European Banking Authority

PEER REVIEW

TAX INTEGRITY AND DIVIDEND ARBITRAGE SCHEMES

EBA/REP/2025/05 FEBRUARY 2025

List of abbreviations

ACPR	Autorité de Contrôle Prudentiel et de Résolution
AEAT	Spanish Tax Administration Agency
AML/CFT	Anti-money laundering and countering the financing of terrorism
BaFin	Bundesanstalt für Finanzdienstleistungsaufsicht
BCR	Behavioural and Cultural Risk
BdE	Banco de España
CA	Competent authority
CI	Credit institution
CBI	Central Bank of Ireland
CDD	Customer due diligence
CF	Controlled function
CNMV	Spanish National Securities Market Commission
COLB	Conseil d'Orientation de la LCB-FT
CPBCIM	Comisión de Prevención del Blanqueo de Capitales e Infracciones Monetarias
CRS	Common Reporting Standard
DNB	De Nederlandsche Bank
DFSA	Danish Financial Supervisory Authority
DGSFP	Spanish Directorate General of Insurance and Pension Funds
ESMA	European Securities and Markets Authority
FEC	Dutch Financial Expertise Centre
F&P	Fit and proper assessment
FTE	Full-time equivalent
FIU	Financial intelligence unit
JST	Joint supervisory team

KFH	Key function holder
KWG	German Banking Act
LSI	Less significant (credit) institution
MB	Management body
NCA	National competent authority
NRA	National ML/FT risk assessment
ODD	Ongoing due diligence
ODIN	Danish platform on information on economic crime
PPP	Private public partnership
RA	Risk assessment
PRC	Peer Review Committee
P&L	Profit and loss
SAQ	Self-assessment questionnaire
SAR	Suspicious Activity Report
SEPBLAC	Spanish Financial Intelligence Unit
SI	Significant (credit) institution
SSM	Single Supervisory Mechanism
Skatteforvaltningen	Danish Customs and Tax Administration
SRA	Sectoral risk assessment
SREP	Supervisory review and evaluation process
STR	Suspicious Transaction Report
ToR	Terms of reference
UBO	Ultimate beneficial owner
VAT	Value added tax

Executive Summary

In April 2020 the European Banking Authority ('EBA') published an action plan on dividend arbitrage trading schemes such as cum-ex and cum-cum schemes. The aim was to enhance the integrity of the EU financial system by clarifying regulatory expectations in this area. In particular, the EBA:

- amended its prudential guidelines on internal governance to ensure that management bodies of credit institutions develop, adopt, adhere to and promote high ethical and professional standards;

- amended its prudential guidelines on the assessment of suitability of members of the management body and key function holders of credit institutions in order to ensure that tax offences are considered in the assessment;

- amended the governance section of its prudential guidelines on the Supervisory Review and Evaluation Process for credit institutions to refer to tax crimes as part of that process;

- amended its guidelines on assessment of ML/TF risk factors to include tax issues as an essential element of country and geographical risks;

- amended its guidelines on risk-based AML/CFT supervision to include additional requirements on how AML/CFT competent authorities should identify, assess and address ML/TF risks associated with tax crimes.

In 2024 the EBA carried out a peer review to assess the effective implementation of these regulatory changes and, in particular, the way that supervisors check compliance by financial institutions with new guidance adopted under the action plan. Competent authorities from six countries were included in the sample. This report sets out the findings of the peer review, focusing on four benchmarks:

- the effectiveness of integration of tax integrity into risk-based AML/CFT supervisory work on credit and financial institutions;

- the effectiveness of integration of tax integrity into sectoral and institution-specific ML/TF risk assessments;

- the effectiveness of arrangements for reviewing the due consideration of tax integrity in institutions' internal governance arrangements;

- the effectiveness of consideration of tax integrity in the assessment of the reputation, honesty and integrity of members of the management body and key function holders.

The changes adopted by the EBA following its action plan clarified that supervisors have responsibility for ensuring that financial institutions have systems and controls in place to manage the risk that they may be involved in tax crime or laundering the proceeds from serious tax crime. Since AML/CFT and prudential supervisors are not responsible for identifying or investigating

individual tax crime cases, this report does not look at or comment on the effectiveness of the overall national frameworks in this regard.

The information available to supervisors in carrying out their work and the way in which they do so can vary according to the national institutional framework, the allocation of responsibilities for tax crime issues within that framework, and the extent of cooperation of other actors. This report does not assess the role of other actors, focusing only on the expectations placed on supervisors under the EU's legislative and regulatory framework, including the guidelines mentioned.

The scope of the peer review is how national supervisors, prudential and AML/CFT alike, integrated tax integrity into their risk-based supervisory work. The focus of the peer review is on tax integrity issues more broadly and is not limited only to dividend arbitrage trading schemes (such as cum-cum or cum-ex schemes), which vary across jurisdictions. The EBA's underlying assumption for the assessment of the peer review's benchmarks was that supervisory actions, and the ensuing supervisory resources, dedicated to tax integrity issues, need to be proportionate to the risk of tax crimes, as assessed by the countries under review.

The peer review found that most of the supervisors reviewed largely or fully applied the benchmarks assessed, hence supervising these areas well overall. However, the detail underlying the assessments revealed some specific areas for improvement and follow-up measures. For example, two supervisors were assessed as only partially applying the expectations concerning supervisory activities covering tax integrity from an AML perspective (Criterion 2 under Benchmark 1), and two as partially applying one of the expectations concerning tax-related information as a source for CA's ML/TF risk assessment supervision (Criterion 4 under benchmark 2).

The EBA's action plan has strengthened supervision, but implementing the follow-up measures described in this report can further build consistency and effectiveness in supervisory outcomes across the EU and help limit the use of the financial system to carry out illegal tax schemes and other tax evasion.

Two years after the publication of a peer review report the EBA is required to prepare a follow up report. In light of the transfer of AML/CFT responsibilities from the EBA to the EU's Anti-Money Laundering Authority at the end of 2025, it will be for AMLA to decide on any follow-up of the implementation of the AML/CFT measures included in the report while the EBA expects to follow up on the remaining prudential measures after two years.

1. Introduction

1.1. Role of peer reviews

One of the EBA's tasks is to conduct peer reviews of the activities of competent authorities (CAs), to further strengthen consistency and effectiveness in supervisory outcomes across the EU.

Peer review reports set out the main findings and conclusions gained from reviewing and comparing the application of certain (parts of) regulations, guidelines or general topics from a number of different CAs one or multiple topics combined. They also identify follow-up measures for CAs that are considered appropriate, proportionate and necessary as a result of the peer review. Follow-up measures are of a general nature and are applicable to all CAs, including those that were not subject to this peer review, unless specified otherwise or not applicable in their jurisdiction (if, for example, the issue analysed does not exist).

1.2. Topic of this peer review

This peer review is performed to assess the effectiveness and degree of supervisory convergence of issues relating to tax integrity and dividend arbitrage trading schemes following the implementation of the EBA's Action plan on dividend arbitrage trading schemes, issued in April 2020.

The peer review aims to assess the steps CAs took to integrate tax integrity considerations (including dividend arbitrage trading schemes such as cum-ex/cum-cum schemes) into their AML/CFT and prudential supervisory work to provide common tools to assess the potential impact on institutions' governance arrangements including the CAs' F&P assessments, to ensure sound risk management, and to take appropriate supervisory measures where weaknesses are identified, in line with the action plan. This includes the assessment of the way CAs verify the compliance by financial institutions with the specific elements identified under the action plan.

The action plan was published following the EBA's assessment of competent authorities' responses to allegations that banks were potentially involved in the abuse of dividend arbitrage trading schemes for tax evasion purposes. It contained 10 specific actions to identify and mitigate risks arising from dividend arbitrage trading schemes going forward, looking at the latter from a prudential, AML/CFT and conduct perspective.

The peer review focuses on the provisions, on AML and prudential issues, relating to tax integrity referred to in the following elements of the action plan:

- EBA/GL/2021/16: EBA Guidelines on risk-based supervision; these specify the characteristics of a risk-based approach to anti-money laundering and terrorist financing supervision, and the steps to be taken when conducting supervision on a risk-sensitive basis under Article 48(10) of Directive (EU) 2015/849;

- EBA/GL/2021/02: Guidelines on money laundering and terrorist financing risk factors: these relate to customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing (ML/TF) risk associated with individual business relationships and occasional transactions under Articles 17 and 18(4) of Directive (EU) 2015/849;

- EBA/GL/2021/05: Guidelines on internal governance under Directive 2013/36/EU;

- EBA/GL/2021/06: Joint EBA and ESMA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU;

- EBA/GL/2022/03: Guidelines on common procedures and methodologies for the supervisory review and evaluation process ('SREP') and supervisory stress testing under Directive 2013/36/EU.

