EU Tax Perspectives

June 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. **BEPS 2.0 — the EU perspective**
2. **EU Public Country-by-Country Reporting**
3. **Harmful Tax Practices**
4. **Q&A**

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BEPS 2.0 — the EU perspective

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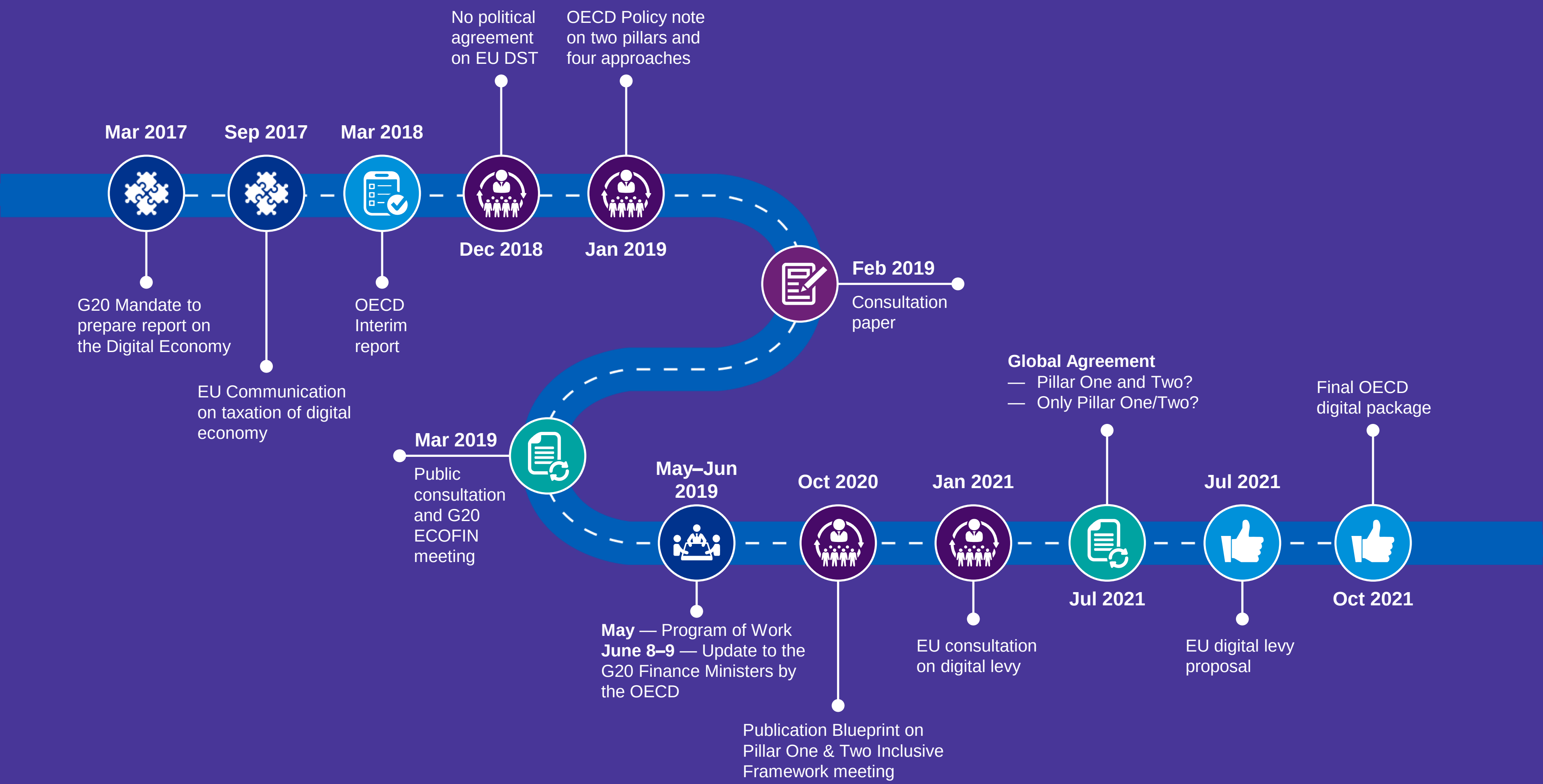
BEPS & BEPS 2.0 Timeline



European Commission Communication: Business Taxation for the 21st Century

1. EU Tax Policy Framework

— Enabling fair and sustainable growth

— Ensuring effective taxation

The EU tax mix on the road to 2050

2. Reform of the international corporate tax framework

How the global agreement will be implemented in the EU:

Pillar 1: Directive for the implementation of Pillar 1 in the EU.

