

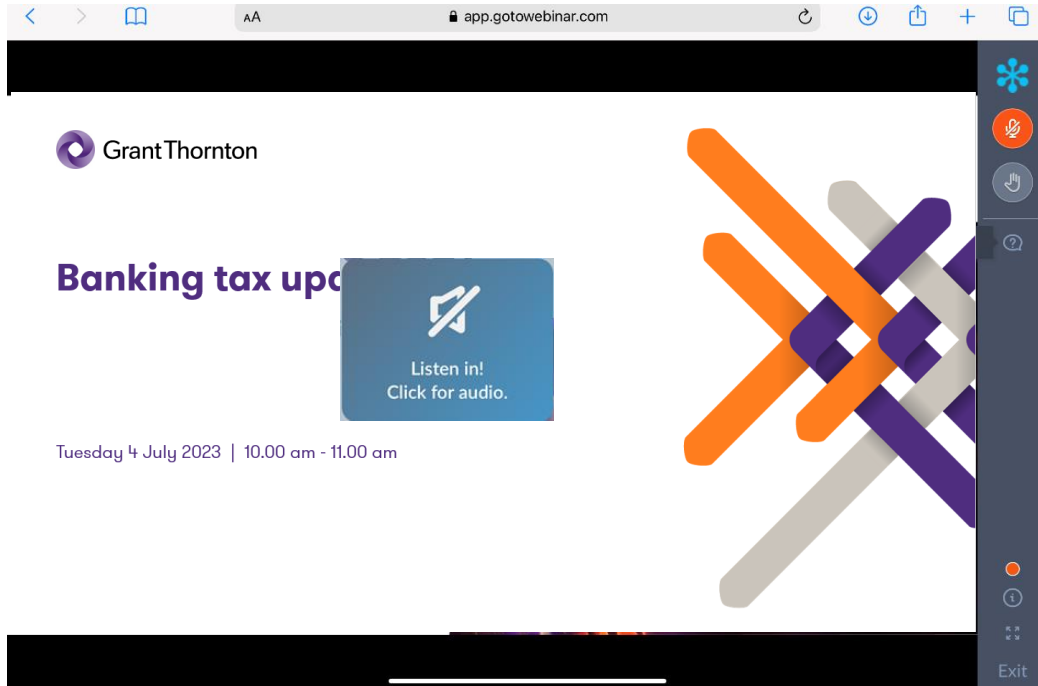


Banking tax update

Tuesday 4 July 2023 | 10.00 am - 11.00 am



GoToWebinar Housekeeping: Attendee Participation



The screenshot shows a web browser window with the URL `app.gotowebinar.com`. The main content area displays the Grant Thornton logo, the title "Banking tax update", and a blue button with a speaker icon and the text "Listen in! Click for audio.". Below the title, it says "Tuesday 4 July 2023 | 10.00 am - 11.00 am". On the right side, there is a vertical controls panel with icons for a snowflake, a microphone, a hand, a question mark, and an "Exit" button at the bottom.

Your Participation

Join audio:

- Click on 'Listen in! Click for audio' in order to join the call.

Submit questions and comments via the controls panel.

Note:

Today's presentation is being recorded and will be provided to all those registered for the event.

GoToWebinar Housekeeping: Time for Questions

The screenshot shows a GoToWebinar interface. On the left, the webinar title is "Banking tax update" by Grant Thornton, dated Tuesday 4 July 2023 | 10.00 am - 11.00 am. On the right, a "Questions" panel is open, showing a "Questions" button and a "Send" button. A purple circle highlights the question icon in the controls panel, which is also pointed to by an arrow from the "Your Participation" box.

Your Participation

- Please continue to submit your text questions and comments using the controls panel.

For more information, please contact FSGEvents@uk.gt.com.

Introduction



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Agenda

1. Interest deductibility for foreign banks operating through UK branch structures – is it time to revisit your CATA calculation?
2. Research & Development tax regime challenges – challenges and opportunities
3. An update on operational tax developments

01

Is it time to revisit your CATA calculation?

Separate enterprise principle

Profits to be attributed are those that the PE would make if it were:

- a separate entity in the UK,
- engaged in the same or similar activities,
- under the same or similar conditions, and
- dealing wholly independently of the non-resident company.

