

DAC6

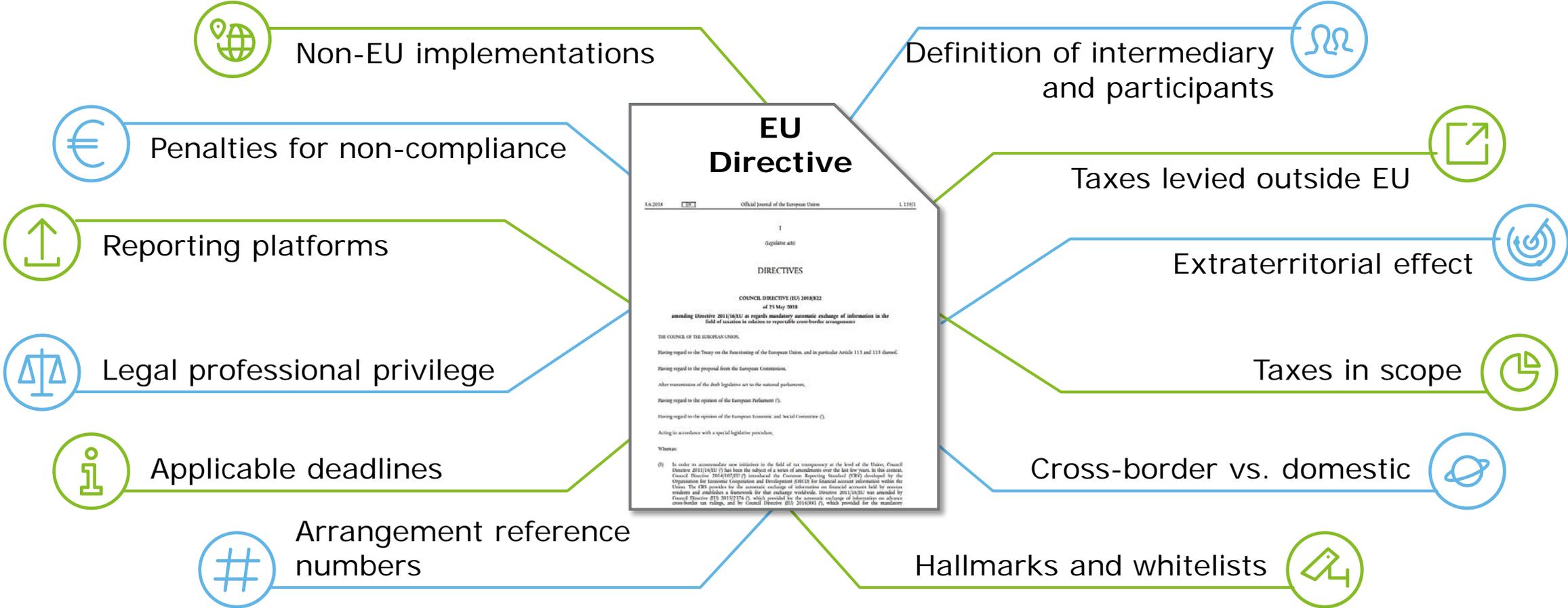
SVA:n seminaari 3.9.2019

Kommenttipuheenvuoro

Virpi Pasanen

Legislative progress

Potential deviations



DAC6 implementation project

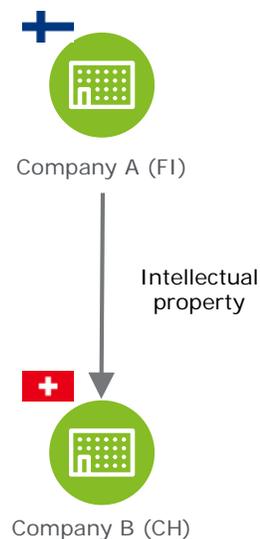
Concept & strategy: Key considerations



Hallmark E.2: Potential use cases for illustration

Transfer of hard-to-value intangibles

Situation sketch



Hallmark

“An arrangement involving the transfer of hard-to-value intangibles. The term “hard-to-value intangibles” covers intangibles or rights in intangibles for which, at the time of their transfer between associated enterprises:

(a) no reliable comparables exist; and

(b) at the time the transaction was entered into, the projections of future cash flows or income expected to be derived from the transferred intangible, or the assumptions used in valuing the intangible are highly uncertain, making it difficult to predict the level of ultimate success of the intangible at the time of the transfer.”

