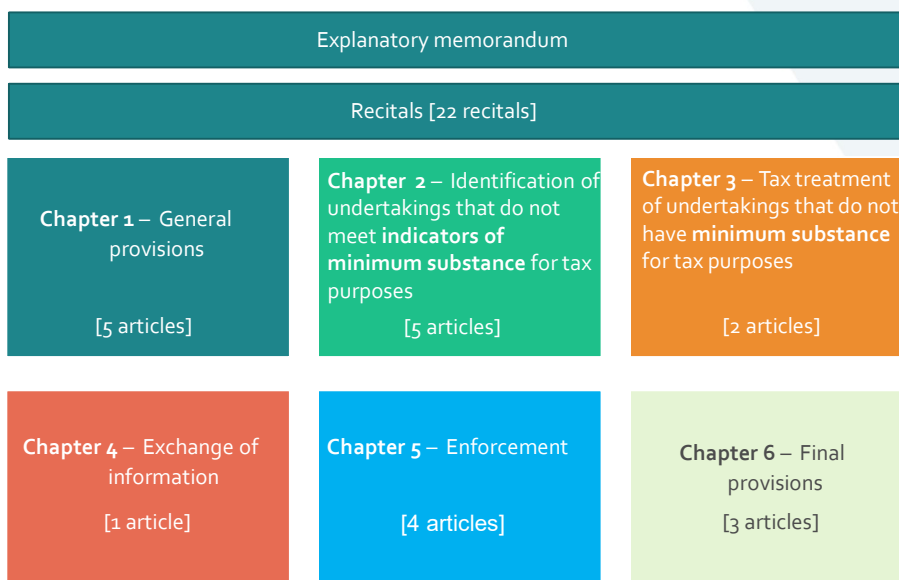


Unshell (ATAD 3)

Laura Weiss-Turcan
IFA, 21. November 2023

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Contents and aims



Aims

- **Prevention of tax avoidance and tax evasion** by means of letterbox companies in the EU
- **objective substance criteria** to identify letterbox companies

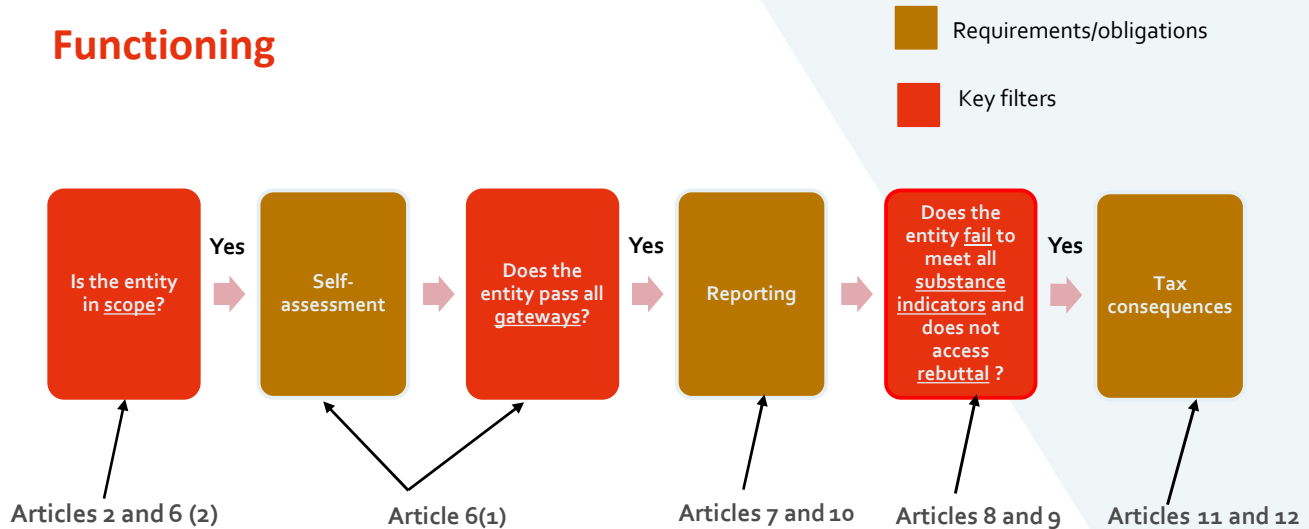
20 articles

**Estimated tax gap:
EUR 20 billion /year
(entire EU)**

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Functioning



Article 18: implementation until [30. June 2023]; application starting [1. January 2024]

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Scope – Article 2 and 6 (2)