Separate enterprise principle

In arriving at those profits, certain assumptions are required to be made:

- It is put beyond doubt that the PE is to be dealt with on the basis that it has the same credit rating as the company as a whole
- The PE has the equity and loan capital that it would have if it were a separate entity carrying out those activities, under those conditions

HMRC explanation of the requirement for a CATA

Where, however, the UK PE's business is not supported, or is inadequately supported, by capital, the purpose of the legislation is to make an adjustment to the UK tax computation to align the taxable profits more closely with those which would be achieved by similar banking activities carried out by a UK bank in the same or similar circumstances.

To avoid confusion, this tax adjustment is referred to as the **capital attribution tax adjustment**.

The five steps

Step 1

Determine the assets attributable to the PE

Step 2

Risk weight those assets

Step 3

Determine the equity capital that the PE would require if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions

The five steps

Step 4

Determine the loan capital that such an enterprise would have had if it had the equity capital determined under step 3 [INTM267770]

Step 5

Determine the capital attribution tax adjustment to be made, based on the difference between the PE's actual funding costs on the combined amount representing the equity and loan capital determined under steps 3 and 4 and the notional funding costs (which will include a rate of nil in respect of the equity capital) to be taken into account

Alternatives to the five steps

- Use of comparables
- Use of calculations based on funding of the company (e.g. apply the capital ratios of the bank to the PE)

02

**Research & Development tax regime
challenges - challenges and
opportunities**

Changes effective from 1 April 2023



Headline rate changes

The gross RDEC rate will be increasing while the R&D tax relief rates for SMEs will be decreasing.



Extension to qualifying expenditure

Data licence and cloud computing services costs will become eligible cost categories with pure mathematics to be considered as a field of science.



Restriction to overseas activities

Expenditure on payments to subcontractors, externally provided workers and contributions to independent research will need to be UK expenditure or qualifying overseas expenditure.



Administrative changes

To minimise fraudulent claims, there will be a number of administrative changes introduced e.g., pre-notification of claims, along with the requirement to provide additional claim information through a prescribed form.

Headline rate changes

For expenditure incurred on or after 1 April 2023:

RDEC:

The gross RDEC rate will **increase from 13% to 20%**.

This will increase the net tax benefit for RDEC claimants to 15% from 10.53%.

This is based on the corporation tax main rate of 25% being applicable to the claimant company from 1 April 2023.

SME:

The R&D tax relief (additional deduction) for SMEs will decrease from 130% to 86%.

The SME payable credit rate which can be claimed for surrenderable losses will be decreased from 14.5% to 10% for most companies, however “R&D intensive” SMEs can claim a credit of 14.5%.

This will reduce the maximum payable credit for loss-making SMEs from 33.35% to 18.6% or 27% for “R&D intensive” SMEs.

Extension to qualifying expenditure

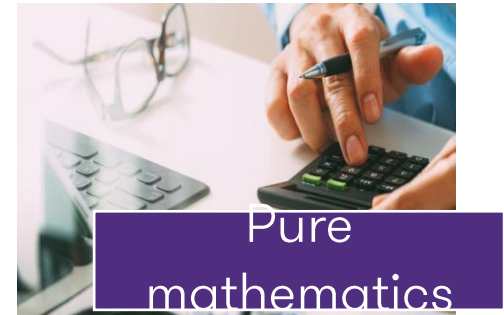
For accounting periods starting on or after 1 April 2023:



Some exclusions will apply to prevent R&D relief being claimed on recoupable costs, for example:

- if a business has a contractual right to sell data onwards and the initial inputs can still be identified.
- if the business has a contractual right to publish, share or otherwise communicate data with a third party, unless the communications are reasonably necessary for, or incidental to, the relevant R&D.
- qualifying indirect activities in relation to data licence and cloud computing services costs will be ineligible.

The DSIT guidelines were previously unclear whether activities relating to pure mathematics met the definition of R&D for tax purposes. The guidelines will now be updated to make it clear that pure mathematics does constitute a field of science.



Restriction to overseas activities

For **accounting periods starting** on or after 1 April 2024, expenditure on payments to subcontractors, EPWs and contributions to independent research will need to be UK expenditure or qualifying overseas expenditure (QOA). Prior to the 2023 Spring statement, the relevant date had been 1 April 2023.

QOA is qualifying expenditure on R&D undertaken outside of the UK.

Conditions for QOA to apply:

1. Conditions necessary for the R&D are not present in the UK.
2. Conditions are present in the location where the R&D is undertaken.
3. It would be 'wholly unreasonable' to replicate the conditions in the UK.