Pillar 2:

— Directive for the implementation of Pillar 2 in the EU (the will reflect the OECD Model Rules with the necessary adjustments), and

— Explore interaction with existing rules (CFC vs IIR) and proposed legislation (make IRD benefits conditional on taxation in destination state)

3. Going beyond the OECD agreement – targeted solutions

Actions to ensure fair and effective taxation:

Action 1: Proposal for the publication of **effective tax rates** paid by large companies, based on the methodology under discussion in Pillar 2 (by 2022)

Action 2: Proposal for union rules to neutralise the **misuse of Shell Entities** for tax purposes (by Q4 2021)

Actions to enable productive investment and entrepreneurship:

Action 3: Recommendation on the **domestic treatment of losses**

Action 4: Proposal creating a **Debt Equity Bias Reduction Allowance** (DEBRA) (by Q1 2022)

Action for a longer-term business taxation framework:

Action 5: **BEFIT** (Business in Europe: Framework for Income Taxation) — common tax rulebook and new allocation of taxing rights between Member States (2023)

EU Public CbyC reporting

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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

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

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

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

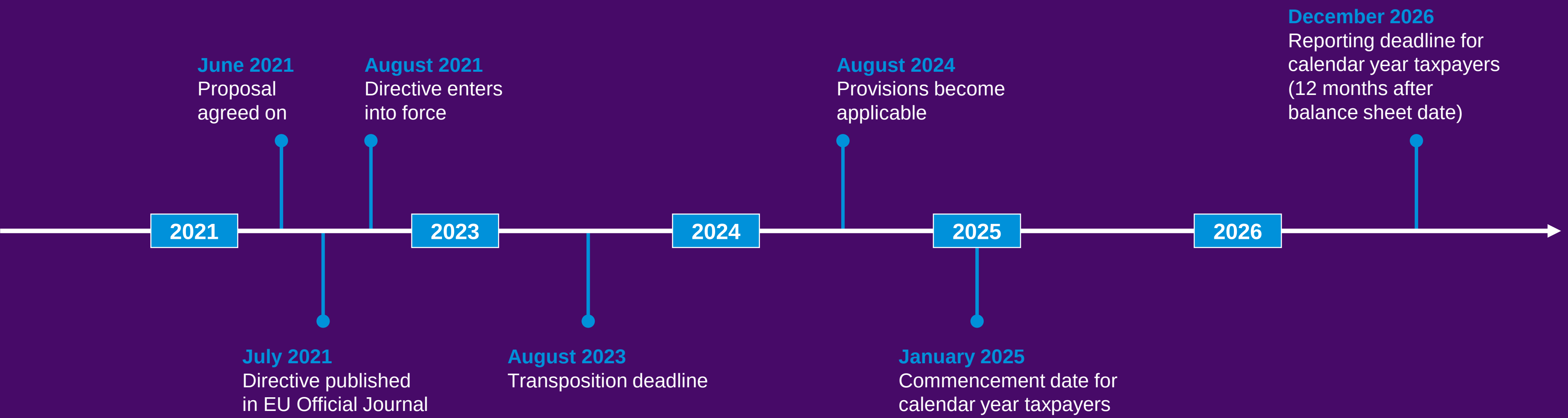
State of play

Trilogue started March 2021

Next steps

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

EU public CbyC reporting: possible timeline*



* Based on the timeline suggested in the Council compromise text. Note that the timeframe may change during the trilogue process and that Member States may transpose into local legislation before the two-year deadline.

As reference:

— The EU Accounting Directive requiring public CbC reporting for the oil, gas and mining sectors was published in the EU Official Journal in June 2013. Member States had two years (until July 2015) to transpose the Directive into local law. Reporting started in 2017 in the majority of Member States (early adopters were the UK and France — first reports filed in 2016).

— The Capital Requirements Directive IV (CRD IV) requiring public CbC reporting for the financial services industry was published in the EU Official Journal in June 2013. Member States had six months (until end of December 2013) to transpose the Directive into local law. First reporting (limited list of data points with respect to 2013) was due in July 2014, while all data points became reportable from January 2015.

