of non-cooperative jurisdictions: State of play

## ◆ Non-cooperative (Annex I)

- American Samoa
- Fiji
- Guam
- Palau
- Panama
- Samoa
- Trinidad & Tobago
- US Virgin Islands
- Vanuatu

## ◆ Monitored (Annex II)

- Anguilla
- Barbados
- Botswana
- Costa Rica
- Dominica
- Hong Kong (SAR), China
- Jamaica
- Jordan
- Malaysia
- North Macedonia
- Qatar
- Seychelles
- Thailand
- Turkey
- Uruguay

# EU list of non-cooperative jurisdictions: Defensive measures — update

## Tax counter-measures

- Member States are required to implement at least one of the following **administrative measures**:
- stricter monitoring of certain transactions;
- increased audit risks for taxpayers benefiting from the disputed regimes, or
- increased audit risks for taxpayers using structures or arrangements involving blacklisted jurisdictions
- **Recommended implementation** of defensive measures: Non-deductibility of costs, CFC rules, increased WHT, limitation of participation exemption.
- Member states to apply at least one defensive measure by January 1, 2021 (or July 1, 2021).
- Review of domestic defensive measures during 2021. Conclusions published December 2021.

## Recent developments at national level

- Cyprus: RRP commitment to introduce WHT on outbound payments (effective by end of 2022) and potential additional measures by 2024.
- Ireland: Consultation for additional defensive measures related to outbound payments of dividends, interest and royalties.
- Malta: RRP commitment to introduce limitations dividend participation exemption regime (by September 30, 2022) and study followed by potential legislative changes on defensive measures for dividends, interest and royalties (by September 30, 2024).
- Slovenia: Extension of the national tax havens list to cover countries listed on the EU list of non-cooperative jurisdictions. New defensive measure: tighter CFC rules.
- Spain: Reform to align the national tax havens list with the EU list of non-cooperative jurisdictions.

<https://home.kpmg/xx/en/home/insights/2021/07/defensive-measures-against-non-cooperative-jurisdictions.html>

# EU State aid investigations: State of play

European Commission		EU General Court	Court of Justice EU
Investigations	Decisions	First instance	Second instance
<b>A. Tax rulings 2010–2013 first wave</b>	<b>Final decisions</b> <ol style="list-style-type: none"> <li>2015 SA.38375 (LU)</li> <li>2015 SA.38374 (NL)</li> <li>2016 Excess profits (BE)</li> <li>2016 SA.38373 (IE)</li> <li>2017 SA.38944 (LU)</li> <li>2018 SA.44888 (LU)</li> <li>2018 SA.38945 (LU)</li> <li>2019 CFC Finance exemption (UK)</li> </ol>	<b>Judgement</b> <ol style="list-style-type: none"> <li>2019 T-759/15 loss (LU)</li> <li>2019 T-760/15 win (NL)</li> <li>2019 Excess profits win (BE)</li> <li>2020 T-778/16 / T-892/16 win (IE)</li> <li>12.05.2021 T-318/18 win (LU)</li> <li>12.05.2021 T-525/18 (LU)</li> <li>Pending CFC Finance exemption (UK)</li> </ol>	<b>Judgement?</b> <ol style="list-style-type: none"> <li>Pending C-885/19 P (IE not LU)</li> <li>No appeal EC</li> <li>16.09.2021 CJEU decision — case sent back to GC</li> <li>Pending C-465/20 P (IE)</li> <li>Pending C-457/21 (LU)</li> <li>C-451/21 P (LU)</li> </ol>
	<b>B. Tax rulings 2010–2013 first wave</b>	<b>Opening decisions</b> <ol style="list-style-type: none"> <li>2017–2020 SA.46470 (NL)</li> <li>2019 SA.51284 (NL)</li> <li>2019 SA.50400 (LU)</li> <li>2019 Excess profits 39 rulings (BE)</li> </ol>	
<b>C. Tax rulings 2014–2018:</b> <ul style="list-style-type: none"> <li>IP regimes</li> <li>Market information</li> </ul>			



