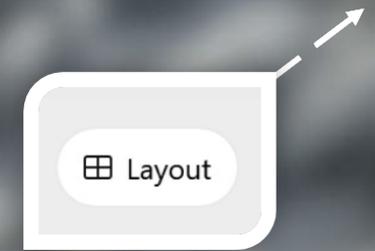


CLIFFORD CHANCE



**WELCOME!
THIS EVENT WILL
BEGIN SHORTLY**



Your lines have been automatically muted upon entry and the video function has been deactivated.



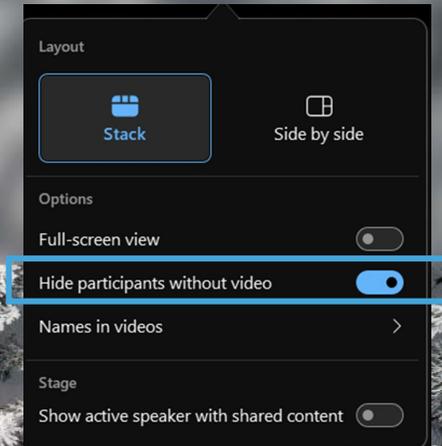
During the presentation, you can ask **questions via the chat**.



Please note that the list of participants cannot be viewed by the attendees due to GDPR regulations.



This webinar is being recorded.



LUXEMBOURG PERSPECTIVES SERIES | WINTER 2023

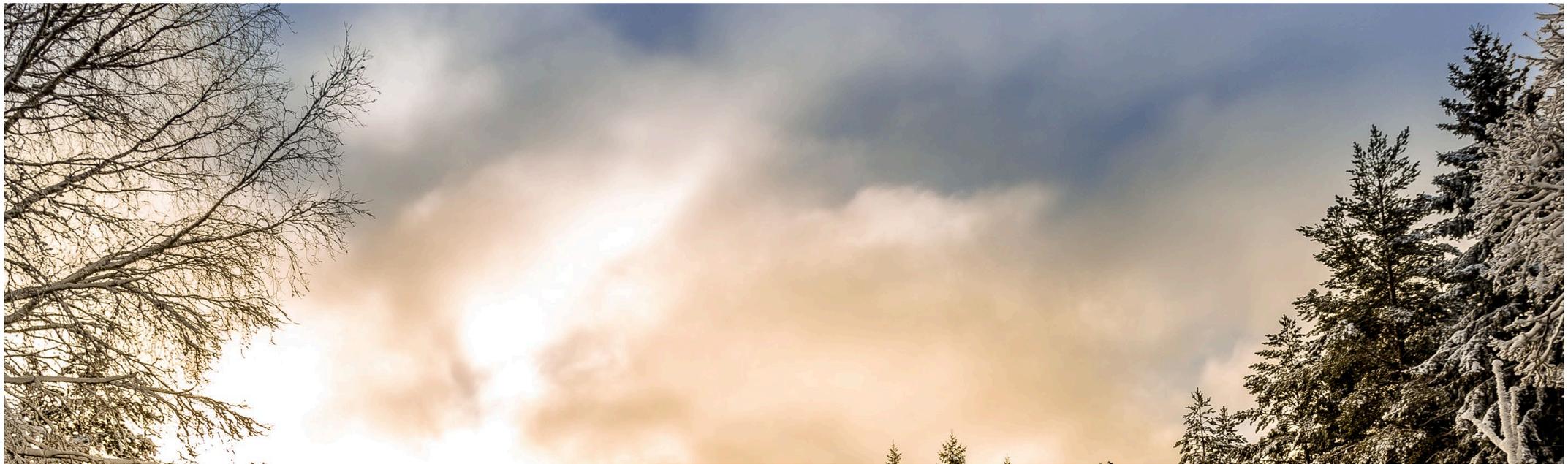
C L I F F O R D
C H A N C E



LUXEMBOURG PERSPECTIVES SERIES | WINTER 2023

TAX WORLD – WHAT TO EXPECT IN 2023 ?