EU public CbyC reporting: considerations

Keep in mind

There are a number of points on which the Council and European Parliament negotiating positions differ, including:

— CbyC disclosure for non-EU, non-tax haven jurisdictions

— Information to be reported

— Details of the “safeguard” clause

— Extent of audit requirement

Trilogue process

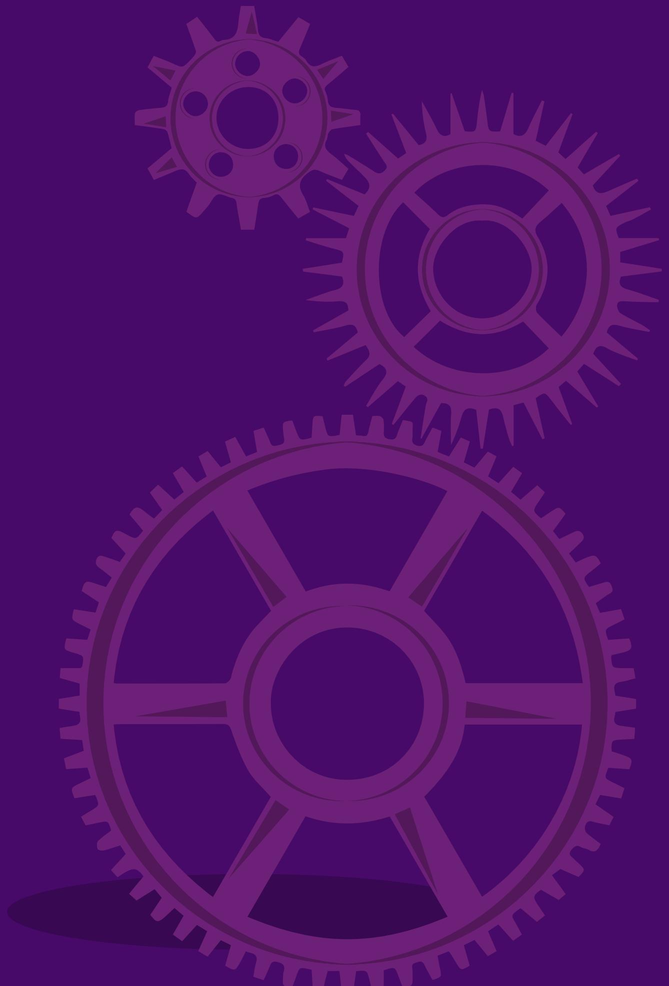
— Last trilogue meeting scheduled for beginning of June

— Compromise solutions expected

Existing CbyC reporting: lessons learned (1/2)

CbyC Action 13 limits and challenges

- Burden to identify, gather, and organize the information
- Multiple sources of data
- Aggregate reporting and duplication of revenue, particularly with respect to transactions between constituent entities resident in the same tax jurisdiction, skews various risk assessment metrics
- Impacts mostly smaller MNCs with les resources to prepare the CBCR report and less options to show data aggregated
- There are other ways to flag aggressive tax planning
- Different nuances in the implementing rules (filings, notifications, formatting)
- Excessive cost for developing countries to implement effective exchange of information network and therefore limited access to data
- Is it always used for high-level risk assessment only?



Existing CbyC reporting: lessons learned (2/2)

How Action 13 information has been used so far

- Factual check against the company's internal records, tax returns, TP documentation, and other reporting positions
- Evidentiary support for transfer pricing adjustments
- Identify perceived inappropriate base erosion arrangements by MNEs
- Summary of global footprint and key global metrics used by executives as well as by independent auditors to understand and plan the tax provision review process
- The US IRS released data bank of CbyCR filed
  - Low ETR vs statutory tax rate
  - Use of tax-havens or tax-favored jurisdictions and stateless entities

EU Framework: CRD IV and extractive industry disclosures*

- Consolidate all reports in a centralized, public and free registry
- Need to improve comparability, via consistent data (machine readable) and definitions
- Significant penalties or consistent audit scrutiny for non-compliance
- Promote reporting worldwide in order to level the playing field