# Other EU tax developments

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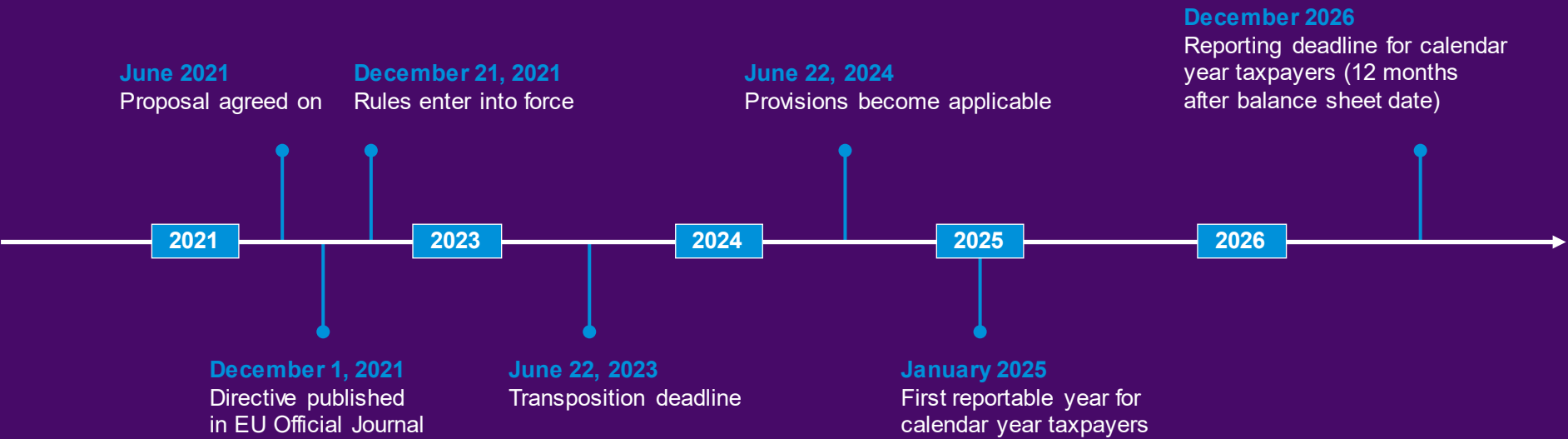
# EU public country-by-country reporting: In a nutshell



## Next steps

Member States to implement the rules by June 22, 2023.

# EU public CbC reporting: timeline



# EU public CbC reporting: Considerations regarding final text

## Keep in mind

- Final text reflects the conclusion on key negotiation points between the Council and European Parliament, including:
  - CbC disclosure only for EU and non-cooperative jurisdictions. Aggregated disclosure for the rest of the world
  - “Safeguard” clause — Member States may allow omission of commercial sensitive information for up to five years
  - Audit requirement — Mandatory, factual check of the publication of the report only
- Review clause: European Commission will analyze the impact of the Directive (four years after its transposition) and consider potential changes to improve its effectiveness.
- Public CbC Directive likely only a stepping stone to more granular reporting requirements



# EU-wide system for WHT relief



## Inception Impact Assessment

### Proposed tax policy options

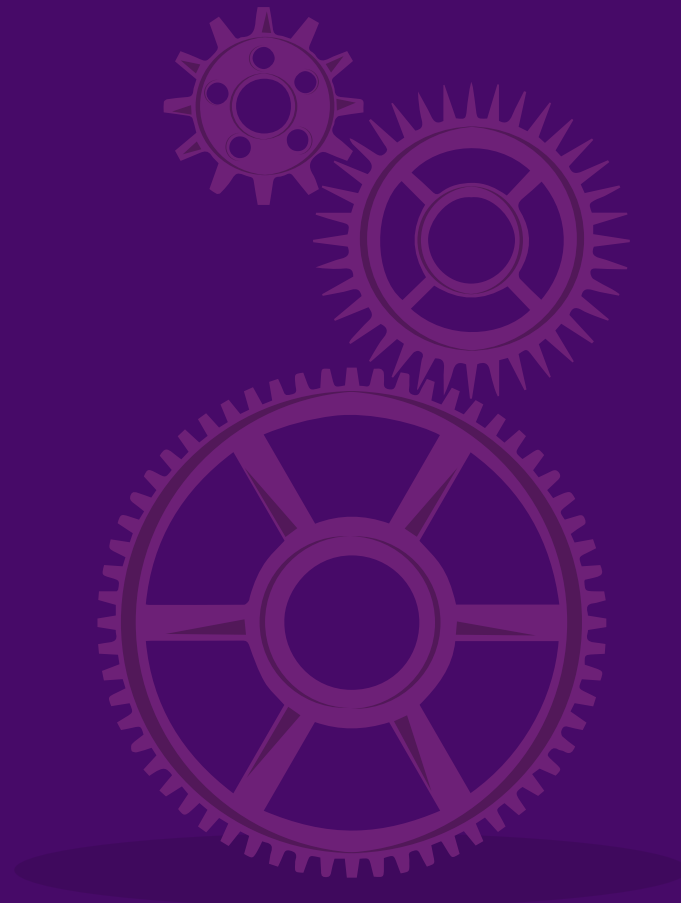
- Make withholding tax refund procedures more efficient
- The establishment of a fully-fledged common EU relief at source system
- Enhancing the existing administrative cooperation Framework
- A mix of the above