24 JANUARY 2023

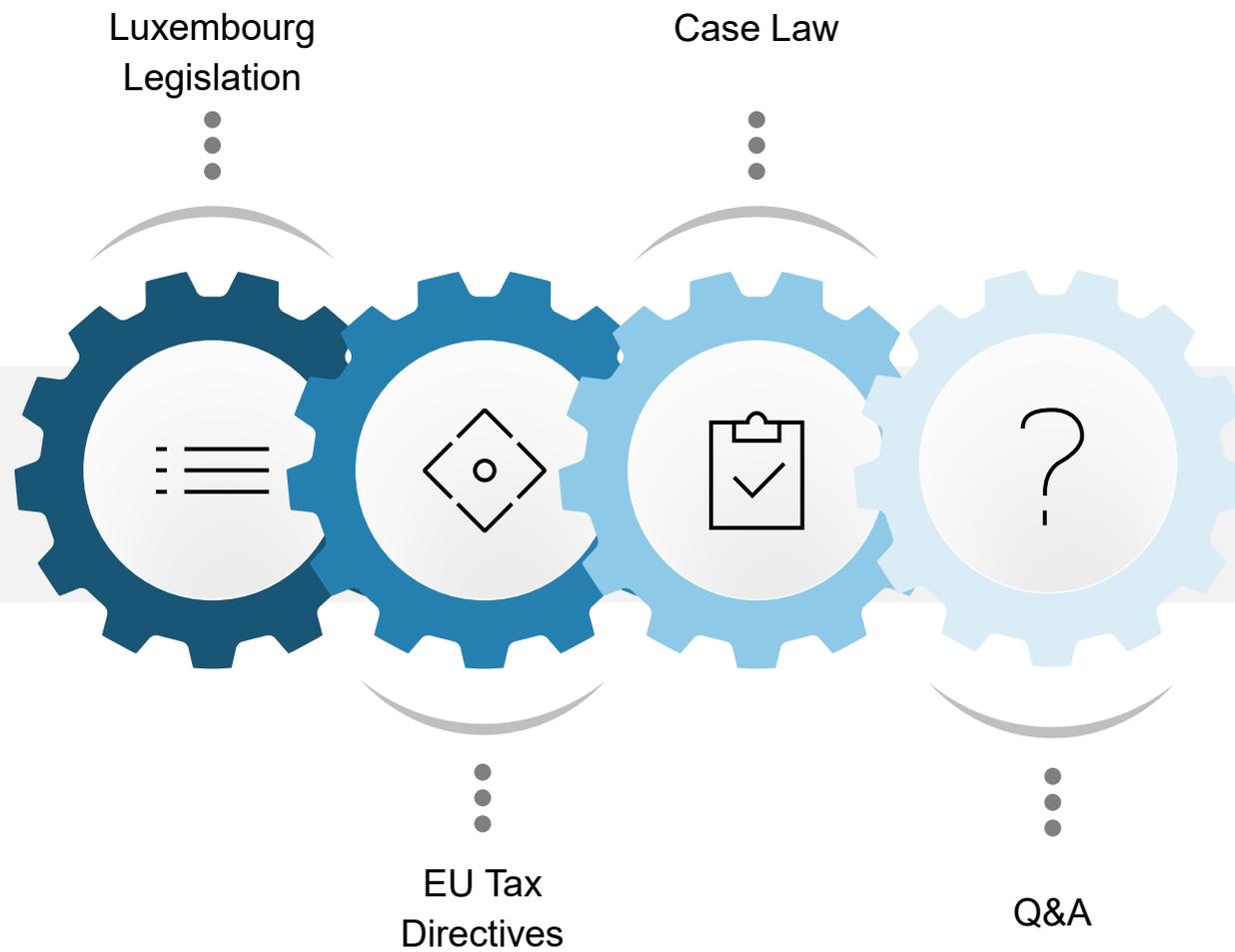


AGENDA



AGENDA

LUXEMBOURG TAX UPDATES



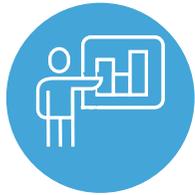


LUXEMBOURG LEGISLATION



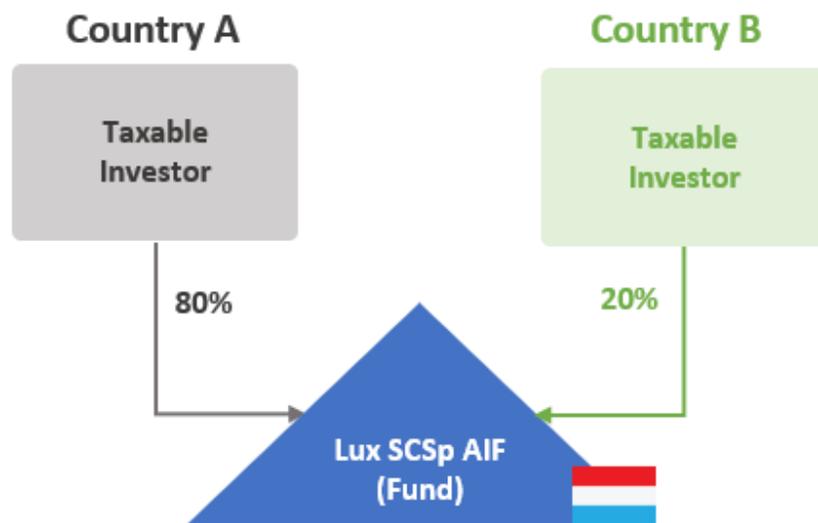
TAX WORLD – WHAT TO EXPECT IN 2023?

LUXEMBOURG LEGISLATION – BUDGET LAW (ATAD 2 REVERSE HYBRID RULE)

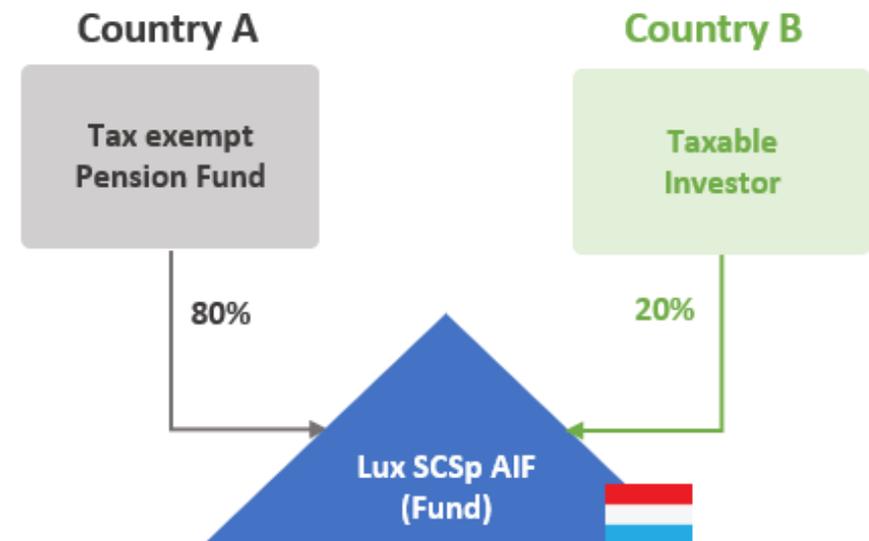


According to the ATAD 2 Law, the Fund may become a taxable entity on (a portion of) income received as from the financial years starting on or after 1 January 2022 if:

1. it is viewed as a taxable person by one or more non-resident associated enterprises holding in aggregate at least a 50% interest in the Fund (either directly or indirectly); and
2. the income received by the Fund is not taxed otherwise in Luxembourg or any other jurisdiction, unless
3. the income which is not otherwise taxed due to it being received by an investor who, despite treating the Luxembourg entity as opaque for tax purposes, benefits from a subjective exemption from tax (such as a tax-exempt pension fund)



