



Council of the European Union
General Secretariat

Brussels, 05 October 2023

Interinstitutional files:

2023/0320 (CNS)

2023/0321 (CNS)

2023/0322 (CNS)

WK 12701/2023 INIT

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MEETING DOCUMENT

From: General Secretariat of the Council

To: Delegations

Subject: Presentation by the Commission

Delegations will find attached a presentation by the Commission delegation.



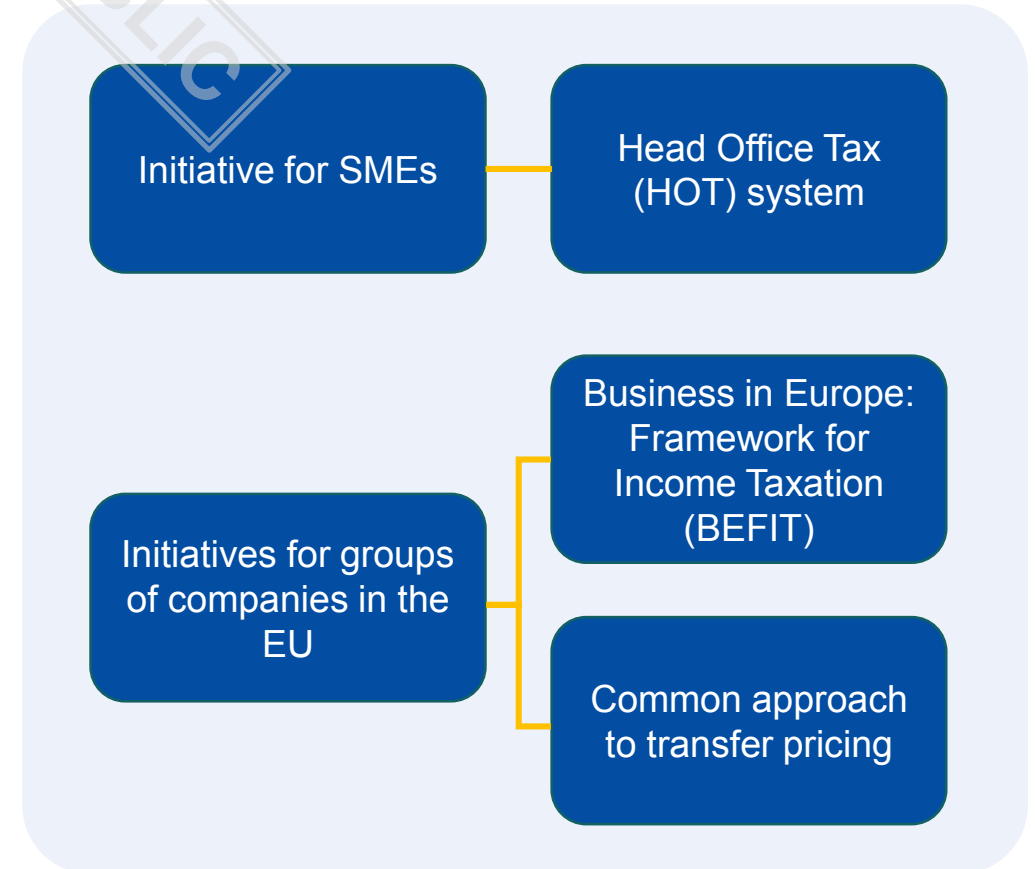
1. Directive establishing a Head Office Tax (HOT) system for micro, small and medium sized enterprises (SMEs)
2. Directive on Transfer Pricing
3. Directive on Business in Europe: Framework for Income Taxation (BEFIT)

Working Party on Tax Questions
Presentation by DG TAXUD

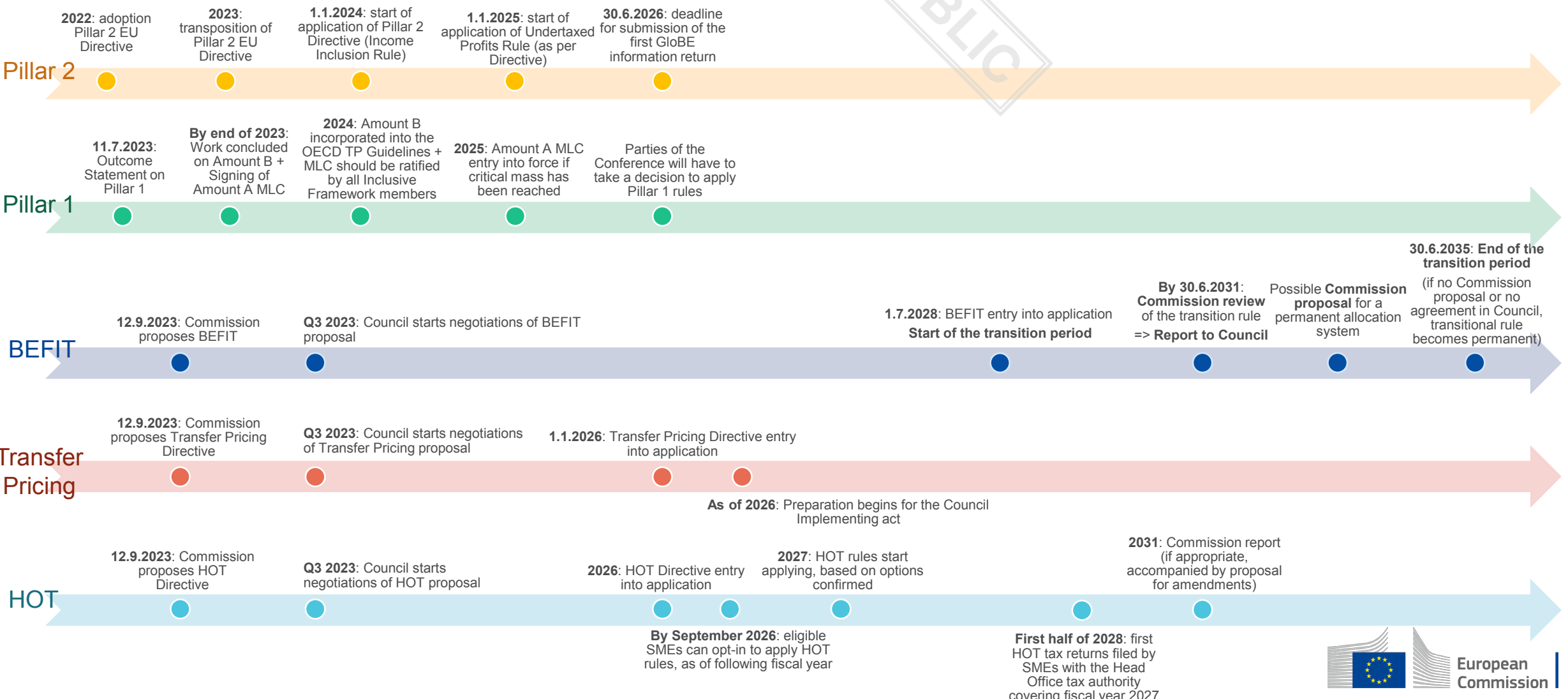
29 September 2023

Initiatives to address current tax challenges for businesses in the EU internal market

- Address challenges caused by 27 different national tax systems in the EU
- 3 legislative proposals
- Main objectives:
 - simplification
 - reduction of tax compliance costs
 - tax certainty
 - level playing field for businesses



Timeline for the different initiatives



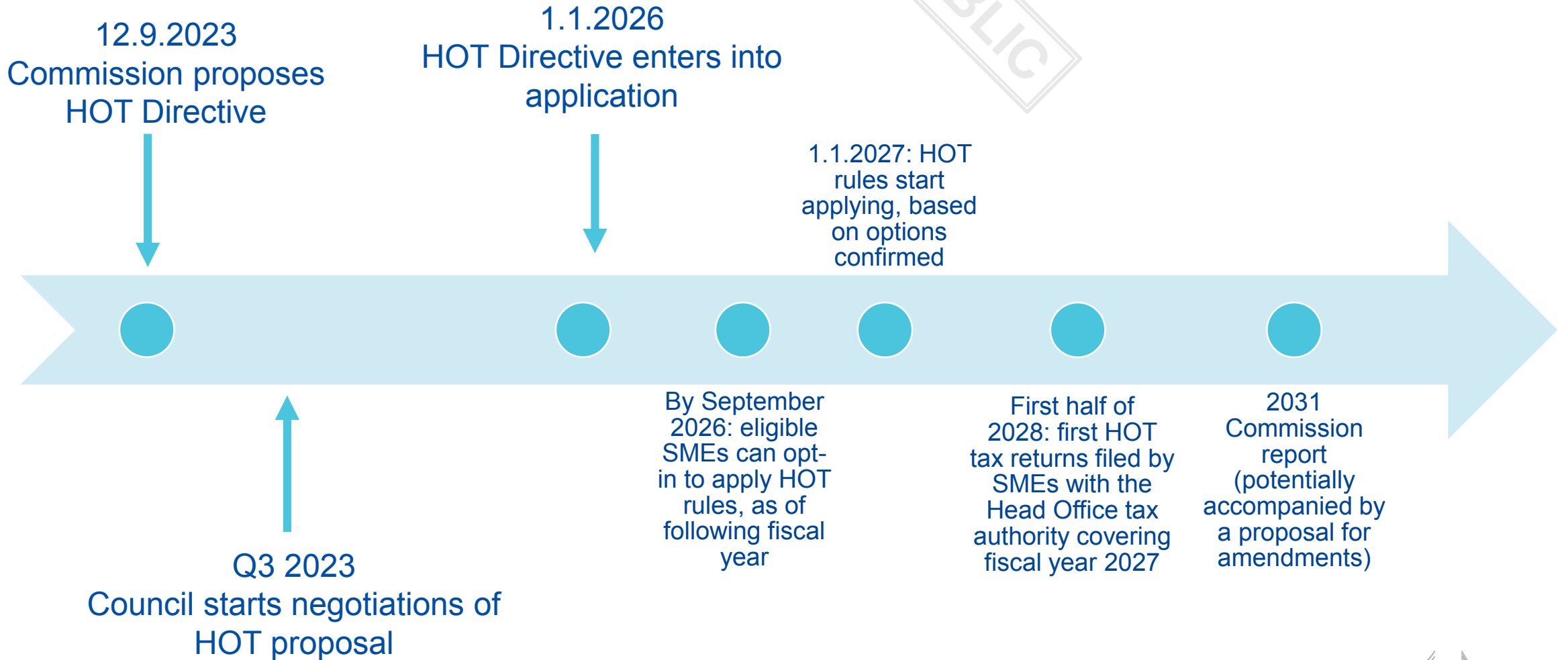


COUNCIL DIRECTIVE establishing a Head Office Taxation (HOT) system for micro, small and medium sized enterprises

Working Party on Tax Questions
Presentation DG TAXUD

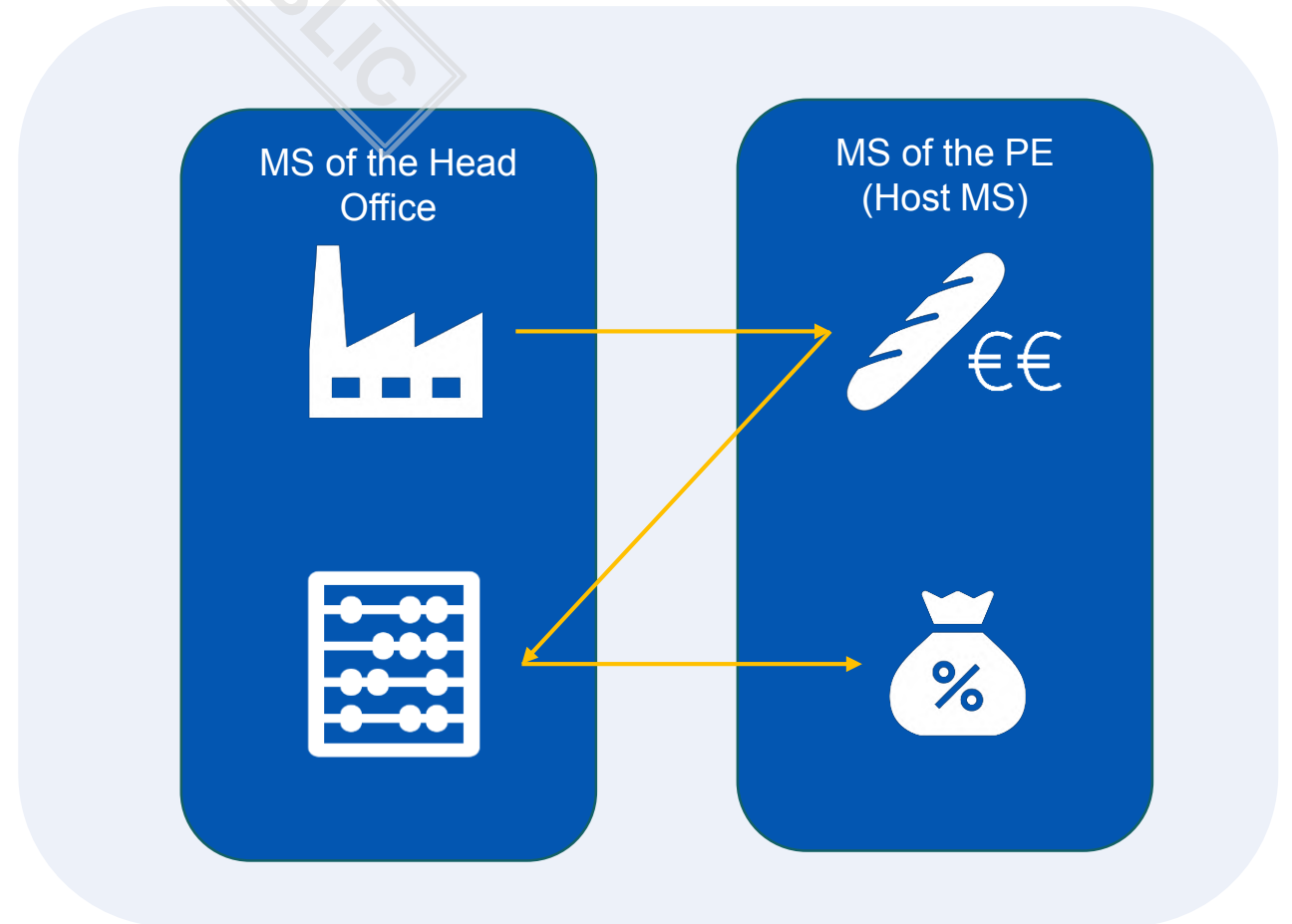
29 September 2023

Head Office Tax (HOT) Directive – Timeline



Head Office Taxation (HOT) for SMEs

- Applicable to **standalone SMEs with PEs** in (an)other Member State(s)
- **Optional rules**
- SMEs would be able to apply the **tax rules of the Member State of their origin** (Head Office MS) to determine taxable results of their PEs in the EU
- Member State of the PE will apply **its own tax rate** to determine the tax liability of the PE.



HOT Directive

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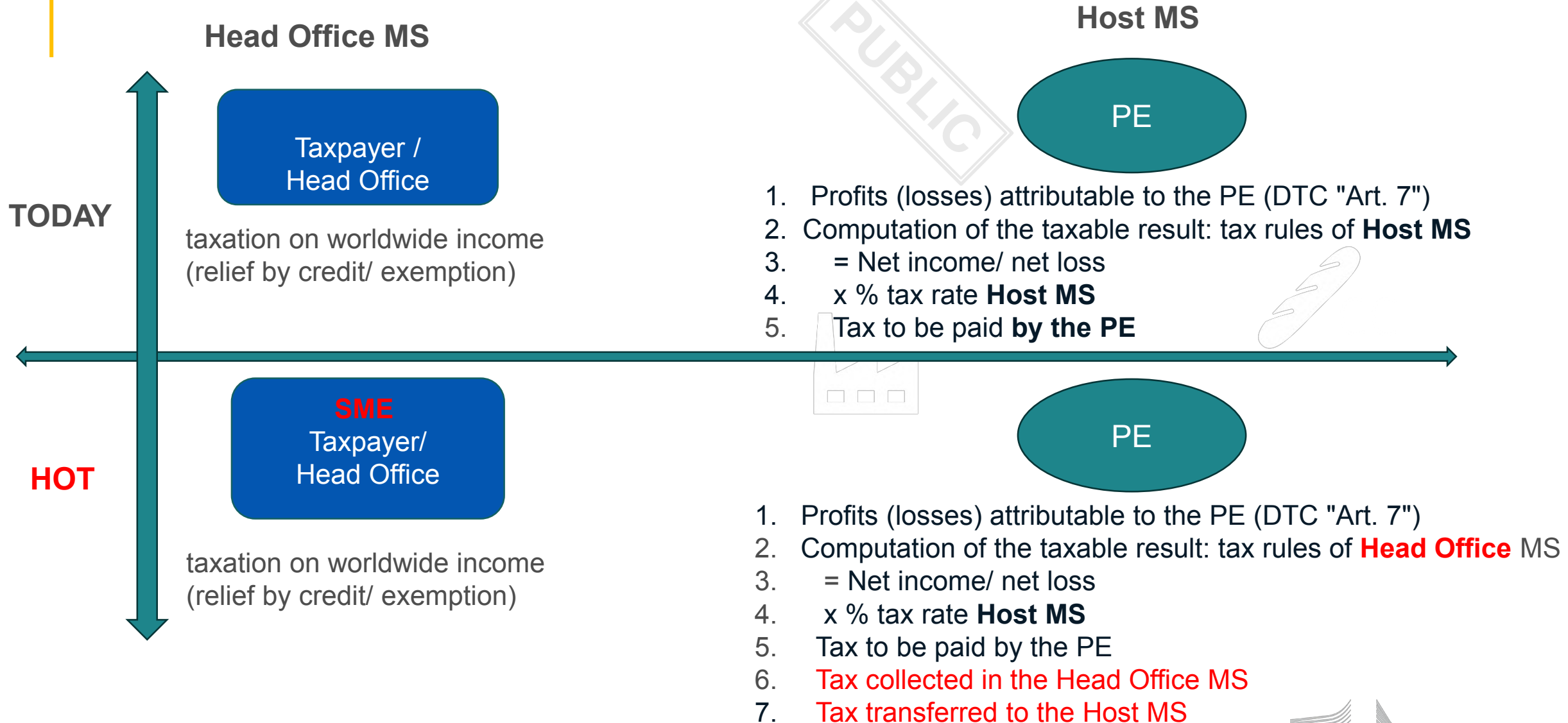
Chapter 1: General provisions

Chapter 2: Head Office Taxation

Chapter 3: Final Provisions

Impact Assessment Report

Head Office Taxation (HOT) for SMEs



HOT Directive

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Chapter 1: General provisions

Chapter 2: Head Office Taxation

Chapter 3: Final Provisions

Impact assessment report

Chapter 1 General Provisions

Article 2 (Scope), Article 3 (Definitions)

Art. 2 : Scope

The HOT Directive applies to SMEs:

- a. **established** in a Member State + take a **form listed** in Annexes I and II;
- b. **tax resident** in a Member State;
- c. **subject**, directly / indirectly at the level of the owners, to a **tax on profits** (Annexes III and IV) or to a tax with **similar characteristics**;
- d. qualify as **SME**, under Directive 2013/34/EU;
- e. operate in other Member State(s) **exclusively through PE(s)**;
- f. **not part** of a consolidated group and are an **autonomous enterprise**, either:
 - Not associated enterprise (Directive 2013/34/EU)
 - Not linked enterprise (Recommendation 2003/361/EC).

Chapter 1 General Provisions

Art. 3 : Definitions

For the purpose of the HOT Directive, some definitions are provided for:

1. Permanent establishment;
2. Head office;
3. Head office Member State;
4. Head office taxation rules;
5. Host Member State;
6. Taxable result of the PE;
7. Filing authority;
8. Head office taxation tax return.

HOT Directive

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Chapter 1: General provisions

Chapter 2: Head Office Taxation

Chapter 3: Final Provisions

Impact assessment report

Chapter 2 Head Office Taxation

One **single set of tax** rules => to compute the taxable result => **one single SME taxpayer**.

Anti-abuse framework:

- Option: **limited in time** (5 years), not automatically renewable - only upon request and if requirements are met (Art. 7).
- **At opting-in** (Art. 4-6: **Eligibility** requirements, Exclusions and Exercise)
- **Termination during** the 5-year period (Art. 8 - **Termination** of the option).
- **Exclusion from renewal** (Art. 9, 10 – Renewal and Exclusions).

Administration

- One-stop-shop (Art. 11-12).
- Audits, legal remedies and dispute resolution (Art. 13)
- DAC amendments (Art. 14).

Chapter 2 Head Office Taxation

Art. 4:

Eligible SMEs can opt-in, if for the last 2 fiscal years:

- Head Office was tax resident in the Head Office MS;
- SME definition was met;
- Joint turnover of the PE(s) did not exceed twice the turnover of the Head Office.

Exclusion: Head Office subject to a shipping tonnage tax regime.