* Sources: various European Commission surveys and commissioned papers, including Fitness Check on the EU framework for public reporting by companies (2021) and related public consultation (2018) , Review of country-by-country reporting requirements for extractive and logging industries (2018), background documents for EC 2016 proposal

US Senator Proposal on Public Country-by-Country Reporting: in a nutshell

Two separate proposals in Congress:

- *Stop Tax Haven Abuse Act*
- *Disclosure of Tax Havens and Offshoring Act*

Closely aligned with BEPS Action 13

Information on a country-by-country basis presented in an aggregated or consolidated form

Key public information: revenue (with both related and unrelated parties), PBIT, tax paid/accrued, stated capital, accumulated earnings, full time employees and tangible assets

SEC registrants would be required to publicly disclose online their CbyC Reports

State of play

Bicameral legislation reintroduced on May 11, 2021.

Next steps

- Bill must pass both Houses to be adopted.
- If introduced, application date TBD based on draft SEC Regulations to be issued within one year from the enactment of the legislation.

Harmful tax practices

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EU list of non-cooperative jurisdictions: state of play

TAX: Non-Cooperative Jurisdictions

Blacklist (Annex I)

1. American Samoa
2. Anguilla
3. Dominica
4. Fiji
5. Guam
6. Palau
7. Panama
8. Samoa
9. Seychelles
10. Trinidad & Tobago
11. US Virgin Islands
12. Vanuatu

Grey-list (Annex II):

1. Australia
2. Barbados
3. Botswana
4. Eswatini (Swaziland)
5. Jamaica
6. Jordan
7. Maldives
8. Namibia
9. St Lucia
10. Thailand
11. Turkey

EU AML/CTF High Risk Jurisdictions

1. Afghanistan
2. Bahamas
3. Barbados
4. Botswana
5. Cambodia
6. N.Korea
7. Ghana
8. Iran
9. Iraq
10. Jamaica
11. Mauritius
12. Myanmar
13. Nicaragua
14. Pakistan
15. Panama
16. Syria
17. Trinidad & Tobago
18. Uganda
19. Vanuatu
20. Yemen
21. Zimbabwe

AML/CTF FATF

Call for action (blacklist)

1. N.Korea
2. Iran

Increased monitoring (grey-list)

1. Albania
2. Barbados
3. Burkina Faso
4. Cambodia
5. Cayman Islands
6. Ghana
7. Mauritius
8. Morocco
9. Myanmar
10. Nicaragua
11. Pakistan
12. Panama
13. Senegal
14. Syria
15. Uganda
16. Yemen
17. Zimbabwe

EU list of non-cooperative jurisdictions: defensive measures

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 to start mid-2021 and published by end of 2021

Implementation at national level

- Non-deductibility of costs: Belgium, Denmark, Germany, Greece, Luxembourg, Poland, Portugal, Slovakia, Spain
- CFC rules: the majority of Member States
- Increased WHT: Croatia, Czech Republic, Denmark, France, Germany, Luxembourg, Netherlands, Poland
- Limitation of participation exemption on profit distributions: Belgium, Czech Republic, Denmark, France, Germany, Luxembourg, Poland
- Other measures: restrictions on access to public funding, increased tax audits, additional disclosure requirements, restricted access to tax rulings, other administrative measures

EU State Aid investigations: state of play

European Commission		EU General Court	Court of Justice EU
Investigations	**Decisions**	**First instance**	**Second instance**
A. Tax rulings 2010 – 2013 first wave	**Final decisions** 1. 2015 SA.38375 (LU) 2. 2015 SA.38374 (NL) 3. 2016 Excess profits (BE) 4. 2016 SA.38373 (IE) 5. 2017 SA.38944 (LU) 6. 2018 SA.44888 (LU) 7. 2018 SA.38945 (LU) 8. 2019 CFC Finance exemption (UK)	**Judgement** 1. 2019 T-759/15 loss (LU) 2. 2019 T-760/15 win (NL) 3. 2019 Excess profits win (BE) 4. 2020 T-778/16 / T-892/16 win (IE) 5. 12.05.2021 T-318/18 win (LU) 6. 12.05.2021 T-525/18 (LU) 7. Pending CFC Finance exemption (UK)	**Judgement?** 1. Pending C-885/19 P (IE not LU) 2. No appeal EC 3. AG Conclusion: Excess profits (BE) 4. Pending C-465/20 P (IE)
B. Tax rulings 2010–2013 first wave	**Opening decisions** 1. 2017 – 2020 SA.46470 (NL) 2. 2019 SA.51284 (NL) 3. 2019 SA.50400 (LU) 4. 2019 Excess profits 39 rulings (BE)		
C. Tax rulings 2014–2018: — IP regimes — market information			