1.3. Methodology

This is a targeted peer review focusing on CAs (including prudential and AML/CFT supervisors) from six Member States:

- Denmark (DK) – *Finanstilsynet* ('DFSA')

- Germany (DE) – *Bundesanstalt für Finanzdienstleistungsaufsicht* ('BaFin')

- France (FR) – *Autorité de Contrôle Prudentiel et de Résolution* ('ACPR')

- Ireland (IE) – Central Bank of Ireland ('CBI')

- Netherlands (NL) – *De Nederlandsche Bank* ('DNB')

- Spain (ES) – *Banco de España* ('BdE') / *Servicio Ejecutivo de la Comisión de Prevención del Blanqueo de Capitales e Infracciones Monetarias* ('SEPBLAC').

While the peer review will look more broadly at tax integrity issues, the following two criteria were considered in order to ensure some Member States (MS) with experience of dividend arbitrage trading schemes were included:

- First, CAs in MS whereby dividend arbitrage trading schemes are qualified/defined as 'tax crime' or 'tax fraud' in national legislation:

  MS in which dividend arbitrage schemes:

- are listed as 'tax fraud' or 'tax crime' in national legislation[1], and thus are qualified as predicate offences for money laundering in line with point (4)(f) of Article 3 of Directive (EU) 2015/849 ('AMLD'); or

- are not explicitly listed in national criminal or tax law, but where national courts have interpreted these schemes as constituting 'criminal activity' as referred to in point (4)(f) of Article 3 of the AMLD.

- Second, CAs in MS where the EBA received confirmation that financial institutions are or have been impacted, directly or indirectly, by investigations on fraud cases related to dividend arbitrage schemes.

This second criterion included MS where financial institutions, or members of the management body of these financial institutions, are or have been under investigation by national authorities, but also cases where, for example, investigations concern financial institutions' establishments or subsidiaries operating in another MS where such investigations are taking place.

This report sets out the conclusions of the peer review together with follow-up measures that CAs need to take, all of which are aimed at further strengthening consistency and effectiveness in supervisory outcomes across the EU. It also identifies a number of best practices, the adoption of which might be of benefit for other CAs. As noted above, the actions taken by CAs in response to follow-up measures will be assessed in a follow-up report after two years.

The report consists of six chapters. Chapter 1 presents an overall introduction including a methodology. The report continues in Chapter 2 with general explanations on the context of the peer review, in particular to explain the different legal and supervisory set-ups in the MS of the targeted CAs as well as the peculiarities arising from these. Chapters 3, 4, 5 and 6 look at the four different benchmarks to be evaluated under the peer review, presenting all relevant findings and drawing the conclusions from those findings as well as best practices. Chapter 7 provides overall conclusions, and sets out the resulting follow-up measures addressed to CAs.

1.4. Benchmarking

For the purposes of this peer review, four supervisory benchmarks were identified which reflect the key objectives of the peer review and the expectations towards AML and prudential CAs with respect to tax integrity and dividend arbitrage trading schemes. This peer review focuses on supervisory activities in relation to credit institutions (CIs) *only*. The four benchmarks are:

- The effectiveness of integration by national AML/CFT CAs of tax integrity risks (incl. dividend arbitrage schemes) into their risk-based supervisory work. This includes supervisory activities (on-site and off-site inspections, thematic reviews) commensurate with the ML/TF risk tax crimes represent in the MS as well as supervisory resources allocated accordingly.

[1] See recital 11 to Directive (EU) 2015/849 ('AMLD')

- The effectiveness of integration of risk relating to tax integrity (including dividend arbitrage schemes) into AML/CFT CAs' ML/TF risk assessments (i.e. sectoral and institution-specific RAs). This covers the collection and use of tax-integrity-related data by the AML/CFT CA when establishing ML/TF risk assessments of the individual banks, or the banking sector as a whole, under supervision.

- The effectiveness of arrangements by CAs for reviewing the due consideration of tax integrity (incl. dividend arbitrage schemes) in institutions' internal governance arrangements including code of conduct and policies to promote and implement high ethical and professional standards, principles and examples, especially as they relate to acceptable and non-acceptable tax-related behaviour.

- The effectiveness of consideration of tax integrity (incl. dividend arbitrage schemes) in the assessment of the reputation, honesty and integrity of members of the management body and key function holders.

The Peer Review Committee (PRC) also identified individual criteria per benchmark that aim to set out the key factors used in reaching a judgment on the effectiveness of supervision in achieving the benchmark. These criteria are not a checklist, they are used as pointers/references to make sure the benchmarks are graded based on tangible elements. The following table summarises the outcome of the benchmarking:

	DK	FR	DE	IE	NL	ES
1. Integration by CAs of tax integrity into risk-based supervisory work	LA	FA	LA	LA	LA	PA
2. Integration by CAs of tax integrity into their sectoral and institution-specific ML/TF risk assessments	LA	FA	PA	PA	FA	LA
3. Arrangements by CAs for reviewing the due consideration of tax integrity in institutions' internal governance	LA	FA	FA	LA	LA	LA
4. Tax integrity in the assessment of the reputation, honesty and integrity of members of the management body and key function holders	LA	LA	LA	LA	LA	LA

Legend:

Fully applied: all assessment criteria are met without significant deficiencies	**FA**
Largely applied: some of the assessment criteria are met with some deficiencies, which do not raise any concerns about the overall effectiveness of the competent authority, and no material risks are left unaddressed	**LA**
Partially applied: some of the assessment criteria are met with deficiencies affecting the overall effectiveness of the competent authority, resulting in a situation where some material risks are left unaddressed	**PA**

Not applied: the assessment criteria are not met at all or to an important degree, resulting in a significant deficiency in the application of the provision	**NA**

2. Background information

2.1. Introduction

For the purpose of this peer review, it is important to look at the different supervisory and organisational set-ups in the respective MS as they differ from MS to MS and can affect the way tax integrity issues including dividend arbitrage schemes are being addressed.

In all MS of the targeted peer review, CAs (including prudential and AML/CFT supervisors, whether combined under one umbrella institution or not) play a role in the supervision of systems and controls that financial institutions put in place to identify and manage the risk of possible tax crimes. None of the CAs in any of the reviewed MS are tax authorities and none of them are responsible for identifying or investigating individual tax crime or financial crime cases. The investigation of these cases is the responsibility of national tax authorities, law enforcement and/or financial intelligence units (FIUs). Also, credit institutions in all MS file Suspicious Transaction Reports ('STRs') with their local FIUs. FIUs are then responsible for investigating further the reported cases and disseminate, where relevant, the information to relevant authorities (i.e. law enforcement).

All of the CAs in the reviewed MS are part of or are contributing to a larger cross-cutting national AML/CFT committee or forum combining several agencies under the umbrella of a lead agency (e.g. the ministry of finance). In certain cases, there are also public private partnership set-ups in which CIs and/or other private actors (i.e. trade associations) participate to further discuss tax integrity issues or exchange information on tax schemes, amongst other things.

The legal prosecution of tax crime cases handled by national prosecutors' offices and courts goes beyond the scope of this peer review and is not covered in the report. The focus of the report is on supervisory actions and it is the national supervisors (AML/CFT and prudential) which are subject to the peer review.

In all six MS the prudential aspects are supervised by the respective CAs.

The above explanations in conjunction with the details below are important, as they have to be considered in the PRC's ratings of the different benchmarks/criteria for the different MS/CAs.

2.2. Specific CA/MS observations and characteristics

Denmark (DK)

The responsibilities for preventing and combating tax evasion are divided between several authorities. The Danish Customs and Tax Administration (Skatteforvaltningen) is responsible for controlling and collecting tax from both individuals and companies, whereas the Danish Tax

Authority (which is under Skatteforvaltningen) and the police investigate tax evasion. Skatteforvaltningen applies control measures with regard to the dividend tax calculation to prevent the Danish system being misused to commit tax crimes.

The Danish Financial Supervisory Authority (DFSA) supervises banks as well as other financial institutions both for prudential and AML/CFT matters. Handling the funds and proceeds obtained through criminal tax evasion falls under the definition of money laundering in the Danish AML Act. The DFSA's focus is to ensure that banks put in place internal controls and systems – including customer due diligence (CDD) and monitoring measures – to detect, through internal alerts, any unusual activities. Danish credit institutions monitor their customers through their CDD processes, including transaction monitoring processes, and file an SAR/STR in the case of underlying suspicion of money laundering, and send it to the FIU (Hvidvasksekretariatet). The information from the SAR/STR can assist the tax authorities and law enforcement agencies in identifying concrete cases for further investigation.