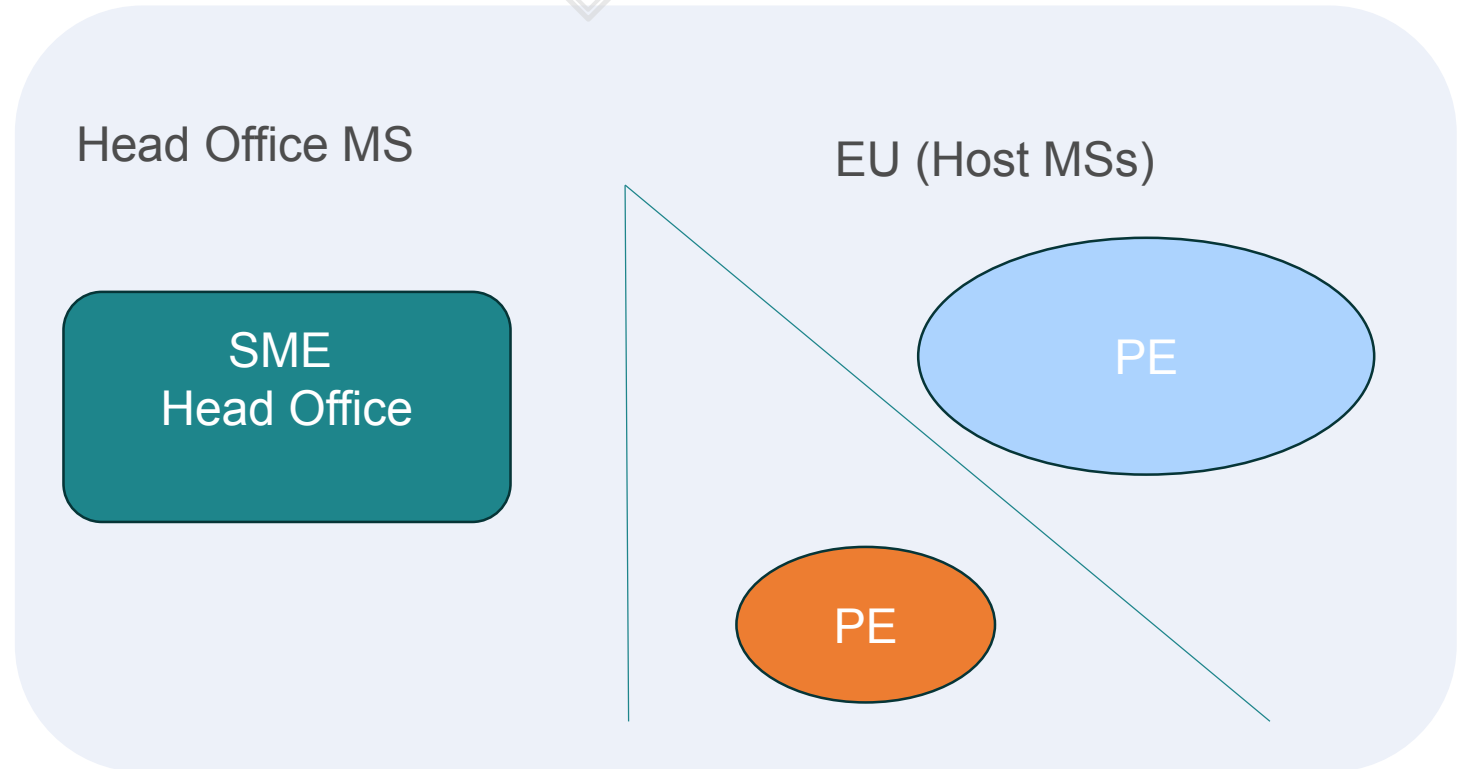
SME definition (art. 3 Directive 2013/34):

do not exceed the limits of at least two of the three following criteria

(a) balance sheet total: EUR 20 000 000;

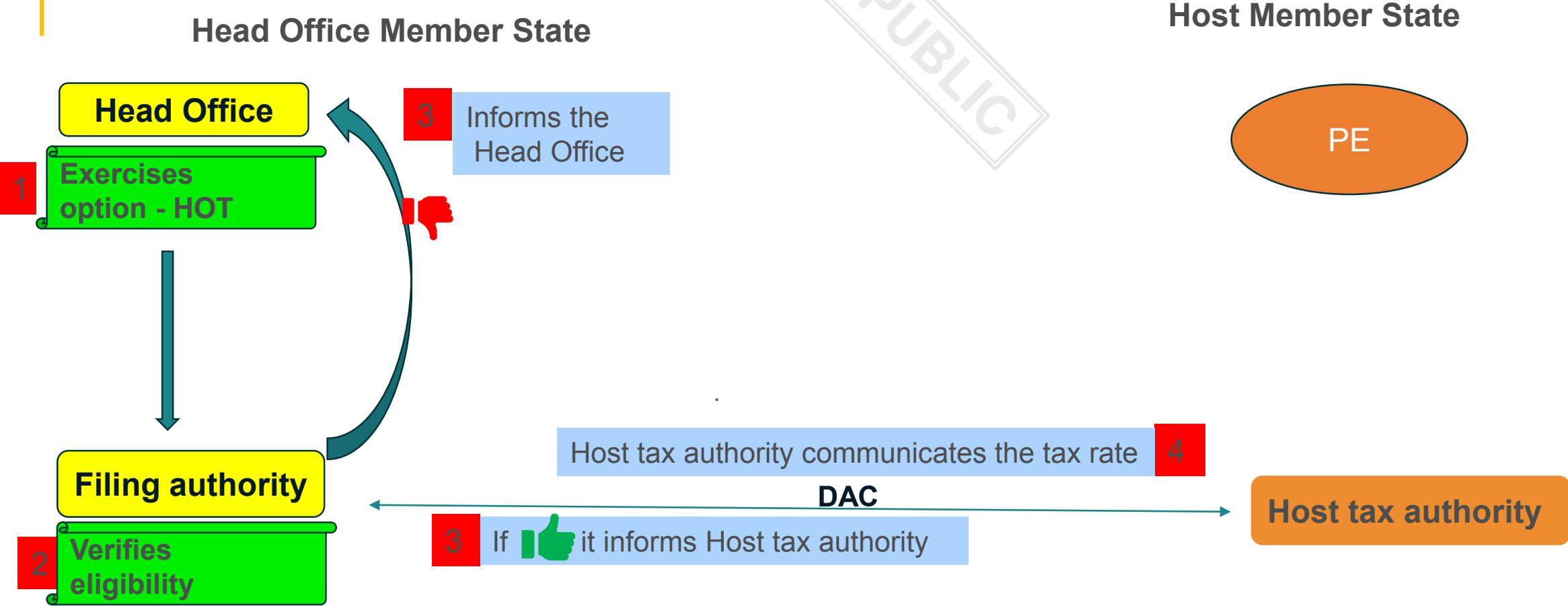
(b) net turnover: EUR 40 000 000;

(c) average number of employees during the financial year: 250.



Chapter 2 Exercise of the Option (Art. 6), Renewal (Art. 10)

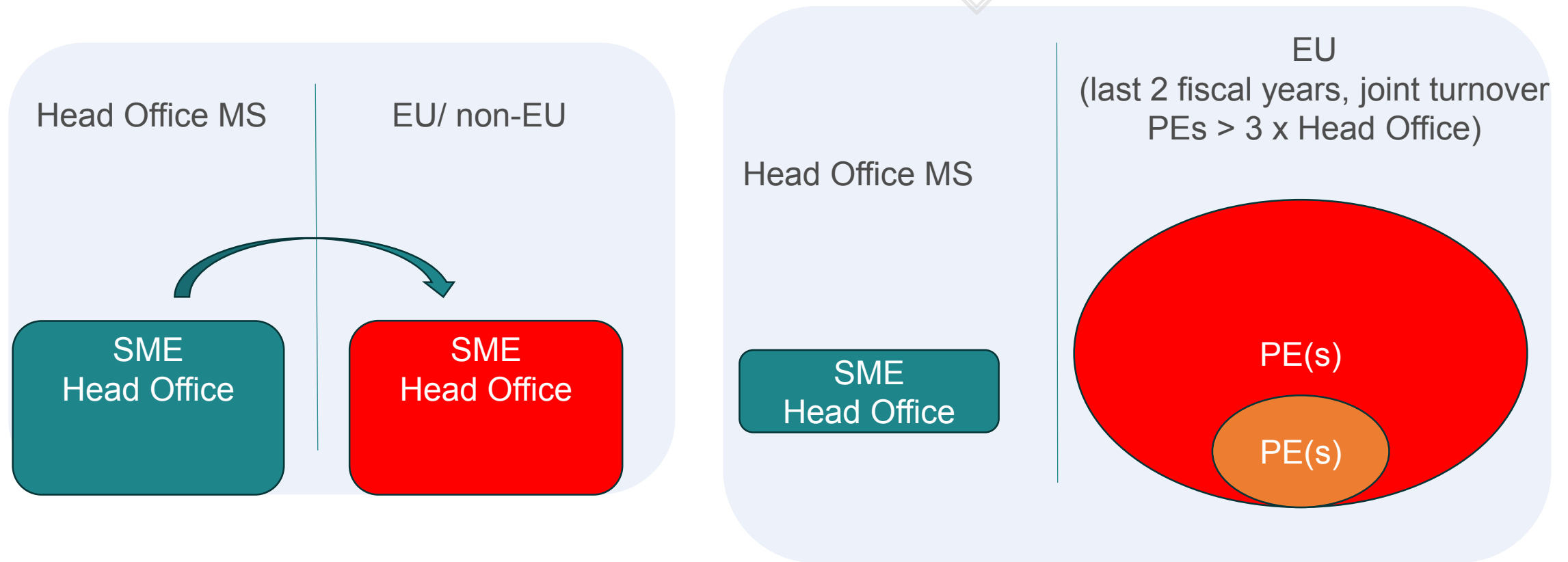
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Chapter 2 Head Office Taxation

Art. 8:

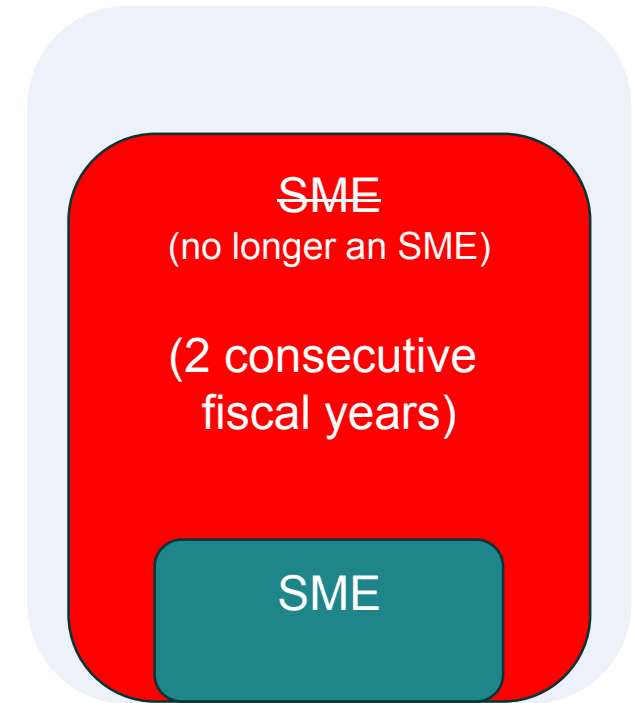
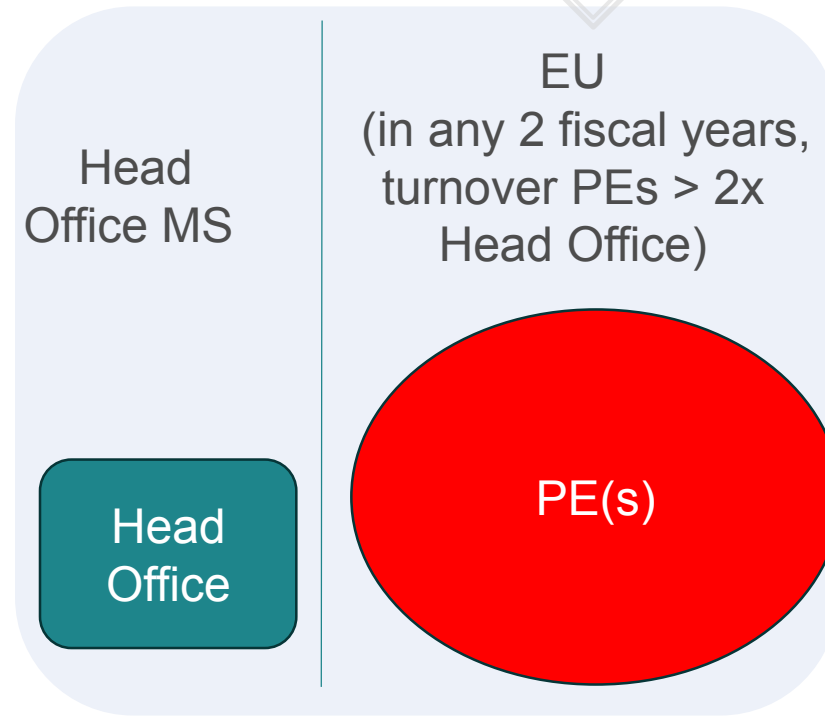
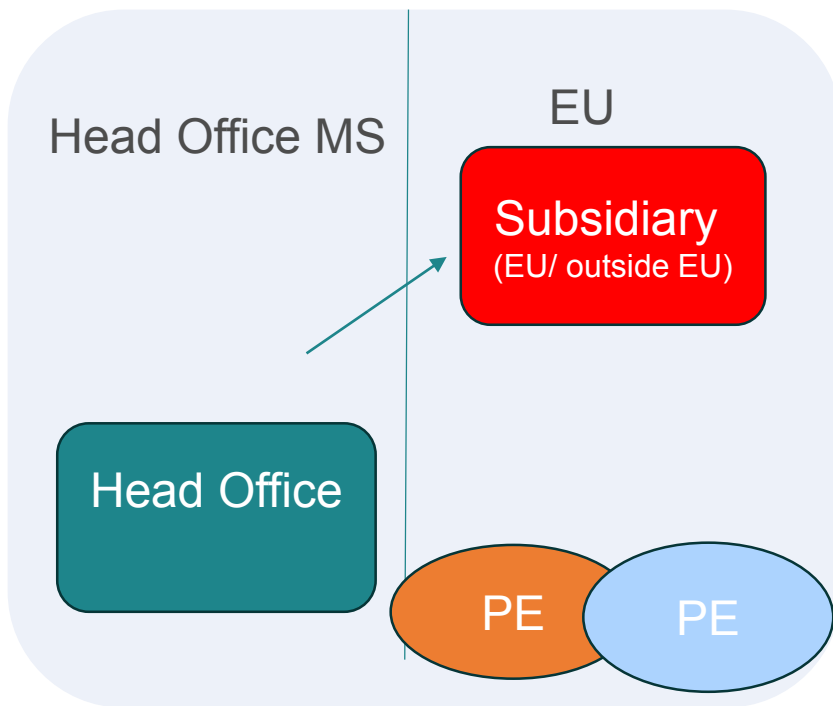
Termination of the option, during the 5-year period if any of the situations occurs:



Chapter 2 Head Office Taxation

Art. 10

Exclusions from the renewal after the 5-year period, if either :



Chapter 2 Head Office Taxation

Administration

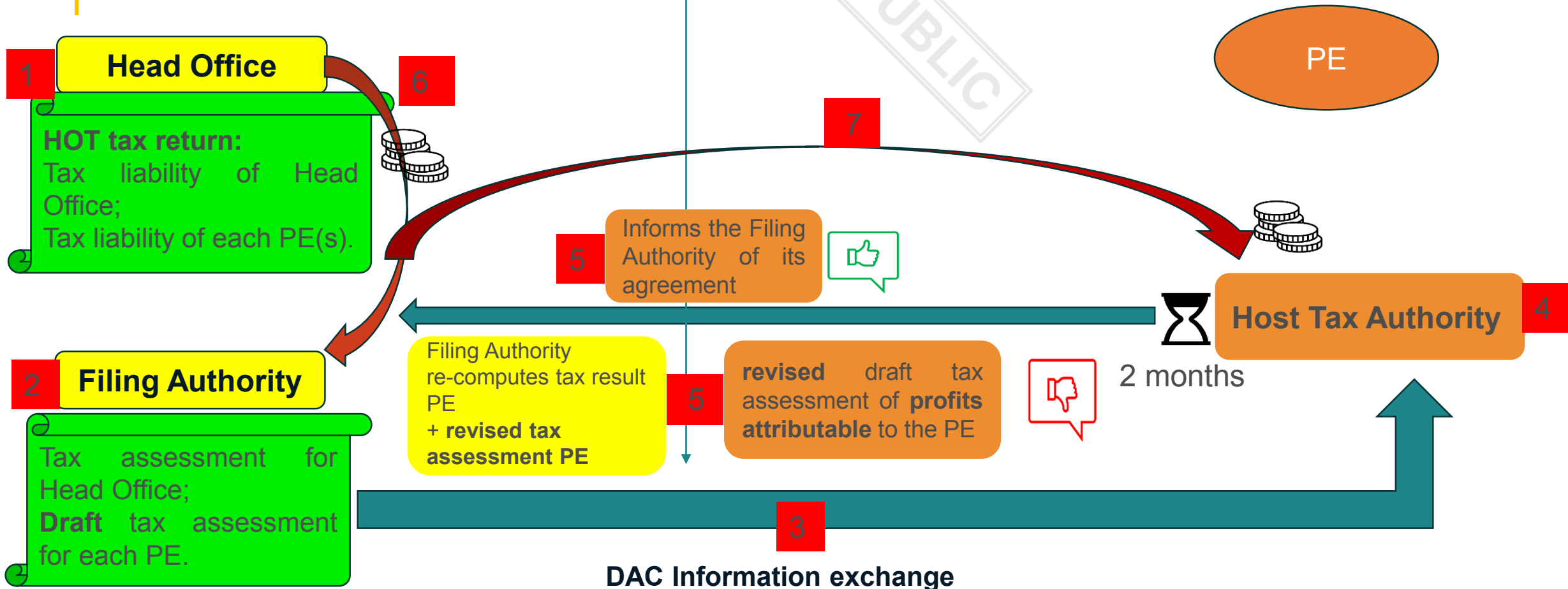
- **One-stop-shop** (Art. 11-12): filing tax return, tax assessment and tax collection.

- **Audits, legal remedies and dispute resolution** (Art. 13)
 - Local audits;
 - Possibility of **mandatory joint audits** at the request of the host tax authority;
 - National legal remedies;
 - Dispute resolution framework.

Chapter 2 Administration – One stop-shop

Head Office Member State

Host Member State



- a) HOT tax return + financial accounting statements + any other relevant documents
- b) Draft tax assessment for PE;
- c) Any other info to allow to compute other national/ regional taxes / surcharges.

HOT Directive

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Chapter 1: General provisions

Chapter 2: Head Office Taxation

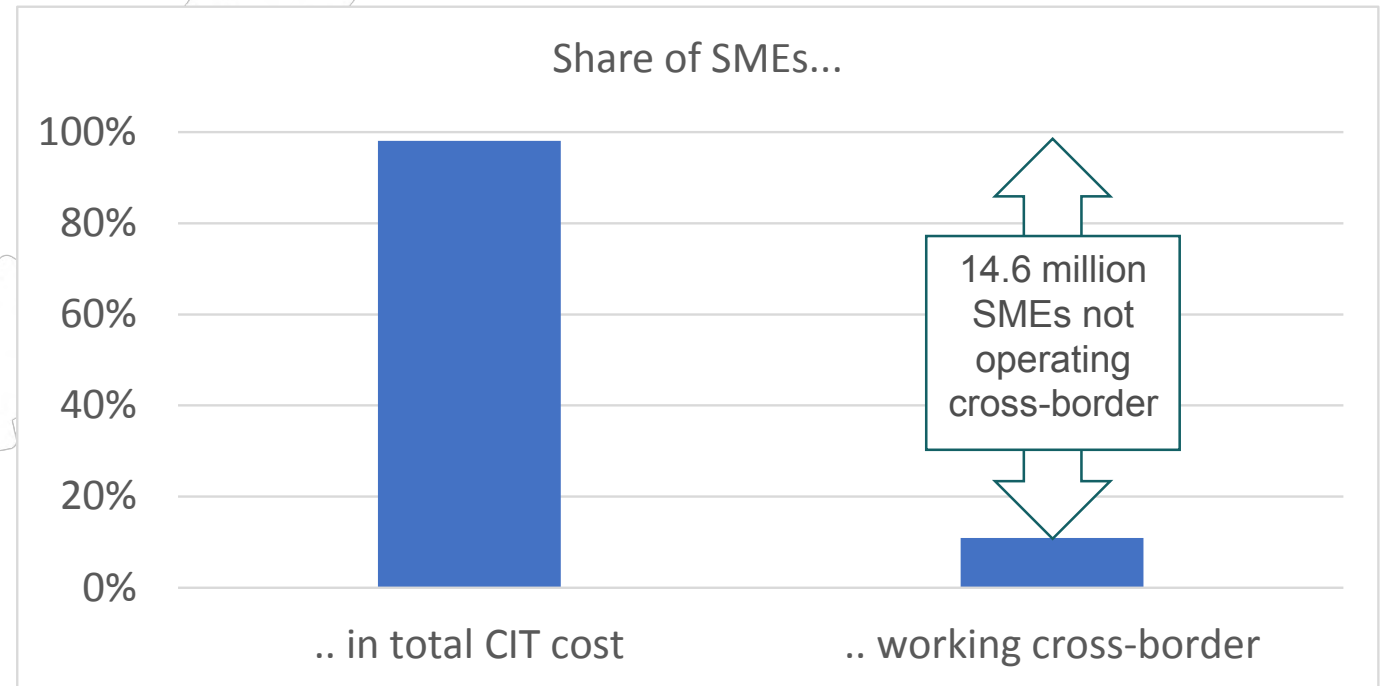
Chapter 3: Final Provisions

Impact assessment report

Impact Assessment Report

The HOT system could **reduce SMEs' current tax compliance costs by 32%** leading to overall savings of up to EUR 3.4 billion per year.