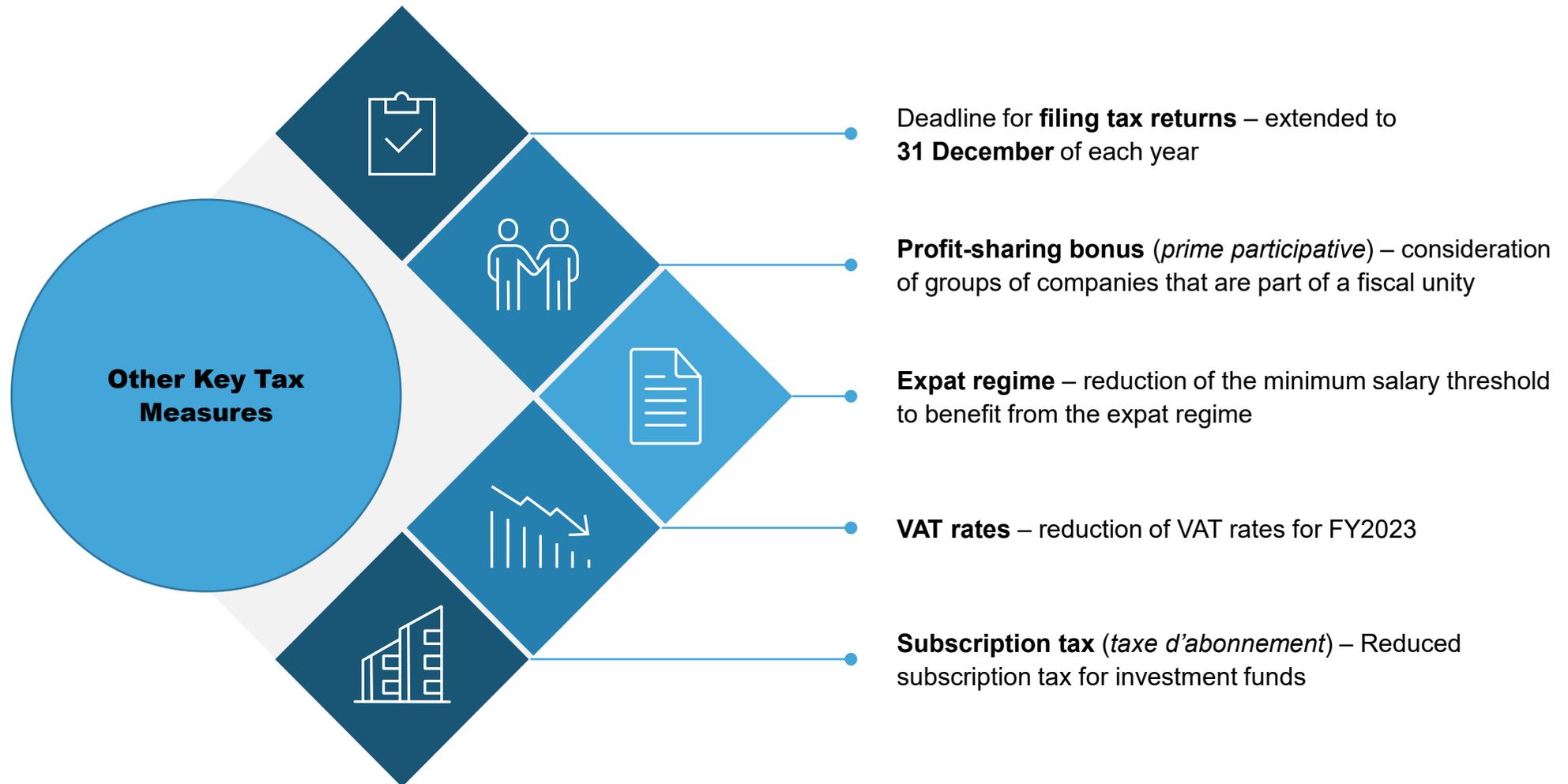
Situation of non-taxation resulting from a difference in qualification (opaque vs. transparent)



Situation of non-taxation resulting from a subjective exemption (related to the investor's tax status)

TAX WORLD – WHAT TO EXPECT IN 2023?

LUXEMBOURG LEGISLATION - BUDGET LAW 2023 (OTHER TAX MEASURES)



TAX WORLD – WHAT TO EXPECT IN 2023?