Situation

A Finnish company researches new medication. The development has not yet been completed and no products have been registered. The Intellectual Property is transferred to a sister company in Switzerland.

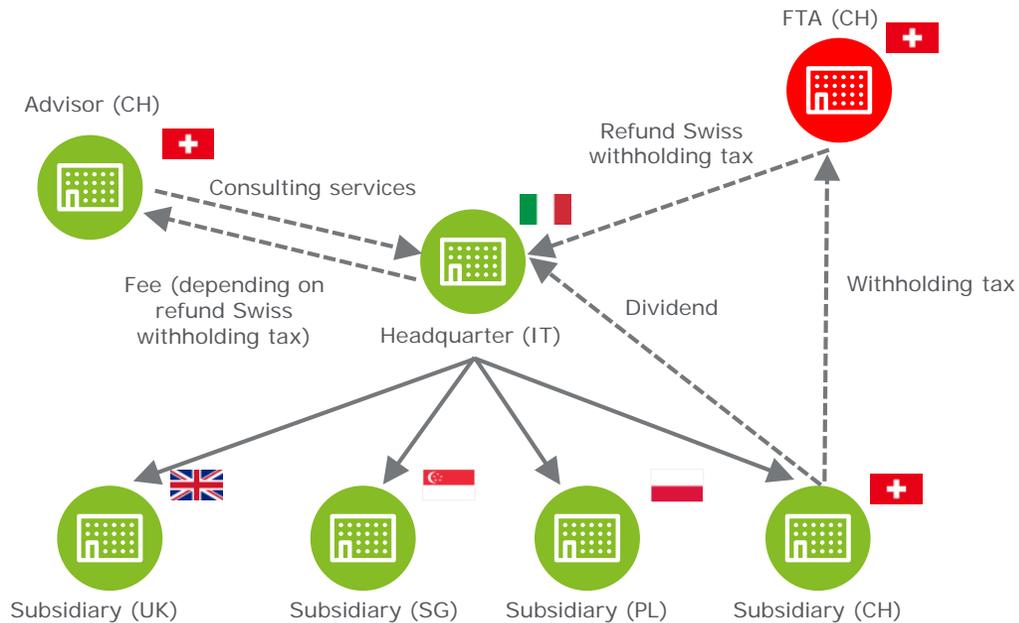
Potential Impact

- Transaction likely captured by a hallmark
- Hard-to-value intangibles defined according to OECD Action 8
- Practically difficult to determine what a hard-to-value intangible is

Hallmark A.2: Potential use cases for illustration

Contingent fee

Situation sketch



Hallmark

"An arrangement where the intermediary is entitled to receive a fee (or interest, remuneration for finance costs and other charges) for the arrangement and that fee is fixed by reference to:

- (a) the amount of the tax advantage derived from the arrangement; or
- (b) whether or not a tax advantage is actually derived from the arrangement. This would include an obligation on the intermediary to partially or fully refund the fees where the intended tax advantage derived from the arrangement was not partially or fully achieved."

Subject to main benefit test

Situation

Swiss tax advisor X advises a EU group in connection with the refund of withholding tax from Swiss investments. The fee of X is connected to the amount that is refunded.

Potential Impact

- It is questionable whether a tax refund presents a tax benefit and could thus fulfil the main benefit test
- Can a tax advantage automatically be assumed with a contingent fee?
- In any case no EU tax affected and therefore no reporting requirement



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