



Operational taxes update

Wednesday 28 June 2023 | 10.00 am - 11.00 am



Introduction



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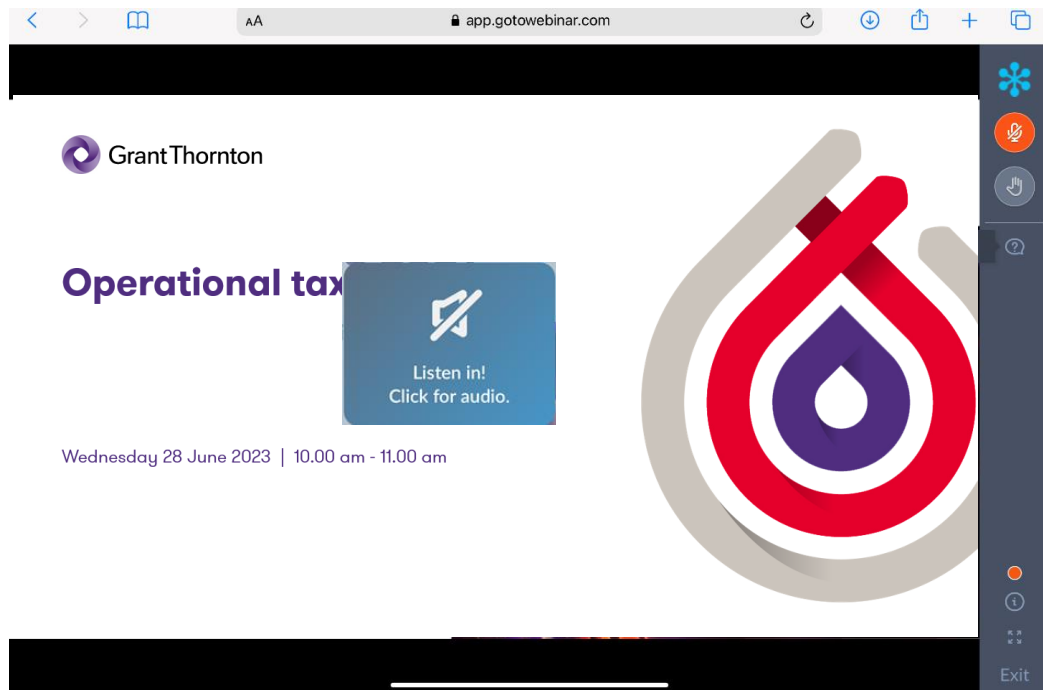


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GoToWebinar Housekeeping: Attendee Participation



The screenshot shows a web browser window with the URL `app.gotowebinar.com`. The main content area displays the Grant Thornton logo, the title "Operational tax", and a blue button with a speaker icon and the text "Listen in! Click for audio.". Below the button, it says "Wednesday 28 June 2023 | 10.00 am - 11.00 am". A large, stylized logo consisting of a red teardrop shape with a purple center is on the right. A dark sidebar on the right contains various icons for audio, chat, and help, and an "Exit" button at the bottom.

Your Participation

Join audio:

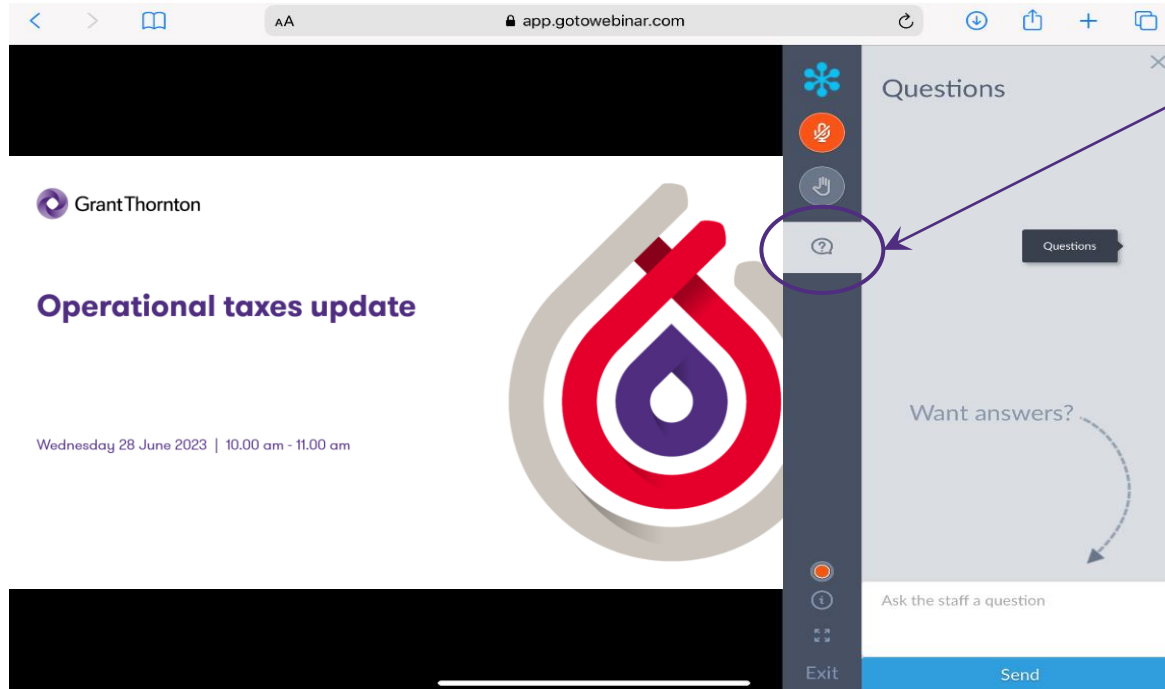
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Submit questions and comments via the controls panel.

Note:

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

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Your Participation

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

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

Agenda

- 1 Proposed changes to the German withholding tax reclaim procedure
- 2 EU FASTER proposal and its impact
- 3 Current developments on cum/ex
- 4 New QI Agreement including 1446(f)
- 5 Crypto Asset Reporting Framework (CARF)
Upcoming changes to the Common Reporting Standard (CRS)
New EU directives – DAC8 and CESOP

01

Proposed changes to the German withholding tax
reclaim procedure

German WHT Tax reclaims

Climate Talks between Federal Central Tax Office and tax advisors

- Processing time for WHT reclaims significantly increased (cum/ex, lack of staff, new responsibilities)
- Strong increase in number of reclaims filed (+ 30 % y/y) – due to phase-out of paper reclaims
- Reclaims strictly processed according to date of receipts/no shortcut for simple cases
- Questions regarding the status of reclaims will not be answered for the time being

German WHT Tax reclaims – Type of reclaims

Type of reclaims (legal basis)

Double income tax treaty reclaim (SOL 4 years after calendar year-end)

- Standard reclaims (residual rate 15 %)
- Reclaims to < 15 % residual rate (e.g. certain pensions, substantial shareholdings)
- Additional requirements (e.g. 45-days minimum holding period requirement, minimum-risk-bearing requirement etc.)

German domestic tax law reclaim, Para. 44a sect. 9 ITA (SOL 4 years after calendar year-end)

- Residual rate of 15.825 %
- For all (from a German tax point of view) opaque entities (except investment funds) irrespective of treaty eligibility

German Investment Tax Act Reclaim, Para. 11 GITA (SOL 2 years after business year-end)

- Residual rate of 15 %
- For all UCITS and corporate/contractual (i.e., non-partnership) type AIFs in terms of EU-AIFMD
- Relief-at-source in the case „investment fund status certificate“ is provided through custody chain to German paying agent/separation of investment funds in own omnibus account

Other reclaims EU law reclaims, reclaims/RAS under Euparent subsidiary directive

German WHT Tax reclaims – Type of reclaims (cont'd)