- SMEs bear the major part of CIT compliance costs
 - ⇒ High potential of CIT compliance cost reduction
 - Not all SMEs capitalise on the internal market:
 - Only 11% of SMEs operate cross-border
 - Only 6% of branches have their headquarters in a different country (2021 sample in *Orbis*)
- ⇒ Significant untapped growth potential



TAXUD services based on data from a VVA/KPMG survey "Tax Compliance Costs for SMEs"



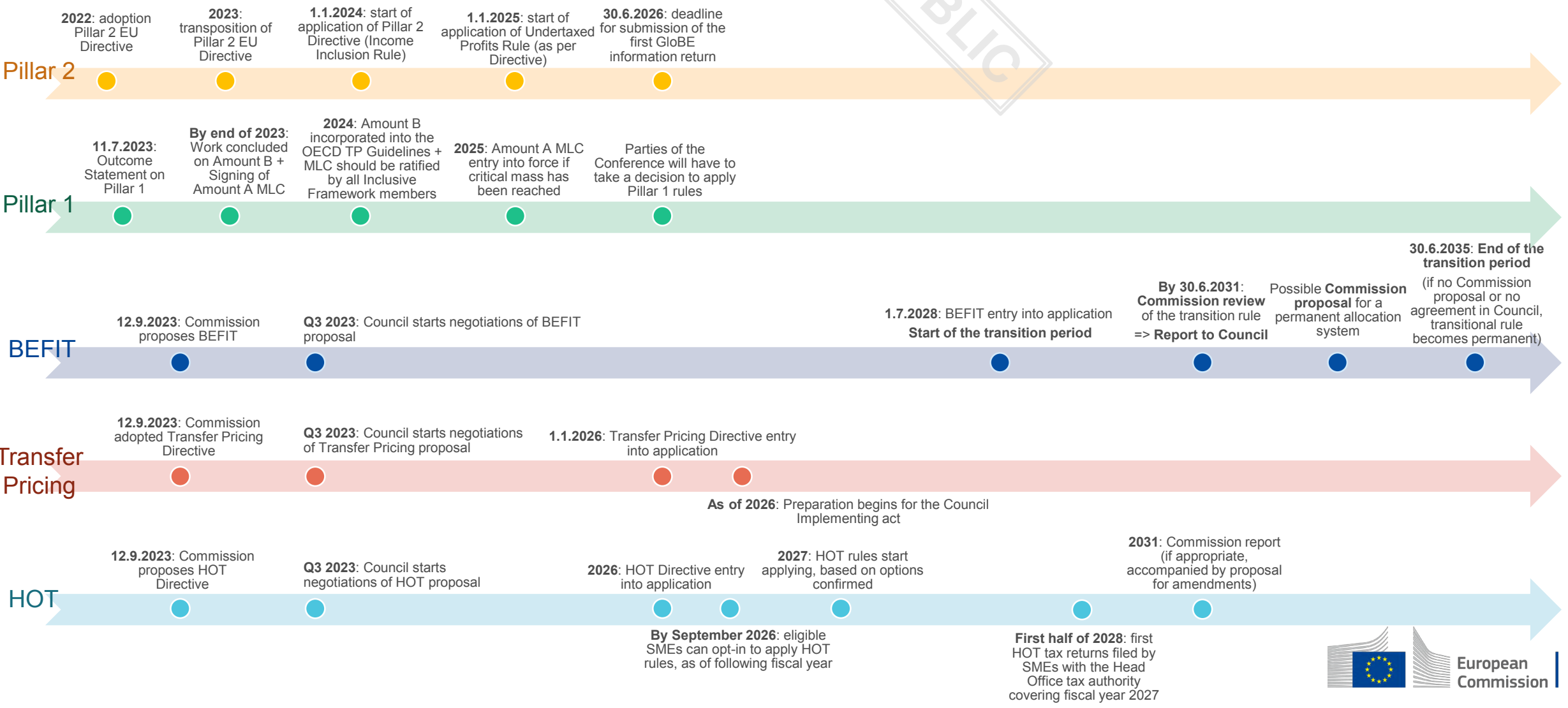
COUNCIL DIRECTIVE on Transfer Pricing

Working Party on Tax Questions
Presentation DG TAXUD

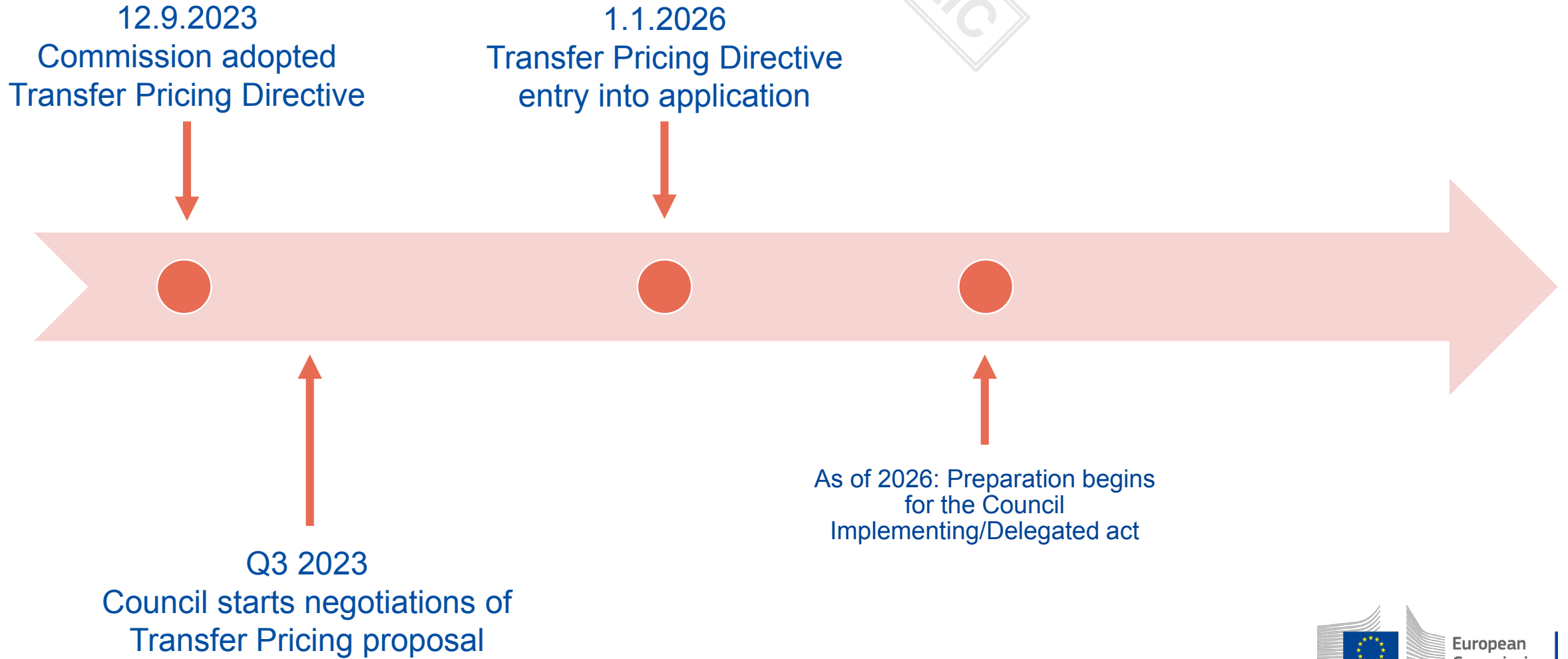
29 September 2023

Timeline

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Transfer Pricing Directive – Timeline



Transfer Pricing Directive

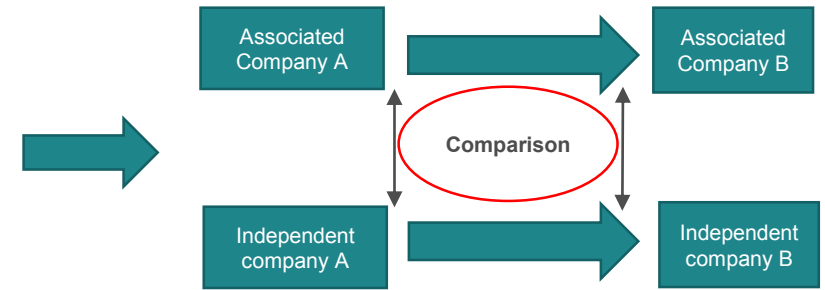
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Chapter 1: General Provisions

Chapter 2: Transfer Pricing Rules

What is Transfer Pricing?

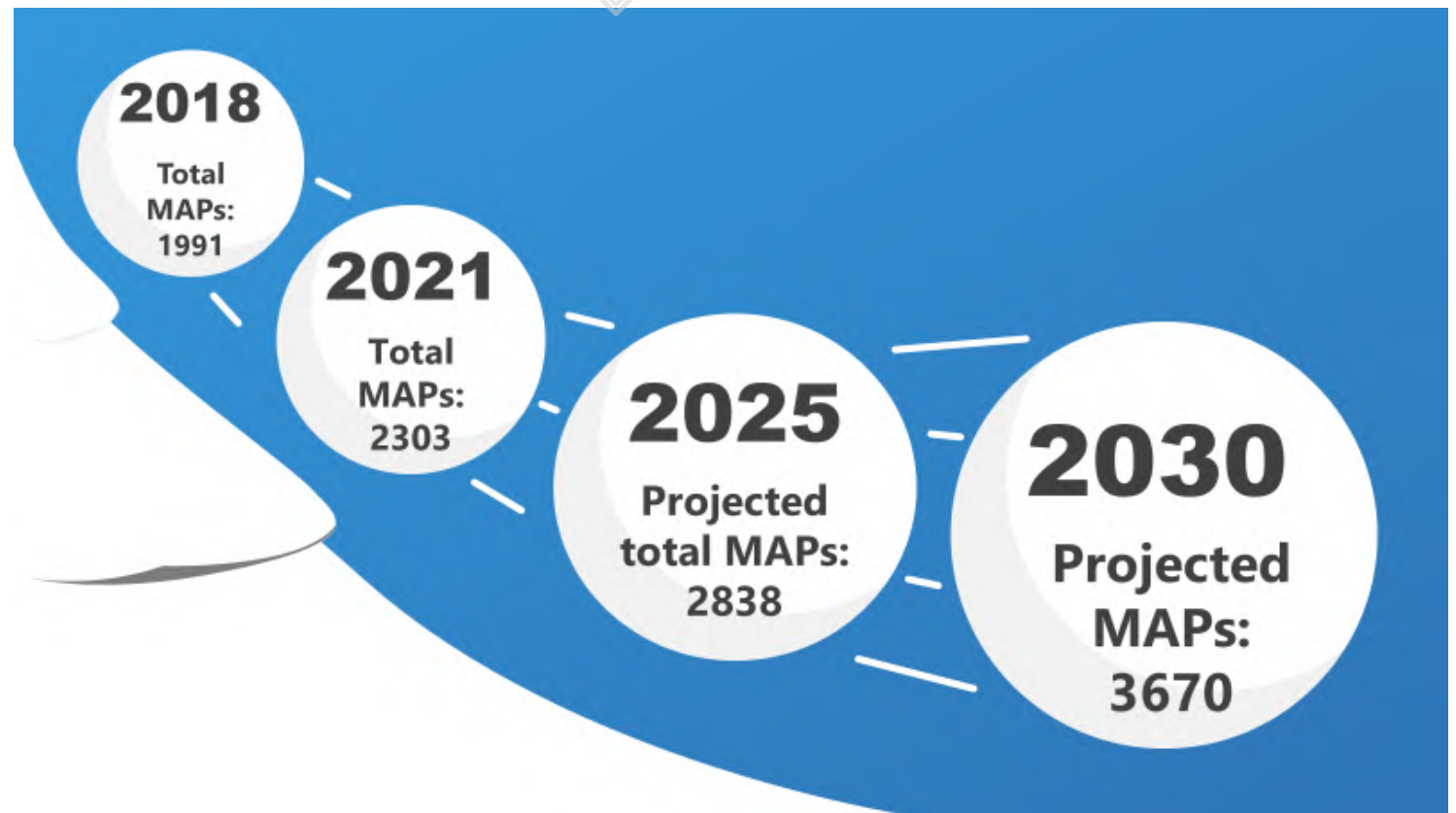
- Transfer pricing is **how** associated entities price goods, services, intangible assets, and loans in their intercompany transactions.
- Transfer pricing rules are **based on** the so-called arm's length principle (“**ALP**”) → individual group members of a MNE must transact with each other as if they were independent third parties.
- **Thus** → transfer pricing rules serve to allocate tax base among those countries in which the company does business.
- Internationally recognized Transfer Pricing Framework → **OECD Transfer Pricing Guidelines.**



Transfer Pricing Directive – reasons and objectives

Data on Mutual Agreement Procedures and projections:

- What is the **problem**?
 - Litigation and double taxation
 - High complexity and high compliance burden



Transfer Pricing Directive – reasons and objectives

- The objective: establish a **common approach** to Transfer Pricing within the EU.
 - Result should lead to **simplification** of the rules
 - to reduce the compliance burden
 - to increase tax certainty
 - to bring down disputes related to transfer pricing
- **thus** preventing double taxation as well as double non-taxation.

Transfer Pricing Directive

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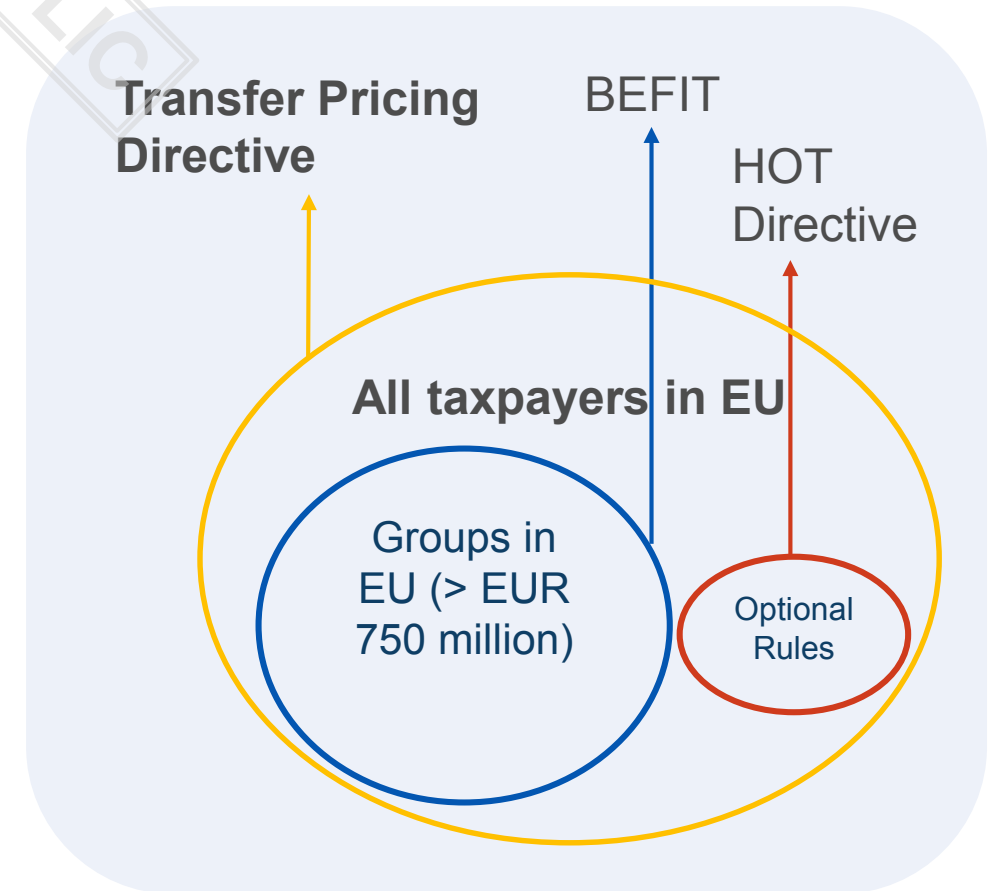
Chapter 1: General Provisions

Chapter 2: Transfer Pricing Rules

Chapter 1 - General Provisions

Art. 2 : Scope

- The Transfer Pricing Directive applies to:
taxpayers that are registered in, or subject to, tax in one or more Member States, including permanent establishments in one or more Member States.
- The Transfer Pricing Directive has an all-inclusive scope.
- Transactions between associated enterprises based in the EU and third countries are in scope.



Chapter 1 - General Provisions

Art. 3 : Definitions

- The Transfer Pricing Directive is **aligned with** the definitions provided for in the OECD Transfer Pricing Guidelines
- arm's length principle
 - Follows OECD definition read in conjunction with article 4
- OECD Transfer Pricing Guidelines
 - Reference to latest (January 2022) OECD Transfer Pricing Guidelines
- Transfer Pricing methods
 - Definition of cost plus, resale price, profit split, TNMM etc.
- Adjustments
 - Definition of terminology related to corresponding and compensating adjustments

Transfer Pricing Directive

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Chapter 1: General Provisions

Chapter 2: Transfer Pricing Rules

Transfer Pricing Rules – General Overview

- 1) **Introduction of Arm's Length Principle into EU Law (art. 4)**
- 2) **Set of common rules:**
 - **Definition** of associated enterprise (art. 5)
 - **When** corresponding and compensating adjustments should be performed (arts. 6 + 7)
 - **How** to identify the commercial and financial relations (art. 8)
 - **How** to choose the most appropriate Transfer Pricing method (art. 9 +10)
 - **How** to perform a comparability analysis (art. 11)
 - **How** to determine the arm's length range (art. 12)
- 3) **Consistency with the OECD Transfer Pricing Guidelines (art. 14(1))**
- 4) **Further simplification** by way of **delegated act** for Transfer Pricing documentation and by way of **implementing act** focused on specific areas relevant for transfer pricing (arts. 13 + 14)

Transfer Pricing Rules – Common Rules (1)

- **Definition of associated enterprise** (art. 5)
 - Threshold for control → 25%
- **Corresponding Adjustment** (art. 6)
 - Link to Arbitration Convention or DRM Directive
 - Fast track procedure outlined in paragraph 3
- **Compensating adjustments** (art. 7)
 - Accepting of year-end adjustment initiated by the taxpayer under certain conditions
- **Identification of commercial or financial relations**(art. 8)
 - Accurate delineation based on certain aspects prescribed in paragraph 2

Transfer Pricing Rules – Common Rules (2)

- **Transfer pricing methods** (art.9)
 - No indicated preference for any recognized transfer pricing method
- **The most appropriate method rule** (art. 10)
 - Selected from transfer pricing methods set out in art. 9
 - Considering certain criteria listed in art. 10(2)
- **Comparability Analysis** (art. 11)
 - Factors to be considered when performing a comparability analysis
- **Determination of the arm's length range** (art. 12)
 - Determined by using the interquartile range of the results of the uncontrolled comparables

Transfer Pricing Rules - OECD Transfer Pricing Guidelines

- **Definition** of the OECD TP Guidelines (art. 3(18))
 - Reference to January 2022 Edition (included in Annex I)
 - Future amendments can be approved by the Union through 218(9) Procedure
- Set the rule that the arm's length principle shall be interpreted **consistently** with the OECD (art. 14(1))
- **Important!**
 - No deviation from the established OECD Transfer Pricing Framework.



