EU Financial Services Tax perspectives

April 2021

... with you today

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Administration

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— Polling questions will appear as we proceed through the presentation.

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Topics for discussion

Agenda

1 **Introduction**

2 **DAC6 update**

3 **EU Financial Transaction Tax**

4 **Other developments**

5 **Q&A**

DAC6 update

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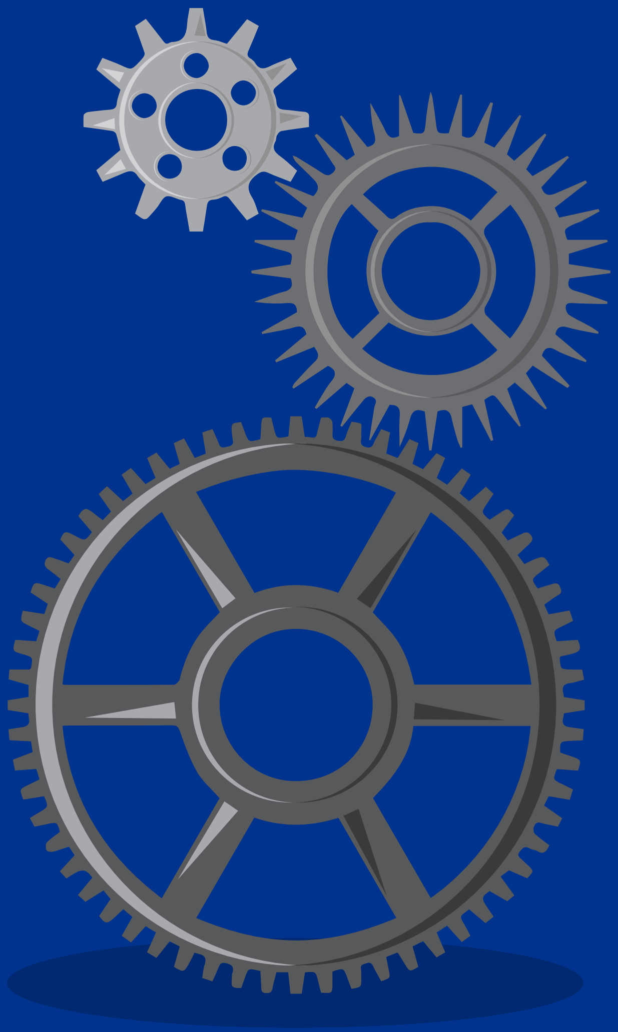
DAC6 — latest developments

- Overview of reporting to-date — number of reports & hallmarks most reported.
- Challenges with Hallmarks & MBT — some differences across EU member states.
- State of Preparation — significant time commitment, value of early impact assessments, level of detail required by reports, IT challenges.
- Response of legislator/tax authorities/industry bodies since initial reporting.
- Future of DAC 6 — 30 day reporting challenge. Focus on processes and documentation.



EU Financial Transaction Tax

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European FTT — State of Play

Lost in discussions — 10 years EU FTT at a glance

2011 | 2012 | 2013 | 2014 | 2018 | 2019 | 2020 | 2021

28 September 2011
1st Proposal FTT Directive

2012
Opposition against EU wide FTT (inter alia, UK, Sweden)

August 2012
Introduction of French FTT

February 2013
2nd Proposal FTT Directive (Enhanced Cooperation)

Jan 2013
Introduction of Hungarian FTT

March/September 2013
Introduction of Italian FTT

April 2013
UK legal challenge

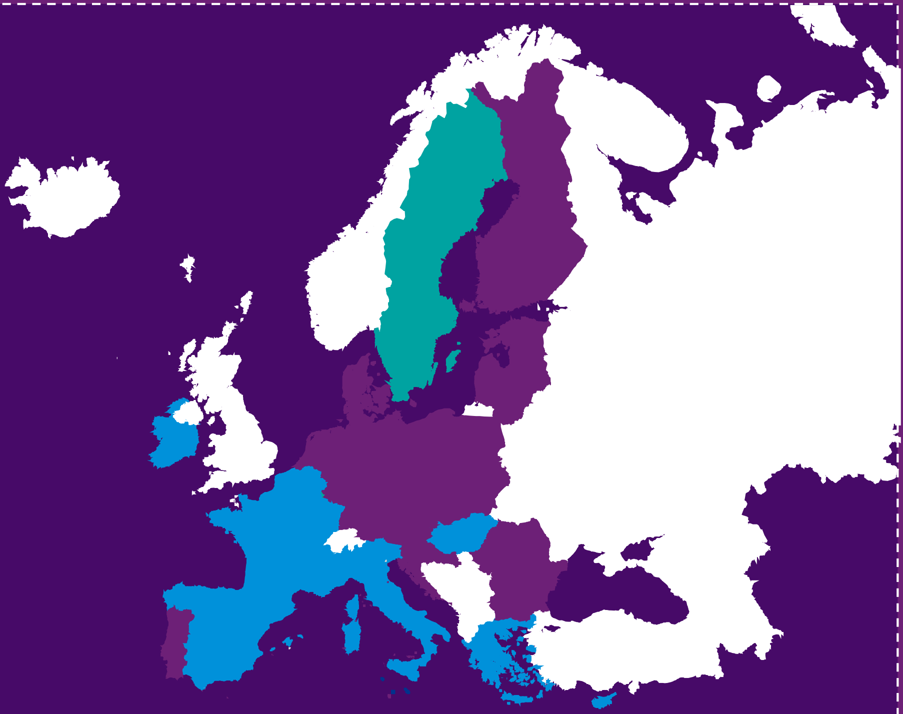
December 2015
- Estonia leaves EU-11
- 10 Member States agree on some principles for FTT