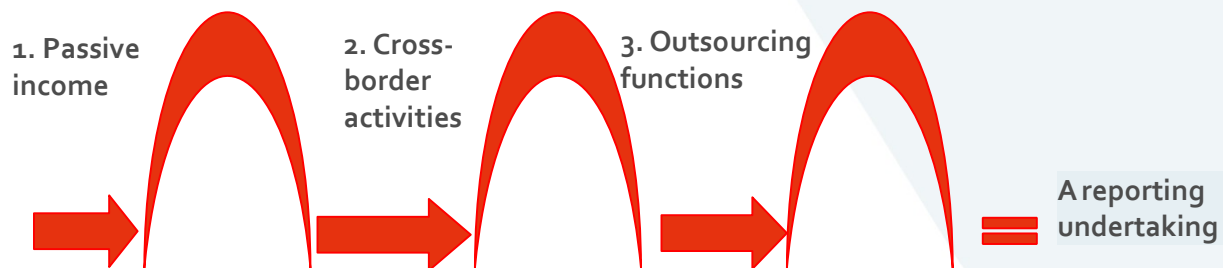
Carve outs (Article 6 (2)):

- Transferable security admitted to trading or **listed on a regulated market**;
- Certain **regulated financial undertakings**;
- Undertakings that hold shares in operational businesses in the same Member State, whose beneficial owners are also **resident for tax purposes in the same Member State**
- Undertakings with **at least five own full-time equivalent employees** or members of staff exclusively carrying out the activities generating the “Relevant Income”.

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Gateways - Article 6 (1)



- **Gateway 1:** > 75% of the income of the preceding two years is passive income (“**Relevant Income**” acc. to **Article 4:** interest, royalties, dividends, income from financial lease or real estate, outsourced services) / value of relevant assets > 75% of book value
- **Gateway 2: cross-border activities:**
 - > 60% of the book value of the assets that can generate passive income is located outside the Member State of the undertaking in the preceding two years **OR**
 - > 60% of the “Relevant Income” is earned or paid out via cross-border transactions
- **Gateway 3: outsourcing** the administration of day-to-day operations and the decision making on significant functions in the preceding two years

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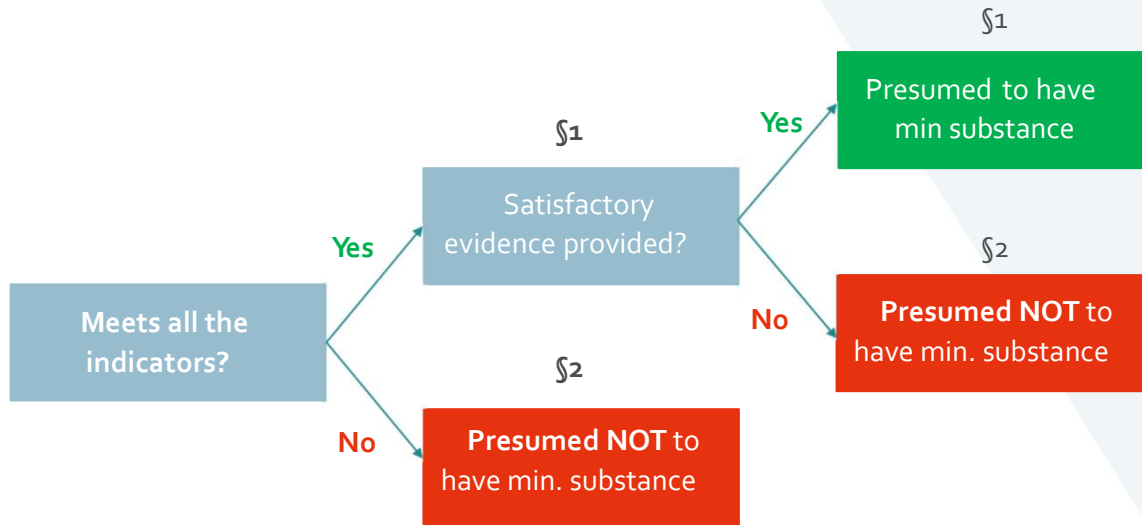
Minimum Substance – Article 7

§1	§2
Self-assessment of minimum substance in tax return (+ additional documentation)	
<p>Minimum substance:</p> <p>a) Own premises / exclusive use</p> <p>b) Own active bank account within EU</p> <p>c) EITHER: at least one director OR the majority of full-time employees who are qualified to take decisions about/ carry out the activities concerning the relevant income are resident for tax purposes in the MS of the undertaking or at a distance compatible with the fulfillment of their duties</p>	<p>Documentation:</p> <p>(a) address and type of premises;</p> <p>(b) amount of gross revenue and type thereof;</p> <p>(c) amount of business expenses and type thereof;</p> <p>(d) type of business activities performed to generate the relevant income;</p> <p>(e) the number of directors;</p> <p>(f) outsourced business activities;</p> <p>(g) Bank account number, mandates, evidence of the account’s activity</p>