The national authorities cooperate closely in several forums, both multilateral and bilateral, some of which also include large banks in the form of a public private partnership (PPP). These forums include:

- the ODIN platform, which includes a number of members from the Special Crime Unit (NSK), the Danish security and intelligence service (PET), the tax authority, the FIU, the DFSA, to the Gambling Authority and several large banks;

- the AML Forum, which is made up of all authorities (including the relevant ministries) involved in the fight against ML/TF;

- the AML+ Forum, made up of all AML Forum members plus private sector organisations, such as Finance Denmark, Insurance and Pension Denmark, the Association of Danish Auditors and the Danish Property Federation.

The AML Forum and the AML+ Forum do not in general exchange information on individual or operational cases but deal with emerging risks and exchange information in this regard.

These PPPs were created through the need and wish for closer cooperation across the authorities and between the authorities and the private sector. ODIN started in 2022 and was established by law under the Ministry of Justice. It is headed by the prosecutor's office as an official operational forum for sharing information on economic crime and facilitating operational cooperation between the members. ODIN aims to prevent and combat money laundering, terrorist financing and economic crime, and in light of this to facilitate discussions and exchange of information – including operational information – on tax fraud cases among the authorities as well as among the authorities and the banks in ODIN.

France (FR)

The ACPR, as well as the French tax authority, are part of the National AML/CFT Steering Committee (i.e. *Conseil d'Orientation de la LCB-FT, ('*COLB')) which coordinates the French AML/CFT system,

and via which, inter alia, information on threats, trends and typologies can be shared. The ACPR cooperates with the tax authority, sharing information about tax-crime-related STRs. Although the Common Reporting Standard (CRS) falls within the remit of the tax authority, the ACPR is in charge of verifying the control framework of banks to make sure that the framework allows for operationally adequate CRS reporting. Cooperation with the tax authority is also possible in this field. In addition, a memorandum of understanding (MoU) has been signed between the tax authorities, the ACPR and the *Autorité des marchés financiers* (AMF, which is the supervisor in charge of the monetary markets) to organise and strengthen this cooperation. The ACPR and tax authorities may also share information indirectly through the French FIU (Tracfin).

Cum-ex schemes are deemed not feasible in France. In France, no final decisions have been taken yet on the (un)lawfulness of cum-cum schemes.

Germany (DE)

BaFin is an integrated supervisor responsible for both prudential and AML/CFT supervision of obliged entities, including banks. Its AML/CFT mission is to prevent the misuse of the financial system for the purpose of money laundering, terrorist financing and other criminal offences.

BaFin has an AML/CFT prevention and not a law enforcement mandate, and therefore it is not BaFin´s mandate to investigate individual tax fraud cases. Instead, BaFin's focus is to ensure that banks put in place internal safeguarding systems – including CDD and monitoring measures – to detect, through internal alerts, any unusual activities, such as tax crimes.

BaFin is entitled to exchange information with law enforcement authorities and other authorities and bodies (as defined in the German Banking Act ('KWG') in cases when the requested information is for the purpose of fulfilling the respective statutory tasks of these authorities. In the context of tax integrity and dividend arbitrage trading schemes, the suspicion of criminal tax offences is a condition for the exchange of confidential information. Where the formal aspects are met, BaFin has an obligation to share the requested information.

Ireland (IE)

The CBI is an integrated supervisor and is the CA for both the prudential and AML/CFT supervision of obliged entities, including banks.

The national tax authority in Ireland is the Revenue Commissioners. The Revenue Commissioners' role includes, but is not limited to, tackling non-compliance, including tax evasion.

CIs in Ireland are legally obliged to file STRs both with the FIU, which is a unit within the national law enforcement body *An Garda Siochana* and with the Revenue Commissioners. The CBI is legally obliged to report any knowledge or suspicion of ML/TF, obtained in the course of monitoring an obliged entity, to law enforcement and the Revenue Commissioners.

The CBI has no role in the investigation or prosecution of ML/TF offences or underlying predicate crimes including tax crimes, which are matters for law enforcement agencies and the Revenue Commissioners respectively.

Netherlands (NL)

In the Netherlands, DNB and the tax authority have separate tasks. DNB, as the AML/CFT supervisor, supervises the way in which banks manage integrity risks, including money laundering, on the basis of the Anti-Money Laundering and Anti-Terrorist Financing Act ('Wwft') and Financial Supervision Act (Wft). DNB also reviews individual customer files, sometimes encountering customers, structures and transactions that are characterised by increased risks of money laundering and tax evasion. DNB may then decide that this information is also relevant to the duties of the tax authority with regard to the control, levying and collection of taxes on the one hand, and the investigation of tax crimes on the other hand. Moreover, DNB is responsible for prudential supervision, and is committed to ensuring sound management and ethical conduct of financial institutions that meet their obligations.

DNB's supervision mainly focuses on controlling tax integrity risks; underlying tax crimes are investigated by the tax authority, the Fiscal Information and Investigation Service (FIOD) and the public prosecutor.

Within the framework of the Financial Expertise Centre (FEC), DNB has regular contact with the tax authority and other relevant stakeholders. The FEC is a partnership between various authorities with supervisory, monitoring, prosecution or investigative tasks within the financial sector, which has been established to strengthen the integrity of the financial sector. The FEC does this by taking preventive and active measures against potential threats to this integrity. In that context there is regular contact between DNB and the Dutch tax authority on various topics.

Spain (ES)

The Spanish Tax Administration Agency, AEAT, is responsible for the effective application of the national tax and customs systems in Spain.

AML/CFT competencies in Spain are shared among different CAs:

- the *Comisión de Prevención del Blanqueo de Capitales e Infracciones Monetarias* (Commission for the Prevention of Money Laundering and Monetary Offences – CPBCIM), which reports to the Secretary of State for the Economy and Business Support of the Ministry of the Economy and Business, is a body made up of representatives from different ministerial departments and agencies, the public prosecutor's office, and the Autonomous Communities. It is ultimately responsible for the development of preventive policy and the fight against money laundering in Spain.

- SEPBLAC is an authority dependent on the CPBCIM. It is the FIU and the main AML/CFT supervisor.

- BdE, the National Securities Market Commission (CNMV) and the Directorate General of Insurance and Pension Funds (DGSFP) cooperate with SEPBLAC in respect of the obliged entities under their prudential supervision remit.

- The Treasury has regulatory and sanctioning powers.

All necessary authorities are represented in the CPBCIM, including AEAT. There is ongoing cooperation between BdE and SEPBLAC. SEPBLAC also coordinates and exchanges information with AEAT. The AML institutional framework allows for ongoing cooperation in the tax field. However, information requests from AEAT to BdE need prior approval from the Ministry of Finance before they can be responded to in case the requested information is subject to secrecy obligations.

The 2021 MoU between BdE and the CPBCIM also regulates the collaboration and exchange of information between the two authorities. Furthermore, there is no specific exchange of information during or for the purpose of the fit and proper ('F&P') assessment.

3. Benchmark 1: Integration by CAs of tax integrity into risk-based supervisory work

3.1. Introduction

Directive (EU) 2015/849 (5th AML Directive) requires that AML/CFT supervisors have effective mechanisms in place to enable them to cooperate with other national stakeholders domestically for AML/CFT purposes. EBA guidelines set up how this requirement should be implemented. In particular, EBA/GL/2021/16[2] provide the modalities on how AML supervisors should cooperate and exchange all relevant information with other national stakeholders including the local tax authorities, to ensure effective AML/CFT supervision of the financial institutions under their supervisory remit. All relevant information should be exchanged without delay.

The 5th AML Directive also included tax crimes as a predicate offence for money laundering. Accordingly, with the legal obligations to transpose this Directive, all MS had to integrate tax crimes as a predicate offence for money laundering in their jurisdiction. In line with the risk-based approach, AML/CFT supervisors should understand the level of tax integrity risk their financial sector is exposed to and allocate supervisory resources to tax-integrity-related matters according to the risk identified.

This chapter analyses the integration by national AML/CFT supervisors of tax integrity risk into their risk-based supervisory work on credit institutions, based on the following benchmarking criteria:

- cooperation and exchange of information with tax authorities including any legal constraints impeding such cooperation (Criterion 1);

[2] Guidelines on risk-based supervision | European Banking Authority (europa.eu).

- supervisory activities covering tax integrity which are commensurate with the level of tax integrity risk identified (Criterion 2);

- AML/CFT supervisor's verification of systems and controls credit institutions put in place to enhance tax integrity (Criterion 3).

3.2. Cooperation with tax authorities including legal obligations of the CA and tax authorities (Criterion 1)

Denmark (DK)

Based on the Danish AML Act, there are no legal obstacles for the DFSA and the tax authority to cooperate. In practice, the DFSA did not yet identify any bank-specific, tax-related case where bilateral communication with the tax authority would have been warranted. In any case, the DFSA has a legal obligation to file an SAR/STR to the FIU if it becomes aware, through its supervisory work (e.g. an on-site inspection), of any suspicion of criminal activity. The FIU can then share this information with the tax authority.