### Summary of feedback received

- Standardized digital documents/forms
- Blockchain/other technology to be used
- Common definition and processes (BO, etc)
- Amended Finnish TRACE

### Next steps

- Targeted questionnaire public consultation: To start by the end of 2021
- EC proposal: Planned for fourth quarter of 2022, but possibly sooner.



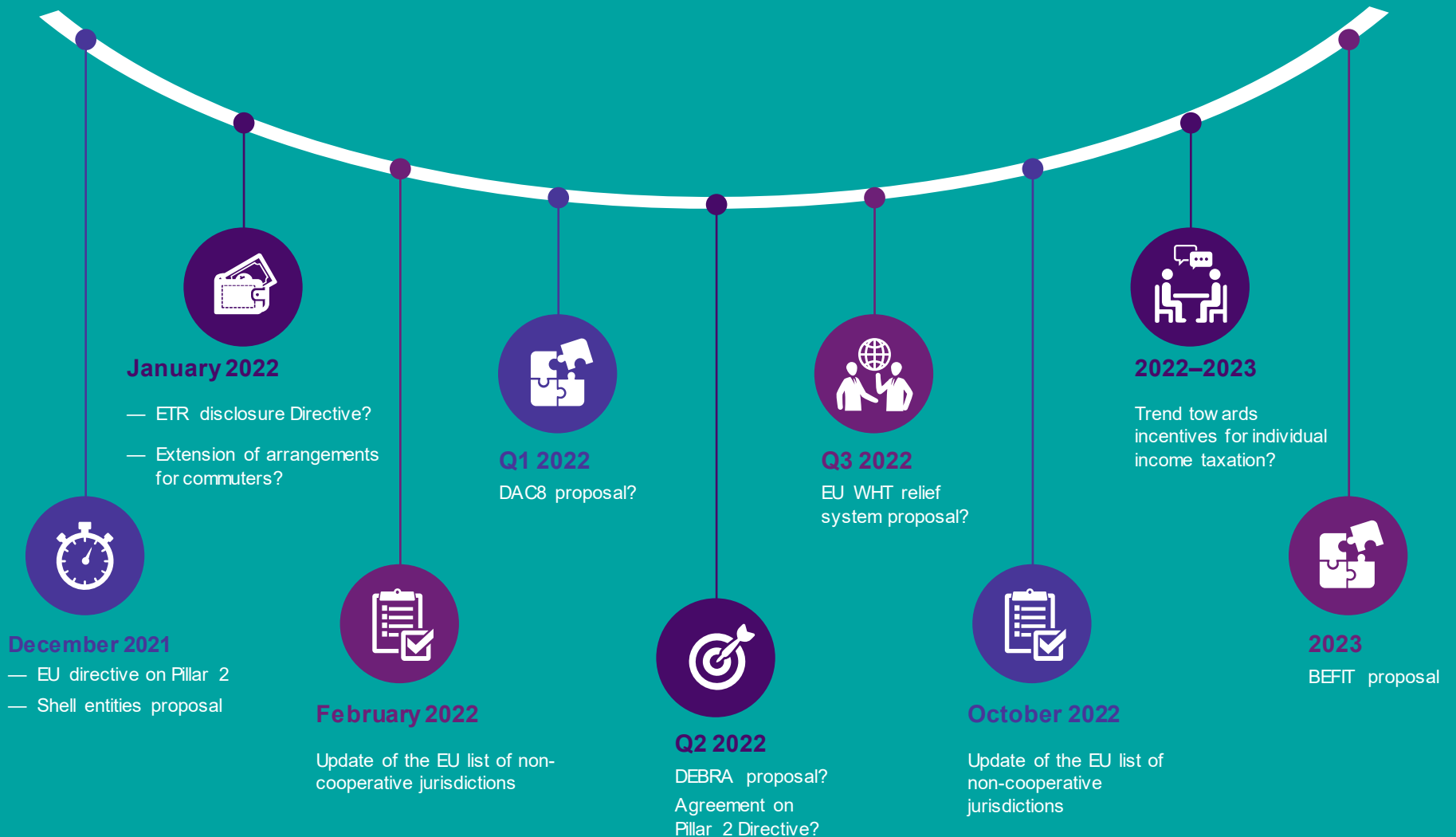




# Looking ahead



# EU tax developments: Looking ahead





# Q&A



# Thank you for joining



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# Appendix



# EU public country-by-country reporting: Who does it affect?

The directive applies to **EU headquartered** companies with a consolidated net turnover exceeding **EUR 750 million** for each of the last two consecutive financial years.

For **non-EU headquartered companies**, the legislation is relevant if they exceed the threshold above and their EU presence includes either medium-sized or large subsidiaries or branches that meet the criteria in terms of net turnover.

**Banks** established in the EU are already within the scope of CRD IV and can continue to follow CRD IV (instead of these proposals) provided their disclosure covers all of the entities in their group.

**Non-EU parented banks** operating in the EU — which are not within the scope of the CRD IV requirements, will now have to publish a country-by-country report if their revenues exceed the abovementioned threshold.

# EU public country-by-country reporting: where to disclose?

For **EU-parented groups**, the EU parent would publish the data on its website and also file directly with the national central register, commercial register or companies register in the relevant Member State.

Mandatory audit report on whether an undertaking is required to report under the **public CbC**, and if the report has been published.

