



WELCOME



Apple Case



APPLE TIMELINE

- ❖ **1980** Apple establishes two Irish subsidiaries. (Apple employs c6,000 in Ireland)
- ❖ **1991 and again in 2007**, Apple sought rulings from the Revenue Commissioners that the allocation of profit to the Irish Branch was reasonable. Irish Revenue approved in both instances
- ❖ **Oct 2013** Ireland changes rules re tax residence
- ❖ **June 2014** European Commission commences a formal investigation
- ❖ **Aug 2016** European Commission concludes Apple had benefitted from preferential tax treatment between 2004 and 2014, resulting in €13 billion in unpaid taxes. The Commission also ordered Ireland to recover these taxes.

APPLE TIMELINE

- ❖ **Sep 2016** Ireland appeals the Commission decision
- ❖ **Dec 2016** Apple appeals the Commission decision
- ❖ **July 2020** General Court of the EU annuls the Commission's decision
- ❖ **Sep 2024** European Court of Justice (CJEU) overturns the General Court's ruling

APPLE — CORE CONCEPTS

- ❖ **Corporate tax residence** Irish tax provisions at the time provided that a company that was incorporated in the State and not managed and controlled in the State was not tax resident in Ireland provided it was “related” to an Irish resident company
- ❖ **Transfer Pricing** Ireland did have any formal transfer pricing provisions until 2011
- ❖ **Rulings** Ireland does not have a formal tax rulings system and did not have one at the time

APPLE- IRISH TAXATION ANALYSIS

- ❖ Apple allocated significant profits to the Irish subsidiaries
- ❖ Apple allocated significant IP-related profits to its non-resident head office. This allocation meant that only a fraction of Apple's profits were taxable in Ireland – profits attributable to the Irish branch
- ❖ Apple's effective tax rate in Ireland was just 1% in 2003, which dropped to 0.005% by 2014.
- ❖ In 1991 and again in 2007 Apple sought “rulings” from the Revenue Commissioners that the allocation of profit to the Irish Branch was acceptable to Irish Revenue. Irish Revenue approved in both instances

APPLE- EU COMMISSION DETERMINATION

- ❖ 2016 Apple decision centred on these two tax opinions, or “rulings” as they are referred to effectively allowing Apple to attribute European profits to its non-tax-resident head office. This arrangement enabled Apple to pay minimal taxes in Ireland on billions of euros in profits.
- ❖ Commission found Apple benefitted from illegal state aid due to tax rulings. The rulings enabled Apple to pay significantly less tax than other businesses, creating an unfair competitive advantage.
- ❖ Commission relied on the arm's length principle, despite not being part of Irish tax law at the time. The Commission's argued that Apple's profit allocation did not reflect market conditions. Although Irish tax law did not explicitly include this principle during the period, the Commission viewed it as a benchmark for determining fair taxation.

APPLE

❖ **2020: General Court ruling in Apple's favor, annulling the Commission's decision**

- The General Court's decision focused on the lack of evidence provided by the Commission to demonstrate that Apple received a selective advantage. This annulment temporarily lifted the €13 billion recovery order

❖ **2024: CJEU reverses the ruling, reinstating the Commission's decision**

- The CJEU found that the General Court erred in its interpretation and that Apple's tax arrangements did indeed grant it a competitive advantage. The ruling required Ireland to finalize the recovery of the €13 billion.

APPLE- IMPLICATIONS

- ❖ Catalyst for international efforts to reform corporation tax
- ❖ Big “win” for the EU Commission
- ❖ Impact on other Multinationals
- ❖ Shift in tax policies among EU member states
- ❖ State Aid - The decision highlights the importance of aligning national tax regimes with EU state aid principles.
- ❖ What do you do with €13BN that you don't want?