Operational-level information is exchanged through multi-parties' meetings and forums, in particular the ODIN platform, the AML Forum and the AML+ Forum. Through the ODIN platform, the DFSA and the tax authority provide and receive information about tax schemes involving credit institutions. If such information was received from a foreign authority, the DFSA will first have to seek permission to share the information.

France (FR)

French law allows the CA and the tax authority to share information in the case of suspicions of tax fraud or in the context of compliance with the Directive on Administrative Cooperation, including the CRS.

Although the CRS falls within the remit of the tax authority, the ACPR is in charge of verifying the control framework(s) of banks to make sure that the framework(s) allow(s) for operationally adequate CRS reporting. It is planned that the ACPR will have direct access to the non-residents database of the tax authority later in 2024. In the same context, the tax authority shares information with the ACPR. The ACPR for its part informs both the FIU and the tax authority in cases where the ACPR discovers, during its supervisory work, failures of banks to report suspicions of tax fraud to the FIU.

In the past, the tax authority has provided feedback to the ACPR on such cases, in writing or during meetings. Such feedback indicated the amount of redress collected by tax authorities as a result of those cases filed by the ACPR. In addition, training has been provided by the tax authority to the ACPR, e.g. on different typologies of tax fraud, bearing in mind that certain supervisors may have previous professional experience with the tax authorities. The ACPR and the tax authority also meet at least twice a month within the context of the COLB's specific tax force and through other meetings organised by the FIU.

The ACPR has an MoU in place with the tax authority and with the AMF, enabling them to meet and exchange information in the context of the CRS. The ACPR uses CRS information sent by the tax authority to supervise (i) whether banks have a good control framework for their CRS obligations and (ii) banks' AML/CFT obligations towards their non-resident customers.

Germany (DE)

Based on the German AML Act ('GwG'), there is no legal obstacle for BaFin and the tax authority to exchange information. Adjustments to the German Banking Act ('KWG') are scheduled to come into effect in 2026 to further facilitate the disclosure of confidential information to tax authorities by BaFin. As of today, in practice, BaFin provides the tax authority with information it collected through its supervisory work (e.g.: whistleblowing relating to tax fraud). BaFin also responds to information requests from the tax authority, whereby a suspicion of criminal tax offence is identified. However, due to the national tax secrecy regulations, BaFin is not in a position to request information from the tax authority, and it remains at the discretion of the tax authorities to grant BaFin access to any sensitive information.

Bilateral meetings are organised between BaFin and the tax authority in order to exchange information, including on tax evasion scheme(s), and/or to discuss how to raise awareness amongst obliged entities. In addition to this, both authorities are part of the Anti-Financial Crime Alliance, AFCA, which is a public private partnership aiming to facilitate cooperation amongst its members. AFCA has a dedicated working group on tax crimes.

Finally, BaFin's AML/CFT department informs the Federal Central Tax Office on AML/CFT-related measures it imposes on financial institutions; during the period 2019-2023, BaFin reported that they shared 15 concrete cases of supervisory measures, involving 15 institutions, with the tax authority. No evidence was received as to whether such supervisory measures were tax-related or wider AML/CFT measures.

Ireland (IE)

There is long-standing cooperation between the CBI and the Revenue Commissioners with this cooperation formalised through the signing of an MoU in 2024. This cooperation is also supported by Ireland's National Anti-Money Laundering Steering Committee (AMLSC), of which the CBI is a standing member and which the Revenue Commissioners attend regularly as an associate member. The FIU among other key agencies is also a standing member of the AMLSC.

The CBI is legally obliged to report to the Revenue Commissioners any knowledge or suspicion of money laundering or terrorist financing and/or any information which leads the CBI to suspect that a tax crime may have been committed by an obliged entity. On this basis, the CBI has filed reports with the tax authorities concerning obliged entities, with regard to suspicions of tax offences within credit institutions.

In other non-entity-specific cases, the CBI can share confidential information in respect of sectoral trends and observations from supervisory engagements with the Revenue Commissioners only on a no-name basis.

The CBI and the tax authority meet bilaterally at least once a year to discuss emerging risks and trends and can engage more frequently, if needed.

Based on information from the Revenue Commissioners, the CBI explained that cum-ex schemes are not possible in Ireland due to the design of both the legislation and the administration of dividend withholding tax, while noting the possibility that Irish institutions may be exposed to the risk of such schemes being undertaken in other jurisdictions. Based on the same source, cum-cum schemes have not been identified as a significant threat in respect of credit institutions in Ireland either. Accordingly, the CBI has assessed that dividend arbitrage trading schemes do not currently represent a significant AML/CFT threat in Ireland, however this assessment could be revised based on any new intelligence gathered through the various cooperation mechanisms available.

Netherlands (NL)

The Dutch AML Act ('Wwft') provides legal grounds to share information between DNB and the tax authority. Information shared by the tax authority with DNB is, for example, used for the fit and proper assessment of management body members performed by DNB but can also be used for other supervisory activities (e.g. inspections and ML/TF risk assessments).

Both DNB and the Dutch tax authority are members of the FEC, and they share supervisory information through the FEC, under certain conditions. For example, DNB can provide the tax authority with information that indicates that the management of tax integrity risks at financial institutions may require improvement. Also, exchanges of information specifically on dividend arbitrage schemes take place via the FEC, which has consolidated the expertise on dividend arbitrage trading schemes available to FEC partners into a specific knowledge document. DNB indicated that bilateral meetings are scheduled between DNB and the tax authority, if necessary.

Spain (ES)

In general, there are no legal obstacles for SEPBLAC and the tax authority (AEAT) to exchange information. SEPBLAC can request and obtain information from the tax authority for its supervisory functions.

Legally, BdE cannot provide the tax authority with requested information except with prior approval from the Ministry of Finance in case of information subject to secrecy obligations. In the case of open/ongoing criminal investigations, BdE is able to provide requested information without such pre-authorisation.

AEAT is not legally permitted to share information with BdE. However, SEPBLAC, which may receive information from the tax authority in the exercise of its duties, and also has an MoU in place with BdE, can use the MoU to share with BdE the supervisory concerns arising from the information received from the tax authority. However, such indirect information sharing between the tax authority and BdE has not occurred yet in practice.

According to national circulars, issued by BdE, payment service providers, including banks, must report to BdE certain cross-border transactions and assets (e.g. belonging to non-residents) above

a predefined threshold. BdE processes this information, and uses it for risk assessments, risk case selections and statistical purposes. BdE also shares this information with the tax authority.

Meetings between SEPBLAC, BdE and the tax authority occur within a coordinated body, the CPBCIM, of which all of them are members.

SEPBLAC, BdE and the tax authority are negotiating a new MoU to facilitate cooperation amongst them.

3.3. Supervisory activities covering tax integrity (Criterion 2)

Denmark (DK)

The most recent Danish national risk assessment (NRA), published in 2022, indicated that proceeds from tax crime represent high ML/TF risk in Denmark. Accordingly, combating tax crime is specifically mentioned in the internal AML policy for the DFSA. In spite of this, supervisory activities do not seem to be commensurate with this level of risk.

The DFSA does not have any full-time equivalents ('FTEs') dedicated to tax integrity issues, and supervisors are not specifically trained on tax-related issues, though several employees have gained some tax expertise through exchanges with the tax authority.

Tax integrity has not been a focus during on-site inspections. However, the DFSA explained that they carried out a thematic off-site review of eight large Danish banks specifically on dividend arbitrage trading schemes in early 2024. Results of this review were not yet available at the time of the peer review.

The DFSA did not issue any guidance to CIs on tax indicators it uses for its supervision. However, the tax authority published a paper explaining how dividend arbitrage schemes develop. The DFSA indicated that they refer to this paper as part of their supervisory engagement with banks under their supervision.

France (FR)

The ACPR does not have any FTEs dedicated to tax integrity issues. However, given that the ACPR is in charge of verifying the control frameworks of banks to make sure such frameworks allow for operationally adequate CRS reporting, the AML/CFT team has developed expertise in CRS criteria. These criteria include among others tax residence, non-tax cooperative countries and complex structures – all being potential indicators of tax crimes. For that purpose and more generally for AML/CFT purposes, the ACPR's AML team, and a number of prudential supervisors, have received dedicated tax training from the tax authorities, including on dividend arbitrage schemes. In addition, a number of AML supervisors had previous experience working for the tax authority.