LUXEMBOURG LEGISLATION - NEW SECURITISATION LAW



Major (non-tax) changes

ATAD 1 – carve-out for securitisation special purpose entity (SSPE) ?

Management of risk portfolio: active management compared to passive management

What's new ?

Question of commerciality ?

Introduction of new legal forms (e.g. SCS, SCSp) and use of Securitisation Fund

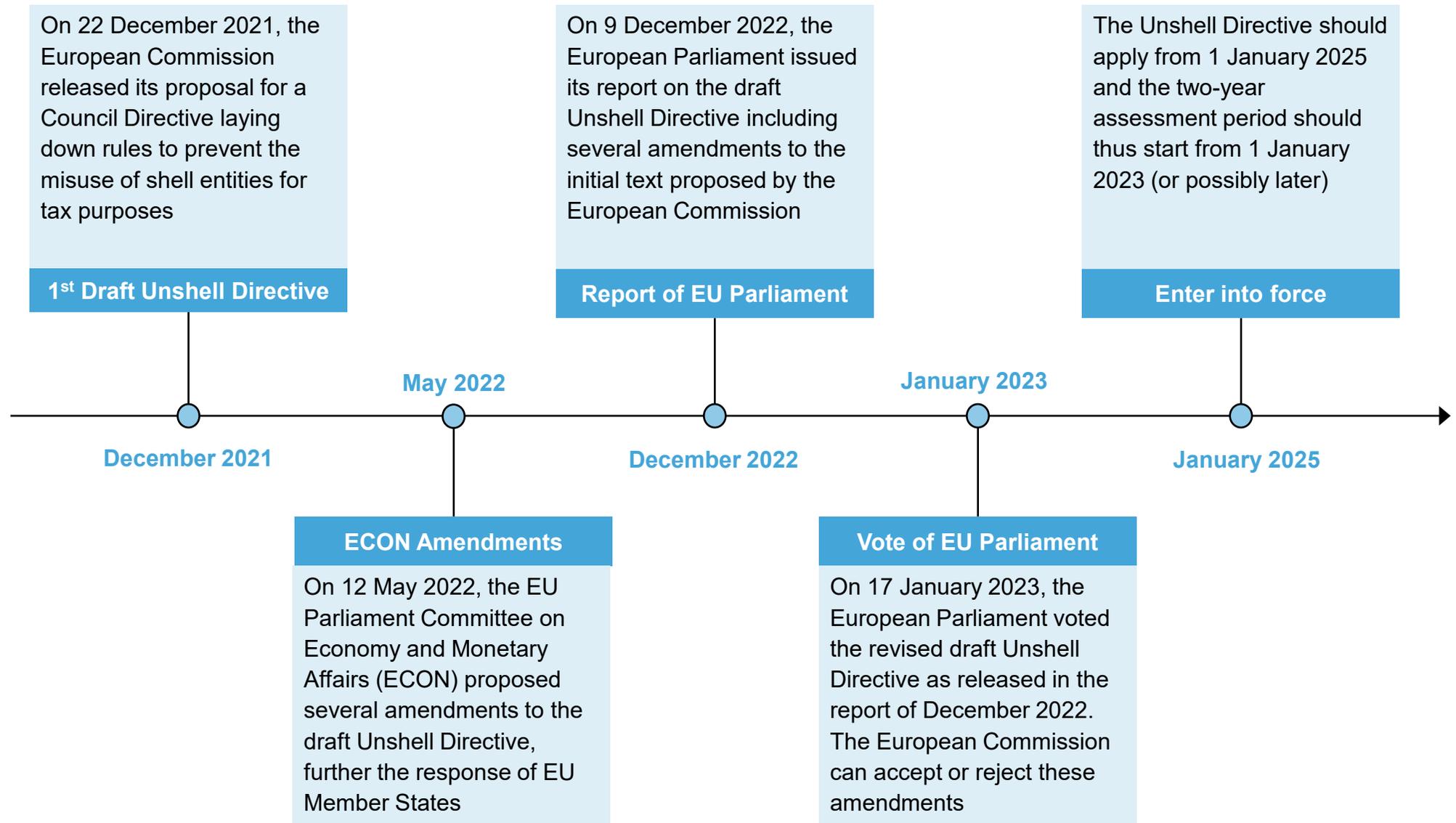


EU TAX DIRECTIVES



TAX WORLD – WHAT TO EXPECT IN 2023?

