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INDEPENDENT TAX CONSULTING



ATA Directive III: Holding Companies



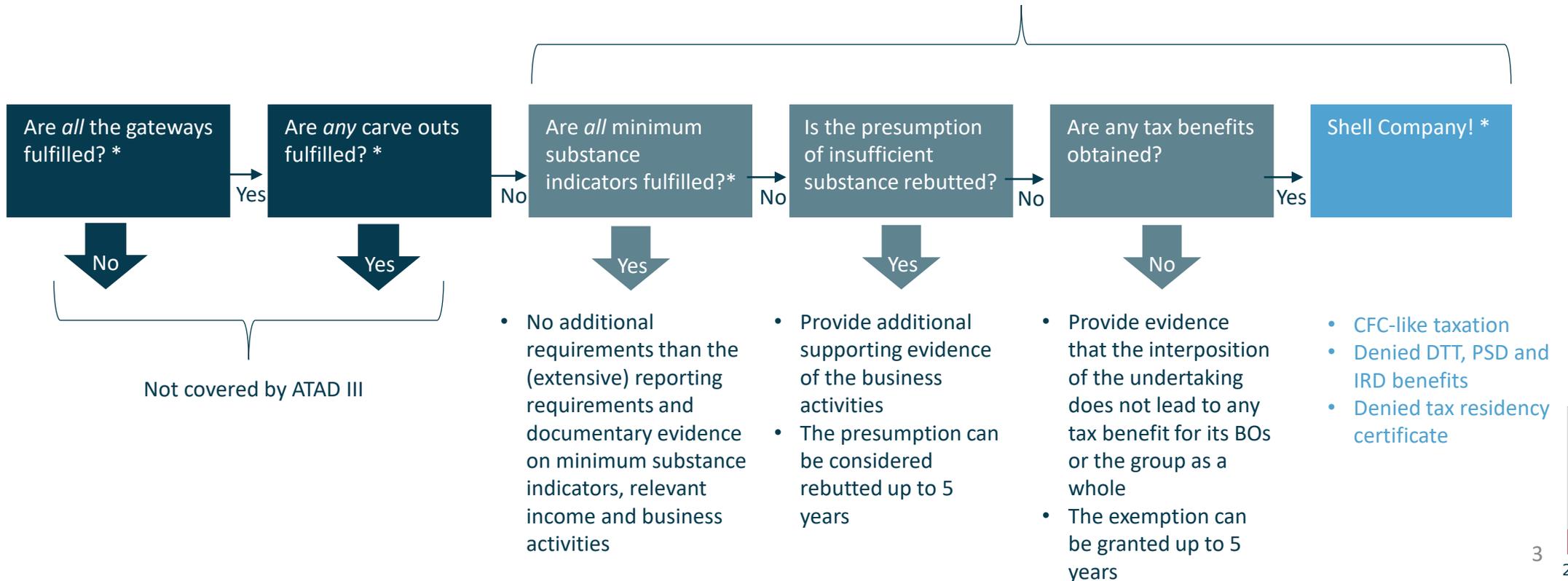
2022 CORIT

ATAD III – Purpose & Scope

- The objective is to prevent tax avoidance and evasion that are likely to flourish through actions by undertakings without minimum substance and to ensure tax certainty and enhance the proper functioning of the internal market
 - Common set of rules for determining what should be considered as insufficient substance for tax purposes in the internal market as well as for delineating specific tax consequences linked to such insufficient substance
 - Common rules on the content of undertaking's declarations
 - Should apply to all undertakings in the Union which are taxable in a MS, regardless of their legal form and status
 - The scope should be limited to undertakings which are at risk of being found to lack minimal substance used with the main objective of obtaining tax advantage, hence the indicative "gateways"
- Intended to be adopted by 30 June 2023 and come into effect from 1 January 2024
 - As the substance test includes a look-back period of the preceding two tax years, an undertaking's compliance as of January 2022 may be taken into consideration

ATAD III - overview

- Reporting requirements on minimum substance indicators
- Non-compliance penalties (at least 5 % of the turnover in the relevant tax year)
- One MS can request another MS to conduct tax audit



Gateways (for holding companies)

Are all the following gateways fulfilled (in the preceding two years)?