EU legislation



AGENDA

- ❖ Pillar Two
- ❖ ATAD III
- ❖ SAFE
- ❖ DAC6/7/8
- ❖ FASTER
- ❖ BEFIT
- ❖ HOTS
- ❖ MICA
- ❖ Transfer of funds regulations (TFR)

PILLAR TWO- RECAP

- ❖ Directive aims to implement the OECD inclusive framework model rules across European Union (EU) member states.
- ❖ Pillar Two aims to ensure a global minimum effective tax rate of 15%.
- ❖ Targets large groups with a turnover of at least 750 million euro, in at least two of the four preceding years.
- ❖ To calculate for every jurisdiction whether the entities in these countries are effectively taxed against at least 15% Pillar 2 introduces its own calculations.
- ❖ 138 countries worldwide have agreed to implement Pillar 2 rules in their national legislation, with a significant number having introduced domestic legislation enacting Pillar 2.
- ❖ As of October 2024, the US has yet to implement Pillar 2 legislation.



PILLAR TWO – WHO DOES IT AFFECT?

- ❖ To calculate for every jurisdiction whether the entities in these countries are effectively taxed against at least 15% Pillar 2 introduces its own calculations.
- ❖ If not, Pillar 2 introduces three main rules to achieve this, by means of these rules, countries will impose additional taxation to achieve the 15% minimum tax.

Domestic Top-Up Tax	Income Inclusion Rule	Undertaxed Payments Rule
With the domestic top-up tax, Pillar 2 countries levy an additional tax if group entities in this country are subject to an effective tax rate lower than 15%.	The Income inclusion rule means an additional tax will be imposed on the ultimate parent company of the group in case a foreign subsidiary of the group is effectively taxed at a rate lower than 15%.	<ul style="list-style-type: none">• This rule allocates the right to impose a top-up tax to the different jurisdictions in which subsidiaries are located and that have implemented Pillar two.• This occurs if the ultimate parent company is located in a jurisdiction that has not implemented pillar two.

PILLAR TWO – CURRENT STATUS

- ❖ EU rules came into effect on 1 January 2024 introducing a minimum effective rate of tax rate of 15%. Groups with a turnover of more than €750 million will be subject to new regulations.
- ❖ The MLI concerning the Subject to Tax Rule has been open for signature since 2 October 2023.
- ❖ A signing ceremony of the STTR was held on 19 September 2024. nine jurisdictions signed and a further 10 expressed their intent to sign the Multilateral Convention to Facilitate the Implementation of the Pillar Two Subject to Tax Rule (STTR MLI)
- ❖ During the signing ceremony, there was also the opportunity for countries that do tax the payments in question, at a rate of at least 9%, to express their support for the STTR.
- ❖ Several countries have introduced registration and notification requirements.

ATAD III – SHELL COMPANY DIRECTIVE

- ❖ **Background** On 21 December 2021, the Commission released ATAD (shell company directive), aimed at preventing the misuse of shell entities for tax purposes.
- ❖ **Problem** -The Directive aims to combat 'shell companies' and includes three “gateways” companies have to pass in order not to be regarded as a “shell company”.
- ❖ These gateways relate to
 - passive income,
 - cross-border activities,
 - and outsourced management and administration.
- ❖ **Aims** - This proposal aims to provide a baseline for 'substance' at the level of the EU company. Certain types of entities are carved out, including listed entities, insurance companies, and pension funds.
- ❖ EU companies failing the substance test will be prima facie presumed to be 'shell companies'. If the entity can't rebut this presumption or cannot obtain an exemption, it will lose certain tax advantages granted through bilateral tax treaties or EU directives.



ATAD III – CURRENT STATUS

- ❖ October 2023 - member states rowed back on the original proposal and favoured instead initially limiting the directive to the exchange of information on shell companies
- ❖ This approach removes the economic substance test and restricts the reporting obligations to entities at high risk of being used in abusive tax schemes.
- ❖ Commission proposal no longer includes common tax consequences. Focused on requiring Member States to use exchange of information to take administrative measures, such as tax audits, to identify potential abuse schemes and to then apply their national anti-abuse rules accordingly.
- ❖ As of June 2024, no agreement is expected in the short term, and it is thought that the proposal will not be adopted in its original form. Number of Member States have expressed concern that the proposed measures will lead to a significant increase in administrative burden.
- ❖ The ECOFIN Report to the European Council on Tax Issues published on 24 June 2024 includes a section on UnShell stating that whilst most delegations supported the proposal, further technical work was required before an agreement could be feasible.