For **non-EU parented groups**, each of the EU subsidiaries and branches is required to publish and make accessible the report on income tax information of their ultimate parent, to the extent that the information is available to them. If the requested information is not available, the EU-based entity should explain in the report the reasons of this omission. There is one exception to this rule: the EU subsidiaries and branches are exempt from their obligations if the non-EU parent publishes the report on their website & assigns one of the EU subsidiaries or branches to file the report with their national trade registry.

The data points required will be reported on an aggregated basis by each **EU Member State** and non-cooperative jurisdictions. Data for all other territories will be aggregated into a single line of the report.

Under the review clause, the Commission is required (four years after transposition) to assess the effectiveness of the **public CbC**. The Parliament is likely to push at that point for increased transparency.

# Directive on Administrative Cooperation — DAC

## DAC6

### 2018/822/EU AEOI ITEMS

Applies: 7/2020  
1st exchanges by:  
31/10/2020 or, in case of  
option for six-months  
deferral, 30/4/2021

Art. 8ab and hallmarks in  
Annex 4

- **Mandatory disclosure rules for intermediaries and**
- **Automatic exchange of information on tax planning cross-border arrangements**

## DAC7

### 2021/514/EU AEOI ITEMS

Applies: 1/2023  
1st reports on 2023 by:  
31/01/2024  
Art. 8ac

**Automatic exchange of information on the revenues generated by sellers on digital platforms** from the following activities:

- Rental of immovable properties
- Personal services
- Sale of goods
- Rental of any mode of transport