December 2019
Amended Proposal FTT Directive presented by Germany/France

January 2021
Introduction of Spanish FTT

February 2021
Portuguese Presidency relaunches FTT discussion

National FTT/stamp duty in the EU



Countries where there is an FTT/similar tax (e.g. stamp duty) in place

Countries where no FTT/similar tax in place

Countries where there is a proposal to introduce an FTT/similar tax

* Finland does not impose an FTT; a transfer tax applies to disposals of shares in a non-listed Finnish company limited by shares.

** In Luxembourg the transfer of shares in a company is in principle free of any FTT, stamp, registration or transcription duties. A transfer duty can apply to a transfer of shares in a corporation holding real estate, under certain circumstances.

*** In Poland a stamp duty (also known as a transfer tax or tax on civil law transactions) is charged on a closed list of transactions, including financial transactions e.g. providing a loan, sale of a receivable, establishment of a mortgage. However, Polish stamp duty should not be viewed as an FTT-like charge, as it generally does not apply to financial institutions (financial institutions are subject to VAT and as a result stamp duty does not apply to them).

EU FTT vs national FTTs

	EU FTT	French FTT	Italian FTT	Spanish FTT	UK SDRT
(Proposed) start date	Unknown	1 Aug 2012	1 Mar 2013 (equities) 1 Sept 2013 (derivatives)	16 Jan 2021	1986
Equities	Yes	Yes	Yes	Yes	Yes
Bonds	No	No	No (with the exception of transactions in bonds and debt securities that contain the unconditional obligation to repay at maturity a specific amount)	No (acquisition of qualifying equities upon the redemption of convertible bonds will be in-scope)	No (with the exception of those which have certain equity-like features e.g. interest exceeding commercial return, or linked to profits/assets or conversion rights or repayable above par)
Derivatives	No	No	Yes (transfers of equity derivatives only)	No (acquisition of qualifying equities upon the physical settlement of financial instruments will be in-scope)	Yes (transfers of existing equity derivatives only)
Stock loans and repos	No	No	No	No	Yes
ADRs	No	Yes	Yes	Yes	No
Residency/deemed residency basis of taxation	No	No	No	No	No
Issuance basis of taxation	Yes	Yes	Yes	Yes	Yes
Netting	Yes	Yes	Yes	Yes	No
Market maker exemption	Yes	Yes	Yes	Yes	Yes
Intra-group exemption	Yes	Yes	Yes	Yes	No (unless transaction effected by document)
Rate	At least 0.2% (equities)	0.3% (equities)	0.1%/0.2% (equities) (on market/OTC) Fixed amounts (derivatives)	0.2% bps (equities)	0.5% (1.5% for certain cross-border transactions)
Who is the taxpayer for the FTT?	FI	Buyer	Buyer (equities) All parties in the transaction (derivatives)	The economic taxpayer is the acquirer. The taxable persons will be investment services companies or credit institutions performing acquisitions for third parties and custodians, in certain cases	Buyer (but intermediaries could be accountable for payment and notification)

European FTT — State of Play

Status Quo of EU FTT first proposed in 2011

— Still unclear: ability to reach consensus on an EU FTT within the framework of enhanced cooperation between the EU-10 along the lines of the FTT in France/Italy or beyond.

— Participating Member States currently: Germany, Austria, Belgium, France, Greece, Italy, Portugal, Slovakia, Slovenia and Spain [existing FTT or similar].

— German proposal for FTT launched in December 2019, envisaging, i.e., tax rate of at least 0.2 percent, acquisitions of shares issued by companies based in a participating country with market capitalization > EUR 1 billion, exemption for pension funds and mutualization of revenues generated by the new tax.

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.

European FTT – State of Play

Outlook/influencing factors on the European level

— Political impetus by/in EU Member States (e.g. upcoming federal elections in Germany, France).

— Upcoming EU Council Presidency (07/21 Slovenia, 01/22 France).

— EU Multiannual Financial Framework (MFF)/ Next Generation EU: FTT as an own resource.

— US States' FTT initiatives (e.g., NY, NJ).

Other developments

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EU Proposal on Public Country-by-Country Reporting: in a nutshell

Amendment of the EU "accounting directive"

Closely follows BEPS #13/EU non-public CBCR But not identical

Key public information: tax paid/accrued, profit, turnover, employees

Information for each EU country + separately for "tax havens". Aggregate for rest of the world

EU ultimate parent to file a global report in a local register and publish it on its website

OR

If non-EU parent — publish on its website + one EU subsidiary local filing

State of play

Trilogue started March 2021

Next steps

Aim to reach agreement before the end of the Portuguese Presidency (30 June 2021). Application date TBD.