- a) More than 75% of the revenue accruing is “relevant income”;
 - E.g., interest or any other income generated from financial assets; royalties or any other income from IP; dividends and income from the disposal of shares; income from financial leasing; income from immovable property; income from insurance, banking and other financial activities; and income from services which the holding company has outsources to other associated parties
 - In case of dividends and income from the disposal of shares, this gateway is deemed fulfilled, if the book value of these assets is more than 75% of the book value of the undertaking
 - In case of immovable property, this gateway is deemed fulfilled, if the book value of these assets are more than 75% of the book value of the undertaking

- b) At least 60% of the relevant income is earned or paid out via cross-border transactions; and
 - In case of immovable property, this gateway is deemed fulfilled, if more than 60% of the book value of the immovable property was located outside the MS of the undertaking

- c) Administration of day-to-day operations *and* decision-making on significant functions are outsourced

Carve outs

Are any the following carve-outs fulfilled?

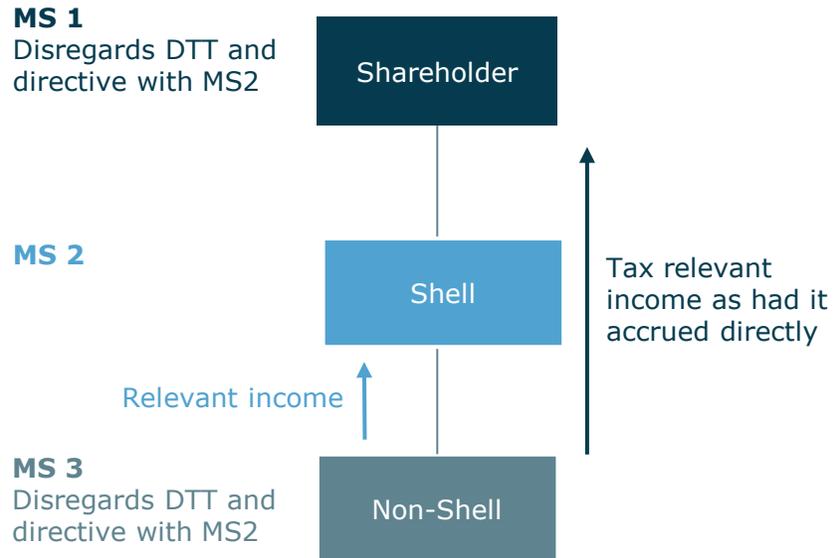
- a) Companies which have a transferable security admitted to trading or listed on a regulated market or multilateral trading facility;
- b) Regulated financial undertakings: Specifically listed in the Directive and includes inter alia; credit institutions, investment firms, alternative investment fund managers (AIFM), undertakings for collective investment in transferable securities (UCITS), pension institutions, alternative investment fund (AIF), central securities depository, securitization special purpose entities, insurance and reinsurance undertakings, crowdfunding service providers and crypto-asset service providers;
- c) Undertakings that have the main activity if holding shares in operational business in the same MS while their beneficial owners are also resident for tax purposes in the same MS;
- d) Undertakings with holding activities that are resident for tax purposes in the same MS as the undertaking's shareholder(s) or the ultimate parent entity; *or*
- e) Undertakings with at least 5 own full-time equivalent employees or members of staff exclusively carrying out the activities generating the relevant income

Minimum substance indicators

Are all minimum substance indicators fulfilled (to be declared and documented)?