Tax integrity is specifically covered by AML/CFT on-site inspections for CRS indicators, which however do not relate to dividend arbitrage schemes per se. AML/CFT on-site inspections also routinely cover tax integrity issues as one of the main underlying offences for money laundering

and due to specific suspicious transaction requirements based on objective criteria in tax matters (Art. D. 561-32-1D. 561-32-1 of the French Monetary and Financial Code), which can serve as red flags. The ACPR does not specifically include tax integrity in its prudential on-site inspections but may investigate the issue if there are suspicions that a specific bank has potential weaknesses in this area.

Guidance covering tax integrity exists, through the NRA, FIU documents and the sectoral risk Assessment ('SRA[3]').

Besides implementing the existing framework, the ACPR has no defined strategy regarding tax integrity for the near future. However, the on-site inspections on investment service providers, initiated in 2023 on dividend arbitrage schemes, are planned to be finalised in 2024.

Germany (DE)

BaFin has established an internal organisation to deal with arbitrage trading schemes, as part of the lessons learnt after the cum-ex cases which hit Germany in the early 2000s. Accordingly, BaFin put in place a Single Point of Contact, SPoC, within its banking supervision directorate and a SPoC in its AML/CFT directorate. These SPoCs are in charge of coordinating tax-related issues within their directorates, and also with each other. BaFin reported that the respective SPoCs can mobilise up to two FTEs from the banking supervision directorate and up to three AML/CFT experts to work on tax-related matters if need be. These SPoCs within BaFin have awareness on tax-related matters mainly as they are the natural counterparts of the tax authority within BaFin. However, the PRC noted that no specific tax training has been provided recently to prudential supervisors by tax experts.

From an AML standpoint, tax integrity is not specifically covered by on-site inspections but is part of the wider AML/CFT issues, as one predicate offence. BaFin conducted a survey in 2021 amongst German financial institutions on how they generally dealt with tax refunds. In 2023 the German FIU issued a tax-related typology, although it mainly focused on VAT fraud. BaFin has not issued any AML/CFT guidance on tax integrity.

BaFin does not have a specific strategy regarding tax integrity embedded in their planned AML work as they consider tax integrity as being 'only' one out of the several predicate offences. BaFin indicated that there is, overall, a decreasing trend of tax crimes in Germany since the two subsequent reforms (2012 on cum-ex schemes and 2016 on cum-cum schemes) which made these dividend arbitrage trading schemes impossible to carry out. Such a decreasing trend in tax crimes is underpinned by the federal police's organised crime statistics which were also provided to the PRC. On this basis, BaFin is currently reviewing its sectoral risk assessment for its financial sector and considers that the ML/TF risk emanating from tax crimes is 'moderately low'.

[3] 'Analyse sectorielle des risques de blanchiment de capitaux et de financement du terrorisme en France' 20230629_asr_lcb_ft_2023.pdf (banque-france.fr)

Ireland (IE)

The CBI, in line with its risk-based approach, does not have any FTE(s) dedicated to tax integrity supervision as the CBI has assessed tax integrity as not currently presenting a significant ML/TF risk. No specific tax training has been provided to supervisors.

AML/CFT on-site inspections do not specifically cover tax integrity. Instead, as part of AML/CFT inspections, the CBI assesses whether the respective CIs take into account requirements included in the CBI's AML Guidelines, which focus, amongst other elements, on tax non-cooperative countries, source of wealth and certain tax risk factors. The CBI also assesses the CI's ML/TF business-wide risk assessment and, should a CI identify tax issues as a significant risk to which the CI is exposed, the CBI would assess the adequacy and effectiveness of the controls put in place to mitigate this identified risk.

The CBI's prudential inspections integrate tax integrity into its supervisory activities only where significant problems in that regard have been discovered.

While the CBI has regard to the two surveys on dividend arbitrage schemes initiated by the ECB, the CBI has not so far launched any off-site or thematic reviews dedicated to tax. Since the CBI has not identified tax integrity risk as being a priority risk at this time, it is not embedded in the AML and governance strategy for 2025.

Netherlands (NL)

DNB does not have FTEs dedicated to tax integrity issues. Although the DNB has built expertise from internal sources and cooperation with FEC partners, there has been no specific training delivered on tax integrity. This is because, as DNB indicated, tax integrity is part of the general AML/CFT supervisory training. With respect to dividend arbitrage trading schemes, supervisors can use the knowledge document developed together with other FEC partners (including the tax authorities) on this phenomenon.

DNB issued guidance and best practices on risk management on tax integrity. This guidance provides details for banks on red flag indicators of tax crimes, from an AML standpoint. This guidance is sufficiently detailed and demonstrates that tax knowledge is internally in place at DNB. However, dividend arbitrage schemes are not addressed in this guidance.

On-site inspections cover tax integrity when the subject is a priority, e.g. due to international tax leaks and, in that case, the inspection is thematic. There is no systematic off-site review covering tax integrity.

For DNB, tax abuse and tax evasion are noted as one of the risks that is looked at in ongoing supervision. DNB takes action whenever obliged entities score outside DNB's risk appetite. DNB has not translated this further into a more specific supervisory strategy and therefore DNB does not have a strategy specific to tax integrity for the near future.

Spain (ES)

SEPBLAC has a dedicated tax unit composed of eight FTE(s) that are seconded on a permanent basis from the tax authority. These FTEs, focusing on all tax-related issues, also provide tax training to AML supervisors of SEPBLAC and, in return, they receive AML training from SEPBLAC.

BdE does not have FTEs assigned specifically to tax integrity issues. BdE indicated that tax integrity, in its internal governance structure, falls under the thematic area of governance. The PRC noted that no specific tax training was provided for BdE staff.

Neither BdE nor SEPBLAC's on-site inspections and off-site reviews specifically cover tax integrity[4].

Although the national risk assessment covers tax crimes as a threat for money laundering, there are no specific guidelines issued by SEPBLAC that would help banks in identifying red flag indicators of ML/TF emanating from underlying predicate offences which are tax crimes. However, SEPBLAC indicated that the CPBCIM has issued a 'Catalogue of Operations with Risk of ML/TF', focusing on the risks of the different sectors and products.[5]

Finally, neither BdE nor SEPBLAC has a strategy specific to tax integrity for the near future.

3.4. CAs' verification of systems and controls that credit institutions put in place to prevent tax crimes (Criterion 3)

Denmark (DK)

The DFSA does not verify systems and controls of supervised entities specifically in respect of tax crimes. The checks the DFSA carries out concern the measures CIs put in place to effectively detect suspicious transactions, including such transactions stemming from tax evasion. In addition, DFSA verifies, during its on-site inspections and on a risk-sensitive basis only, if tax-related information is collected by the bank as part of its CDD measures.

Dividend arbitrage schemes are not specifically covered during the on-site inspections. However, in 2024 the DFSA conducted a thematic off-site review that focused on assessing the ability of eight CIs to detect dividend arbitrage trading schemes. Results of this review are not available yet at the time of this peer review.

Regarding STRs, Danish regulations require CIs to file STRs in case of suspicious transactions. This also includes tax integrity suspicions, such as identification of complex ownership structures spread across several countries, including tax havens and other high-risk countries. Before each inspection, the DFSA obtains a report from the FIU on the amount and quality of STRs and SARs the bank has filed, although this information is not specific by predicate crime. In addition, the DFSA also

[4] ES has informed the EBA that SEPBLAC and Bank of Spain would review tax integrity issues when performing inspections but would not perform specific inspections exclusively focusing on tax crimes. This new information provided after the peer review was completed and so was not taken into account in the peer review assessment.

[5] This catalogue was provided to the EBA only after the peer review was completed and so was not taken into account in the peer review assessment.

requests the authorities which are part of the ODIN platform to share any adverse information on CIs, if they have any.

France (FR)

For banks identified as being exposed to dividend arbitrage trading schemes, the ACPR uses on-site inspections, carried out by supervisors specifically trained by the tax authority on dividend arbitrage schemes. In addition, the ACPR recently used a tailor-made questionnaire with dedicated questions on dividend arbitrage trading schemes sent to these exposed banks.

For all banks, the ACPR assesses CDD measures and tax information collected through a systematic checklist specific to CRS data used during on-site inspections. Although detailed, this checklist does not cover dividend arbitrage schemes. From an off-site review, the assessment of CDD measures is done by the ACPR through its annual questionnaire, which is not tax-specific but has been recently updated to improve the questions relating to the source of funds.

Regarding STRs, French regulations explicitly provide that a report must be filed with the FIU in the case of suspicions of tax crimes. The ACPR itself is filing STRs in the case of suspicions not reported by a bank, including on tax matters. This is well documented by statistics and the ACPR has an adequate basis to evaluate the quality of STRs, including tax-related STRs.