The EU list of non-cooperative jurisdictions

EU list of non-cooperative jurisdictions

The Screening Process

- Fair Tax Transparency
- Taxation
- BEPS standards

EP resolution on reforming the EU list. New criteria to be added in the future?

National Defensive Measures

- Required at administrative level (e.g. increased tax audit risks)
- Recommended legislative action on e.g. non-deductibility of costs, WHT
- Member States to apply at least one defensive measure by January 1, 2021 (or July 1, 2021)
- Review of domestic defensive measures to start mid-2021 and published by end of 2021

Current status

As at February 2021:
12 countries in Annex I

American Samoa, Anguilla, Dominica (new) Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago, US Virgin Islands, Vanuatu, Seychelles

9 countries in Annex II ("Grey" list)

Australia, Barbados, Botswana, Eswatini, Jamaica, Jordan, Maldives, Thailand and Turkey

Monitoring Commitments

- Monitoring by the Code of Conduct Group
- Last update on February 22, 2021
- Next update expected October 2021

Directive on Administrative Cooperation – DAC

DAC1

2011/16/EU
NON AEOI

Applies: 1/2013
All exchanges of info except Art. 8

- **Exchange on request**
- **Spontaneous exchanges**
- **Presences in adm. offices**
- **Simultaneous controls**
- **Request for notification**
- **Sharing best practices**
- **Use of standard forms**

DAC1

2011/16/EU
AEOI ITEMS

Applies: 1/2015
1st exchanges on 2014 by: 30/6/2015
Art. 8

Automatic exchange of information on **5 non-financial categories:**

- Income from employment
- Directors fees
- Pensions
- Life insurance products
- Immovable property (income and ownership)

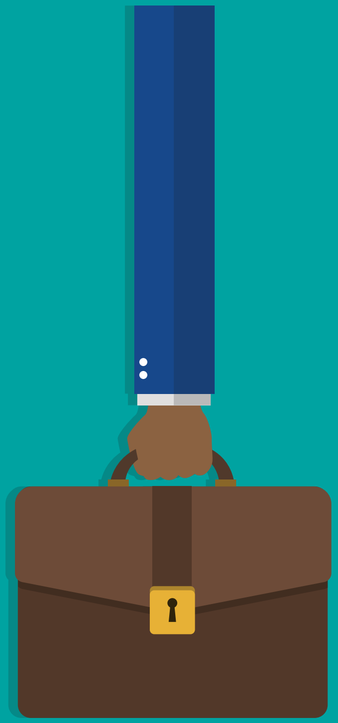
DAC2

2014/107/EU
AEOI ITEMS

Applies: 1/2016
1st exchanges on 2016 by 30/9/2017
Art. 8 para. 3a

Automatic exchange on **financial account information:**

- Interest, dividends or other income generated by financial account
- Gross proceeds from sale or redemption
- Account balances



Directive on Administrative Cooperation — DAC

DAC3

2015/2376/EU
AEOI ITEMS

Applies: 1/2017
1st exchanges by 30/9/2017
Art. 8a

Automatic exchange of information (using a central directory as from 1/2018) of:

- **Advance cross-border rulings**
- **Advance pricing arrangements**

DAC4

2016/881/EU
AEOI ITEMS

Applies: 6/2017
1st exchanges on 2016 by: 30/6/2018
Art. 8aa

Automatic exchange of information on **country-by-country reports** on certain financial information:

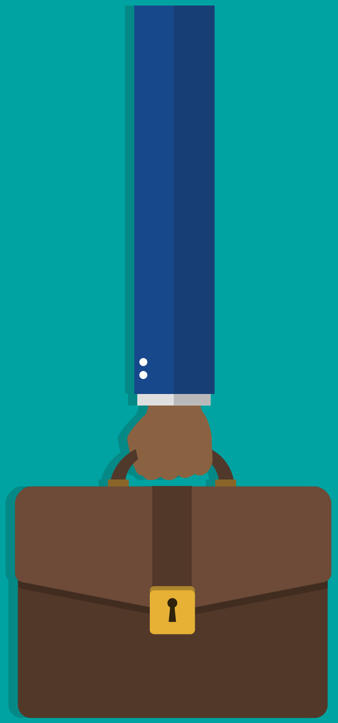
- Revenues
- Profits
- Taxes paid and accrued
- Accumulated earnings
- Number of employees
- Certain assets

DAC5

2016/2258/EU
NON AEOI

Applies: 1/2018
Art 22., para. 1a

Access by tax authorities to beneficial ownership information as collected under AML rules