Type of reclaims (technical requirements)

Double income tax treaty reclaim (SOL 4 years after calendar year-end)

- Applicable until 31 December 2024
- Mass reclaims, limited scope since 1 January 2022 (e.g. max. EUR 10.000 reclaim amount per dividend, etc.)
- Not applicable for (i) investment funds in terms of Investment Tax Act, (ii) relief to < 15 % standard treaty rate, (iii) partnerships
- Pros: Quick refund
- Cons: Liability risks

Paper based reclaims (DTT reclaims, German domestic tax law reclaims)

- Official forms to be used (two forms i.e. (i) for standard reclaims (010005) and (ii) for reclaims to < 15 % residual rate (010004), to be filed as wet ink copies including attachments (e.g. CoR, German tax vouchers, etc.)
- Phased-out until 30 June 2023 (30th September 2023 for 2019 reclaims) – banking associations lobbying for prolongation
- NB: German Investment Tax Act Reclaims, Para. 11 GITA (form 034268) remain paper based

New: Electronic Reclaims (as of 1 January 2023) – obligatory as of 1 July 2023 (as of 1 October 2023 for 2019 reclaims)

New: Implementation of new electronic mass reclaim interface (applicable as of ???)

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

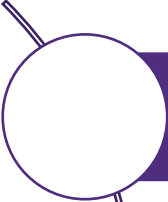
Registration requirements, i.e., (i) pre-registration with Federal Tax Office and (ii) registration with Elster BOP

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

02

EU FASTER proposal and its impact

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 2017):

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.

Conclusions

- ▶ Impact on the revised German WHT Tax reclaim system – New electronic reclaims
- ▶ FASTER will trigger huge bureaucratic effort and massive costs at the time of introduction
- ▶ The planned system is basically comparable to the German system. Distinction between exemption from withholding tax and refund.
- ▶ But: Many follow-up questions
- ▶ Why a new system? All problems could be solved by introducing a final withholding tax on income (dividend and capital gains) on free float (<10%) for corporations domiciled in Germany and abroad at a rate of 15% (plus solidarity surcharge, 15.825%, if assessed in Germany) in accordance with European law.

03

Current developments on cum/ex

What's on the news



Bloomberg.com


German Lawyer Berger Gets Second Conviction in Tax Scandal Probe

Hanno Berger, a German lawyer dubbed the "mastermind" of Cum-EX, received a second conviction for his part in a tax scandal that's robbed...

2 weeks ago

June 13, 2023, 1:27 PM

Natisx's German Offices Raided in Sprawling Cum-Ex Tax Probe

 **Karin Matussek**
Bloomberg News

Natisx SA's offices in Frankfurt and Munich were raided as part of the sprawling German probe into the Cum-Ex tax dividend scandal that's ensnared many of the world's top banks.

Cologne-based prosecutors said on Tuesday they are searching offices of a French lender without disclosing the name. The step is part of a probe into four employees and have also raided homes of suspects. About 60 law-enforcement officers are involved. The searches targeted Natisx, according to people familiar with the matter.

Natisx's press offices didn't immediately reply to calls and an email seeking comment.

June 13, 2023, 2:23 PM

UK Trader Extradited to Denmark in \$50 Million Cum-Ex Tax Case

 **Christian Wienberg**
Bloomberg News

Denmark's police said a UK trader has been extradited to the Nordic country from Belgium to face tax fraud charges as part of its Cum-Ex dividend prosecution.

The 53-year-old man, who wasn't identified in line with Danish rules, will be charged with defrauding Denmark out of about 320 million kroner (\$46.3 million), prosecutors said in a statement on Tuesday.