Examples of this may include:

- Geographical reasons such as deep ocean research or the study of active volcanoes.
- Legal and regulatory exemptions e.g. if clinical trials are not available in UK.
- The existence of laboratory facilities overseas which do not exist in the UK, where it would not be reasonable for the claimant to build such a facility in the UK.
- Conditions relating to cost or the availability of workers are specifically excluded.

Additional Information Form



All R&D claims submitted on or after 1 August 2023, including amended tax returns, will require an Additional Information Form to be submitted to be valid.

The final form is not yet available however examples of additional information that will need to be provided are expected to include:

- How costs are split between qualifying categories
- Amount of the above that is Qualifying Indirect Activities (QIAs)
- Amount of expenditure incurred on each project
- Technical details for up to ten projects
- Details of any agent who has advised the company on its R&D claim

Pre-Notification of claims



- A Claim Notification form will need to be submitted for **first time claimants** or **R&D claimants who have not made an R&D claim/claim notification in the previous three years** for an R&D claim to be valid.
- The earliest date that a Claim Notification form can be submitted is the first day of the accounting period to which the claim relates and the latest date is 6 months after the accounting period to which the claim relates.
- If an R&D claim is submitted before the 6 month Claim Notification deadline, the company will not have to submit a Claim Notification form.

Potential upcoming changes in 2024



On 13 January 2023, the Government launched a consultation to simplify the UK's R&D tax regime, drive innovation and grow the economy. The consultation closed on 13 March 2023 and effectively sets out proposals on how the two R&D schemes currently in place could be replaced by one single RDEC-style scheme for accounting periods starting on or after 1 April 2024. No final decision has been taken on whether a new single regime will be introduced but the Government maintains the option of introducing a new single regime from 1 April 2024.

Planning ahead

- Review your data and identify costs that will be eligible or potentially excluded. HMRC expect to see qualifying costs split by project
- Overseas R&D workers – Although effective from 1 April 2024, start to model the changes now to better predict future cashflow impact
- What sort of documentation is kept on file to substantiate the claims. The AIF now requires companies to write up to 10 project narratives per claimant entity
- Have you considered moving to real-time reporting and does your current data capture process enable you to achieve this?



03

An update on operational tax developments

Agenda

- 1 Proposed changes to the German withholding tax reclaim procedure
- 2 EU FASTER proposal and its impact
- 3 New QI Agreement
- 4 Information Reporting – change of pace?

German WHT Tax reclaims – New electronic reclaims (1 /2)

New Electronic Reclaims (as of 1 January 2023) – Key Facts

Web-based online form

Available within the Elster BOP (Federal Tax Office) and Elster (Local tax offices) online portal

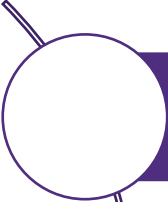
Registration requirements, i.e., (i) pre-registration with Federal Tax Office and (ii) registration with Elster BOP

Also for filings of reclaims under PoA by e.g., foreign banks, German banks, German tax advisors etc.

New reclaim form

- Completely manually process (no upload function for claimants' information or dividend information) **(Cons)**
- If filed by representative (e.g. foreign bank) under PoA – no signing by claimant or co-signing possible **(Cons)**
- Increased liability risks for foreign banks filing as representative under PoA? – Possible mitigation measures? **(to do)**
- Attachments (e.g., CoR, German tax voucher) can be uploaded, originals only requested upon occasion **(Pro)**
- Text box for additional disclosures, large number of attachments possible (e.g. for additional disclosures) **(Pro)**
- Each reclaim is attributed a filing number/report, which services as confirmation of receipt and permits to locate the reclaim within the Federal Tax Office **(Pro)**
- Process not suitable for large volume of reclaims (Cons – but process automatization seems feasible)

German WHT Tax reclaims – New electronic reclaims (2 /2)



Information has become available in English language on the website of the Federal Tax Office
(including registration checklist, leaflet, etc.)



Link to the website:

- https://online.portal.bzst.de/auth/realms/BOP-neu/protocol/openid-connect/auth?response_type=code&scope=openid&client_id=post&state=vOIYOXmq82vOJFLRfMjLFE PqzOA&redirect_uri=https%3A%2F%2Fonline.portal.bzst.de%2Foauth2%2Fcallback&nonce=SC4GxyV2DiSTm1iO4l4sZ4U2jpt00M_eSalxLJQnEtA



Since April 2023 the new electronic reclaim form has also become available in English language

New rules on the withholding tax procedures in the EU

Press release 19th June 2023

Key actions proposed on 19th June 2023 (starting 1 January 2027):

Common EU digital tax residence certificate

- will make withholding tax relief procedures faster and more efficient. For example, investors with a diversified portfolio in the EU will need only one digital tax residence certificate to reclaim several refunds during the same calendar year. The digital tax residence certificate should be issued within one working day after the submission of a request. At present, most Member States still rely on paper-based procedures.