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

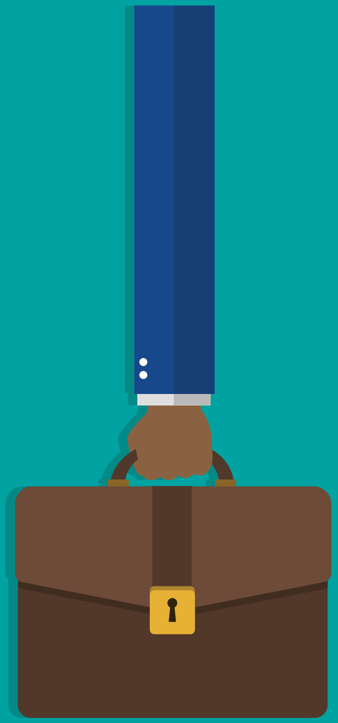
DAC 8

(under public consultation)

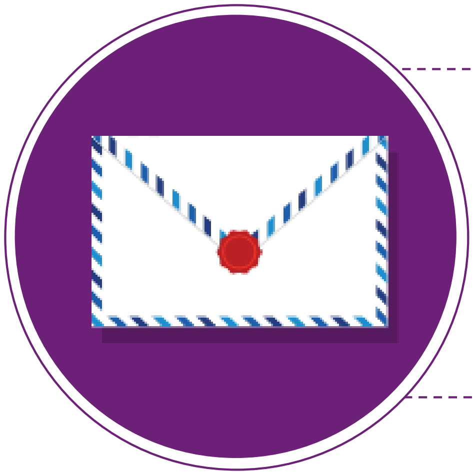
Inception Impact Assessment on amendment to Council Directive 2011/16/EU on **exchange of information to include crypto-assets and e-money**.

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

Third quarter 2021:
Proposal for a Directive



Spotlight on France: recent CJEU case-law and infringement procedures



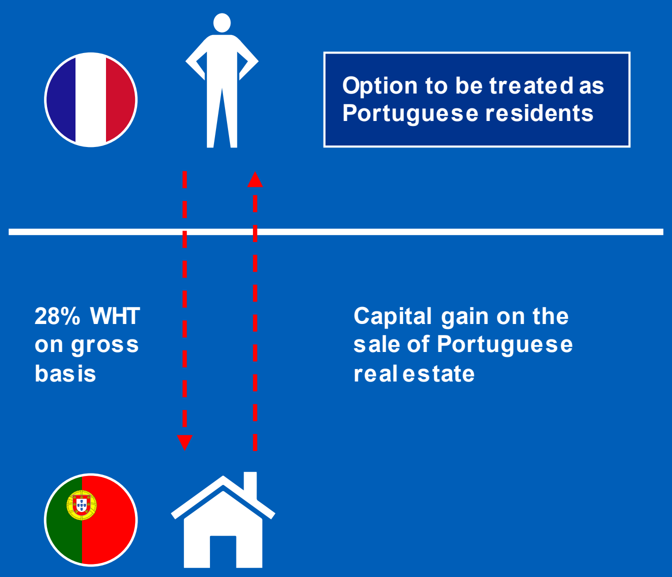
European Commission Infringement package (February 2021)

- — Letter of formal notice sent to France over its withholding tax rules on dividends paid to “Unit Linked insurance” companies established in other EEA Member States.
- — French dividends received by EEA United Linked insurance companies are subject to a final withholding tax, while the French counterparts can either not pay withholding tax or are allowed to credit the withholding tax paid against corporate income tax.

CJEU — withholding taxes on dividends paid in other EU Member States

- — Tax credit rules designed to offset the double taxation of foreign dividends received.
- — In the absence of discrimination, a disadvantage in the form of double taxation of foreign-source dividends that arises from the parallel exercise of the power to tax by two Member States cannot be regarded as a restriction on the free movement of capital.

CJEU decision on mitigation of a discriminatory regime (C-388/19)



Facts

- French resident individual realized a capital gain on the sale of Portuguese real estate.
- Different tax treatment of capitals gain on real estate depending on the country where the seller is resident
- Portuguese tax regime amended following previous CJEU decision — now gives residents of other EU/EEA Member States the choice between being taxed as a resident or as a non-resident.

The CJEU decision

- Portuguese residents are systematically taxed at a lower effective tax rate than non-residents
- The restriction concerns situations that are objectively comparable and is not justified by overriding reasons in the public interest.
- **Simply giving non-residents the choice to be treated as residents is not sufficient to make the restriction compatible with the EU law.**

Article 63 TFEU, read in conjunction with Article 65 TFEU, must be interpreted as precluding the legislation of a Member State which, in order to permit the capital gains realized from the transfer of immovable property situated in that Member State, by a taxable person resident in another Member State, to not be subject to a tax burden greater than that which would be applied to capital gains realized from the same type of transaction by a person resident in the first Member State, makes the taxation regime applicable dependent upon the choice made by that taxable person.