SAFE – SECURING THE ACTIVITY FRAMEWORK OF ENABLERS

- ❖ **Aim** - to combat the role that enablers can play in facilitating schemes that can lead to tax evasion or aggressive tax planning within the EU. Prevent enablers from setting up such structures in non-EU countries when used to erode the tax bases of the EU Member States.
- ❖ The Policy options considered are:
 - Due diligence to be undertaken by all enablers;
 - Prohibition on facilitation of tax evasion and aggressive tax planning plus due diligence to be undertaken and a requirement for EU registration;
 - Code of conduct for all enablers.
- ❖ The Commission has stated that an agreement needs to be reached on ATAD III before progressing with a proposal on the SAFE initiative. No formal wording for this SAFE proposal, therefore timeline unclear.
- ❖ Commission has not announced when the SAFE initiative will be tabled for further discussion.

DAC 6

- ❖ European Commission launched a 'Call for Evidence' in relation to functioning of the DAC in the period 2018-2022 (excludes DAC7 and DAC8).
- ❖ Assessment of the relevance of the scope and purpose of the DAC, the effectiveness in achieving the objectives, and an efficiency/cost-benefit analysis.
- ❖ Included a survey for Member States on the relevant hallmarks **in DAC6**. A public consultation was open from 7 May 2024 - 30 July 2024.
- ❖ The main concerns of the respondents regarding the DAC(6) evaluation are the following:
 - No alignment across EU Member States of the interpretation of the different DACs definitions;
 - No harmonization of penalties across EU Member States;
 - Limited information shared by tax authorities, including, for example, statistical filing information and the contents of the filings;
 - Trigger dates for reporting under DAC6 are not practical and unclear in most cases;
 - The application of the main benefit test should not be limited to a few hallmarks. Most respondents argue that the main benefit test should be extended to other hallmarks.

DAC 7 – REPORTING OBLIGATION FOR DIGITAL PLATFORMS

- ❖ DAC7 introduced a requirement for “Digital Platform” Operators to collect information on reportable sellers utilising their platforms for “Relevant Activities” and to annually report the information to the competent tax authority, who in turn shares this with other Member States.
- ❖ A Digital Platform = software, including websites and mobile applications, that allows sellers to connect to other users to carry out a relevant commercial activity.
- ❖ Relevant activities for the purposes of the DAC include:
 - Rental of immovable property, residential, commercial and parking spaces e.g Airbnb, Booking.com).
 - Provision of personal services (can be carried out either online or offline, by an individual or collectively on behalf of an entity, after being facilitated by the platform)
 - Sale of goods e.g. eBay, Amazon.
 - Rental of a mode of transport e.g. GoCar.
- ❖ Exclusion - Platforms that only allow for the processing of payments, users to list or advertise, or that redirect or transfer users to a platform.
- ❖ Non-EU platform operators must also comply with DAC7 if they facilitate “relevant activities” of sellers who are residents in the EU or they rent out immovable property located in the EU.



DAC 7 – CURRENT STATUS

- ❖ First reporting obligation for Platform Operators was 31 January 2024. Platform operators allow sellers to provide for the sale of goods and services and the rental of property through the platform (websites, mobile apps etc.).
- ❖ Platform operators must disclose to their sellers – that are active on their platform – what data they disclose to the local tax authorities.
- ❖ Sellers who were already active on the platform before 1 January 2023 (so-called 'existing sellers') do not have to be reported for the first time until January 2025.
- ❖ Certain Member States have opted to provide short extensions to the reporting deadline under the domestic transposition of DAC 7; to date, these are Ireland, Cyprus, Italy, Luxembourg, Germany, Spain, and Greece
- ❖ Under Irish law, the penalties for missing the reporting deadline will include an initial penalty of €19,045 for the Platform Operator plus an additional penalty of €2,535 for each day a report remains outstanding.