Two fast-track procedures complementing the existing standard refund procedure:

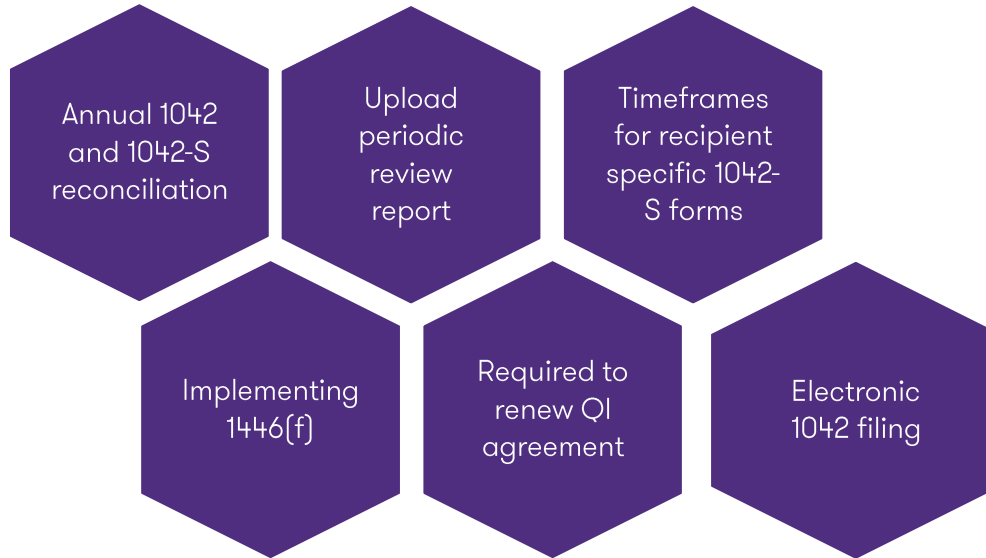
- a “relief at source” procedure and a “quick refund” system, which will make the relief process faster and more harmonised across the EU. Member States will be able to choose which one to use – including a combination of both.
- Under the “**relief at source**” procedure, the tax rate applied at the time of payment of dividends or interest is directly based on the applicable rules of the double taxation treaty provisions.
- Under the “**quick refund**” procedure, the initial payment is made taking into account the withholding tax rate of the Member State where the dividends or interest is paid, but the refund for any overpaid taxes is granted within 50 days from the date of payment.

Standardised reporting obligation

- Certified financial intermediaries will have to report the payment of dividends or interest to the relevant tax administration so that the latter can trace the transaction.
- In particular, large EU financial intermediaries will be required to join a national register of certified financial intermediaries.
- This register will also be open to non-EU and smaller EU financial intermediaries on a voluntary basis.
- Taxpayers investing in the EU through certified financial intermediaries will benefit from fast-track withholding tax procedures and avoid double taxation on dividend payments.

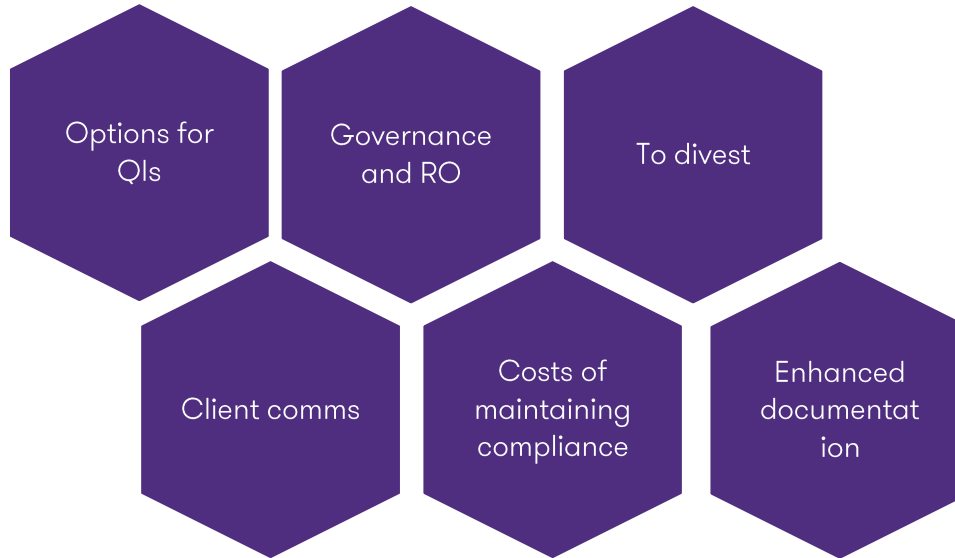
New qualified intermediary (QI) agreement