Germany (DE)

BaFin does not verify systems and controls of supervised entities with a specific focus on tax integrity, or on dividend arbitrage schemes. Instead, BaFin verifies whether banks have put in place internal control and risk management measures to prevent money laundering and underlying criminal activity, including tax crimes. There is no verification, by BaFin, of the tax-related data banks collect as part of their CDD measures. This is because there is no general obligation on banks to collect tax-related information as part of their mandatory CDD measures.

In the aftermath of the cum-ex cases which hit Germany in the early 2000s, BaFin defined dividend arbitrage schemes as a priority. Accordingly, BaFin intensively coordinated its supervisory work with the Bundesbank and the German FIU, and held specific meetings with the affected financial institutions. These meetings focused on STRs filed by the financial institution on tax crimes and their overall quality. At that time, BaFin also defined dividend arbitrage schemes as a priority for the audit of the financial statements of some banks.

Regarding STRs, German law provides that STRs must be filed in the case of any criminal offence, including tax crimes. It is a legal obligation also applying to BaFin. BaFin has access to statistics for STRs regarding suspicion of tax crimes filed by financial institutions. BaFin reported to the PRC that the number of tax-related STRs has increased after the publication of the FIU's typology report on VAT fraud.

Ireland (IE)

The CBI does not verify systems and controls of supervised entities specifically in respect of dividend arbitrage schemes or, more broadly, tax integrity, on the basis that tax integrity has not been assessed as a significant risk that the Irish banking sector would be exposed to. While the CBI does not assess specific tax integrity criteria when assessing CIs' CDD measures, risk factors that could be an indication of tax crimes, such as complex legal entities, shell companies, nominee arrangements and high-value goods dealers, are considered in supervisory activities.

Regarding STRs, Irish law provides for a unique, dual system requiring that CIs file STRs with both the FIU and the Revenue Commissioners in the case of suspicions of ML or predicate offences for ML, including tax crimes. The tax authority investigates STRs with an underlying suspicion of tax crimes. This suggests that information from the tax authority that would be relevant to supervisors, such as statistics on STRs with a tax component, is available. The PRC notes that the CBI does not currently request or consider such information directly from the Revenue Commissioners.

Netherlands (NL)

DNB does not verify systems and controls of supervised entities with a specific focus on dividend arbitrage schemes. However, on a risk-sensitive basis, DNB checks if banks collect tax-related information from clients that present high tax integrity risks (e.g. in the case of complex structures or activities, off-shore jurisdictions or inconsistent information).

Regarding STRs, Dutch regulations prescribe that banks must file STRs in the case of suspicions of criminal activity, which encompasses tax integrity risks. When deemed necessary by the FIU, STR-related information can be shared, by the FIU, with the tax authority.

DNB does not establish bank-specific statistics on STRs with the underlying suspicion of tax crimes, nor does it request the FIU to share statistics on the proportion of STRs linked to tax crimes. DNB may assess the quality of STRs filed by financial institutions during its supervision work, without differentiating whether the STR has been filed for suspicions of tax crimes or not.

Spain (ES)

SEPBLAC does not verify systems and controls of supervised entities specifically in respect of tax integrity or dividend arbitrage schemes. Although SEPBLAC/BdE indicated to the PRC that it is not possible to carry out dividend arbitrage trading schemes in Spain, one subsidiary of a Spanish bank located outside Spain was involved in the initial cum-ex cases.

SEPBLAC does not assess specific tax integrity criteria when assessing banks' CDD measures; such an assessment is embedded only in a more general review of the preventive measures that banks put in place to prevent financial crimes. This approach is no different from other types of potential underlying crimes committed by clients.

Regarding STRs, Spanish law provides that supervised institutions must file STRs in the case of suspicions of any crimes, including tax crimes. Statistics about STRs filed for tax crimes are shared

by SEPBLAC with BdE, including information on the nature of the tax fraud and the supervised entities. This classification potentially enables specific supervisory actions.

3.5. Assessment of Benchmark 1

Denmark (DK)

With respect to Criterion 1 (i.e. cooperation between tax authorities and CAs), the PRC rated the DFSA as '**fully applied**'. Although not bilateral on specific cases, the DFSA's cooperation with the tax authority enables information to be shared on a name basis through the ODIN platform.

Regarding Criterion 2 (i.e. supervisory activities covering tax integrity), the DFSA is rated as '**partially applied**'. In 2024 the DFSA carried out an on-site inspection dedicated to dividend arbitrage schemes, but overall the PRC considers that DK's level of supervisory activities is not commensurate with the level of risk in Denmark.

As for Criterion 3 (i.e. verification, by the CA, of systems and controls CIs put in place to prevent tax crimes), the PRC rated the DFSA as '**largely applied**'. The systems and controls put in place by CIs are not sufficiently looked at from a tax integrity standpoint by the DFSA. Equally, there seems to be no systematic follow-up action when a specific institution is filing a large number of STRs with suspicions of tax fraud. However, the DFSA does check CDD measures of banks in a risk-based approach.

The PCR rated the DFSA as '**largely applied**' for Benchmark 1.

France (FR)

The ACPR is rated as '**fully applied**' for Criterion 1. Cooperation between the tax authority and the CA seems to run smoothly, partly because the CRS is partially in the remit of the ACPR.

On the basis of information collected, the ACPR has adequate levels of supervisory activities covering tax integrity, commensurate with the risk identified. Criterion 2 is rated '**fully applied**' for the ACPR.

Equally, the PRC rated the ACPR '**fully applied**' for Criterion 3. The ACPR looks at credit institutions' systems and controls, including CDD measures, from a tax integrity standpoint. The ACPR could consider including in its tax-related CDD verifications specific measures focusing on inconsistent transactions

Based on the above, the ACPR is rated '**fully applied**' for Benchmark 1.

Germany (DE)

BaFin is rated '**largely applied**' for Criterion 1; cooperation with the tax authority could be further improved by BaFin.

BaFin indicated to the PRC that it assesses the level of ML/TF risks emanating from tax crimes to which German banks are exposed as 'moderately low'. In line with the risk-based approach, the PRC therefore rated Criterion 2 as '**largely applied**' concerning BaFin's supervisory activities and measures.

As for Criterion 3, the PRC rated this as '**partially applied**'. This is because supervision of the systems and controls, including CDD measures, put in place by banks, is not effectively ensured for tax integrity matters, in particular dividend arbitrage schemes.

Based on the above, the PRC is of the opinion that Benchmark 1 is '**largely applied**' for BaFin.

Ireland (IE)

The CBI and the Revenue Commissioners cooperate bilaterally, based on an MoU, and through multilateral forums such as the National AMLSC.

The PRC rated Criterion 1 for CBI as '**largely applied**'.

The CBI has not identified tax crime as a significant risk for ML/TF in Ireland. The CBI defined its supervisory activities as commensurate with this risk. However, tax offences committed abroad should be taken into account and the CA should perform its own assessments of tax risks. The PRC notes that the CBI annual AML questionnaire issued to CIs is currently being enhanced to include tax-integrity-related questions and that this data will inform the CBI's assessment of tax risks.

The PRC rating for the CBI for Criterion 2 is therefore '**largely applied**'.

In addition, where warranted by significant new or emerging tax integrity risk, tax integrity should be considered by the CBI in its supervisory actions (training, on-site inspections and off-site reviews, verification of systems and controls, follow-up on tax-related STRs) and not only when checking CIs' CDD measures. On this basis, the PRC rated IE as '**largely applied**' on Criterion 3.

Based on the above, the PRC rated the CBI as '**largely applied**' for Benchmark 1.

Netherlands (NL)

Exchange of information between the tax authority and the CA is effective for the fit and proper assessment of board members and key function holders, and does happen regarding AML subjects in group meetings in the FEC. The PRC therefore rated DNB as '**fully applied**' for Criterion 1.

While the guidelines of the CA show a good knowledge of tax offences in the context of money laundering, on-site inspections are only initiated in the case of leaks/signals. Consequently, the PRC applied a '**largely applied**' rating to DNB on Criterion 2.

Similarly, because CDD measures are checked only in the case of high-risk situations in the context of offshore jurisdictions and complex structures, the PRC rated DNB as '**largely applied**' for Criterion 3. DNB should enlarge its supervisory activities, in particular to specifically cover dividend arbitrage schemes.

Based on the above, the PRC rated DNB as '**largely applied**' for Benchmark 1.

Spain (ES)

The PRC welcomes the integration of a tax unit within SEPBLAC and the dissemination of knowledge performed by this unit to AML supervisors. Cooperation with the tax authorities has therefore been rated '**fully applied**'.

SEPBLAC should leverage this knowledge and define specific supervisory activities focusing on tax crimes in line with the risk-based approach. BdE should also make sure that its prudential supervision covers tax integrity, on a risk-sensitive basis, in particular for on-site inspections and off-site reviews. Accordingly, the PRC rated Criterion 2 as '**partially applied**' for BdE/SEPBLAC.