Transfer Pricing Rules – Further simplification

- **Transfer Pricing Documentation** (art.13)
 - Common templates by way of **delegated acts** setting:
 - Linguistic requirements
 - Type of taxpayer to abide by these templates
 - Timeframes to be covered
- **Common binding rules on specific transactions** (art. 14(2+3))
 - Covering the following transactions or dealings by way of **Council Implementing acts**:
 - a) Intangible assets incl. Hard to value intangibles
 - b) Provision of services
 - c) Cost contribution arrangements
 - d) Business restructurings
 - e) Financial transactions
 - f) Dealings between Head Office and Permanent establishment



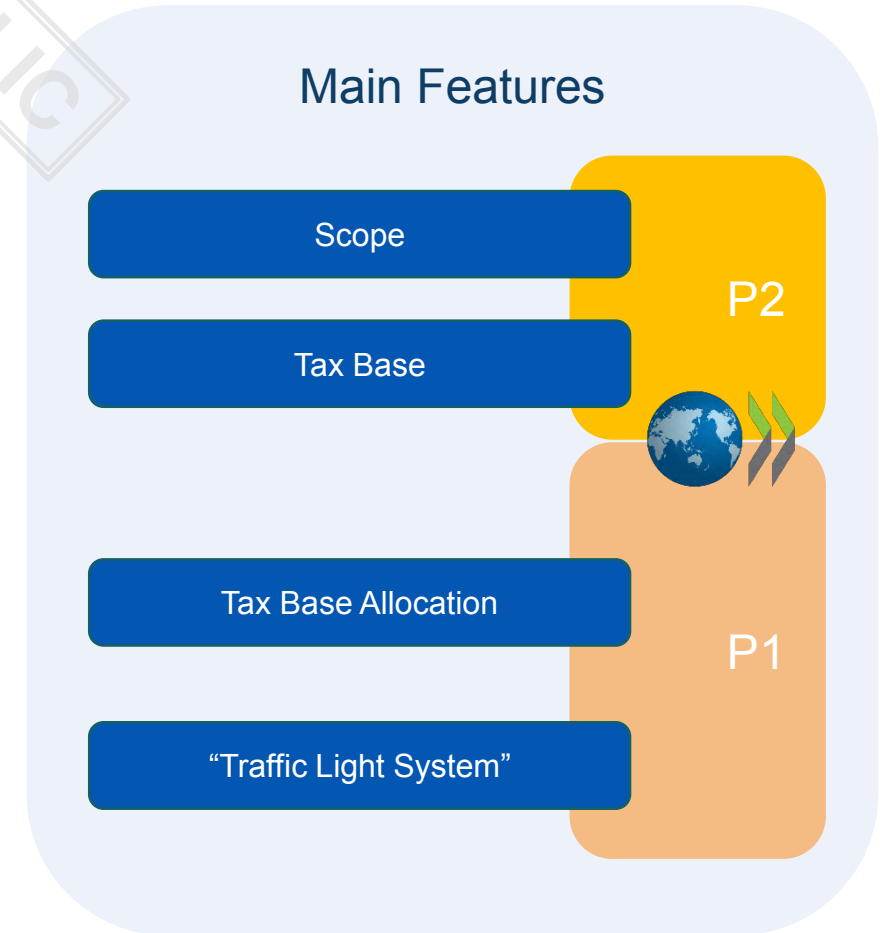
COUNCIL DIRECTIVE on Business in Europe: Framework for Income Taxation (BEFIT)

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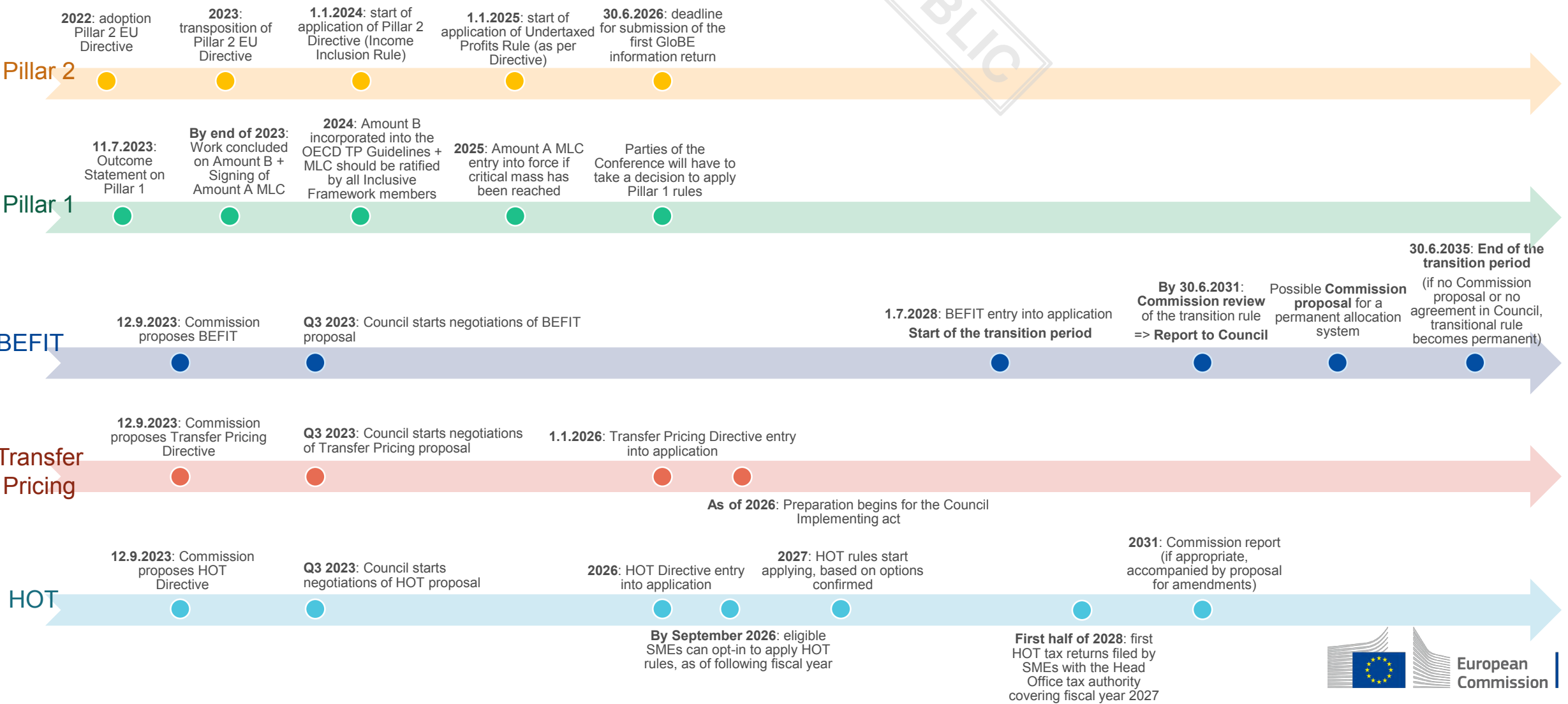
Business in Europe: Framework for Income Taxation

- **1 common framework** instead of 27 different national corporate tax systems
- Takes inspiration from the OECD/G20 “**Two Pillar Solution**” to the Digitalisation of the Economy
 - From Pillar 2: Scope, Tax Base Computation
 - From Pillar 1: Tax Base Allocation and Transfer Pricing Simplification
- **Mandatory** for EU members of groups in scope of the Pillar 2 Directive (global annual combined revenues of EUR 750 million or more)
- **Optional** for EU members of other groups (of smaller size)



Timeline

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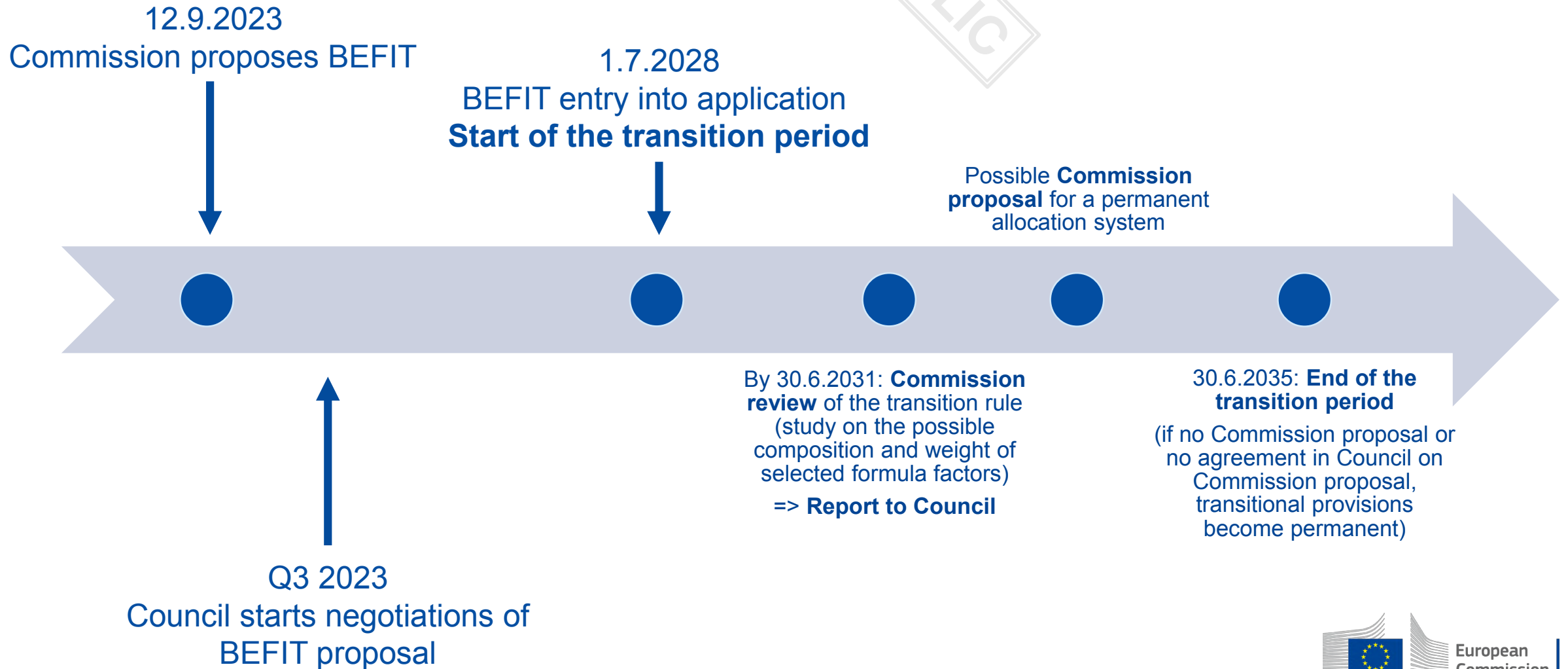
As of 2026: Preparation begins for the Council Implementing act

By September 2026: eligible SMEs can opt-in to apply HOT rules, as of following fiscal year

First half of 2028: first HOT tax returns filed by SMEs with the Head Office tax authority covering fiscal year 2027



BEFIT – Timeline



BEFIT Directive

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Chapter 1: General Provisions

Chapter 2: Determination of the preliminary tax result

Chapter 3: Aggregation of the preliminary tax results and allocation of the BEFIT tax base

Chapter 4: Simplified approach to transfer pricing compliance

Chapter 5: Administration and procedures

Chapter 6: Final Provisions

Impact Assessment Report

BEFIT Directive

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Impact assessment report

Chapter 1 – General Provisions

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Preliminary Tax Result

- An EU tax group: delineation of the “BEFIT group”
- Common tax rules to compute the preliminary tax result of each BEFIT group member

Aggregation & Allocation

- Aggregation of the preliminary tax results – cross border loss relief – to obtain a “BEFIT tax base”
- Allocation of the BEFIT tax base with a transitional rule

Transfer Pricing simplification

- Within the BEFIT group: Risk assessment framework
- Outside the BEFIT group: Traffic light system

Hybrid One-Stop Shop

- BEFIT information return, individual tax returns, audits, disputes
- A permanent coordination structure: the “BEFIT Team”

Art. 1 - Subject-matter

Chapter 1 – General Provisions

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Art. 2 - Scope:

- **Mandatory scope :**
 - One or more **companies** (Annex I) and **permanent establishments** located in the **European Union**;
 - Subject to corporate tax (Annex II); and
 - Belong to an **MNE group** or a **domestic group** with **combined annual revenues of at least EUR 750 million** (consolidation criterion)
- **Optional scope:**
 - **Companies and permanent establishments** located in the EU, where they are subject to corporate tax;
 - Belong to an **MNE group or domestic group** with combined annual revenues **below EUR 750 million**
 - **5-year option**



BEFIT Directive

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Impact assessment report

Delineation of a “BEFIT group”



Art. 2(1) and 5:

1

Control

- Companies and PEs of companies that are consolidated on a line-by-line basis by the ultimate parent entity (UPE)

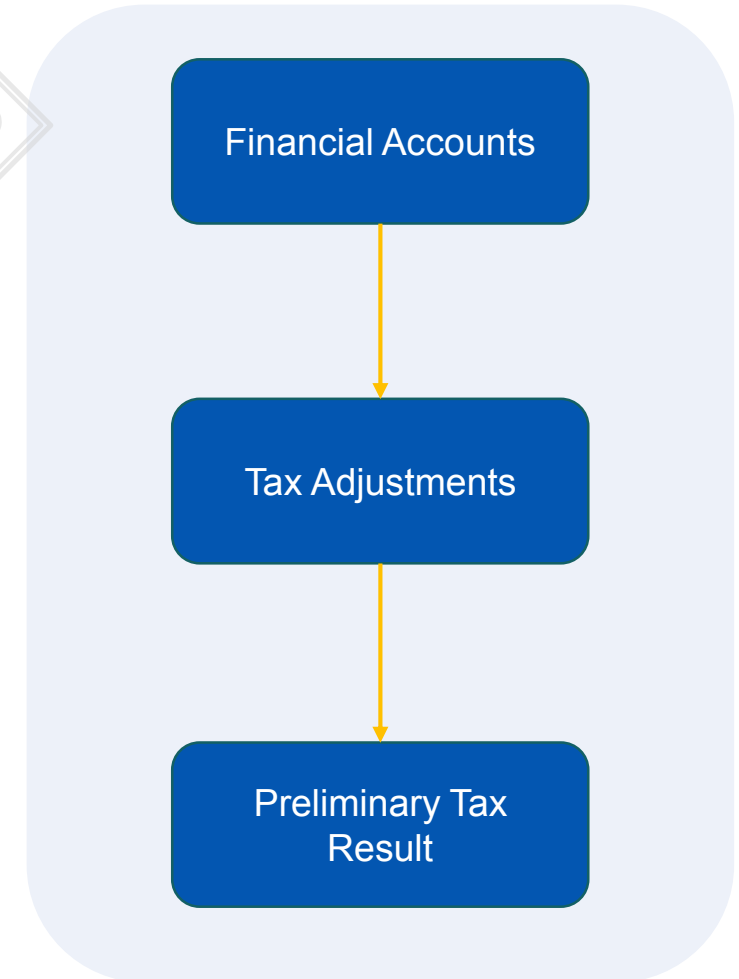
2

Ownership

- The UPE itself; and
- Any other company (or PE of a company) of the group in which the UPE holds direct or indirectly at least 75% of the ownership rights or rights giving entitlement to profit

Arriving at the Preliminary Tax Result

- **Starting point:** computing the preliminary tax result of each group member based on their **financial accounts**
- Financial Accounts must follow certain accounting standards which are **accepted under EU law**
→ National Generally Accepted Accounting Principles (**GAAP**) or International Financial Reporting Standards (**IFRS**)
- A **limited number of tax adjustments** have to be applied to convert the financial accounts into a tax base, e.g. for tax depreciation.



Starting point

Art. 7:

Financial accounting net income or loss of each BEFIT group member as determined under a single common acceptable accounting standard in the Union

1

UPE resident in the Union

- The accounting standard used in the preparation of the consolidated financial statements
- MS GAAP or IFRS

2

UPE resident in a third-country jurisdiction

- The accounting standard in force in the Member State where the filing entity is resident for tax purpose
- MS GAAP or IFRS

Exception

Computation of the preliminary tax result at jurisdictional level when a Member State allows financial statements on a jurisdictional basis

- Requirement to identify all necessary data for each BEFIT group member

Calculation of the preliminary tax result

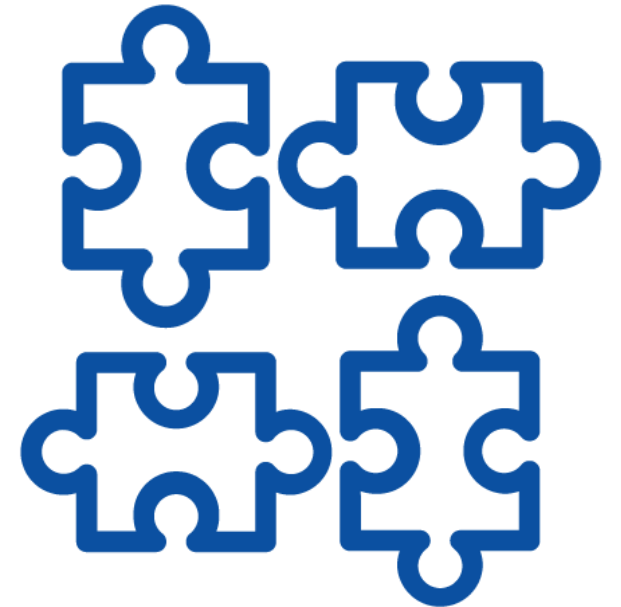
Limited adjustments to the financial accounting net income or loss

Accounting starting point → tax rules are adjustments to items recorded in the financial statements

Adjustments to exclude items from the computation of the preliminary tax result: tax exemption

Adjustments to include items in the computation of the preliminary tax result: non-deductible for tax

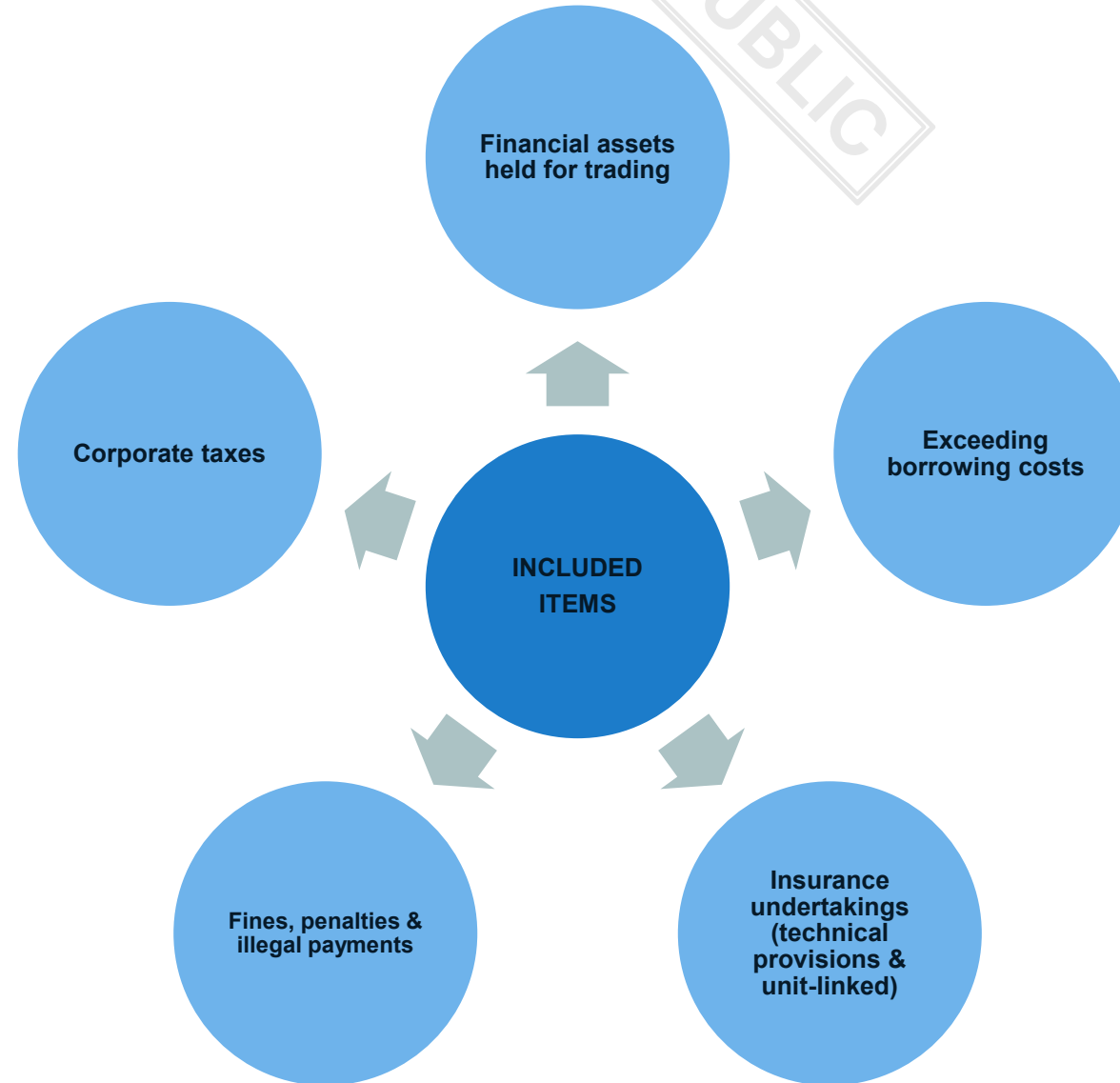
No adjustment: accounting treatment prevails



Adjustments to exclude certain items from the preliminary tax result



Adjustments to include certain items in the preliminary tax result



Depreciation

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Who?

- The economic owner
- Where the economic owner cannot be identified, the legal owner

What?

- Depreciation base: all costs connected with the acquisition, construction or improvement of a fixed asset.

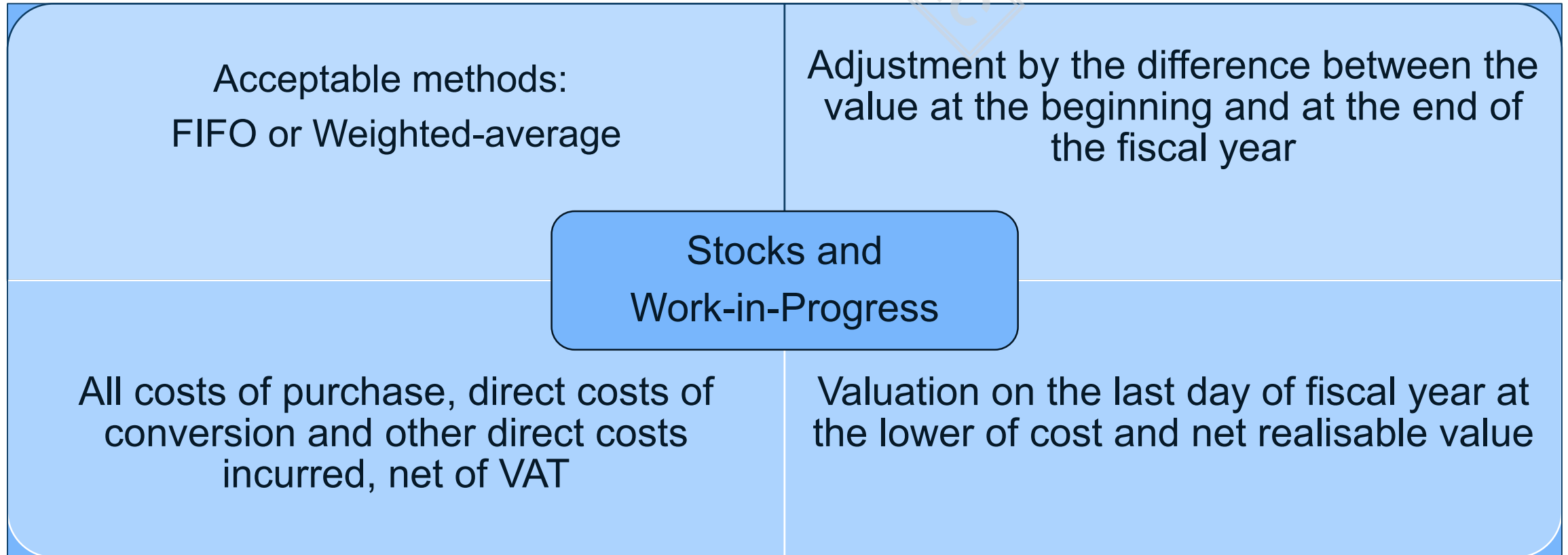
How?