DAC 8 – DIRECTIVE ON EXCHANGE OF INFORMATION FOR CRYPTO-ASSETS AND E-MONEY

- ❖ European Commission has published new tax transparency regulations (DAC8) that apply to all service providers facilitating transactions in crypto-assets for EU-resident customers.
- ❖ DAC8 rules require that crypto-asset service providers, regardless of size or location, report on crypto-asset transactions conducted by clients residing in the EU.
- ❖ It also introduces penalties and compliance measures for the various reporting obligations under the DAC framework.
- ❖ The Council of the European Union unanimously adopted the revised DAC8 on 17 October 2023. This decision comes after a political agreement was reached on 16 May 2023 and the issuance of a non-binding opinion on 13 September 2023 by the European Parliament.
- ❖ DAC8 entered into force on 13 November 2023 and, for the most part, will come into effect for all EU Member States from 1 January 2026. Member States have until 31 December 2025 to transpose DAC8 into national domestic law.



FASTER – FASTER & SAFER TAX EXCESS REFUND FOR WITHHOLDING TAXES (WHT)

- ❖ **Background** Many EU countries levy withholding taxes on dividends and on interest paid to investors who live abroad. However, investors also have to pay tax on the same income in their country of residence.
- ❖ To avoid double taxation DTAs may entitle non-resident investors to a lower rate of withholding taxes or to an exemption in the country they are levied.
- ❖ **Problem** - refund procedures are often lengthy, costly and cumbersome, causing frustration for investors and discouraging cross-border investment within and into the EU.
- ❖ **Aims**
 1. to simplify the EU-wide system for WHT on dividend and interest payments.
 2. Assist tax authorities in identifying and targeting the abuse of rights under tax treaties.

FASTER – FASTER & SAFER TAX EXCESS REFUND FOR WITHHOLDING TAXES

- ❖ May 14, 2024 - general consensus of the EU Council on the proposal.
- ❖ Member States acknowledged the importance of FASTER and fully supported the directive's objectives. However, the Council's text differed significantly from the Commission's original proposal.
- ❖ Council decided that Member States must implement either the relief at source or quick refund mechanisms for withholding tax relief on dividends paid for publicly traded shares. However, Member States with an existing comprehensive relief at-source system and a market capitalization ratio below a certain threshold are allowed to maintain their own national system if they prefer.
- ❖ Regarding the European Tax Residency Certificate, the Council endorsed the implementation across all EU Member States. However, the Council extended the deadline for issuing such certificates from one working day to fourteen calendar days. In addition, Member States to process a refund request within sixty calendar days.
- ❖ Because the Council has changed the original Commission proposal, the European Parliament will need to be consulted again before the Council can formally adopt it.
- ❖ Member states must transpose the directive into national legislation by 31 December 2028, but the national rules must become applicable on 1 January 2030. The previous entry into force date of 1 January 2027 would be very difficult to achieve, so 1 January 2030 is a more realistic timeline.

BEFIT - BUSINESS IN EUROPE: FRAMEWORK FOR INCOME TAXATION

- ❖ The European Commission launched the BEFIT proposal on the 12th of September 2023.
- ❖ Proposal introduces a single set of rules to determine the tax base for large businesses that operate out of more than one Member State.
- ❖ Provisions will be mandatory for groups with a combined global annual revenue of at least €750m and the ultimate parent holding at least 75% of ownership rights. BEFIT groups effectively the same group as Pillar Two but limited to EU entities.
- ❖ For groups headquartered outside the EU, BEFIT rules will apply to their Union subgroup where they achieve €50m combined revenues in at least 2 out of four previous fiscal years or 5% of the total group revenues.
- ❖ Rules are discretionary for smaller groups, provided they prepare consolidated financial statements.

BEFIT – CURRENT STATUS

- ❖ **Aims** - Simplifying corporate taxation rules and reducing the administrative burden to businesses and tax authorities are supported by Member States in principle.
- ❖ Concerns from some for a number of reasons included
 - current proposal will not achieve these desired outcomes,
 - Issues concerning operation with Pillar Two rules,
 - national corporate tax rules, and other existing areas of EU taxation (anti-abuse measures for example).
- ❖ Member States want a political discussion on the proposal. Therefore, it will likely take some time to negotiate the BEFIT proposal.
- ❖ Unanimous approval from all Member States will be required before adoption. An implementation date of 1 July 2028 has been proposed - ambitious