In the same way, in the verification of systems and controls, including tax-related CDD measures implemented by CIs, insufficient attention is paid to the tax-related component. The PRC rated Criterion 3 as '**partially applied**' for BdE/SEPBLAC.

Based on the above, the PRC considers BdE/SEPBLAC as '**partially applied**' for Benchmark 1.

	DK	FR	DE	IE	NL	ES
Criterion 1: Cooperation with tax authorities including legal obligations of the CA and tax authorities	FA	FA	LA	LA	FA	FA
Criterion 2: Supervisory activities covering tax integrity	PA	FA	LA	LA	LA	PA
Criterion 3: CA's verification of systems and controls credit institutions put in place to prevent tax crimes	LA	FA	PA	LA	LA	PA
Overall score for Benchmark 1	LA	FA	LA	LA	LA	PA

3.6. Conclusions / findings / best practices

The level of integration of tax integrity into risk-based supervisory work varied significantly in the CAs assessed. The PRC is satisfied that:

- the national legislation of each of the six countries assessed integrated tax crimes as a predicate offence for money laundering;
- as a precondition for effective supervision, all CAs in the sample established the legal basis for information exchange with the tax authority;
- in all countries assessed, some mechanisms of cooperation between the CAs (i.e. prudential and AML/CFT) and the local tax authority have been established, either on a multilateral basis (i.e. AML national forums or steering committees) or in a bilateral manner.

As a general finding, the EBA recommends to CAs, prudential and AML/CFT alike:

- that they ensure information exchange between the tax authority and the CAs (prudential and AML/CFT) is operational and takes place without undue delays;

- that the information tax authorities provide to CAs (prudential and AML/CFT) is followed up on by CAs in line with their risk-based supervisory work;

- that all CAs consider building up, and keeping up to date, sufficient tax expertise in-house in order to enable them to deal with tax-integrity-related issues and cases from an AML/CFT standpoint, whether identified within their jurisdiction, or requested by their foreign counterparts.

For the purposes of Benchmark 1, the PRC's starting point for the analysis and subsequent ratings was the national AML/CFT risk assessment of the countries under review. In line with the EBA's Guidelines on risk-based supervision, supervisory measures and activities should be commensurate with the specific risk identified within the jurisdiction. Accordingly, if tax crimes have been assessed as representing high AML/CFT risk in a specific country, the supervisors need to reflect that in their approach, for example by planning specific activities in that area and allocating a sufficient level of supervisory resources to it. Similarly, if the identified AML/CFT risk in relation to tax crimes is assessed as low, supervisors should focus on other, higher-risk areas instead.

Tax crimes have been identified as high AML/CFT risks in four of the reviewed countries (DK, ES, FR, NL), while assessed as a low risk for IE. In Germany, according to the findings of the next edition of their sectoral risk assessment, which was launched end-2024, the level of risk tax crimes represent in Germany is assessed as 'moderately low'. The PRC considered these identified levels of tax crime risks when assessing countries and when allocating the ratings.

In terms of best practices, the PRC noted the following:

- Both the ACPR and DNB issued guidance to their financial sectors on their respective supervisory expectation in relation to tax integrity. This guidance can be useful to identify red flag indicators for tax fraud or tax crimes and clarify definitions in relation to tax matters. Similar guidance could be jointly issued by the local FIU, which would then add the value of concrete case studies or typologies.

- Within SEPBLAC, a specific tax unit has been established with seconded experts from the tax authority. This unit, centralising all tax-related matters within SEPBLAC, is also in charge of internal awareness raising: it disseminates tax integrity knowledge to SEPBLAC's AML/CFT supervisors. This knowledge sharing could be extended to prudential supervisors.

- The ACPR established a predefined list of tax-integrity-related questions on CRS matters which it uses for on-site inspections covering tax integrity. This allows the CA to apply a consistent approach of verification during the on-site inspections.

- BaFin, the DFSA and DNB are all active members of the multilateral information exchange forums established in their respective countries. These forums, called AFCA in Germany, the FEC in NL and ODIN in DK, are built as a PPP model and they allow participants to

meaningfully exchange information on financial crime, including on tax crimes. Concrete cases of tax fraud or tax crimes can be identified and discussed during the meetings, and could be followed upon, where relevant.

4. Benchmark 2: Integration by CAs of tax integrity into their sectoral and institution-specific ML/TF risk assessments

4.1. Introduction

The EBA Guidelines on ML/TF risk factors (EBA/GL/2021/02) ('RFGL') provide that CAs should use tax-related information as a risk factor when assessing ML/TF risks in institutions and sectors under their supervisory remit. In addition, the RFGL make references to the EU AML Directive, which explicitly prescribes that when national risk assessments are being prepared at a national level, tax authorities should be involved (Article 7(4)f).

This chapter looks at how the CAs under review integrated tax integrity into their sectoral and institution-specific ML/TF risk assessments. In particular, it focuses on how:

- tax-related information is collected by the CAs as a source for the CA's RA (Criterion 4);
- tax-related information is effectively used within the CA's supervisory competences and mandate (Criterion 5).

4.2. Tax-related information as a source for CAs' ML/TF risk assessment (Criterion 4)

Denmark (DK)

The DFSA collects tax-related information from banks under its supervision as part of its general AML/CFT data reporting which all institutions are required to undertake quarterly (for high-risk entities) or annually (for other risk categories). The information collected relates to data on transactions to and from countries listed on the EU's list of non-cooperative tax jurisdictions, as well as correspondent banking relations with such countries. The DFSA pointed out that certain other data collected as part of the questionnaire can also be useful for assessing tax integrity risks, including data on private banking products or services or data on cash transactions.

To complement the information from the AML/CFT questionnaire, the DFSA also receives, on a quarterly basis, tax-related data from the Danish FIU, containing information on STRs from CIs where the underlying suspicion is of tax crime or tax fraud. Data collection is further supplemented by other sources, including prudential supervisors, whistle-blowers and the media.France (FR)

The ACPR uses its AML/CFT questionnaire to collect tax-related information from banks in particular relating to CRS obligations (i.e. tax residency of customers and/or their UBOs, and whether the bank has put in place specific permanent control mechanisms to ensure that the bank's dealings with these customers follow the appropriate CDD measures), and on transactions involving jurisdictions which represent a high risk for tax purposes. Banks also report to the ACPR the number of STRs they filed in relation to underlying tax-related suspicions. In addition, the French tax authority shares with the ACPR information on the number of non-residents as well as the amounts of assets and income that were reported by the banks in relation to these non-residents – information the ACPR uses to determine which banks may be particularly exposed to tax integrity risks.

From the FIU, the ACPR collects information on the number of STRs by banks, including a specific breakdown of the proportion of STRs with underlying suspicion of tax matters for the largest reporting entities. The FIU also shares with the ACPR tax-related typologies, where relevant. Lastly, the ACPR receives tax-related statistics from the Ministry of Justice and from the National Office against Corruption and Financial and Tax Crime (*Office Central de Lutte contre la Corruption et les Infractions Financières et Fiscales* (OCLCIFF)).

Germany (DE)

BaFin does not collect specific tax-related information from the banks under its supervision for AML/CFT supervisory purposes.

BaFin confirmed that it receives the German FIU's statistics on tax-related SARs. Also, upon request, BaFin receives the FIU's analysis reports in a condensed and aggregated manner, which is a useful source of information for BaFin's supervisory actions. In addition, tax-related information is brought to BaFin's attention by the tax authority or law enforcement on individual cases of investigation, or through the annual external audit reports of specific banks. BaFin confirmed that it also receives tax-related information through its participation in the AFCA platform.

Tax-integrity-related data is not part of the regular data collection from banks as part of the AML/CFT questionnaire. Also, BaFin confirmed that it considers cum-ex and cum-cum schemes, and more widely tax integrity, as a prudential issue, rather than an AML/CFT issue, because in BaFin's view a money laundering offence is only committed if banks are being misused for tax fraud by external persons. Consequently, if the institution´s staff itself commits the tax fraud jointly with external criminal customers, the bank is not considered to be misused for money laundering purposes and therefore this does not trigger any measures from an AML/CFT supervisory standpoint. BaFin explained that the cum-ex cases in the early 2000s occurred with the involvement of the CIs' staff, and were therefore dealt with as a prudential issue (as opposed to an AML/CFT issue). This could also explain why BaFin has so far not started collecting tax integrity information as part of its AML/CFT questionnaire from banks.