- Immediate expensing of all fixed tangible assets with a book value < EUR 5000
- All buildings and immovable property and structure in use for the business : 28 years
- All other fixed tangible assets: useful life in accounting
- Fixed intangible assets: legal protection or 5 years

Section 3 – common rules for depreciation

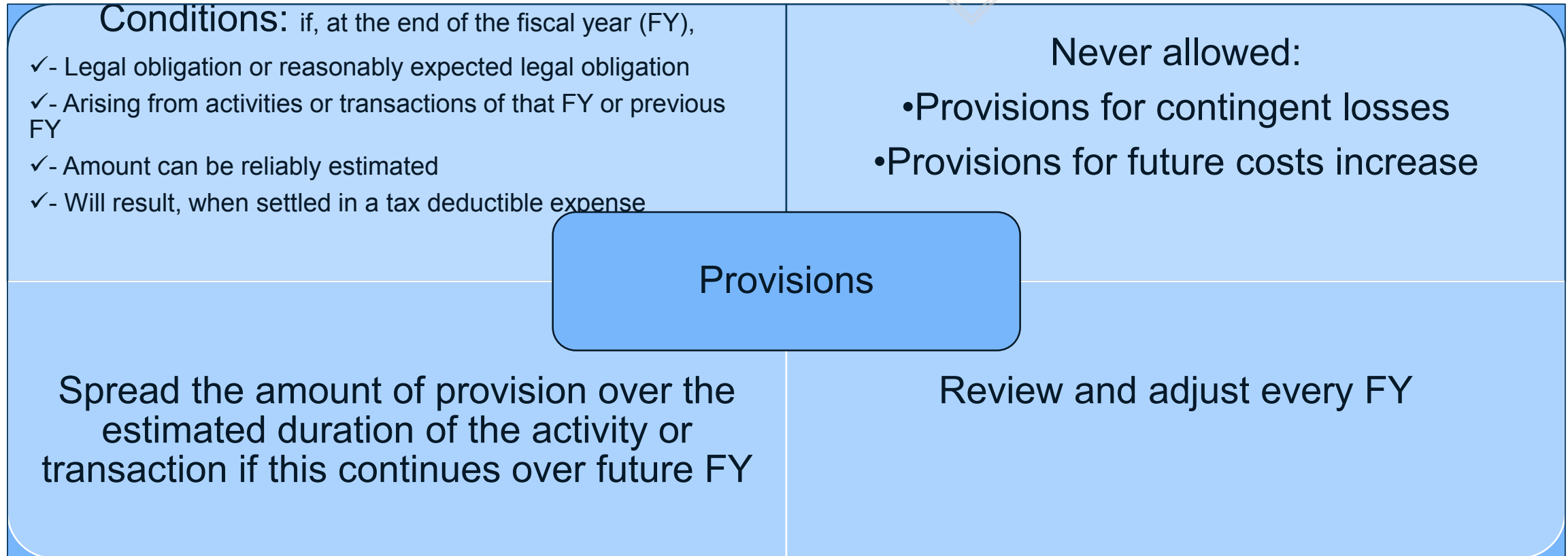
Timing rules – (1)

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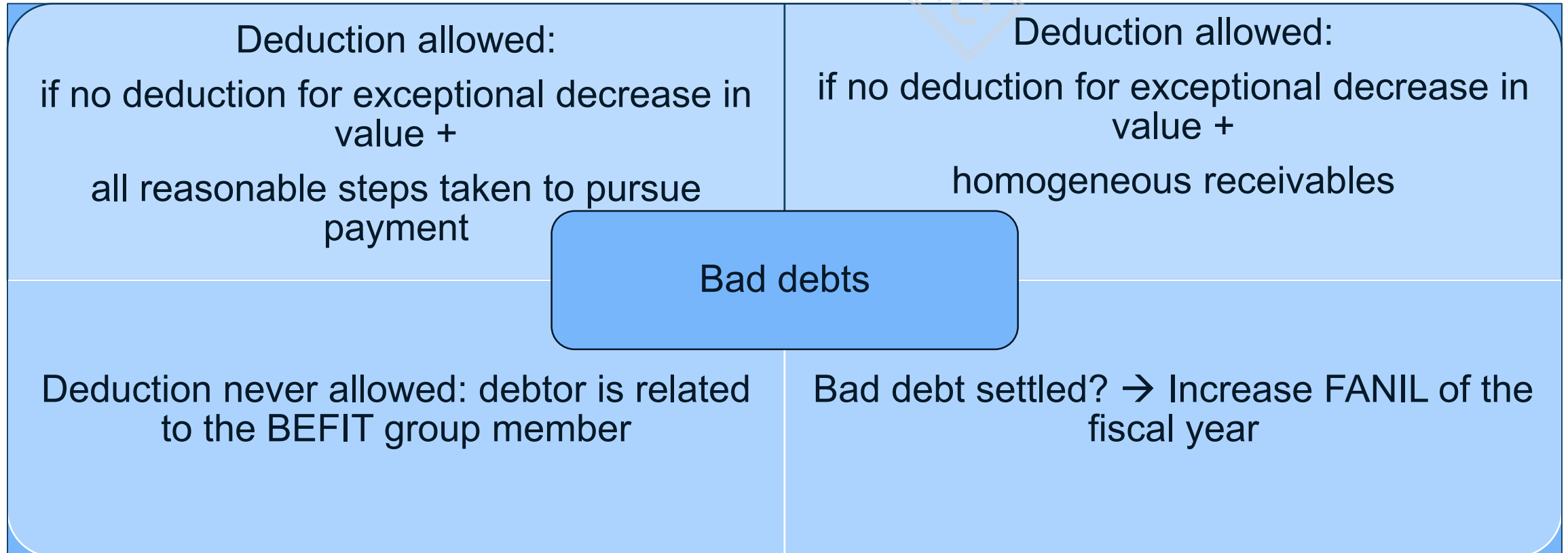
Timing rules – (2)

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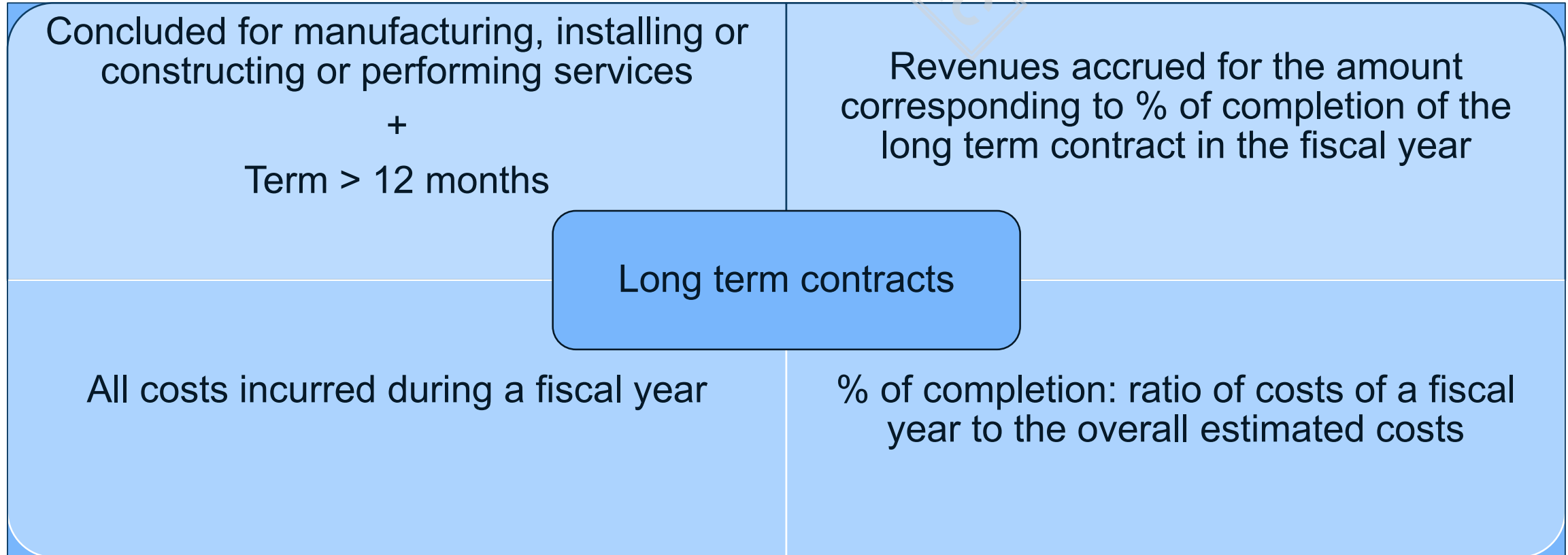
Timing rules – (3)

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Timing rules – (4)

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Entering a BEFIT group (1)

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Assets & Liabilities	<ul style="list-style-type: none">• Recognition: book value immediately before entering BEFIT• Depreciation: computation in proportion to remaining months in FY when entering BEFIT
Depreciation transition rule	<ul style="list-style-type: none">• Fixed assets < EUR 5000: immediate expensing of remaining value• Book value ≠ net tax value: difference to be pooled and spread over 5 years in the preliminary tax result
Revenues & Expenses	<ul style="list-style-type: none">• Revenues accrued before BEFIT but not yet taxed → added to the share of BEFIT tax base• Expenses incurred after BEFIT in relation to activities / transactions carried out before BEFIT or incurred pre-BEFIT but not yet tax deducted → deducted from the share of BEFIT tax base
Pre-entry losses	<ul style="list-style-type: none">• Any unrelieved losses incurred before BEFIT → deduction from the share of BEFIT tax base

Section 5 – Entering a BEFIT group

Entering a BEFIT group (2)

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Long term contracts

- Revenues & costs accrued or incurred before BEFIT but not yet included in tax base → adjust the share of BEFIT tax base
- Revenues previously subject to tax at an amount higher than under BEFIT → adjust the share of BEFIT tax base
- Carry-forward any remaining unrelieved amount

Provisions & Bad debts

- Deductible only to the extent they arise from activities or transactions carried out after entering BEFIT

Section 5 – Entering a BEFIT group

Leaving a BEFIT group

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Assets & Liabilities

- Recognition at the value calculated in accordance with BEFIT rules
- Depreciation: in proportion to remaining months in FY before leaving BEFIT

Termination of a BEFIT group

- Fiscal year ends, BEFIT tax base computed & allocated to each BEFIT group member
- Depreciation: in proportion to the number of months that the BEFIT group operated in the fiscal year

Section 5 – Leaving a BEFIT group

Corporate restructuring

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Business reorganisations

- Principle: immediate taxation of the gain or loss in the hands of the BEFIT group member that disposes of assets and liabilities
- Exception: deferral of taxation in the case of a reorganisation as defined in the Merger Directive

Disallowance of exempt shares disposition

- Principle: Art. 9 → 95% exemption of capital gains on disposition of shares if held for more than 1 year and more than 10% capital, profits or voting rights
- Exception: Art. 41 → taxation of the gain on disposition of shares when an asset is transferred to a BEFIT group member in the fiscal year, or the previous one, that it is sold out of the group

Section 5 – Corporate restructuring

BEFIT Directive

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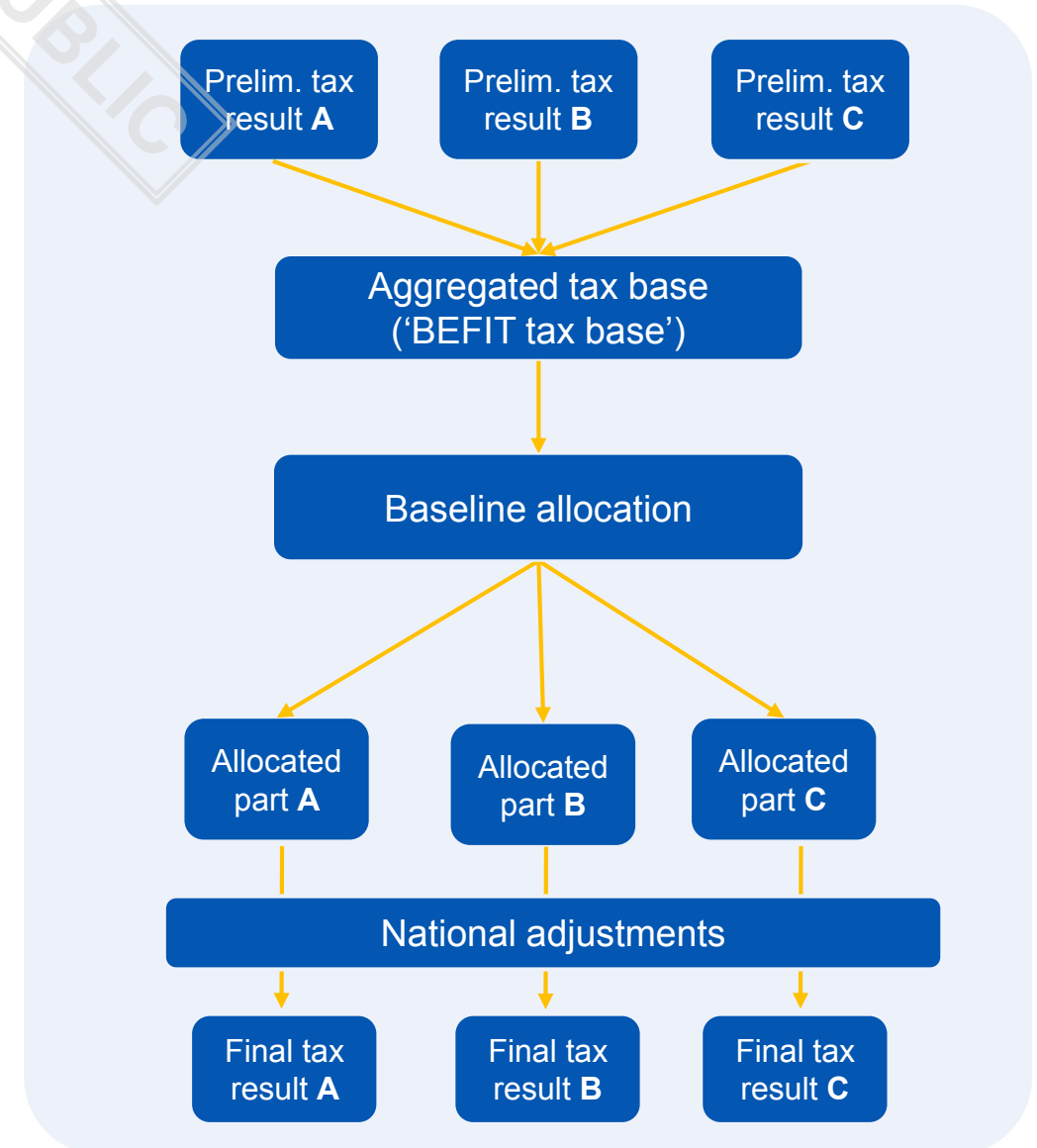
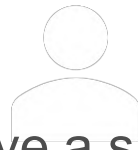
Chapter 5: Administration and procedures

Chapter 6: Final Provisions

Impact assessment report

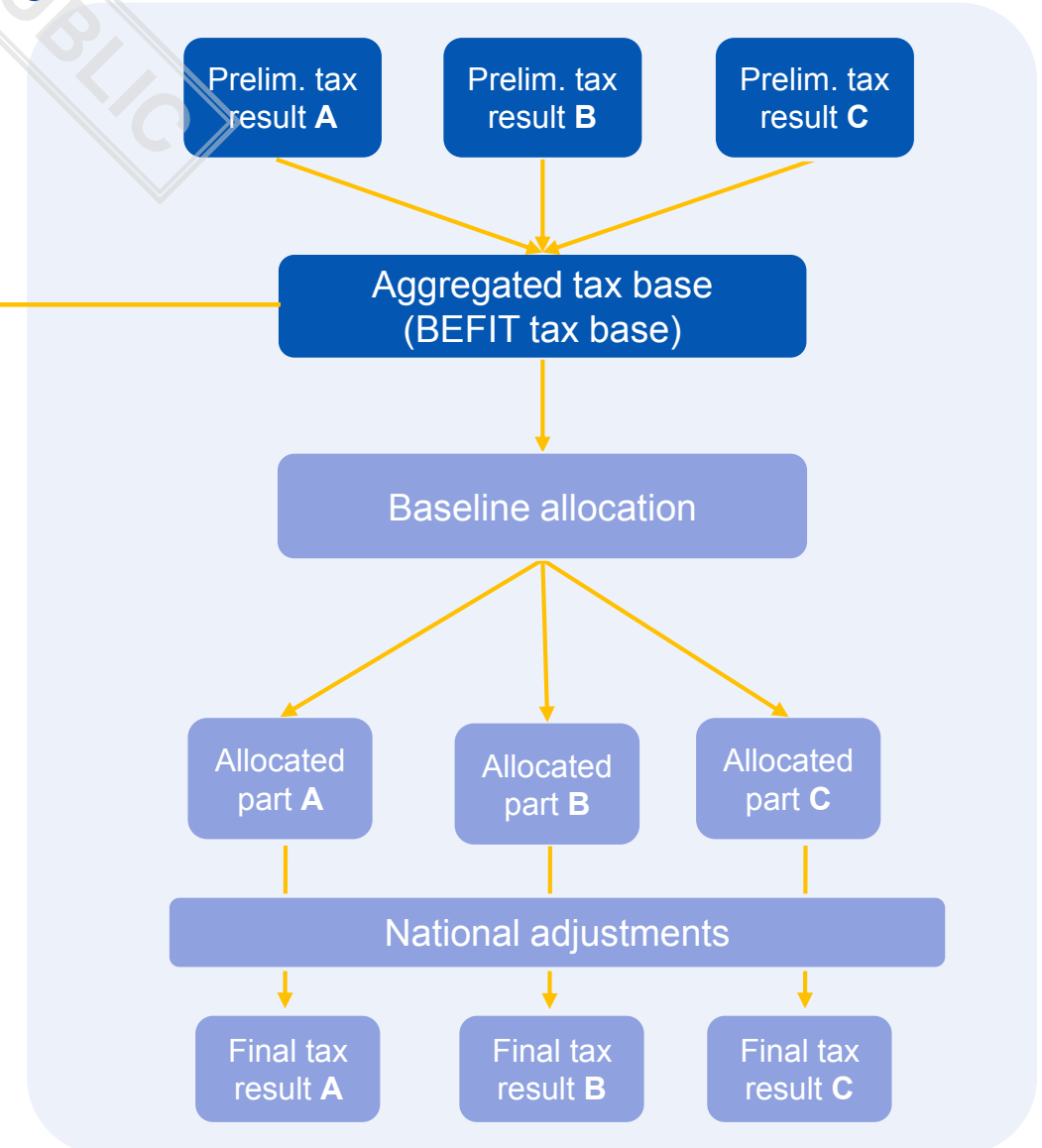
Chapter 3: Aggregation of the preliminary tax results and allocation of the BEFIT tax base

- The preliminary tax results of the group members are **aggregated** into a single tax base: the **BEFIT tax base**
- The BEFIT tax base is **allocated** to group members using a transitional method: **baseline allocation**
- Member States receive a share for each group member to be taxed nationally: **allocated parts**
- **Transfer pricing** remains necessary within the BEFIT group during the transition, but compliance will be simplified with a **risk assessment framework**



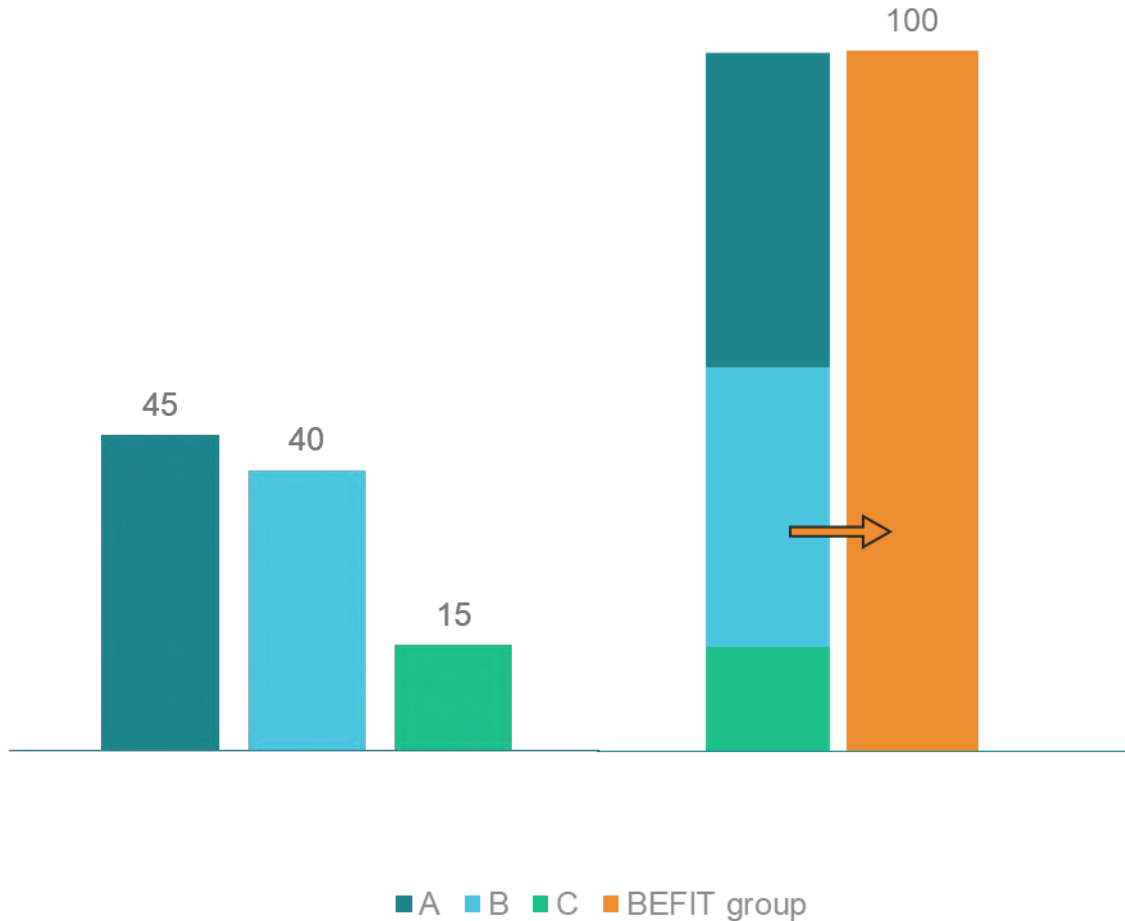
Aggregation of the preliminary tax results