Q&A

Thank you for joining us

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Appendix

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 **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*, **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 recognised 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 organisations 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 (3)

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."***

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

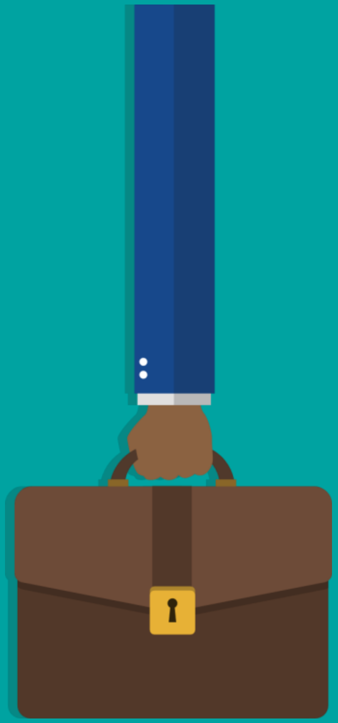
DAC 8

(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



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

Platform Operator

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

Users

2023:

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

Next steps

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

Tax authorities

European FTT — State of Play

Relaunch: Portuguese Proposal (Feb. 2021)

— Working paper “Financial Transaction Tax — the way forward” presented by Portuguese Presidency:

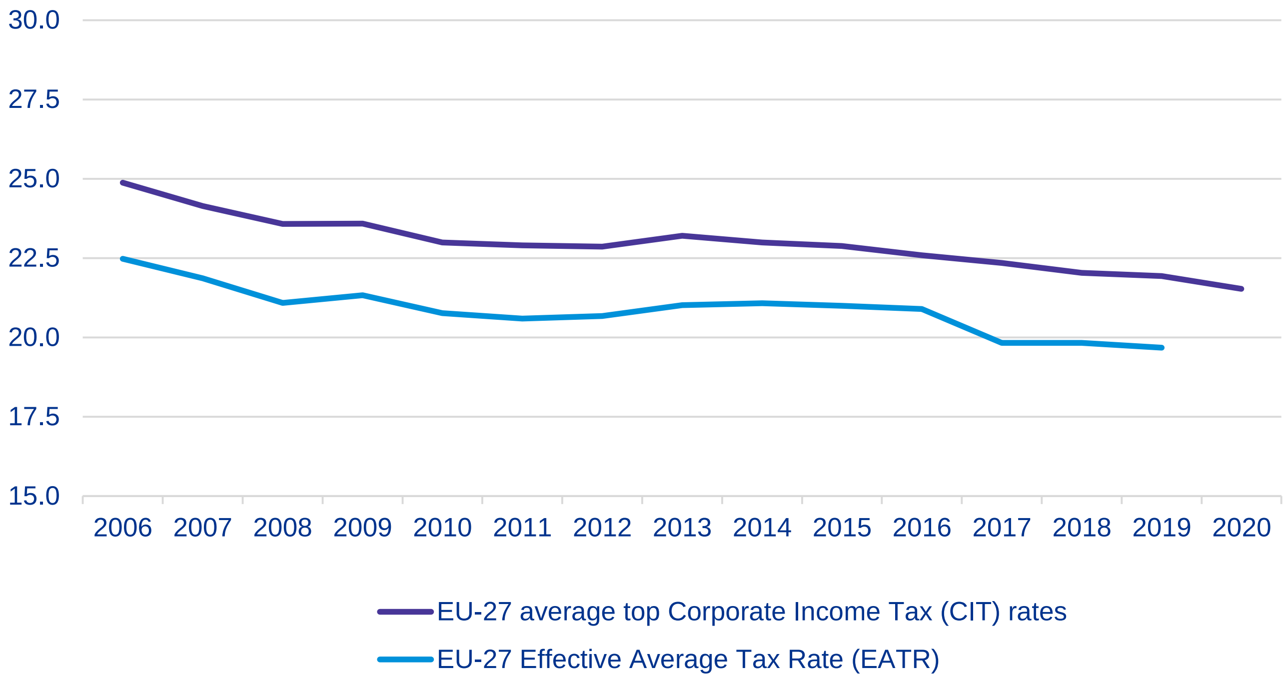
  — inclusive debate among all Member States focused on tax design issues

  — 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.