HEAD OFFICE TAX (HOT) SYSTEM

- ❖ As part of the BEFIT proposal, a proposal for a Head Office Tax (HOT) system for SMEs was also included.
- ❖ HOTS would allow certain SMEs to calculate their tax liability based on the tax rules of the Member State where their head office is located and file a single tax return in that Member State. The tax return and tax revenues will then be shared with the Member States in which the permanent establishments are located (somewhat akin to VAT One Stop Shop).
- ❖ The proposal was adopted by ECOFIN on 22 February 2024. Strong support of ECOFIN.
- ❖ Proposal to extend HOTS to companies that operate in other Member States through no more than two subsidiaries. The European Parliament adopted its (non-binding) report with the amendments on 10 April 2024.

(HOT) SYSTEM – CURRENT STATUS

- ❖ Member States support the general objective to facilitate cross-border activities for SMEs, however concerns in relation to:
 - Concerns over tax sovereignty
 - Opportunity for aggressive tax planning,
 - Administration issues,
 - Potential effects on tax revenues for Member States,
- ❖ More discussions and further work on this proposal required
- ❖ Commission proposed that Member States would implement the directive by 31 December 2025 with the provisions applying from 1 January 2026. Seems ambitious

MARKETS IN CRYPTO-ASSETS REGULATION (MICA)

- ❖ **Background** - MiCA introduces a new regulatory framework for European crypto-assets and will cover crypto-assets not already regulated by existing financial services legislation.
- ❖ **Aim** - Ensure that consumers are informed of the risks, costs, and charges linked to crypto assets. Provide measures against market manipulation, money laundering, terrorist financing, and other criminal activities.
- ❖ The new reporting requirements entered into force on 29 June 2023. MICA will apply from 30 December 2024.
 - Crypto Asset Service Providers (CASP) will require authorization from a Competent Authority to operate within the EU.
 - Includes individuals or companies located outside the EU that promote or advertise their services to clients within the EU.

TRANSFER OF FUNDS REGULATION (TFR)

- ❖ **Background** – TFR requires crypto asset service providers and financial institutions providing crypto asset services to collect information from buyers and sellers in transactions and submit this information to tax authorities.
- ❖ Introduces new rules on the information on originators and beneficiaries on transfers of crypto assets
- ❖ **Aim** –The new rules are intended to prevent, detect, and investigate money laundering and terrorist financing where at least one of the crypto-asset service providers involved in the transfer of crypto-assets is established in the EU.
- ❖ TFR obliges crypto asset service providers to provide information on the originator and the beneficiary of transfers of crypto assets to the local tax authorities.
- ❖ Increased traceability of crypto asset transfers intended to make it more difficult for individuals and entities under restrictive measures to circumvent them. Crypto asset service providers must adopt internal policies, procedures, and controls to effectively mitigate the risks of tax evasion.
- ❖ TFR adopted on 16 May 2024 and will apply from 30 December 2024



EU Provisions Appendix



UPDATES - EU TAX PROVISIONS

Measure	Applicable to:	Aim	Expected Timing
DAC 7	EU Digital platform operators.	Ensure that sellers who generate income from goods or services via online platforms pay their fair share of taxes	<ul style="list-style-type: none"> • First reporting obligation was due on 31st January 2024. • Certain Member States have opted to provide short extensions to the reporting deadline under the domestic transposition of DAC 7 (Including Ireland).
DAC 8	Crypto-asset services providers and issuers, as well as for e-money institutions	<ul style="list-style-type: none"> • Implements new rules on reporting and exchange of information for tax purposes on e-money and crypto-assets and on the exchange of information on cross-border rulings concerning high-net-worth individuals. • It also introduces penalties and compliance measures for the various reporting obligations under the DAC framework. 	<ul style="list-style-type: none"> • The Council opposed the Commission's proposal to establish a standardized minimum financial penalty for late or incorrect filings under the DAC. • DAC8 will come into effect for all EU Member States from 1 January 2026. Member States have until 31 December 2025 to transpose DAC8 into national domestic law.