Q&A

Thank you for joining us …

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Appendix

DAC 7 in a nutshell

Purpose

Prevention of tax fraud, tax evasion and tax avoidance

Platform

Reportable seller

- EU residency
- EU VAT number
- EU real estate rental

Relevant activities (both domestic and cross-border):

- Rental of real estate
- Personal service
- Sale of goods
- Rental of any mode of transportation

Users

Platform Operator

- EU tax resident/PE
- Facilitate Reportable Seller
- Facilitate EU real estate rental

2023:

- Reportable Seller's revenue
- Platform's commission
- Reportable Seller's DD info

Tax authorities

Next steps

- Implementation by Member States within December 31, 2022
- Go-live as from January 1, 2023

EU Proposal on Public Country-by-Country Reporting: state of play

State of play

- The initiative had been in deadlock, due to disagreements on its legal basis, i.e. art. 50 TFEU (subject to ordinary legislative procedure = qualified majority voting) vs. art. 115 TFEU (treated as a tax file, subject to common procedure = unanimous approval needed), *however*,
- Necessary support to move forward (under qualified majority) achieved in February 2021
- Interinstitutional negotiations ("trialogue") started in March 2021

Next steps

- Aim to reach agreement on the directive at second reading ("early second reading agreement"), before the end of the Portuguese Presidency (30 June 2021).
- Application date to be determined — if agreement reached in June 2021, the potential transposition deadline may be July 2023 (two years after adoption) and reporting required from FY starting a year later, i.e. 2025 for calendar year taxpayers. However Member States may introduce the requirement sooner.

EU Proposal on 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 Proposal on 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.

There is an option for Member States to require that auditors state whether an undertaking is required to report. The European Parliament is proposing to also require a statement on the content of the report.

The **non-EU ultimate parents** have the option to publish the required information on their website and assign one of its EU subsidiaries/branches to file the report with the trade registry in its EU Member State of residence. Alternatively, if the report is not published on the non-EU parent's website, the publishing and filing obligation would shift to each EU subsidiary or branch, to the extent that the requested information is available to the EU entity. If the requested information is not available the EU-based entity should explain in the report the reasons of this omission.

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.

The European Parliament would like all information to be presented on a country-by-country basis, including for each tax jurisdiction outside the EU. This point will likely be subject to negotiations during the trilogue.

EU Proposal on Public Country-by-Country Reporting: points under negotiation (1)

Information to be reported

EP amendments to Commission proposal in bold

- **a** **the name of the ultimate undertaking and, where applicable, the list of all its subsidiaries**, a brief description of the nature of ~~the~~ **their** activities **and their respective geographical location**;
- **b** the number of employees **on a full-time equivalent basis**;
- **ba** **fixed assets other than cash or cash equivalents**;
- **c** the amount of the net turnover*, ~~which includes~~ **including a distinction between** the turnover made with related parties **and the turnover made with unrelated parties**;
- **d** the amount of profit or loss before income tax;

**Council asks for disclosure of the revenues which are: (i) the sum of the net turnover, other operating income, income from participating interests, excluding dividends received from affiliated undertakings, income from other investments and loans forming part of the fixed assets, other interest receivable and similar income or (ii) the income as defined by or within the meaning of the financial reporting framework on the basis of which financial statements are prepared excluding value adjustments and dividends received from affiliated undertakings.*

EU Proposal on Public Country-by-Country Reporting: points under negotiation (1)

Information to be reported

EP amendments to Commission proposal in bold

- **e** the amount of income tax accrued (current year) which is the current tax expense recognized on taxable profits or losses of the financial year by undertakings and branches resident for tax purposes in the relevant tax jurisdiction;
- **f** the amount of income tax paid which is the amount of income tax paid during the relevant financial year by undertakings and branches resident for tax purposes in the relevant tax jurisdiction;
- **g** the amount of accumulated earnings;
- **ga** **stated capital;**
- **gb** **details of public subsidies received and any donations made to politicians, political organizations or political foundations;**
- **gc** **whether undertakings, subsidiaries or branches benefit from preferential tax treatment, from a patent box or equivalent regimes.**

EU Proposal on Public Country-by-Country Reporting: points under negotiation (2)

Other points potentially subject to negotiation

Country-by-country data:

— Council: CbC for EU countries and tax havens, aggregate for the rest of the world;

— European Parliament: information should be presented CbC, including for each tax jurisdiction outside the EU.

“Comply or explain” clause:

— Council and EP agree that companies should be allowed to temporary omit the disclosure of commercially sensitive information, however disagree on details.

— EP asking for a strict pre-approval procedure.

EU Proposal on Public Country-by-Country Reporting: points under negotiation (2)

Other points potentially subject to negotiation

Reporting format: EP wants a common template available free of charge in an open data format, potentially based on the non-public CbC format

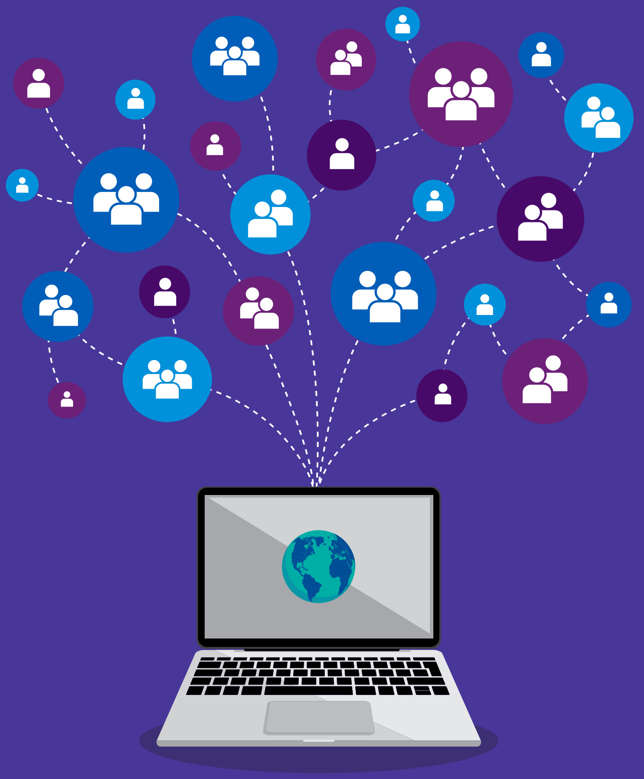
Audit requirement:

— Council: auditor to ascertain whether a disclosure obligations exists:

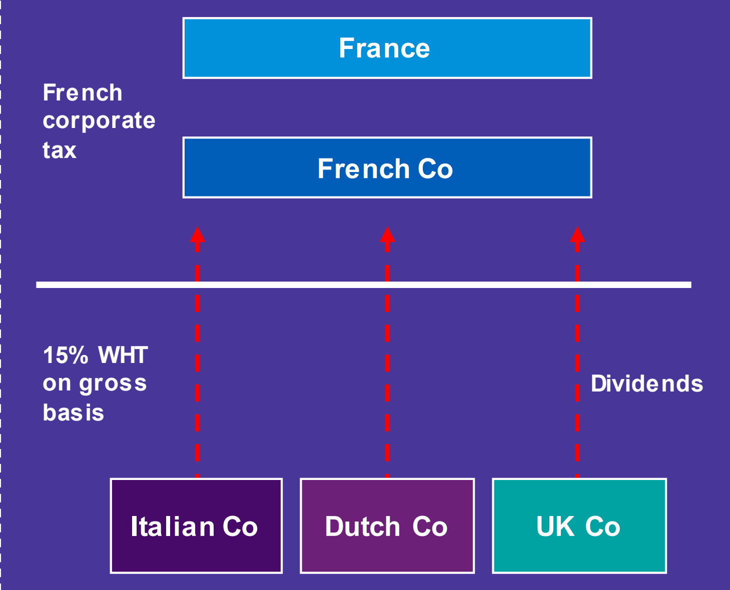
— EP: “To ensure that cases of non-compliance are disclosed to the public, statutory auditor(s) or audit firm(s) should check whether the report on income tax information has been submitted and presented in accordance with the requirements of this Directive and made accessible on the relevant undertaking’s website or on the website of an affiliated undertaking, ***and that publicly-disclosed information is in line with the audited financial information for the undertaking within the time limits provided for in this Directive.”***

European Commission — February 2021 infringement package

- On February 18, 2021 the European Commission sent a letter of formal notice to France urging it to change its withholding tax rules on dividends paid to "Unit Linked insurance" companies established in other European Economic Area (EEA) Member States.
- Unit Linked insurance is a live insurance scheme where the premiums paid by the policy-holder are used to purchase units in investment funds selected by that person, and where the dividends paid out by the funds are passed on by the insurer to the policy-holder.
- Under these rules, French dividends received by EEA United Linked insurance companies are subject to a final withholding tax, while the French counterparts can either not pay withholding tax or are allowed to credit the withholding tax paid against French corporate income tax (which amounts to zero). This is because the dividends received constitute deductible provisions or technical reserves
- The difference in treatment is deemed by the European Commission as an infringement of the free movement of capital provided for by Article 63(1) of the TFEU and Article 40 of the EEA Agreement.
- France has two months to reply to the arguments raised by the European Commission, after which the Commission may decide to send a reasoned opinion.



CJEU decision on tax credits for withholding taxes on dividends paid in other EU Member States



Facts

— Free movement of capital — Dividend withholding tax — Bilateral conventions for the avoidance of double taxation — Maximum amount of tax credit accorded — Legal double taxation — C-403/19

The CJEU decision

— The Court observed that foreign-source dividends should not be subject to a higher rate of corporation tax in France than that applied to domestic-source dividends:

  — all French companies are subject to corporation tax on dividends received, regardless of whether such dividends are from domestic or foreign sources,

  — France, although it subjects dividends received from companies established in another MS to corporation tax, grants the company receiving those dividends a tax credit that can be offset against corporation tax, and

Article 63 TFEU does not preclude legislation of a MS which, under a scheme designed to offset the double taxation of dividends received by a company subject to corporation tax in the MS in which it is established, which has been subject to a levy by another MS, shall grant such a company a tax credit limited to the amount which that first MS would receive if those dividends alone were subject to corporation tax, without offsetting in full the levy paid in that other MS.