Taxation trends in the EU (1/3)

Corporate income tax revenues, EU-28, EU-27 and EA-19, 2006–2018



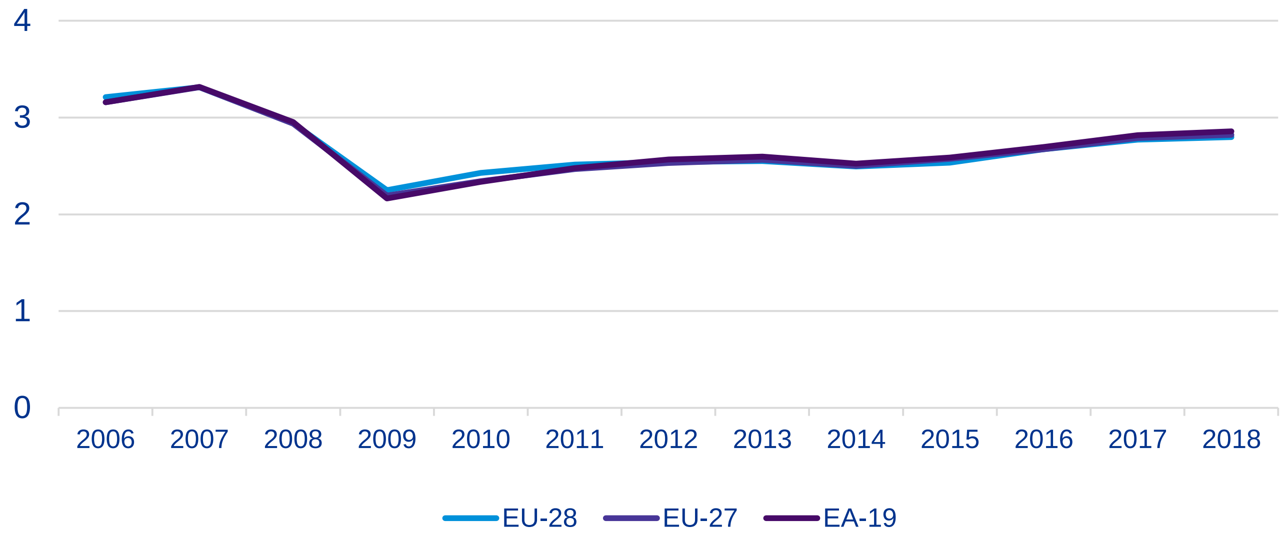
Both average CIT rates and EATRs slowly decreased in the decade running up to 2019

The average EATR in the EU-27 in 2019 was 19.7 percent

Source: European Commission, DG Taxation and Customs Union, based on Eurostat data

Taxation trends in the EU (2/3)

Corporate income tax revenues, EU-28, EU-27 and EA-19, 2006–2018 (% GDP)



CIT revenues have gradually increased (2.8 percent of GDP in 2018)

2007–2009 dropdown due to economic crisis

Source: European Commission, DG Taxation and Customs Union, based on Eurostat data

Taxation trends in the EU (3/3)

Changes as annouced by countries

CIT rate changes

— Increased CIT rate: UK* — 25 percent from April 1, 2023 (currently 19 percent)

— Proposed CIT reduction: Greece — 22 percent from 2022 (currently 24 percent); France** — 25 percent from 2022 (currenty 26.5 percent)

Green tax reforms

— Denmark: increased depreciation, extension of increased deduction for R&D expense

— UK*: new plastic packaging tax (April 1, 2022)

Transfer pricing legislation

— Ireland: extension of TP rules starting 2020

— Malta: TP legislation to be introduced

Unilateral DSTs and FTTs

— FTT: Spain

— DST: enacted — Italy, Spain; proposed — Poland, Czech Republic

**transition period for Brexit ended on January 1, 2021*

*** a 3.33 percent social surcharge applies for lage companies*

Additional taxes/extension of anti-abuse measures*

— annual tax on securities accounts (Belgium); potential wealth tax (UK*); anti-abuse legislation (Germany, Netherlands)

EC Recommandations

Communication on fiscal policy response to COVID-19

— support measures should be timely, temporary and targeted

— the focus should move from emergency relief to more targeted measures, once health risks diminish

— once the recovery phase starts, Member States are encouraged to boost employment incentives

— viable, but still vulnerable, companies should benefit from targeted support as they reopen

— in the full recovery phase, fiscal policy should prioritize higher public and private investment, supporting the transition towards a green and digital economy.