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Ex-Warburg Chair's Cum-Ex Trial To Begin Sept. 18

By **Todd Buell** · May 23, 2023, 11:00 AM EDT

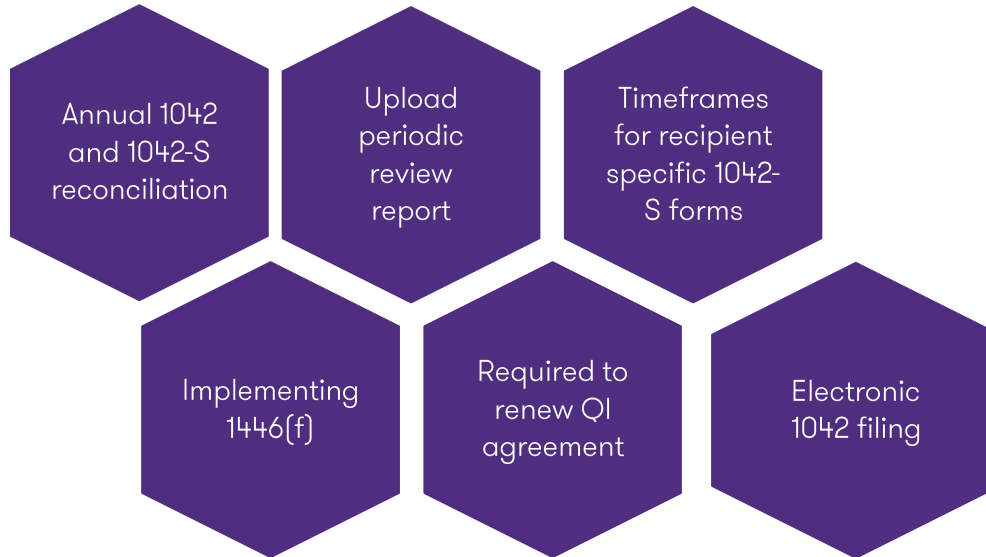
The trial of the former chairman of Germany's Warburg bank on charges of tax evasion linked to trading activity known as cum-ex is scheduled to begin on Sept. 18, a spokesman...

04

New QI Agreement and 1446(f)

New qualified intermediary (QI) agreement

Key changes:



1446(f) withholding

Under section 1446, a QI can assume the following status (or alternatively be treated as an NQI):

Non-withholding and non-disclosing QI

- QI appoints a primary withholding agent for 1446 purposes.
- Primary withholding agent issues Form 1042 to QI
- QI reports Form 1042-S on pool basis
- Collective refund unavailable to QI
- QI to report as a nominee as per the requirements of 1.1603(c)-1T

Withholding and non-disclosing QI

- QI has assumed primary 1446 withholding
- QI reports Form 1042-S on pool basis
- B/O can request a specific Form 1042-S
- Collective refund unavailable to QI
- QI to report as a nominee as per the requirements of 1.1603(c)-1T
- Gross reporting on Form 1042-S issued by custodian

Non-withholding and disclosing QI

- Primary withholding agent assumes section 1446 withholding and reporting responsibilities
- Primary withholding agent discloses the beneficial owner on Form 1042-S
- QI to report as a nominee