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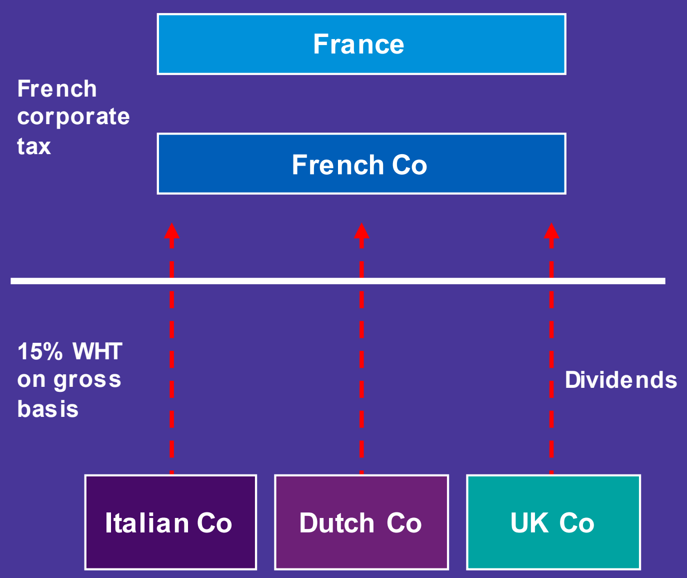


The CJEU decision (Cont.)

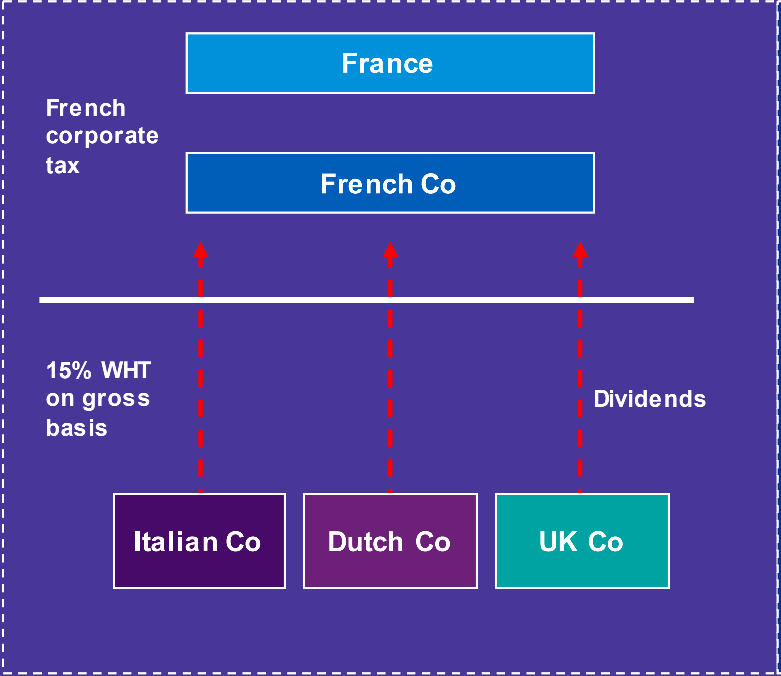
- With respect to the method of calculation of the tax credit deductible from the tax already paid on foreign-source dividends, the basis of assessment and the rate of corporation tax corresponding to that income alone appear to be the same as that of the corporation tax which would be due if the dividends were domestic-source dividends.

— As regards the argument that it would be contrary to the free movement of capital to adopt a different tax base from that adopted by the MSs in which the dividends are paid for the calculation of the French tax credit, the Court noted that:

- each MS is free to define, in compliance with EU law, the tax base which applies to shareholders receiving the dividends;
- the purpose of a convention for the avoidance of double taxation is not to ensure that the taxation to which the taxpayer is subject in one MS is not higher than that to which he would be subject in the other MS.

Article 63 TFEU does not preclude legislation of a MS which, under a scheme designed to offset the double taxation of dividends received by a company subject to corporation tax in the MS in which it is established, which has been subject to a levy by another MS, shall grant such a company a tax credit limited to the amount which that first MS would receive if those dividends alone were subject to corporation tax, without offsetting in full the levy paid in that other MS.

CJEU decision on tax credits for withholding taxes on dividends paid in other EU Member States

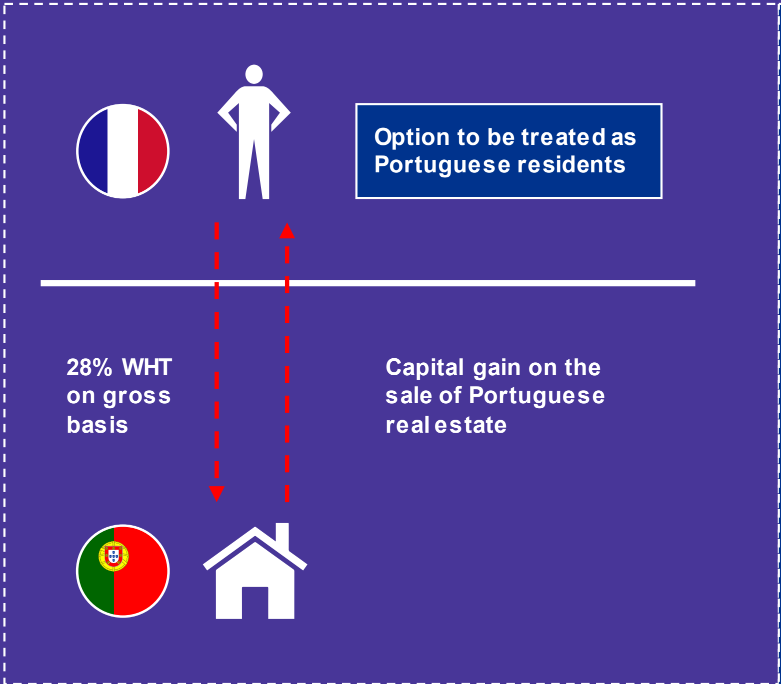


The CJEU decision (Cont.)