EU TAX DIRECTIVES – ATAD 3 TIMELINE



TAX WORLD – WHAT TO EXPECT IN 2023?

EU TAX DIRECTIVE – ATAD 3 PRACTICAL CONSIDERATIONS



Highlighted
proposed
amendments in
ATAD 3

Key proposed amendments voted by the Parliament

- Carve-out for “**regulated financial undertakings**” is maintained but general exemption for entities with at least 5 own full-time employees is deleted
- Adjustment of **thresholds** imposed under the “**gateway test**”
- Considered “**premised shared with entities of the same group**” for substance test purposes
- Deletion of **qualification requirement for directors** with respect to the minimum substance indicators
- Request for the **rebuttal of the presumption** of not having minimum substance within a period of nine months after the introduction of the request (and it shall be considered as accepted in the absence of answer after the nine-month period)
- Change in the **consequences of being a “shell company”**



What next ?

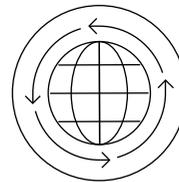
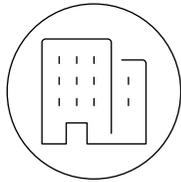
What does it mean for you ?

TAX WORLD – WHAT TO EXPECT IN 2023?

EU TAX DIRECTIVES – PILLAR 2



The OECD's Pillar 2 Directive seeks to enforce a **global minimum corporate income tax** at an effective rate of 15% for large group companies globally. (i.e., multinationals or domestic group companies meeting a EUR 750 million annual turnover threshold)



TAX WORLD – WHAT TO EXPECT IN 2023?

EU TAX DIRECTIVES – DEBRA



What is it?

It means
**Debt-Equity
Bias Reduction
Allowance**



On 11 May 2022, the EU Commission published the proposal directive on laying down rules on a **debt-equity bias reduction allowance** and on **limiting the deductibility of interest** for corporate income tax purposes

The main objective of DEBRA is to **encourage companies to finance their investments through equity** by reducing tax treatment difference between equity vs. debt funding

DEBRA concerns **all resident corporate taxpayer** BUT carve-out for financial undertakings (e.g. AIF, AIFM, UCITS, securitisation special purpose entity)

EU Member States shall transpose the Directive into their domestic law by **31 December 2023**. The rules are expected to apply from 1 January 2024

TAX WORLD – WHAT TO EXPECT IN 2023?

EU TAX DIRECTIVE – SAFE DIRECTIVE



Another
Directive?

Yes ! Securing
the Activity
Framework of
Enablers



On 6 June 2022, the European Commission (EC) released its proposal for a Council Directive to tackle the role of enablers that facilitate tax evasion and aggressive tax planning within the European Union

On 6 July 2022, the EC launched a public consultation on its proposal. The EC is asking for feedback on possible measures with regard to intermediaries that provide tax advisory services (the «enablers») on complex structures that could lead to tax evasion or an aggressive tax structure



CASE LAW

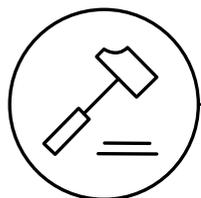


TAX WORLD – WHAT TO EXPECT IN 2023?

CASE LAW



CA 31 March 2022 (n°46067C) – **Account 115**, Participation exemption regime



CA 31 March 2022 (n°46131C & 46132C) – Tax treatment of a financial instrument (**MRPS**)



TA 23 September 2022 (n°44902) – Tax treatment of an interest free loan (**IFL**)



CJEU 8 December 2022 (Case C-694/20) – **DAC 6**, Legal professional privilege of lawyers, Notification to other intermediaries

Q&A



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