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

Key requirements

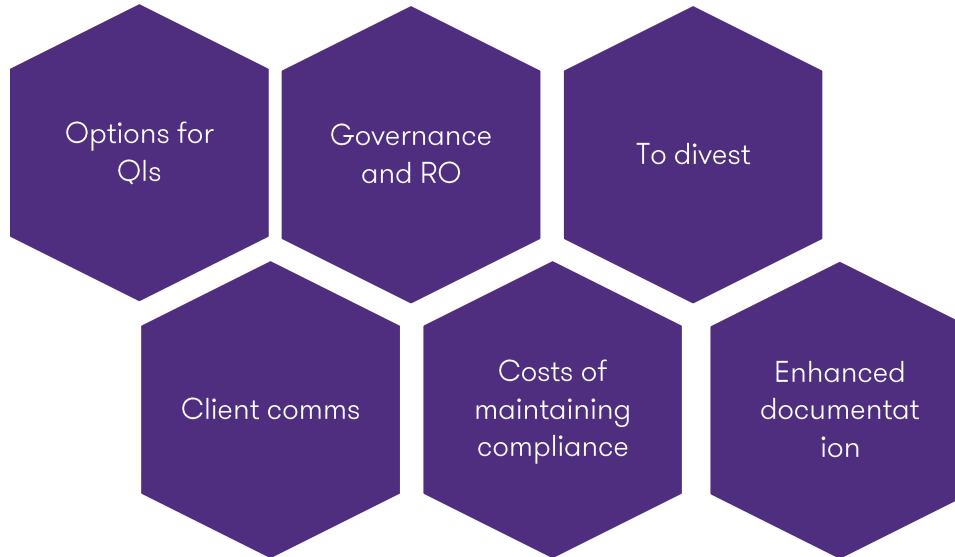
- Requirement to withhold 10% on amount realised from transfer of publicly traded partnership (“PTP”) for non-U.S. Persons effective from 1 January 2023
- Applies to both U.S. and foreign PTPs

Key changes since the issuance of the new QI Agreement

- Best efforts basis to obtain the US TIN
- Notice 2023-8 – where entities are organised outside of the US and trade only on a non-US stock market, the broker may presume the entity is not a PTP for US tax purposes. Hence no requirement to withhold under 1446(f)

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

Practical considerations:



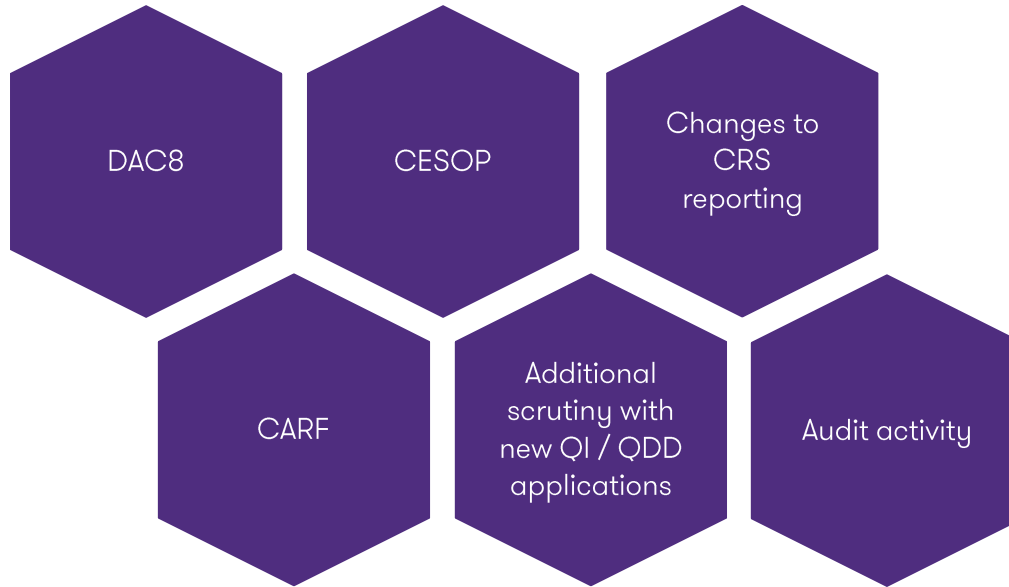
05

Crypto Asset Reporting Framework (CARF)

Upcoming changes to the Common Reporting Standard (CRS)

New EU directives – DAC8 and CESOP

Information reporting – change of pace?



CARF – Rules and Commentary

The rules and commentary have been designed around four key building blocks:

Scope of Crypto-Assets

Entities and individuals are subject to data collection and reporting requirements

Transactions subject to reporting, as well as the information to be reported in respect of such transactions

Due diligence procedures to identify Crypto-Asset Users and Controlling Persons and to determine the relevant tax jurisdictions for reporting and exchange purposes.