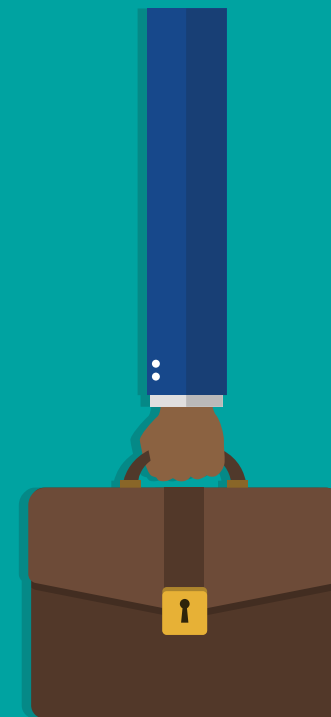
## DAC 8

### (proposal pending)

Inception Impact  
Assessment on amendment  
to Council Directive  
2011/16/EU on **exchange of information to include crypto-assets and e-money.**

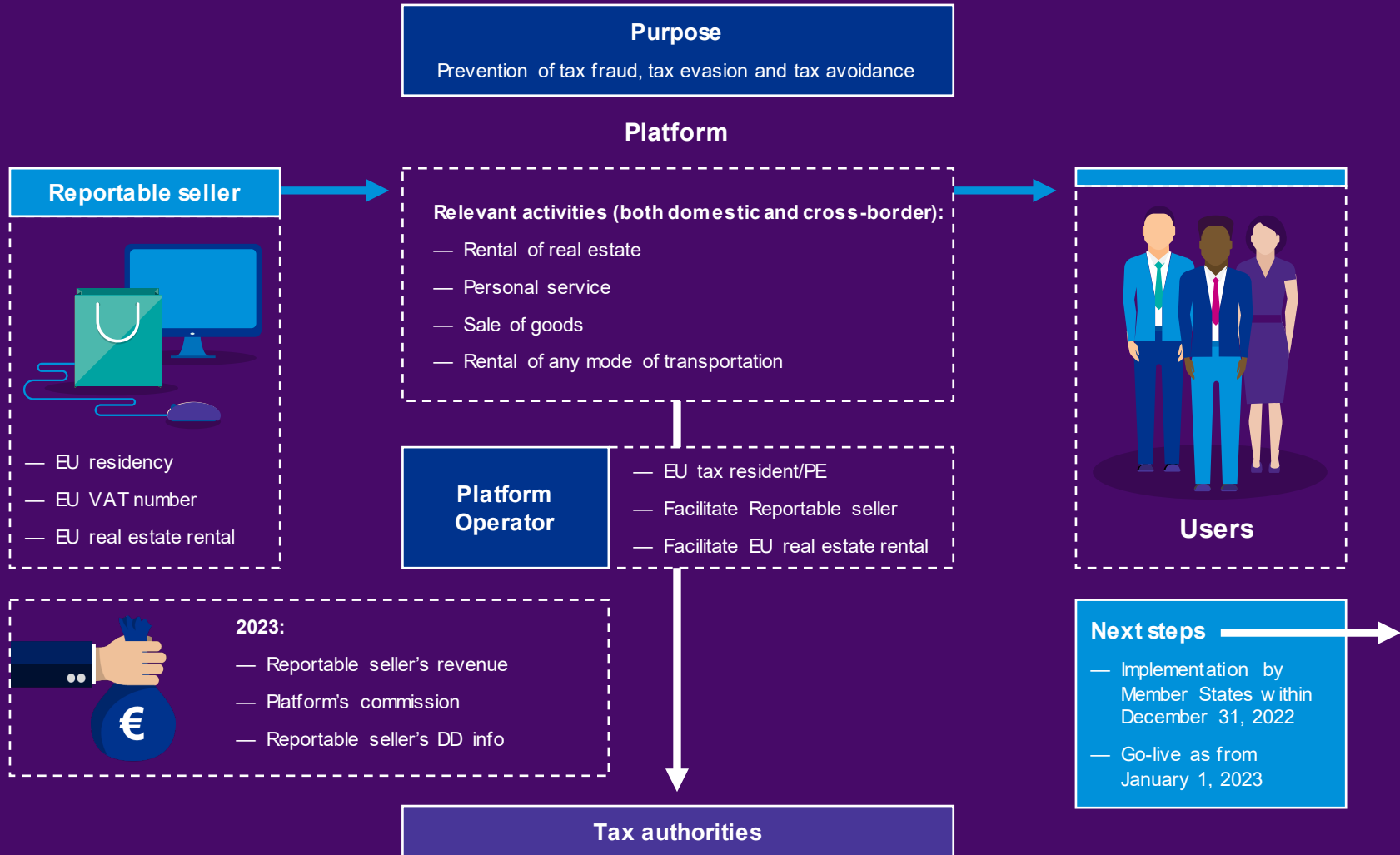
10/3/2021–2/6/2021:  
Public consultation