***other than defensive measures as requested by the EU or ATAD related*

A selection of recent CJEU case-law (1)

	Member State	Status	Issue	Main conclusion	KPMG link
T-318/18	**Luxembourg**	General Court decision of 12 May 2021	State aid	The judgement provides clarifications as regards the scope of the EC's burden of proof in establishing the existence of an advantage when the level of taxable income of an integrated company belonging to a group is determined by the choice of transfer pricing method.	E-news 132
T-525/18	**Luxembourg**	General Court decision of 12 May 2021	State aid	The EC did not err in law by looking at the combined effect of the deductibility of income at the level of a subsidiary and the subsequent exemption of that income at the level of its parent company. It also demonstrated to the requisite legal standard a derogation from the reference framework comprising the provision relating to abuse of law.	E-news 132

A selection of recent CJEU case-law (2)

	Member State	Status	Issue	Main conclusion	KPMG link
E* **C-480/19**	**Finland**	Decision of 29 April 2021	Income distributed by a UCITS — Difference in treatment — Objectively comparable situations	Comparability between foreign and domestic investment fund is determined on basis of the similarity of applicable regulations and taxation principles.	E-news 132
MK **C-388/19**	**Portugal**	Decision of 18 March 2021	Basis for assessment of tax — Discrimination — Option to be taxed according to the same arrangements as residents	Simply giving non-residents the choice to be treated as residents is not sufficient to make the restriction compatible with the EU law.	E-news 129
UH **C-64/20**	**Ireland**	Decision of 7 March 2021	Transposition of an EU Directive — Article 288 TFEU	The obligation on Member States to achieve the result envisaged by a directive and their duty to take all appropriate measures is binding on all the authorities of Member States	E-news 129

*KPMG member firm represented the taxpayer.

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A selection of recent CJEU case-law (3)

	Member State	Status	Issue	Main conclusion	KPMG link
C-362/19 P	**Spain**	Decision of 4 March 2021	State aid — Aid granted to certain professional football clubs — Concept of 'advantage' — Reduced tax rate — Non-profit entities — Less advantageous tax deduction	The disputed provisions can benefit each of the eligible football clubs in an abstract manner (and the fact that it was granted individually is not relevant). The impossibility of determining *ex ante* the amount of aid granted cannot prevent the Commission from finding that that scheme could result in an advantage to the beneficiaries.	E-news 128
C-562-19 P and C-596-19 P	**Poland/ Hungary**	Decision of 16 March 2021	State aid — Polish tax on the retail sector — Hungarian tax on turnover linked to advertisements — Progressivity of rates — Existence of a selective advantage — Burden of proof	No evidence in either tax regime of any selective advantage and therefore no State aid in favor of undertakings with lower turnover.	E-news 128

A selection of recent CJEU case-law (4)

	Member State	Status	Issue	Main conclusion	KPMG link
C-403/19	**France**	Decision of 25 February 2021	Taxation of dividends distributed by a non-resident already subject to a levy in another Member State — Maximum amount of tax credit accorded — Legal double taxation	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.	E-news 127
C-420/19	**Estonia**	Decision of 20 January 2021	Recovery of claims relating to taxes — Mutual assistance — Request for precautionary measures — Jurisdiction of local court	In the context of the Mutual Assistance Directive, member states are in principle bound by the assessment performed by the authorities of the applicant member state as regards the necessity of the precautionary measures.	E-news 124
C-484/19	**Sweden**	Decision of 20 January 2021	National tax legislation prohibiting a company which is established in one Member State from deducting interest paid to a company established in another Member State	No evidence in either tax regime of any selective advantage and therefore no State aid in favor of undertakings with lower turnover.	E-news 124

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