— The Court held that, in the absence of discrimination, a disadvantage in the form of double taxation of foreign-source dividends that arises from the parallel exercise of the power to tax by two MSs cannot be regarded as a restriction on the free movement of capital.

Article 63 TFEU does not preclude legislation of a MS which, under a scheme designed to offset the double taxation of dividends received by a company subject to corporation tax in the MS in which it is established, which has been subject to a levy by another MS, shall grant such a company a tax credit limited to the amount which that first MS would receive if those dividends alone were subject to corporation tax, without offsetting in full the levy paid in that other MS.

CJEU decision on mitigation of a discriminatory regime

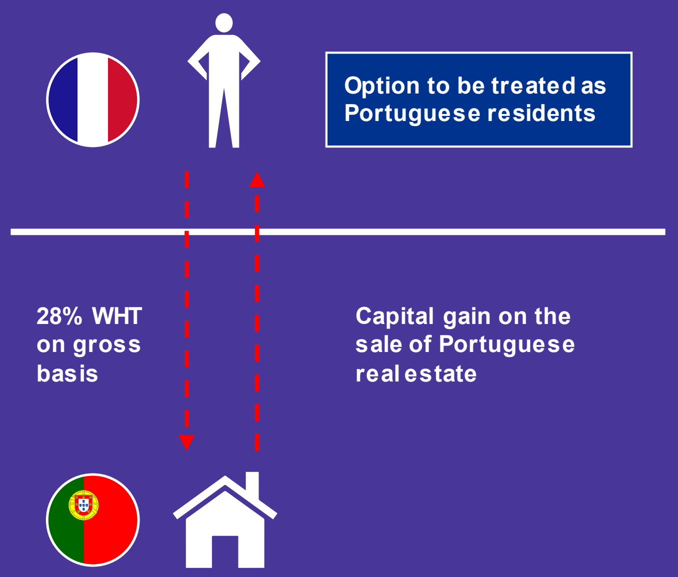


Facts

- Free movement of capital — Portugal — Capital gains on immovable property — Taxation of non-residents — Discrimination — MK v Autoridade Tributária e Aduaneira case (C-388/19)
- The case involved a French resident individual who realized a capital gain on the sale of Portuguese real estate. The Portuguese tax law provides for a different tax treatment of capitals gain on real estate depending on the country where the seller is resident, i.e. only 50 percent of capital gains from real estate made by persons resident in Portugal is taken into account in determining the taxable amount and a tax rate per bracket is applied on this amount, while the same capital gains, if realized by non-resident taxpayer, are taxed in full at a flat rate of 28 percent. Following a previous decision of the CJEU (the Hollman v. Fazenda Publica case, C-443/06), the Portuguese tax regime was amended in order to give residents of other EU/EEA Member States the choice between opting to be taxed either as a resident or as a non-resident.

Article 63 TFEU, read in conjunction with Article 65 TFEU, must be interpreted as precluding the legislation of a Member State which, in order to permit the capital gains realized from the transfer of immovable property situated in that Member State, by a taxable person resident in another Member State, to not be subject to a tax burden greater than that which would be applied to capital gains realized from the same type of transaction by a person resident in the first Member State, makes the taxation regime applicable dependent upon the choice made by that taxable person.

CJEU decision on mitigation of a discriminatory regime



The CJEU decision

- The Court observed that i) under the Portuguese tax rules persons resident in Portugal are systematically taxed at a lower effective tax rate than non-residents and ii) such a difference in treatment continues to represent a restriction on the free movement of capital prohibited by Article 63(1) TFEU.
- The Court then held that this restriction cannot be justified on any of the grounds provided for in paragraphs 1 and 3 of Article 65 TFEU. The difference in treatment between resident taxable persons and non-residents taxable persons provided for by Portuguese legislation:
  - concerns situations that are objectively comparable,
  - is not justified by overriding reasons in the public interest.
- The Court finally noted that simply giving non-residents the choice to be treated as residents is not sufficient to make the restriction compatible with the EU law. Otherwise, he consequence would be to regard as lawful a tax regime which, in itself, because of its discriminatory character, would still be in breach of Article 63 TFEU.

Article 63 TFEU, read in conjunction with Article 65 TFEU, must be interpreted as precluding the legislation of a Member State which, in order to permit the capital gains realized from the transfer of immovable property situated in that Member State, by a taxable person resident in another Member State, to not be subject to a tax burden greater than that which would be applied to capital gains realized from the same type of transaction by a person resident in the first Member State, makes the taxation regime applicable dependent upon the choice made by that taxable person.

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