Q1 2022: Proposal for a  
Directive





# DAC 7 in a nutshell



# European FTT — State of play

## Relaunch: Portuguese proposal (Feb. 2021)

- Working paper “Financial Transaction Tax — the way forward” presented by Portuguese Presidency:
  - Inclusive debate among all Member States focused on tax design issues
  - Gradual implementation based on combined French/Italian experience, advocates German/French proposal of 2019
  - WPTQ meeting on February 24, 2021, regarding FTT state of play and exchange of views on the way forward
  - No further public comments on state of play since early 2021



# A selection of recent CJEU case-law (1)

	Member State	Status	Issue	Main conclusion	KPMG link
<b>C-556/20</b>	<b>France</b>	AG opinion of 14 October 2021	French “précompte” regime	The Parent — Subsidiary Directive does not preclude a levy such as the advance payment on redistributions imposed by France, as long as a corresponding tax credit which neutralizes the levy is equally granted in both domestic and cross-border scenarios.	<a href="#">E-news 141</a>
<b>C-342/20</b>	<b>Finland</b>	AG opinion of 7 October 2021	Tax exemption for open-end funds	The requirement that a fund is set-up based on a contract in order to benefit from the Finnish corporate income tax exemption represents a breach of the free movement of capital.	<a href="#">E-news 140</a>
<b>C-561/19</b>	<b>Italy</b>	Decision of 6 October 2021	Duty to request a preliminary ruling	The Court reasserted the criteria previously set out in the CILFIT case (C-283/81) and clarified the concept of “no reasonable doubt”.	<a href="#">E-news 140</a>

# A selection of recent CJEU case-law (2)

	Member State	Status	Issue	Main conclusion	KPMG link
<b>C-50/19 P to C-55/19 P, C-64/19 P and C-65/19P</b>	<b>Spain</b>	Decision of 6 October 2021	Financial goodwill	The mere fact that a measure is of a general nature, and could apply in theory to all corporate taxpayers if they were to undertake certain transactions, does not entail that the measure is not selective	<a href="#">E-news 140</a>
<b>C-257/20</b>	<b>Bulgaria</b>	AG opinion of 30 September 2021	Fictitious interest related to interest-free loans	In order to comply with EU law, tax adjustments should be based on an individual examination of the transaction concerned, while also granting the taxpayer the possibility to produce evidence to support the economic substance of the transaction.	<a href="#">E-news 141</a>
<b>C-337/19 P</b>	<b>Belgium</b>	Decision of 16 September 2021	Excess profit ruling system	Commission was correct to conclude that the Belgian tax rulings represent an aid scheme. It is now up to the General Court to decide if the excess profit exemptions represent unlawful State aid, and if yes, if the recovery of the aid infringes the principles of legality and protection of legitimate expectations.	<a href="#">E-news 139</a>

# A selection of recent CJEU case-law (3)

	Member State	Status	Issue	Main conclusion	KPMG link
<b>C-394/20</b>	<b>Germany</b>	AG opinion of 16 September	Inheritance tax rules	The disputed provisions are contrary to the free movement of capital and could not be justified by the need to safeguard the 'cohesion' of the German tax system or the principle of territoriality.	<a href="#">E-news 139</a>
<b>C-788/19</b>	<b>Spain</b>	AG opinion of 15 July 2021	Sanctions applicable for failure to report assets held abroad	The AG found that the sanctions/fines applicable for cross-border cases are higher than those applied in internal situations. Therefore, the AG concluded that the fines represent a breach of EU law.	<a href="#">E-news 137</a>
<b>T-648/19</b>	<b>Netherlands</b>	General Court decision of 14 July 2021	State aid	The Court considered that the Commission did not initiate prematurely the formal investigation procedures. It also found that the Commission complied with the procedural rules, did not fail to meet its obligation to state reasons and did not perform errors of assessment.	<a href="#">E-news 137</a>



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