- The preliminary tax results of the group members are **aggregated** into a single tax base: **the BEFIT tax base**
- **Cross-border loss relief**
 - Losses of a group member are automatically offset against profits of other group members
- No **withholding taxes** on intra-group payments
 - Provided a BEFIT group member is the beneficial owner
- **Exclusions from aggregation:** extractive activities, international shipping, inland waterways transport and air transport

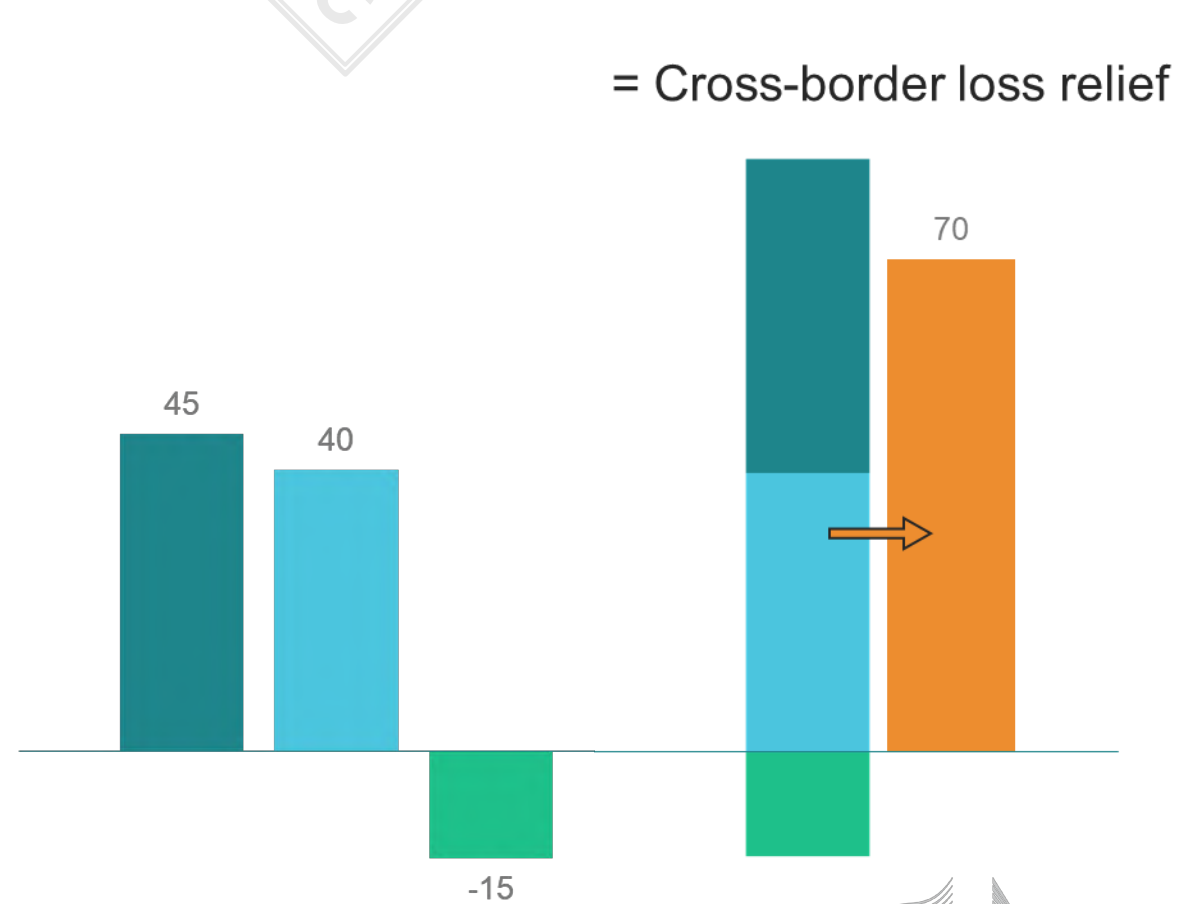


Aggregation – Example

Only profitmaking BEFIT group members



Profit- and lossmaking BEFIT group members



Allocation of the BEFIT tax base

- BEFIT tax base = profit

Transition rule during transition period (2028-2035)

= **Baseline allocation**: Profits are allocated to group members in line with the average of the taxable results of group members in the last 3 fiscal years

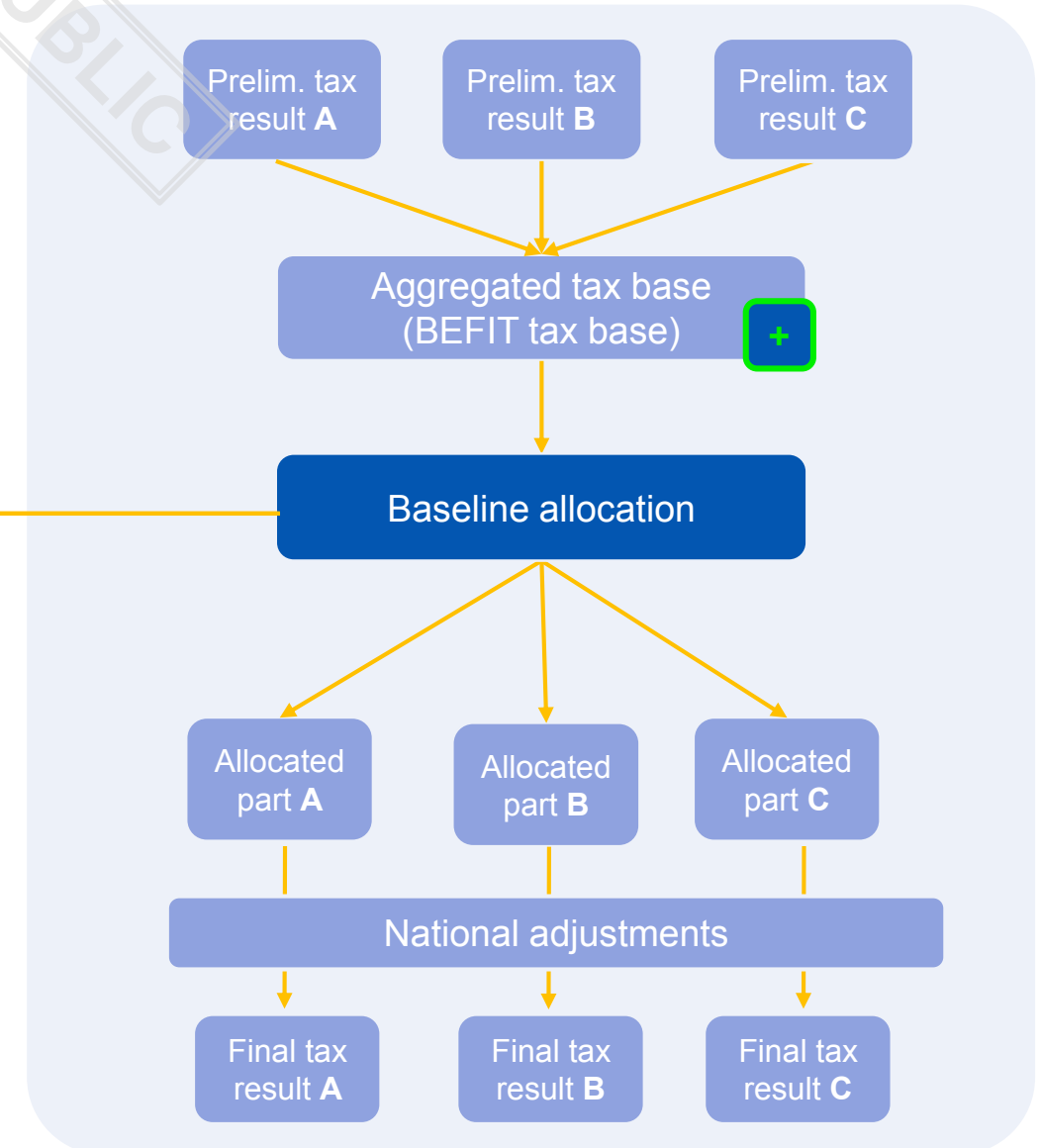
→ Transfer pricing remains necessary

A way towards a permanent allocation method

→ Comprehensive review based on substantive data, not yet available, including a study on the possible composition and weight of selected formula factors

→ **By 30 June 2031**: Report to the Council, followed by a possible proposal for a permanent allocation method

End of the transition period (30 June 2035): If no Commission proposal or no agreement in Council, transition rule becomes permanent



Allocation of the BEFIT tax base

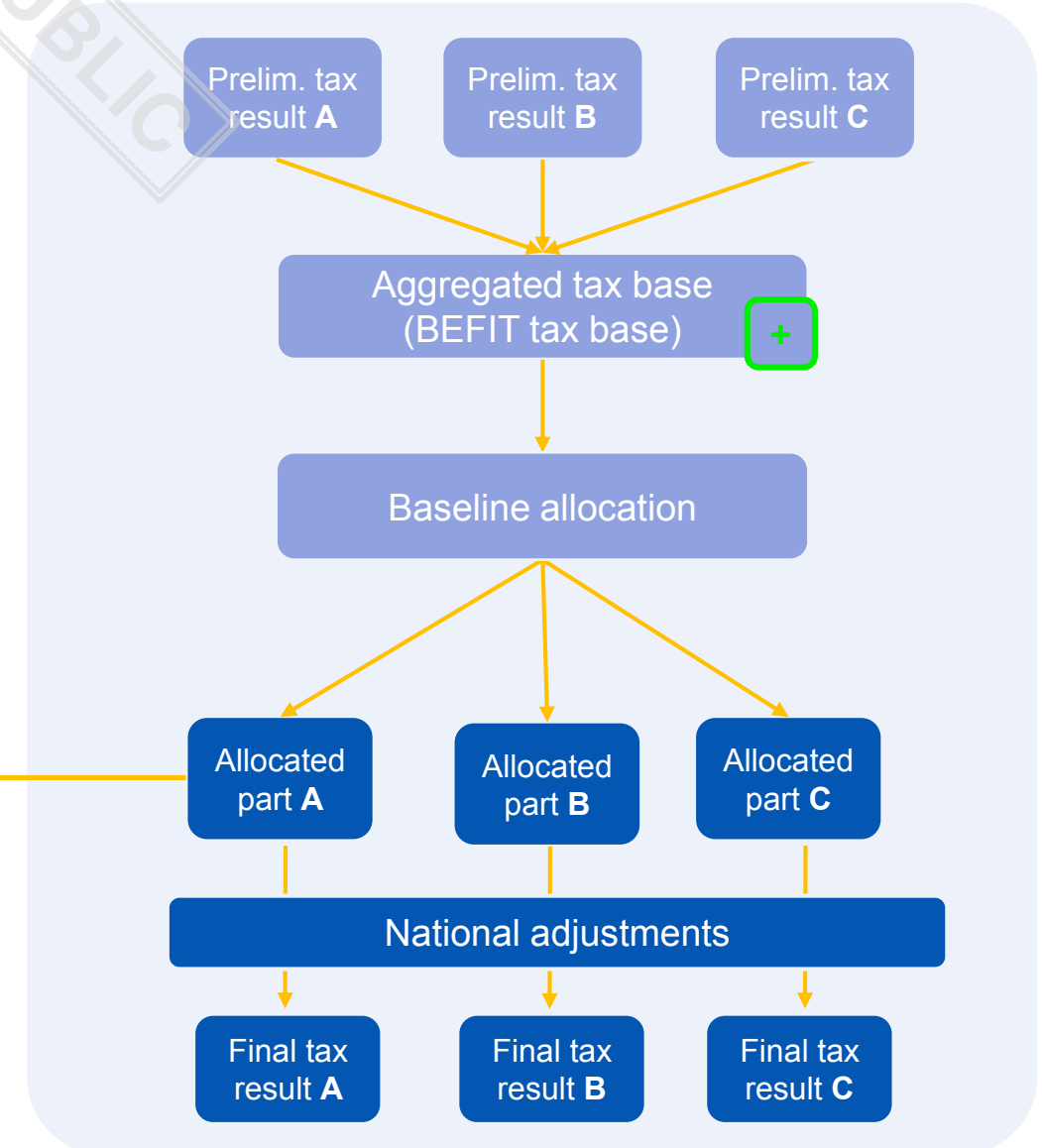
- BEFIT tax base = profit

Member States receive the **allocated parts** for each group member to be taxed nationally

→ subject to **additional national tax adjustments**

- Pre-BEFIT unrelieved losses
- Revenues and costs related to pre-BEFIT activities
- Tax-deductible gifts and donations
- Tax-deductible pension provisions
- Tax-deductible local taxes
- **Any other adjustments allowed by the Member State**
 - No ceilings, only Pillar 2 Directive

→ adjusted for **distribution-based tax systems**

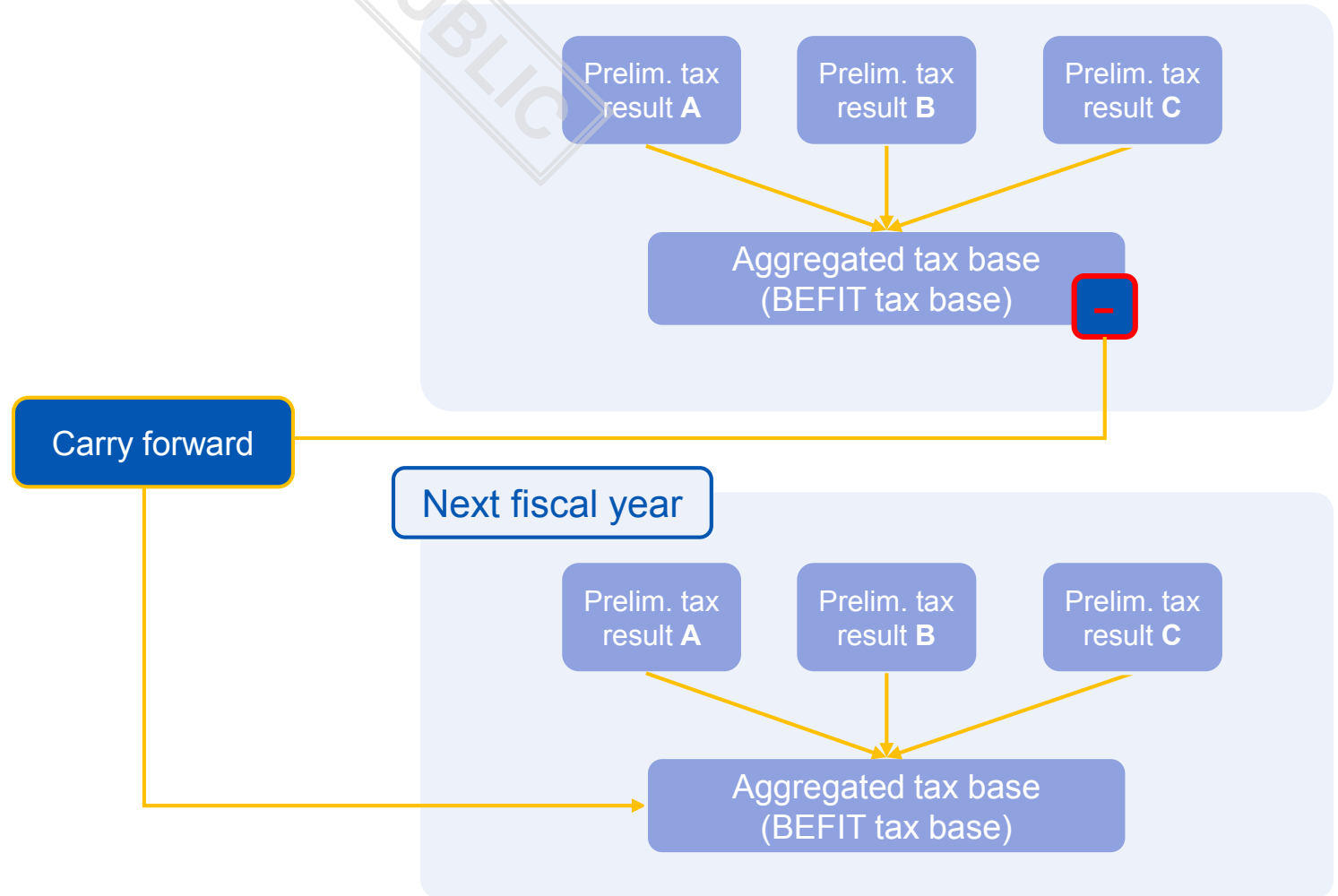
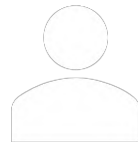


Allocation of the BEFIT tax base

- BEFIT tax base = loss

→ No allocation &

Carry forward to the next year



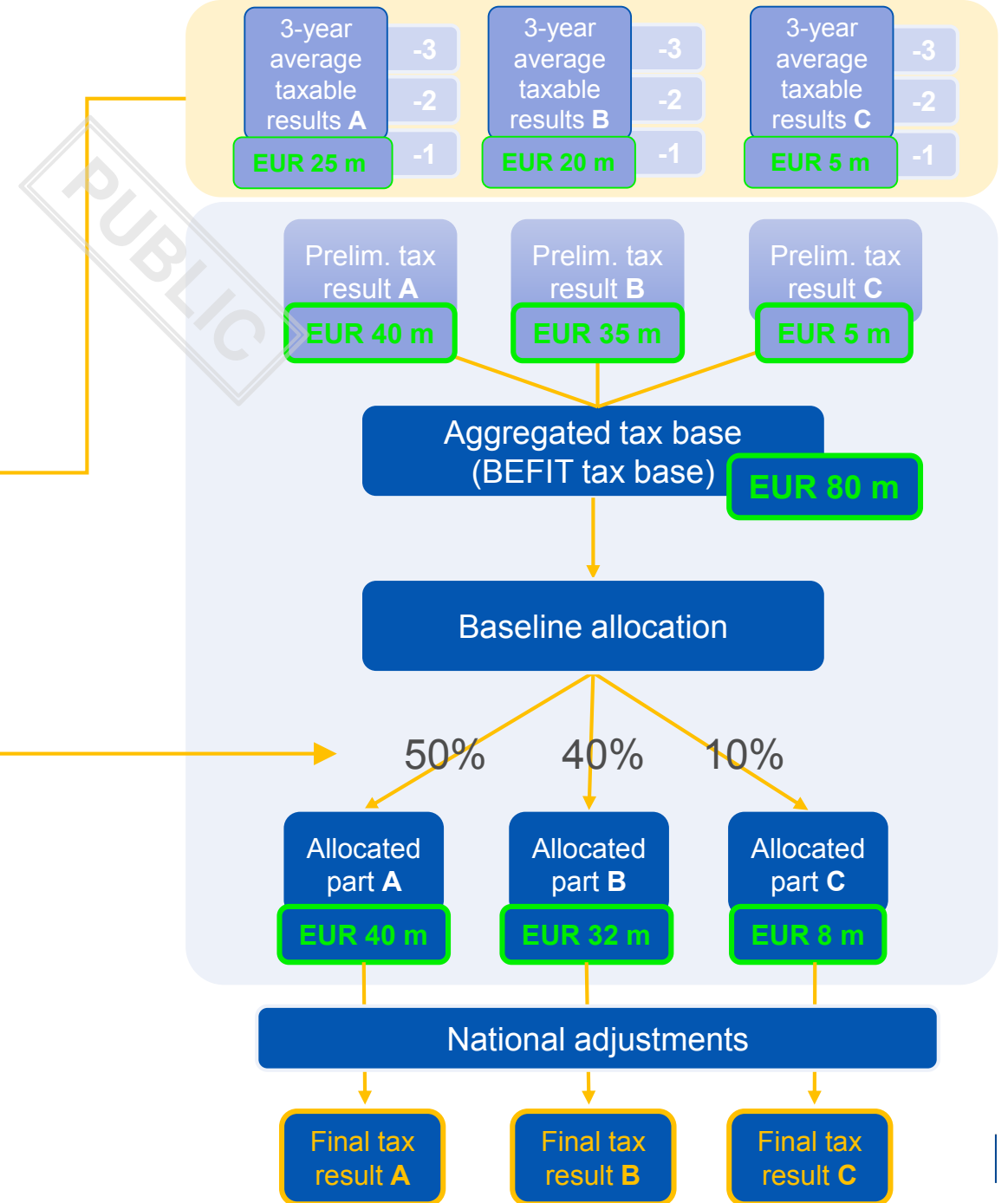
Allocation – Example

- A: EUR 25 m
- B: EUR 20 m
- C: EUR 5 m

Total: EUR 50 m

→ **Baseline allocation percentages:**

- A: EUR 25 m / EUR 50 m = 50%
- B: EUR 20 m / EUR 50 m = 40%
- C: EUR 5 m / EUR 50 m = 10%