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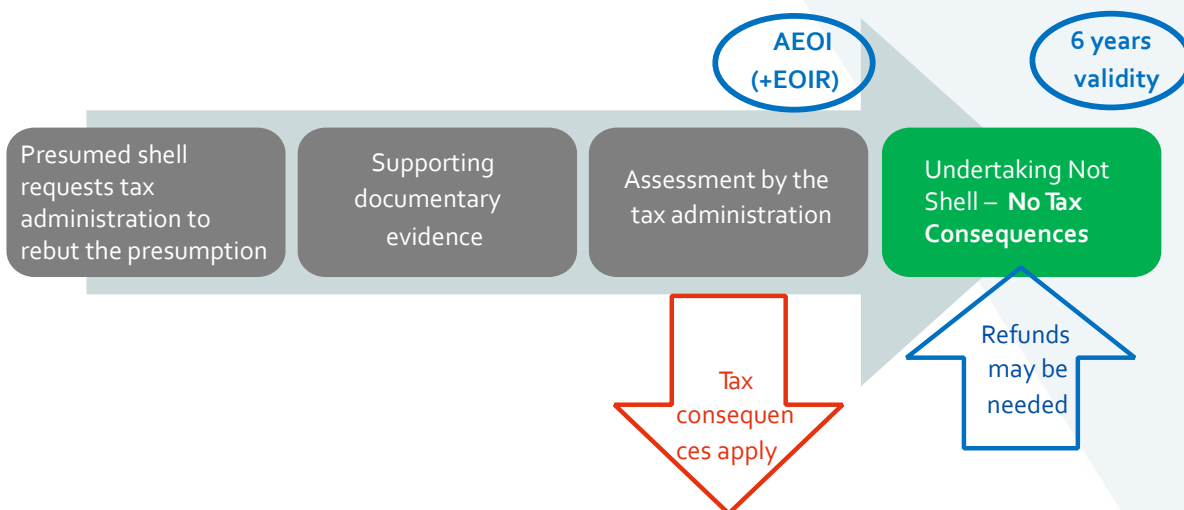
Presumption of minimum substance - Article 8



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Rebuttal of presumption (of lacking substance) - Article 9



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Documentation for the rebuttal – Article 9

Documentation on the **commercial rationale** for the company's establishment

Information about the **employees** (qualifications, experience, powers, role in the company, contract, duration)

Decision-making in the MS of the undertaking

„has performed and continuously had control over, and borne the risks of, the business activities that generated the relevant income / the relevant assets“

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Exemption - Article 10

Reporting undertaking requests the tax administration to exempt it from reporting

Supporting documentary evidence

No tax benefit for BO / group because of undertaking's interposition

Undertaking **does not need to report**

AEOI
(+EOIR)

6 years
validity

Before reporting

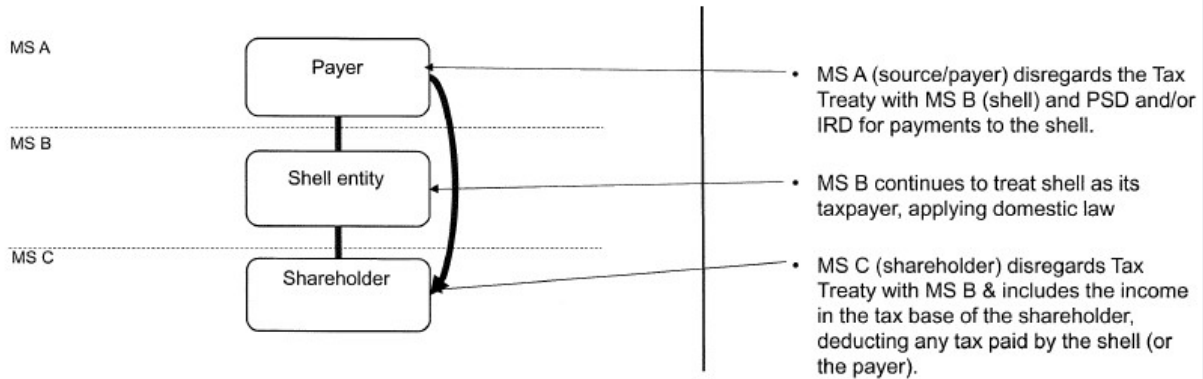
Assessment by the tax administration

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Tax consequences (1) - Article 11