UPDATES - EU TAX PROVISIONS

Measure	Applicable to:	Aim	Expected Timing
Securing the Activity Framework of Enablers (SAFE)	The Policy options considered are: <ol style="list-style-type: none">1. Due diligence to be undertaken by all enablers;2. Prohibition on facilitation of tax evasion and aggressive tax planning plus due diligence to be undertaken and a requirement for EU registration;3. Code of conduct for all enablers.	The SAFE proposal aims to combat the role that enablers can play in facilitating schemes that can lead to tax evasion or aggressive tax planning within the EU.	<ul style="list-style-type: none">• The Commission has stated that an agreement needs to be reached on the Unshell Directive before progressing with a proposal on the SAFE initiative.• The timeline therefore remains unclear as the Commission has not announced when the SAFE initiative will be tabled for further discussion.
EU Directive on Pillar 2	Corporates with revenues in excess of €750 million.	Avoid race to the bottom (minimum effective tax rate).	<ul style="list-style-type: none">• EU rules came into effect on 1 January 2024.• The US has yet to implement Pillar 2 legislation.• Several countries have introduced registration and notification requirements. (e.g. Belgium.)

UPDATES - EU TAX PROVISIONS

Measure	Applicable to:	Aim	Expected Timing
ATAD III – misuse of shell entities	Corporates with minimal or no substance in their country of residence.	To ensure that legal entities and legal structures in the EU without a substantial business presence will not benefit from tax advantages.	The ECOFIN Report to the European Council on Tax Issues published on 24 June 2024 includes a section on Unshell stating that whilst most delegations supported the proposal, further technical work was required before an agreement could be feasible.
Faster and Safer Tax Excess Refund for Withholding Taxes (FASTER).	All EU Jurisdictions	The withholding tax initiative aims to provide Member States with the information to prevent tax abuse in the field of withholding taxes and, at the same time, accommodate a swift and efficient processing of the requests for a refund and/or a relief at source procedures of the excess taxes withheld.	<ul style="list-style-type: none">• Member States are required to transpose the directive into national law by December 31, 2028.• Rules are to take effect on January 1st, 2030, pushing back the original start date of January 1st, 2027.

UPDATES - EU TAX PROVISIONS

Measure	Applicable to:	Aim	Expected Timing
BEFIT	Mandatory for groups operating in EU with annual combined revenue of at least €750 million and the ultimate parent holding at least 75% of ownership rights.	The proposal introduces a single set of rules to determine the tax base for large businesses that operate out of more than one Member State.	<ul style="list-style-type: none"> The broad aims of the proposal are supported by Member States. Concerns have been raised that the proposal in its current form will not achieve these desired outcomes An implementation date of 1 July 2028 has been proposed.
Head Office Tax (HOT) System	SMEs operating in the EU who wish to operate cross-border during their early stages of expansion.	<ul style="list-style-type: none"> This would allow certain SMEs to calculate their tax liability based on the tax rules of the Member State where their head office is located. They can then file a single tax return in that Member State instead of having to comply with multiple tax systems. 	<ul style="list-style-type: none"> It was adopted by ECOFIN on 22 February 2024, strongly supporting the overall proposal. The Commission proposed that Member States would implement the directive by 31 December 2025 with the provisions applying from 1 January 2026.

UPDATES - EU TAX PROVISIONS

Measure	Applicable to:	Aim	Expected Timing
Markets in Crypto-Assets Regulation (MiCA)	Crypto Asset Service Providers (CASP) that wish to operate within the EU.	<ul style="list-style-type: none">Will introduce a new regulatory framework for European crypto-assets and will cover crypto-assets not already regulated by existing financial services legislation.The aim is to ensure that consumers are informed of the risks, costs, and charges linked to crypto assets	The new reporting requirements were published in the Official Journal of the European Union on 9 June and entered into force on 29 June 2023. The regulation will apply from 30 December 2024.
Transfer of Funds Regulation (TFR)	Originators and beneficiaries on transfers of crypto assets.	The new rules are to prevent, detect, and investigate money laundering and terrorist financing where at least one of the crypto-asset service providers involved in the transfer of crypto-assets is established in the EU.	Transfer of Funds Regulation (TFR) was adopted on 16 May 2024 and will apply from 30 December 2024.



Thank you

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