

Step 1: Is the new entity carved-out by the Directive?

- Listed on a regulated market or MTF; or
- Regulated financial undertakings (e.g. securitisation, UCITS, AIFM, credit institution; or
- Certain holding companies with no/limited cross-border elements

Step 2: Does the entity pass ALL the 'gateway tests'?

- More than 65% of the entity's income over the two preceeding years qualifies as 'relevant income' or more than 65% of the assets consists of real estate or other valueable property; and
- More than 55% of the entity's income is earned through cross border transactions or more than 55% of immovable property and other valueable property is held outside the member state; and
- Outsourced day-to-day administration and decision making to a third party.

No

Not in
scope of
Directive

Not
"at risk"

Yes
Minimum
substance

Yes

Step 3: Can the entity report specific information in it's tax return?

This will include whether it has:

- Exclusive or shared premises with non-group entity
- Own active bank account
- Adequate nexus to the Member State of claimed residency

No

Step 4: Can the entity report specific information in it's tax return?

Providing additional supporting evidence of business activities performed.
A successful rebuttal is valid for up to 6 years.

Yes
Not a shell

Yes

No

Step 5: Can the entity request an exemption?

Must prove that the existence of the 'shell' does not reduce the tax liability of its beneficial owners and of the group as a whole.

The entity is considered a shell

If the entity is considered a shell it may be subject to consequences including:

- Denial of double tax treaty benefits, the Parent-Subsidiy directive and the Interest and Royalties Directive
- Denial of tax residence certification
- Information shared under the exchange of information process
- Fines of at least 2% of the entity's annual revenue

No

No adverse
tax consequences