Allocation – Example

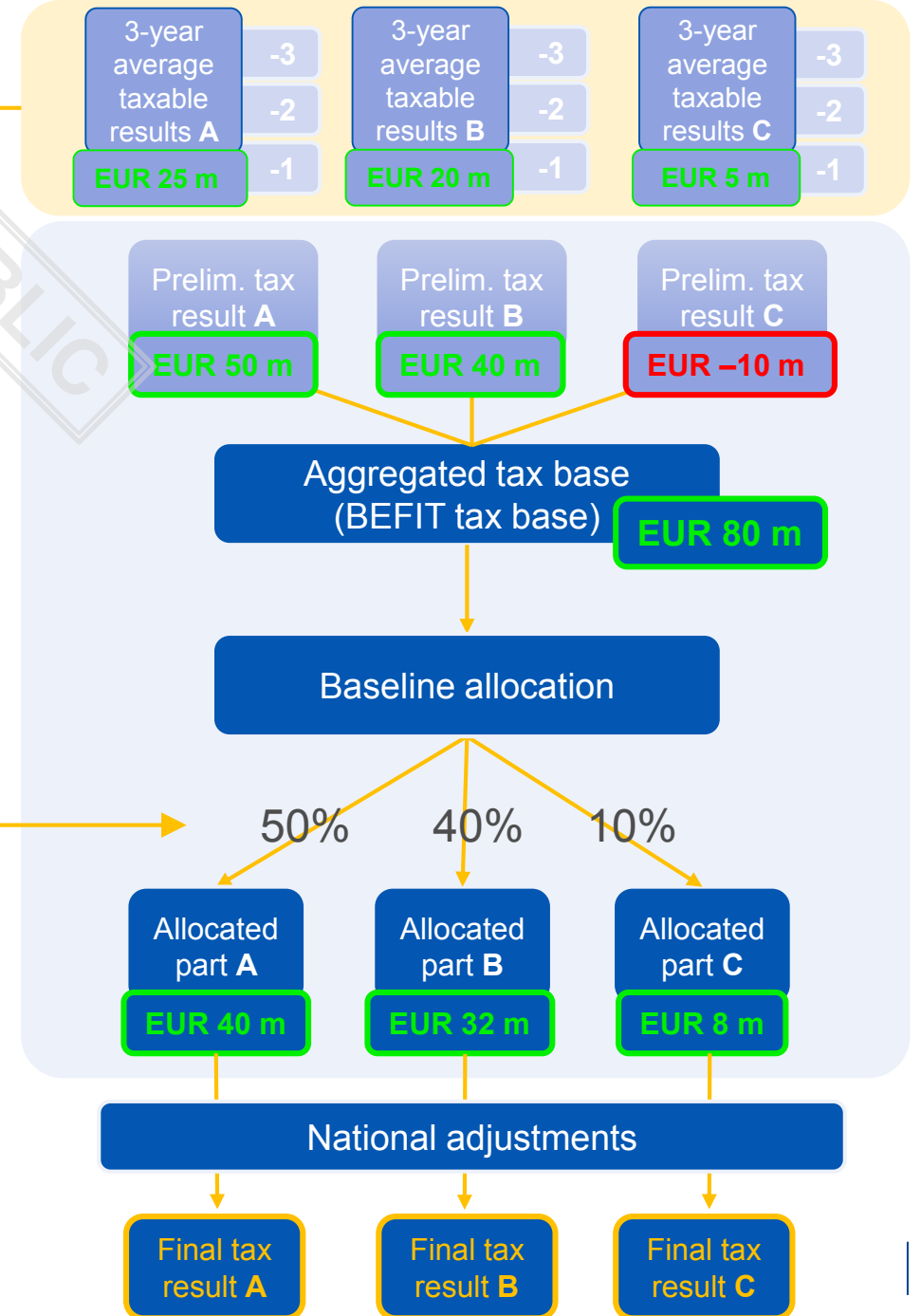
Loss-making group member

- A: EUR 25 m
- B: EUR 20 m
- C: EUR 5 m

Total: EUR 50 m

→ **Baseline allocation percentages:**

- A: EUR 25 m / EUR 50 m = 50%
- B: EUR 20 m / EUR 50 m = 40%
- C: EUR 5 m / EUR 50 m = 10%



Allocation – Example

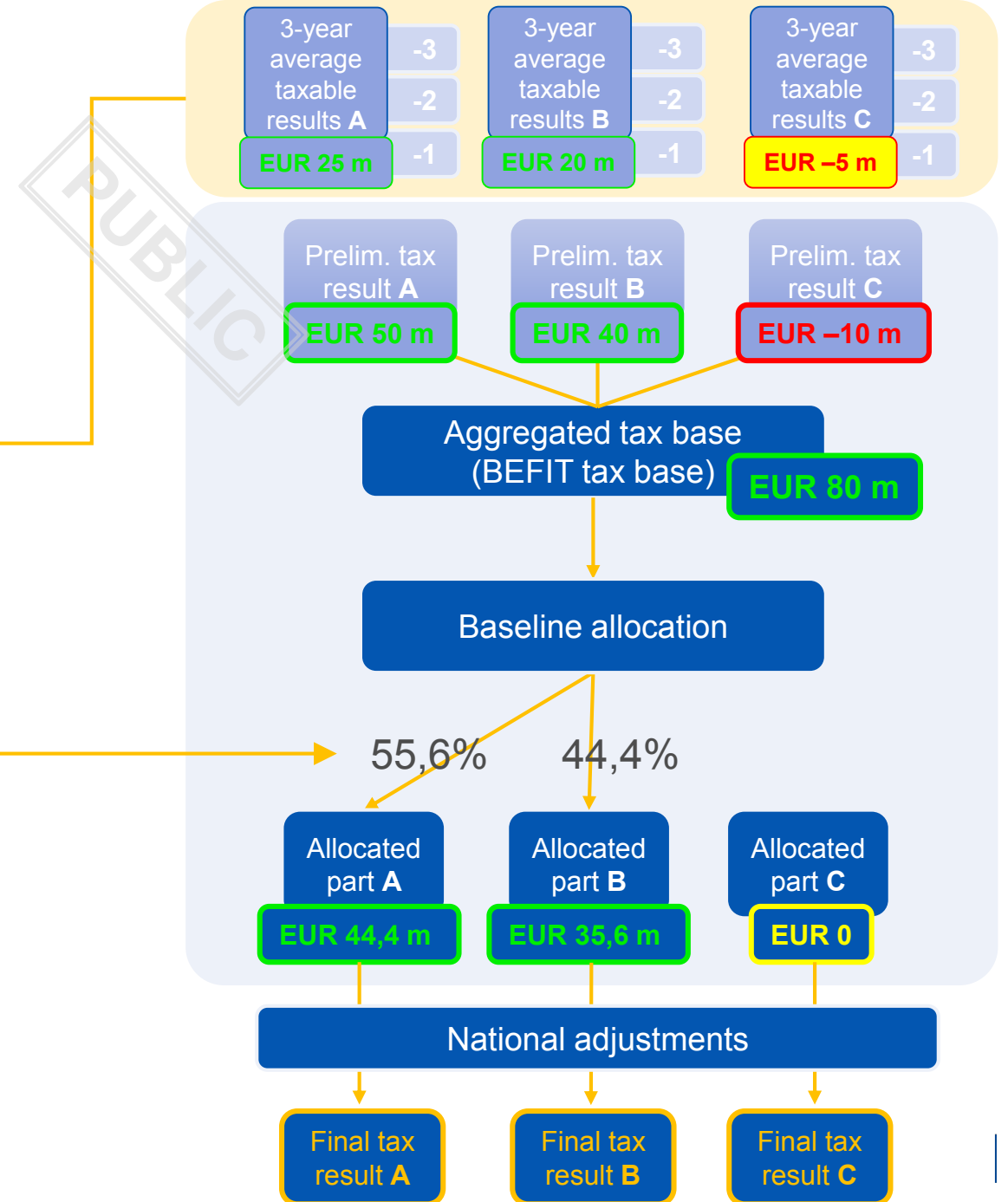
Previously loss-making group member

- A: EUR 25 m
- B: EUR 20 m
- C: N/A

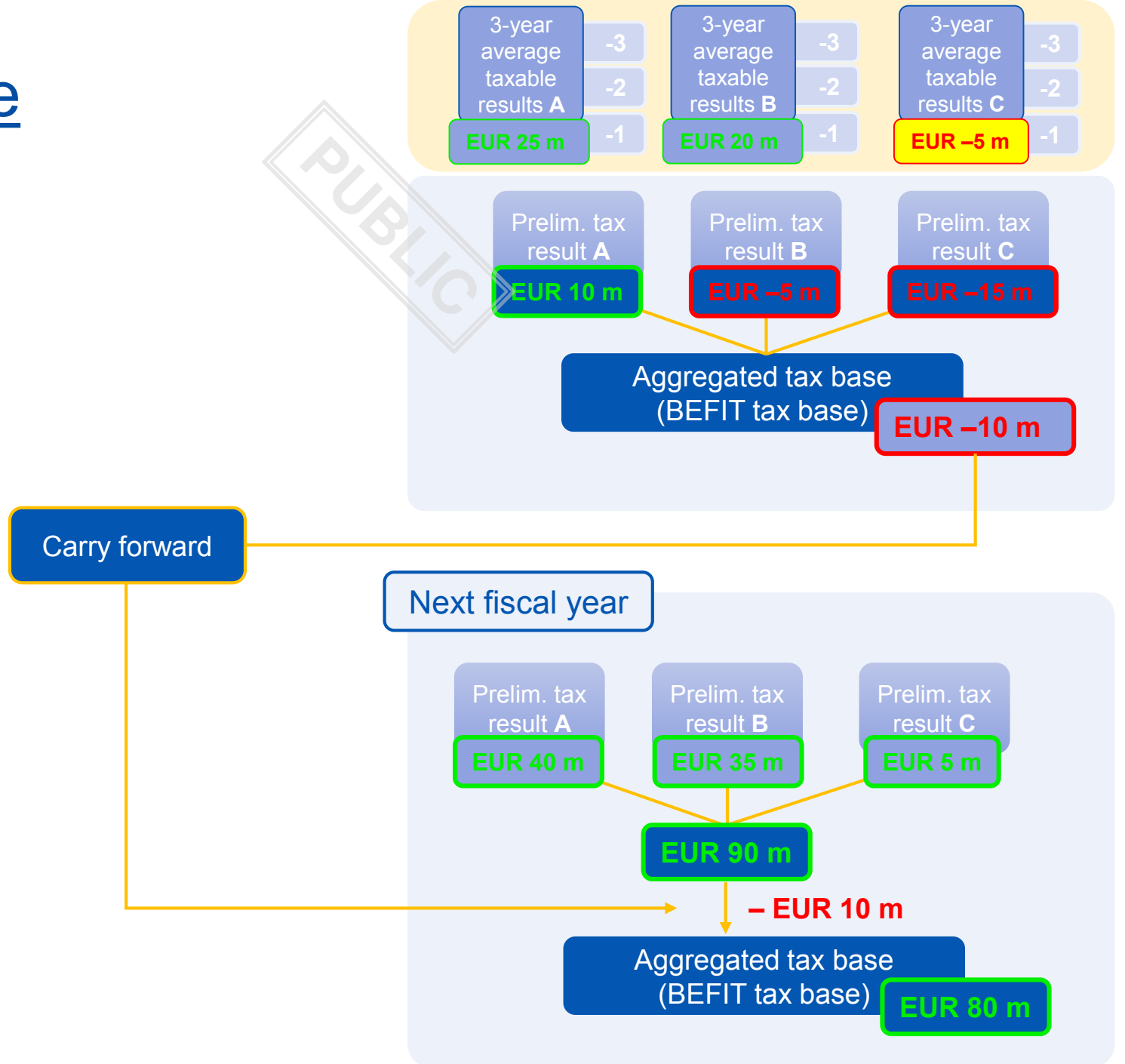
Total: EUR 45 m

→ **Baseline allocation percentages:**

- A: EUR 25 m / EUR 45 m = 55,6%
- B: EUR 20 m / EUR 45 m = 44,4%
- C: N/A



Allocation – Example Loss-making group

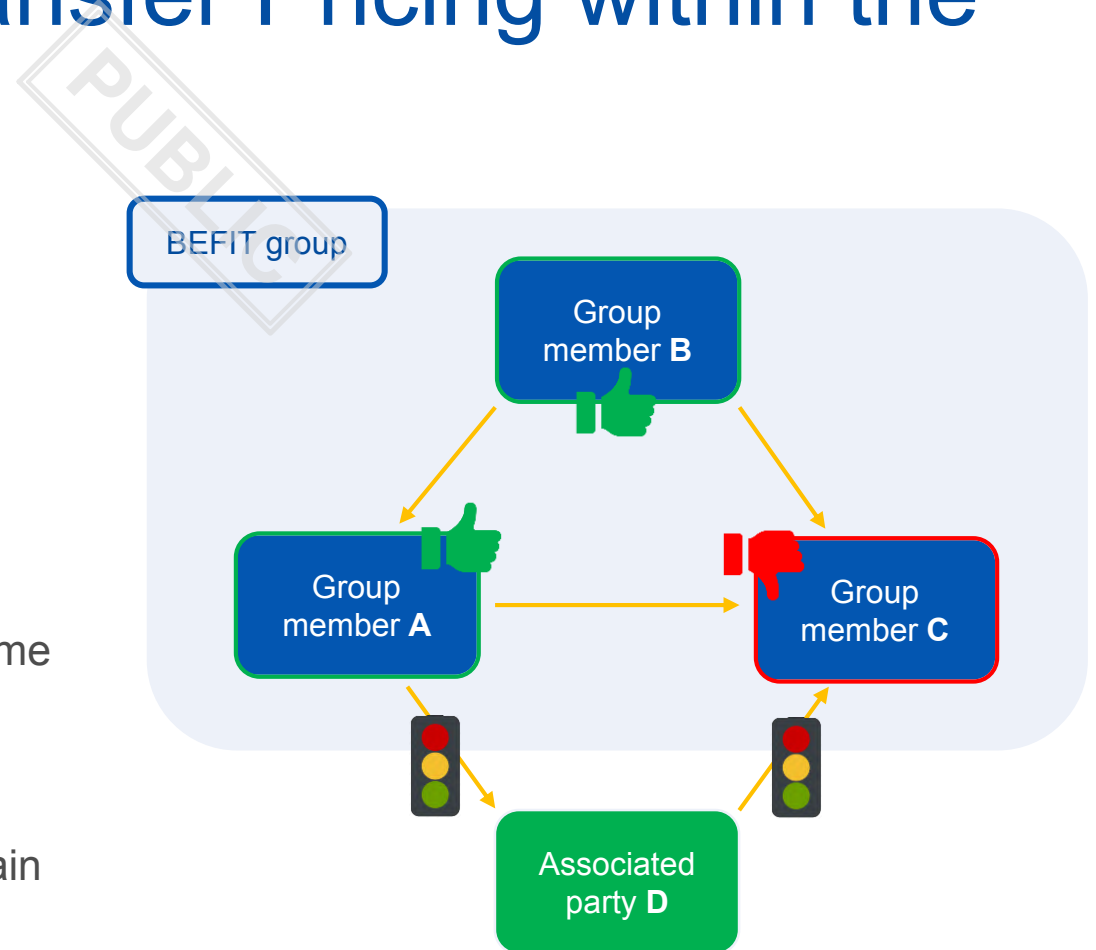


Simplified approach to Transfer Pricing within the BEFIT group

- **Transfer pricing** remains necessary within the BEFIT group but compliance will be simplified with **risk assessment tools**
 - **Within the BEFIT group: risk assessment framework**

Based on a comparison with the average expense/income from intra-group transactions in last three fiscal years

- If less than 10% increase: **low-risk zone** 👍
 - Compliance is presumed but tax authorities retain right to audit
- If 10% or more increase: **high-risk zone** 👎
 - Non-compliance is presumed but taxpayer has right to rebut



BEFIT Directive

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Chapter 1: General Provisions

Chapter 2: Determination of the preliminary tax result

Chapter 3: Aggregation of the preliminary tax results and allocation of the BEFIT tax base

Chapter 4: Simplified approach to transfer pricing compliance

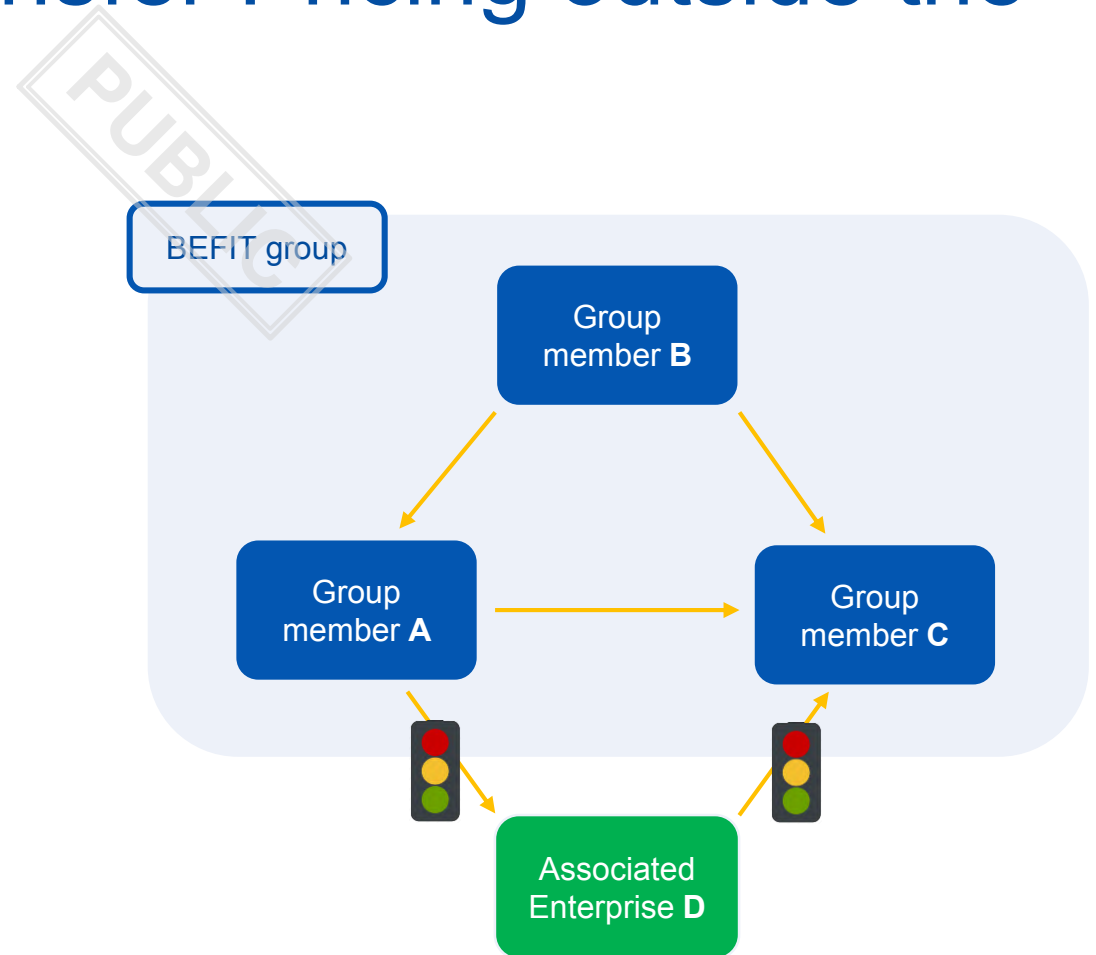
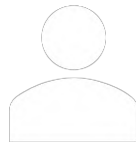
Chapter 5: Administration and procedures

Chapter 6: Final Provisions

Impact assessment report

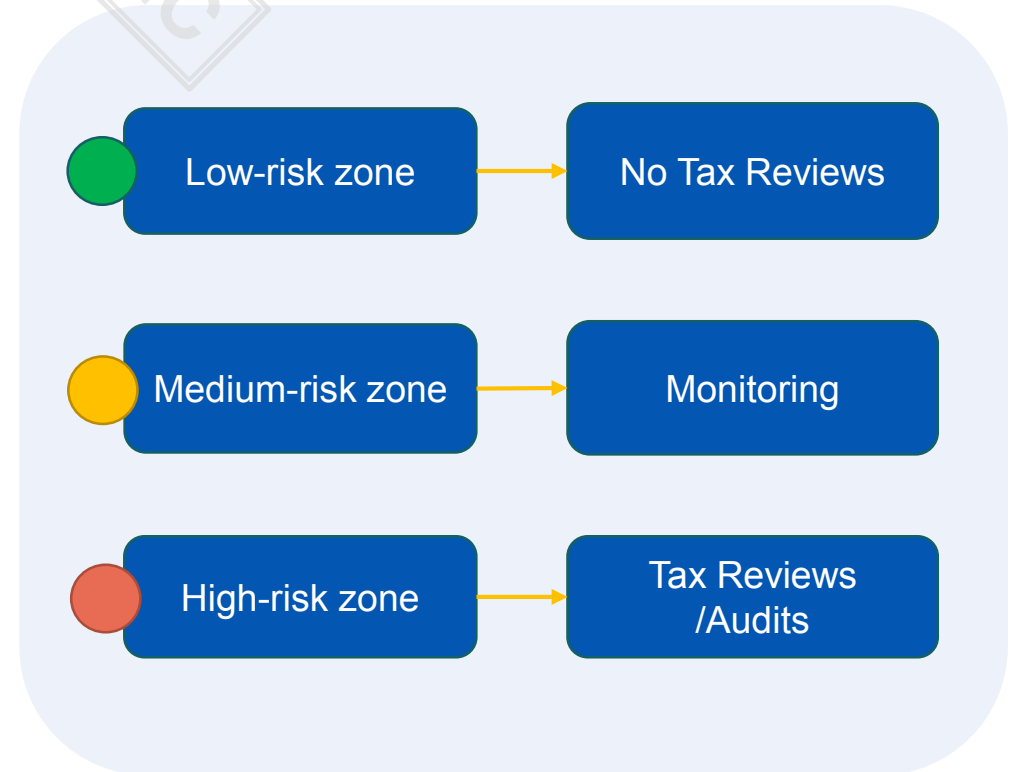
Simplified Approach to Transfer Pricing outside the BEFIT group