Key changes:

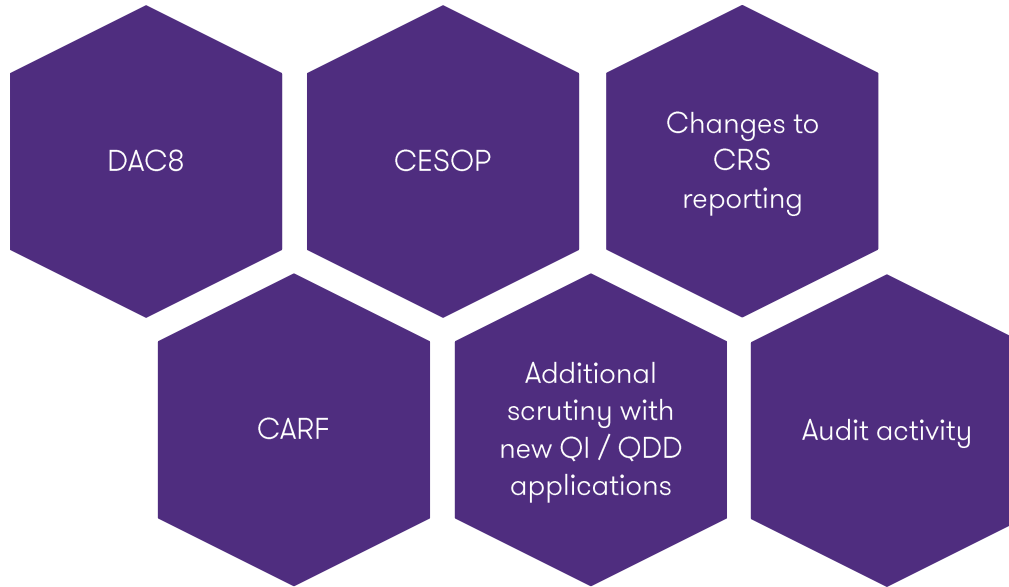


New qualified intermediary (QI) agreement and 1446(f) withholding

Practical considerations:



Information reporting – change of pace?



CESOP

- Central Electronic System of Payment Information
- Extension of the EU VAT directive to clamp down on avoidance
- Start date 1 January 2024 with quarterly reporting (first reports due by 30 April 2024)
- Impact on payment service providers under PSD2
- Monitoring beneficiaries where more than 25 cross border payments per quarter (and where beneficiary EU / non-EU)
- What is a cross border payment?
- Detailed data elements for reporting
- Status of implementing legislation / guidance and penalty regimes vary across EU
- Interaction with GDPR

CESOP will require payment service providers to:

- Undertake impact assessments to review systems to determine impacted payments
- Assess reporting requirements
- Determine how to file XML returns across different EU jurisdictions
- Retain information for at least 3 years
- Obtain assurance that they have implemented appropriately

Amendments to CRS

- Scoping in of new digital financial products including Central Bank Digital Currencies (CBDC) and Specified Electronic Money Products (SEMP)
- Changes in definitions of financial institution and financial asset
 - Depository institution / investment entity
 - References to Crypto-assets
- Expansion of reporting requirements in respect of Account Holders, Controlling Persons and Financial Accounts
 - Role of controlling person
 - Whether an account is new or pre-existing
 - Whether a valid self-certification has been obtained
 - Type of financial account
- Qualification of certain capital contribution accounts as Excluded Accounts
- CRS now contains an optional new Non-Reporting FI category for genuine Non-Profit Entities

Interaction between the CARF and the CRS

The CARF and CRS are separate reporting regimes that have some overlap for entities that have reporting obligations under both of the regimes. To address the overlap, the CARF has made the following allowances:

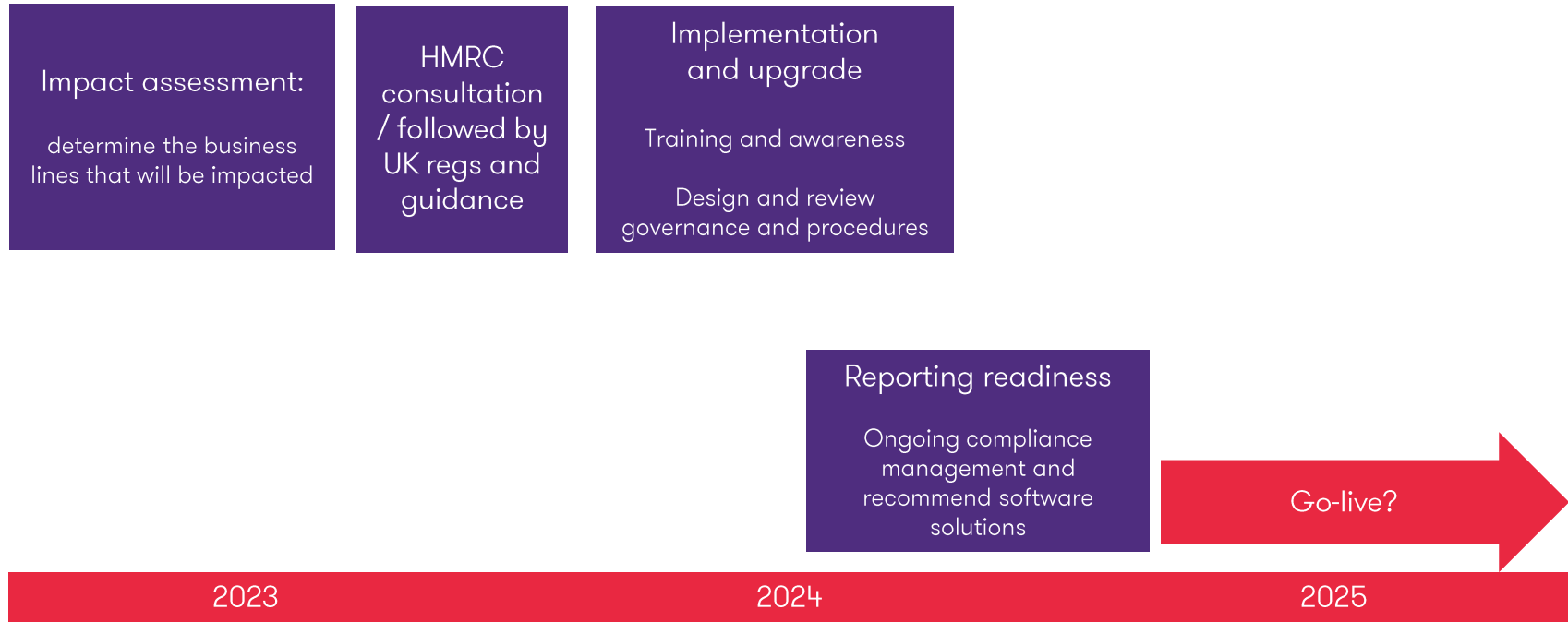
CARF

- Specified Electronic Money Products¹ and Central Bank Digital Currencies have been excluded under CARF as these products are reportable under the CRS
- Assets reportable under both the CARF and CRS such as **shares in crypto form**, can be reported under the CARF only at the discretion of the Reporting Crypto-Asset Service Providers/Reporting financial institution (*jurisdiction-specific guidance will provide greater clarity*).
- Indirect investments in Relevant Crypto-Assets through traditional financial products, such as **derivatives or interests in investment vehicles**, are covered by the CRS
- An Intermediary can rely on the **CRS New Accounts due diligence procedures** for the CARF

CRS

1. a) a digital representation of a single Fiat Currency; b) issued on receipt of funds for the purpose of making payment transactions; c) represented by a claim on the issuer denominated in the same Fiat Currency; d) accepted in payment by a natural or legal person other than the issuer; and e) by virtue of regulatory requirements to which the issuer is subject, redeemable at any time and at par value for the same Fiat Currency upon request of the holder of the product

Determine Impact – manage tax risk and protect reputation



DAC 8

- ECOFIN reached agreement on final text 16 May 2023
- Expected to receive final EU Parliament approval July 2023
- Envisaged start date 1 January 2026
- Expected that DAC8 will mirror CARF on key definitions so broad alignment
- Other areas addressed around penalties and use of cross border tax rulings

DAC8 will:

- Introduce uniform disclosure requirements for e-money and crypto intermediaries;
- Introduce significant information gathering requirements for intermediaries;
- Impose obligations on intermediaries to obtain tax data and to file returns containing details of their customers' acquisitions, disposals and income earned during a period

Questions?



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