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:

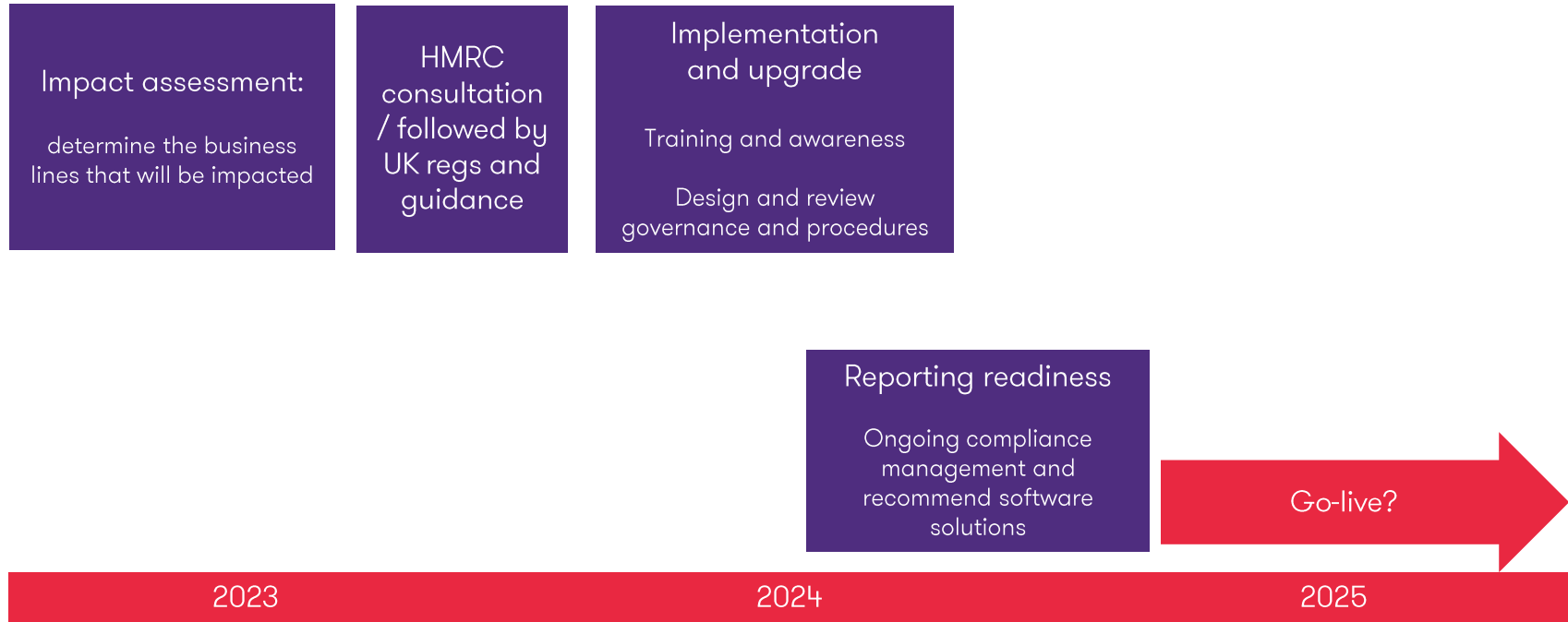
CARF

- 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



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

Determine Impact – Manage tax risk and protect reputation

Consultation on amendments to CRS envisaged later in 2023

RFIs to conduct impact assessment across all product lines and business especially from a crypto-assets perspective

2023

RFIs to build systems to implement CRS changes

Considering new reporting formats – new XML schema and new fields to be reported

Increased focus on quality of data and retrieval methods during reporting – potential tags in system to ensure all additional fields are being captured.

Renew efforts to obtain self-certifications

2024

HMRC committed to implementing rules

RFIs cannot ignore changes in CRS

Prepare for increased scrutiny on compliance by HMRC

2025 / 2026?

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

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

Questions?



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