- Transfer pricing outside the BEFIT group remains necessary but compliance will be simplified with **risk assessment tools**
- ‘Traffic Light System’



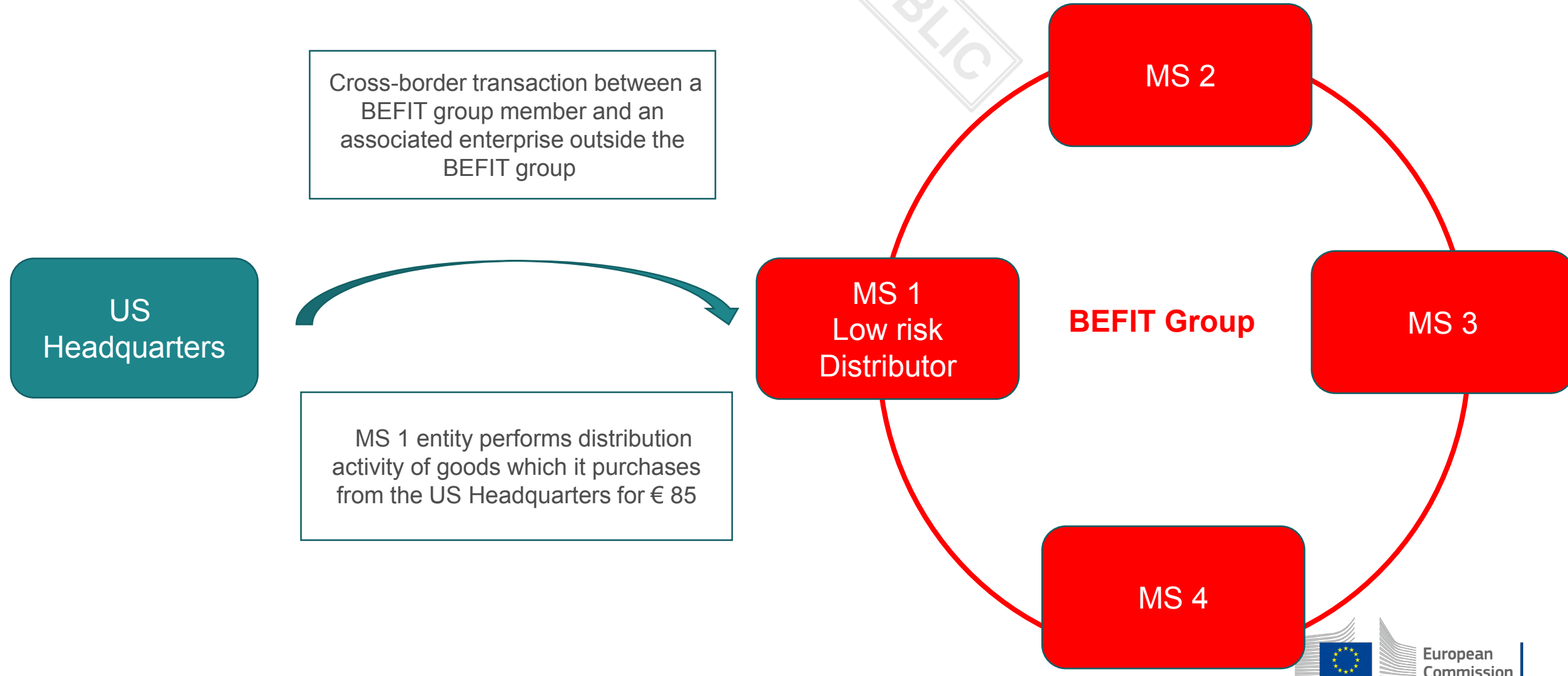
Risk Assessment Tool for Transfer Pricing

- Introduction of a **Traffic Light System**
 - No changes to current Transfer Pricing principles
- Facilitation of the risk assessment for transactions with associated enterprises outside the BEFIT Group
- Parties will know in advance the arm's length returns (market based) that they are expected to achieve in a particular transaction
- Helps the tax authorities to focus on high-risk transactions
- Non-binding for tax authorities



The Traffic Light System: numerical examples

Distribution activity (1/2)



Distribution activity (2/2)

Under the Traffic Light System, the profit performance of MS 1 distributor should be compared with the profit performance of independent distributors, as this features in EU public benchmarks

Comparison

		100	Sales
Earnings Before Interests and Taxes (EBIT)	5		
Operating expenses	10		
Cost of Goods Sold (COGS)	85		

MS 1 distributor
Return on Sales (ROS)
EBIT/sales = 5/100 = 5%

EU Public Benchmarks		
Profit marker A	Upper Quartile	4,29%
Profit marker B	Lower Quartile	2.20%

Transfer Pricing between US and MS 1

The profit margin of MS1 distributor is above the upper quartile (profit marker A) of the EU benchmark => the distribution activity falls within the green zone and should be considered as low-risk from a TP prospective

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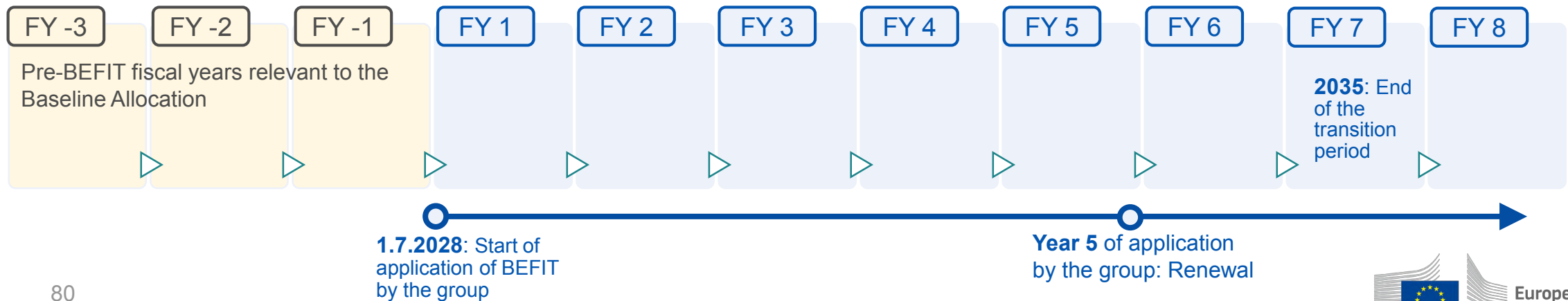
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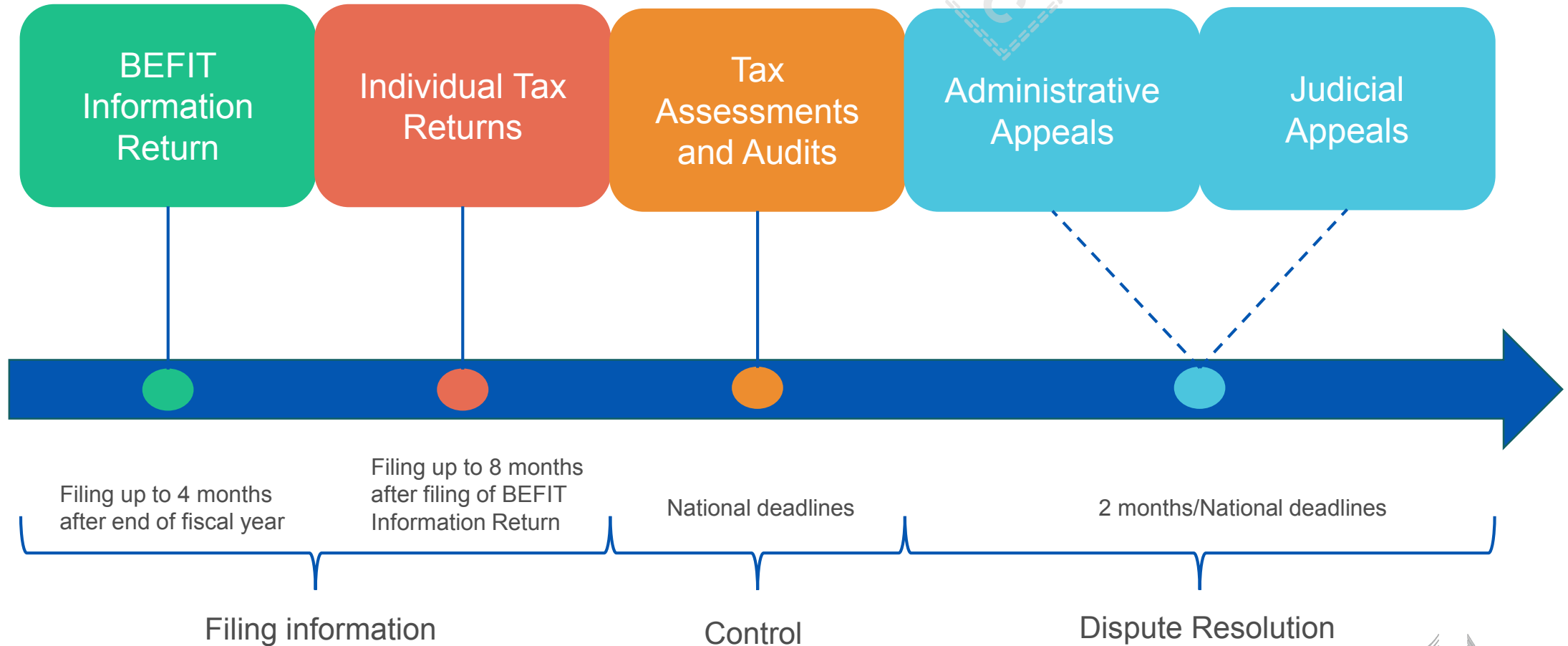
Impact assessment report

General Administrative Rules

- Groups within the mandatory scope must apply BEFIT rules for a period of 5 years
→ automatically renewed unless notified termination
- Other groups opting in must apply BEFIT rules for a period of 5 years
→ renewed application must be notified
- All BEFIT group members shall have the same fiscal year (a period of 12 months)
→ if shorter, allocated share is adjusted proportionally

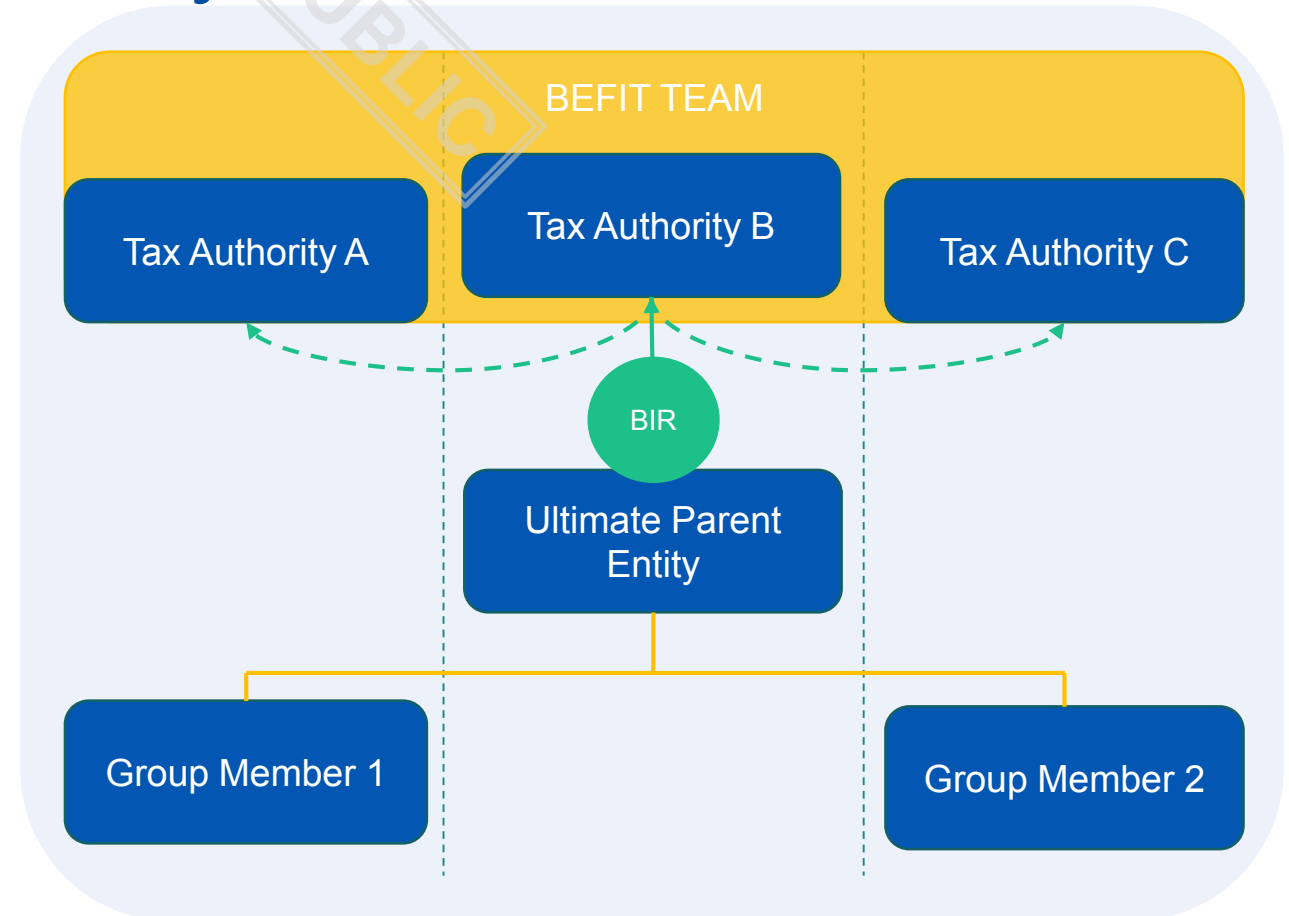


Overview of Administrative Steps



Filing Information Centrally

- Hybrid **One-Stop-Stop**
- **BEFIT Information Return (BIR)**
 - overall corporate structure*
 - group members / Member States*
 - preliminary tax results
 - BEFIT tax base
 - baseline allocation percentage*
 - allocated parts
- Filing Entity \Leftrightarrow Filing Authority
 - transmission to other authorities
- **BEFIT Teams**
 - coordination and cooperation
 - early certainty on key elements*



BEFIT Teams

1) Form

- One BEFIT Team for each BEFIT group
- Comprised of **representatives from tax authorities**: one from each relevant Member State; communication through a **collaborative tool**

3) Agreement on BIR

- Reached by **consensus** and if this is not achieved, by **simple majority**. In the latter case, voting rights are proportionate to the share of the turnover of the group in each Member State in the fiscal year.

2) Cooperation

- **Content of the BEFIT Information Return** (group structure, group members, relevant Member States, baseline allocation %)

4) Coordination

- In **other aspects**, such as assessments, audits, appeals and adjustments.



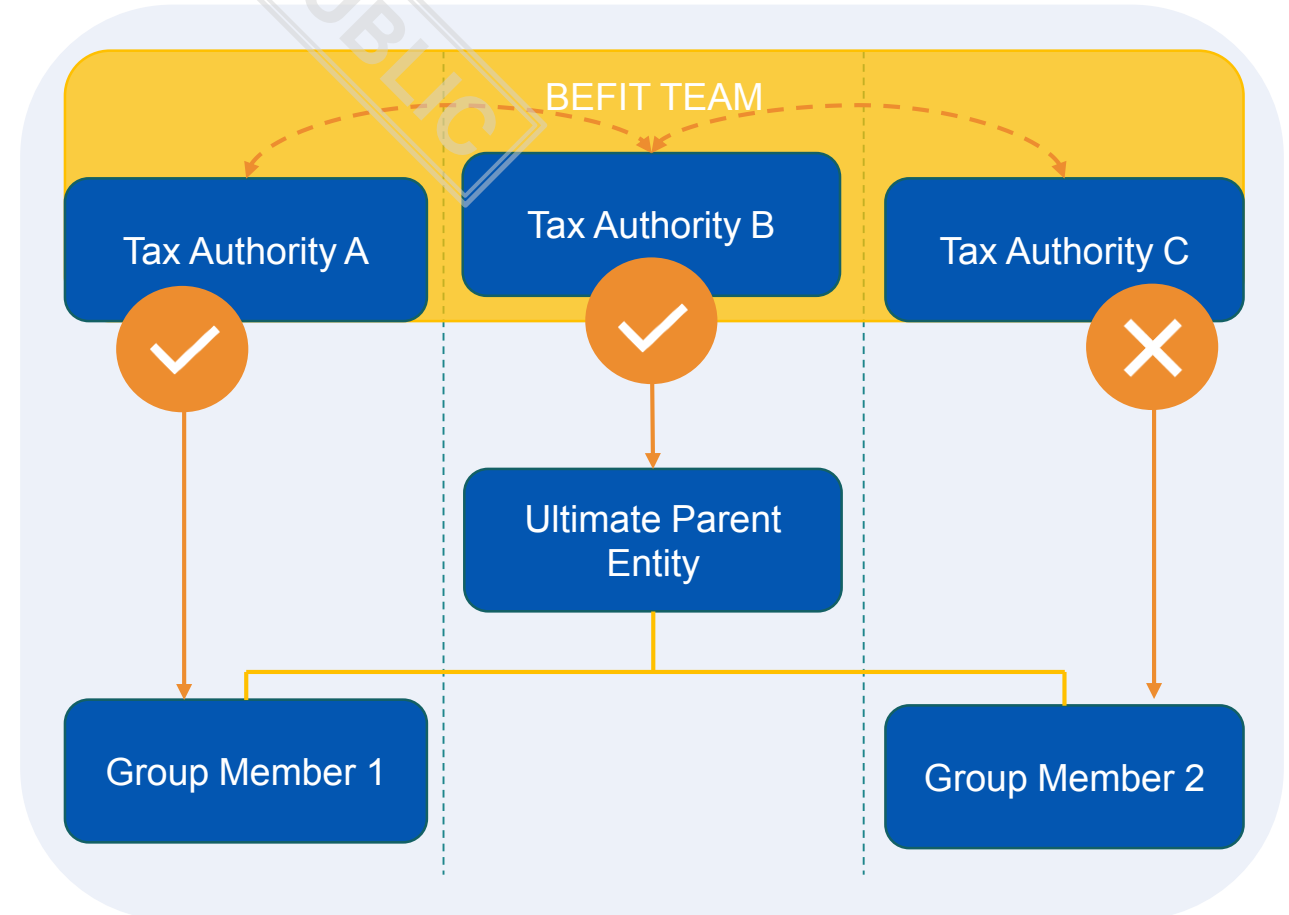
Filing Information Locally

- Individual Tax Return (ITR) for each group member / Member State
 - preliminary tax result
 - allocated part
 - national adjustments
 - tax credits to relieve foreign tax
- Determines the tax liability of the group member
- Group member \Leftrightarrow local tax authority
- **BEFIT Teams:**
 - coordinating role



Assessments and Audits

- **Local tax authorities** issue tax assessments and may carry out tax audits
→ national procedural rules may continue to apply
- Local authorities can **request another local authority** to initiate an audit, including mandatory joint audits, via **BEFIT Teams**
- Outcome affects BEFIT Tax Base
→ amendments across the group through a coordinated process via BEFIT Teams



BEFIT Directive

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Impact assessment report

Impact assessment report

BEFIT and the Transfer Pricing Directive could **reduce cross-border firms' compliance costs by between 32% and 65%**

- Major simplification for businesses
 - ⇒ Reduction of CIT-related compliance costs for cross-border firms
 - ⇒ Cost savings in legal advice and litigation concerning transfer pricing
- Total implementation costs for all tax administrations in the EU combined is tentatively estimated at an annualised EUR 30 million. Overall, costs will be outweighed by the benefits.
 - ⇒ Hybrid One-Stop-Shop
 - ⇒ Exchange of information and BEFIT Teams
 - ⇒ Increased tax certainty and transparency
 - ⇒ More efficient use of staff resources

Businesses

	Low-end estimate	High-end estimate
Benefits	EUR 42 m per year	EUR 80 m per year
Costs	EUR 15 m (one-off), and EUR 5 m per year	EUR 29 m (one-off), and EUR 9 m per year

Impact assessment report

BEFIT and the Transfer Pricing Directive could **stimulate investment and increase GDP in the EU** while also ensuring **sustainable tax revenues of Member States**

- **Cross-border loss relief** (Cortax, for MNEs with turnover > €750 million)
 - ⇒ Tax revenues: -0.02%
 - ⇒ GDP: +0.1%
- **Common tax base: focus on tax depreciation rules** (Cortax, for all MNEs)
 - ⇒ Tax revenues: -0.02%
 - ⇒ GDP: +0.04%
- **Better legal certainty**
 - ⇒ Not quantifiable
- **Formulary apportionment** (CbCR data)
 - ⇒ Increase in CIT revenue in the EU
 - ⇒ Uncertain distributive effect due to limited data availability
- **Transition mechanism**
 - ⇒ Stability of national tax revenues
 - ⇒ Availability of CbCR data and future impact of Pillar 1, Pillar 2 and common BEFIT tax base

Thank you

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