Example intra-EU: EU payer – EU shell – EU shareholder

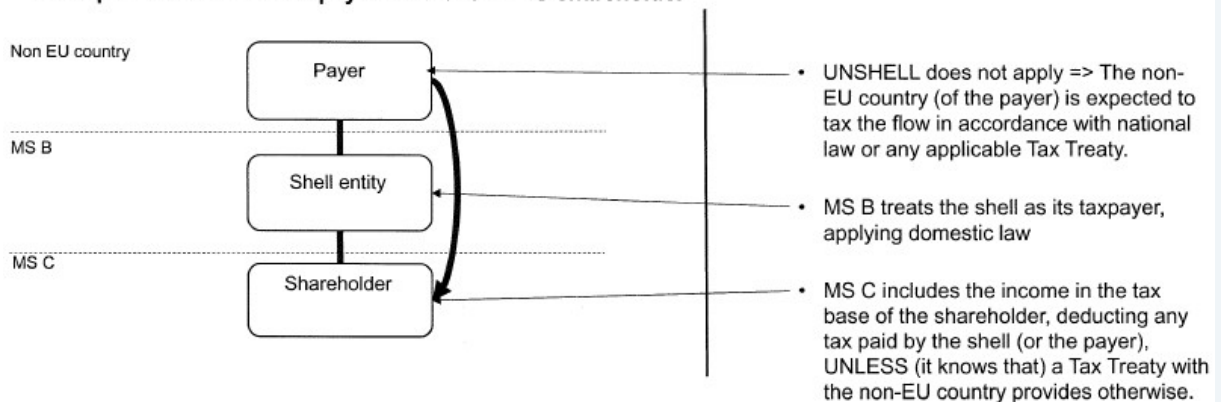


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Tax consequences (2) - Article 11

Example non-EU: Non-EU payer – EU shell – EU shareholder

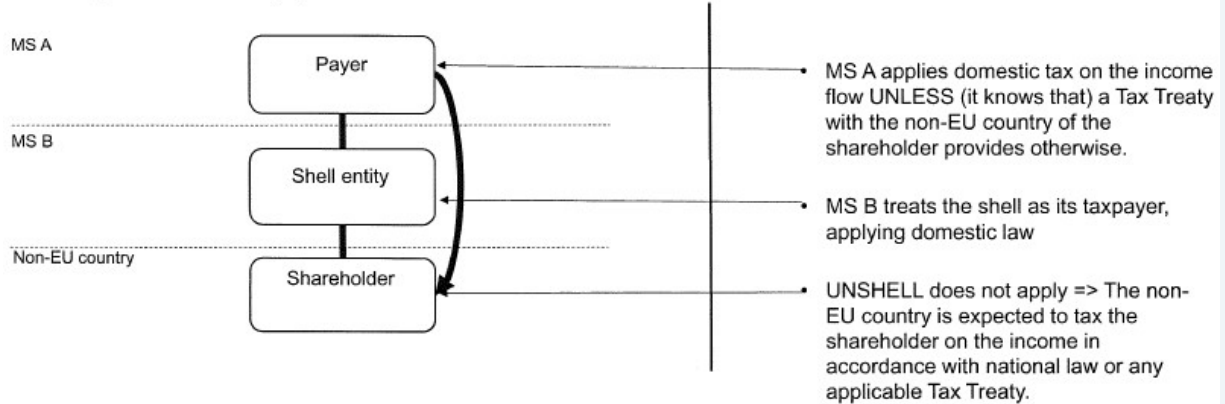


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Tax consequences (3) - Article 11

Example non-EU: EU payer – EU shell – Non-EU shareholder



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Tax consequences (4) – Article 12

MS of the undertaking:

- Does not grant certificate of residence **OR**
- Grants certificate of residence which specifies that entity is not entitled to treaty benefits

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EOI & Administrative cooperation – Articles 13-15

- **Article 13:**
 - **Reporting situations** (deadline **30 days**):
 - Regular reporting under **Article 7**
 - Successful rebuttal of presumption under **Article 9**
 - Granting of exemption under **Article 10**
 - **Audit** leading to the conclusion that **Article 7** indicators are not met
 - Information stored in Central Depository (DAC3 + DAC6) → can be accessed by all MS
- **Article 14: sanctions**
- **Article 15:** MS of undertaking may be **requested to carry out an audit** of the undertaking
 - Requesting CA assumes Directive is breached
 - Audit must begin within 1 month of request; feedback to requesting CA within one month of the end of the audit

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Thank you for your attention!

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