- a) Own premises (or premises for its exclusive use);
- b) One own and active bank account within the Union; and
- c) One or more “exclusive” directors (i) or majority of equivalent full-time employees (ii)
 - One or more directors, who are:
 - i. Tax resident in the same MS (or at no greater distance that are compatible with proper performance of their duties); and
 - ii. Qualified and authorized to take decisions in relation to the activities generating the relevant income; and
 - iii. Actively and independently use this authorization on a regular basis; and
 - iv. Not employees of a third-party provider and do not perform the function of director or equivalent for other non-associated enterprises.
 - The majority of the full-time equivalent employees are:
 - i. Tax resident in the same MS (or at no greater distance that are compatible with proper performance of their duties); and
 - ii. Qualified to carry out the activities generating the relevant income

Shell Co - material tax consequences (I)



EU Shareholder(s):

- Taxes the income as had it accrued directly from Non-Shell in MS3 as per national law
- Relief for any taxes paid at source
- Take into account and deduct any tax paid by Shell

EU Shell:

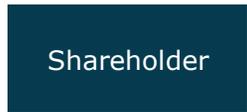
- Continue to be tax resident in MS2 and taxed accordingly

EU source/payer:

- Will have no right to tax the payment
- May apply domestic WHT on outbound payments if it cannot be identified whether the undertaking's shareholder(s) are in the EU

Shell Co - material tax consequences (II)

Non-MS



Shareholder

MS 2



Shell

Relevant income

MS 3

Disregards DTT and directive with MS2



Non-Shell

Tax relevant income as had it accrued directly

Third country shareholder(s):

- Not compelled to apply any consequences
- May be asked to apply a DTT (if any) with MS 3 in order to provide relief

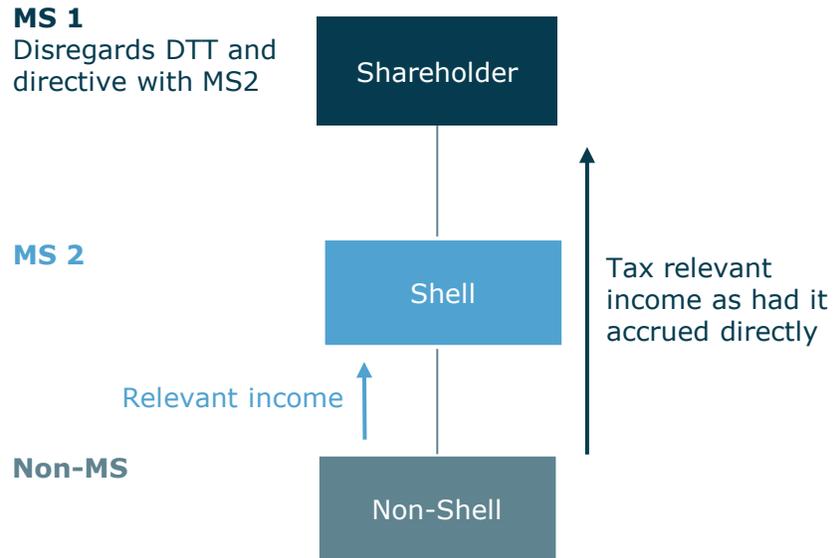
EU Shell:

- Continue to be tax resident in MS 2 and taxed accordingly

EU source/payer:

- Will tax the outbound payments in accordance with DTT in effect with Non-MS or in accordance with its national laws in absence of a DTT

Shell Co - material tax consequences (III)



EU Shareholder(s):

- Taxes the income as had it accrued directly from Non-Shell in Non-MS as per national law
- Relief for any taxes paid at source in accordance with the applicable DTT with Non-MS (if any)
- Take into account and deduct any tax paid by Shell

EU Shell:

- Continue to be tax resident in MS 2 and taxed accordingly

Third-country source/payer:

- Not compelled to apply any consequences
- May tax the outbound payments in accordance with its national laws
- May tax the outbound payments in accordance with DTT in effect with MS 1 / MS 2



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