Ireland (IE)

The CBI does not currently collect tax-related information from its banking sector as part of the annual AML/CFT questionnaire. The CBI evidenced that it is significantly redesigning its annual Risk Evaluation Questionnaire and that the enhanced questionnaire will require firms to submit specific

tax-related data and other data that could indicate tax integrity risk, e.g. data on tax residency, including for UBOs, as well as data related to complex legal structures, policies and procedures to detect tax evasion or tax avoidance, the number and value of transactions linked to high-risk jurisdictions for potential tax purposes, STR reporting, etc. The redesigned questionnaire will be issued to CIs in 2025.

In respect of STRs, as part of the revised AML/CFT questionnaire the CBI will receive data on what percentage of the STRs submitted to the FIU and the Revenue Commissioners have an underlying suspicion which relates to tax crimes.

As for now, based on the Revenue Commissioner' statistics provided to the PRC, the proportion of STRs with at least one underlying suspicious element being tax crimes, compared to the total number of STRs, was approximatively 13% in 2020, 32% in 2021, 37% in 2022 and 41% in 2023. However, such statistics are based on the CI's determination of the underlying predicate offence when filing an STR. Therefore, as the CBI indicated to the PRC, this data, given the potential data quality concerns, should not be viewed in isolation as an indicator of the level of STRs pertaining to tax evasion.

Netherlands (NL)

In its annual AML/CFT questionnaire, DNB includes tax-related questions especially regarding the client portfolio (e.g. number of non-resident customers, customers domiciled in tax havens), questions on banking products offered and questions on cross-border transaction flows (including transactions with a correspondent bank established in high-risk jurisdictions). DNB also enquires on the number of STRs reported with underlying suspicion on either tax evasion or tax avoidance, and collects data as to whether the bank has policies and procedures in place to detect evasion or avoidance of tax regulations.

Spain (ES)

As part of the AML/CFT questionnaire, SEPBLAC collects tax-integrity-related information, in particular in relation to the establishment of a bank's subsidiary, branch or any other entity of the bank (e.g. parent) in a high-risk country or tax haven. The data collection also covers tax residency of the bank's clients, and any transactions the bank conducts with non-resident clients. There is no data collection in relation to complex structures or other tax indicators.

In addition, BdE collects specific information on cross-border transactions of natural and legal persons which are above the threshold of EUR 1 million in a single transaction or aggregated for a certain period. The legal basis for this requires reporting information on funds transfer with any foreign country; credits and debits on their non-resident client accounts; and any collection of euro notes and coins to/from foreign correspondents. Given the non-resident element of these transfers of funds, as reported, they can provide potential red flags for tax purposes, too.

4.3. Tax-related information used for AML/CFT supervisory purposes (Criterion 5)

Denmark (DK)

The defrauding of public funds is subject to close scrutiny and a collective effort by the relevant authorities in Denmark. The most recent money laundering national risk assessment was issued by the Danish FIU in November 2022[6], in cooperation with the AML Forum of which the DFSA is a member. The NRA dedicated a chapter, under the threat analysis, to tax and value added tax (VAT) crimes. The NRA indicated a significant number of tax fraud cases in Denmark for the period 2018-2021 (i.e. a total of 11 334 prosecutions of tax fraud, out of which 2 432 convictions), pointing to the effectiveness of the authorities' controls related to combating tax fraud. These convictions relate mainly to unemployment fund fraud, serious tax and VAT crime, and social fraud, and not to dividend arbitrage trading schemes.

The information collected by the DFSA on tax integrity feeds into the risk assessment of the banks, both directly in connection with the DFSA's risk assessment of institutions and indirectly as the NRA is used by the DFSA as a source of information when assessing the individual ML/TF risks of banks – especially in the inherent risk assessment of products and services offered and in the risk assessment of certain jurisdictions.

In addition, as the DFSA explained to the PRC, individual cases of tax fraud can be exchanged through the recently created ODIN platform. Such cases, once discussed in ODIN, can trigger adjustments in the individual ML/TF risk assessments of banks. However, this has not yet been the case.

France (FR)

Both the most recent national risk assessment (published in January 2023) and the sectoral risk assessment (published in June 2023) cover the risk of tax fraud and tax crimes in France. The NRA was prepared by the COLB of which the ACPR is a member. The NRA indicated that tax crime, including tax fraud, social security fraud and customs fraud, represents a high ML/TF risk in France. The NRA explicitly identified dividend arbitrage schemes as one specific risk in relation to investment services. Also, the SRA made explicit reference to dividend arbitrage schemes and indicated that the ACPR organised, throughout 2021, targeted bilateral meetings with large French banking groups aiming to explain how illegal funds deriving from dividend arbitrage schemes could be subject to money laundering schemes.

The fight against fraud relating to all types of public funds (tax, social security, customs) is a priority of the French FIU, which also deploys significant resources to fight against tax fraud. As the FIU annual report mentions, tax fraud concerns mainly omission, or dissimulation of tax payments (including the absence of a declaration of assets with tax payment obligations, both inside and

[6] Denmark reported that a separate national risk assessment on terrorist financing is also published, and the Danish Intelligence Authority (PET) is in charge.

outside of France, or the absence of a declaration of a workforce), and does not refer to dividend arbitrage schemes[7].

The information collected by the ACPR on tax integrity feeds into the individual risk assessment of banks. While the methodology does not contain a specific 'tax crime' risk rating, the risk of tax crimes is assessed as part of the risk assessment under both the inherent and the residual ML/TF risks. For the inherent risk assessment, tax-integrity-related information feeds into the three risk categories of 1. geographies (e.g. transactions to or from high-risk countries for tax matters; correspondent banking relationships involving the same set of countries); 2. products and services offered (e.g. wealth management products and services with potential tax advantages, retail banking services (including VAT fraud) and investment banking services); and 3. customer risks (e.g. non-resident customers). For the residual risk assessment, the final risk rating of the individual bank will be adjusted by the information which is collected on the quality of the bank's AML/CFT and CRS-related systems and controls including the identification, analysis and reporting of transactions with an underlying suspicion related to tax crimes.

Germany (DE)

Neither the most recent national risk assessment nor the sectoral risk assessment dedicated a specific chapter on tax integrity. BaFin indicated to the PRC that the risk of tax crime will be taken into account in greater detail in the future, revised versions of the NRA/SRA. Indications received from BaFin suggest that, in the forthcoming edition of its SRA, which was initiated in late 2024, the tax integrity risk to which German banks are exposed would be assessed as 'moderately low'.

As referred to earlier, BaFin confirmed that it has no formalised process in place for collecting tax-related information or data for the ML/TF risk assessment. There is no data collection directly from supervised institutions which could influence the ML/TF risk rating of the individual institution. Therefore, there is no evidence that tax-related information could provide input into the sectoral risk assessment, or into the individual ML/TF risk assessment of banks under BaFin's supervision. However, BaFin indicated that when specific tax-related information is brought to BaFin's attention by the tax authority or law enforcement, or through the annual external audit reports of specific banks, this information will be considered in the individual risk assessment. This remains, nevertheless, ad hoc information, which will be received at the moment when there is already an ongoing investigation and therefore the tax crime risk is already crystallised.

Ireland (IE)

Ireland's most recent national risk assessment (NRA), published in 2019, included a specific section on tax evasion. While it highlighted the threats presented by tax crime, the NRA noted important mitigants including Ireland's tax laws, its rates of compliance, the powers available to the Revenue Commissioners to investigate and prosecute tax crimes, the levels of international cooperation, the corporate landscape, etc. Accordingly, the NRA did not indicate that tax crimes are a significant ML/TF risk for Ireland.

[7] Activity Report of the French FIU, 2022.

The CBI's assessment of tax integrity and ML/TF risk is informed by the NRA, by supervisory engagements and by ongoing cooperation and dialogue with the Revenue Commissioners who have not apprised the CBI of any significant emerging threats.

The current sectoral risk assessment for CIs – which is for internal CBI use only – does not specifically cover the risk of tax crimes (noting that tax crimes have not been identified as a significant ML/TF risk). The CBI indicated to the PRC that it plans to commence updating the SRA in 2024, and it is expected that the update of the ML/TF NRA, to which the CBI contributes, will commence in 2024.

As indicated above, the CBI currently does not collect tax-integrity-related information from the banks under its supervision. The current ML/TF risk assessment of individual banks does not specifically include 'tax crimes' as part of the methodology. However, the CBI explained to the PRC that some of the risk factors associated broadly with AML/CFT can be used for tax integrity purposes and are indeed collected as part of the AML/CFT questionnaire. This covers information related to geography as well as risk factors linked to the customer base.

Netherlands (NL)

The most recent national risk assessment, published in 2023, does not specifically include tax crimes. DNB indicated that the tax-related information collected through the AML/CFT questionnaire feeds into the sectoral ML/TF risk assessment of the banking sector. This information provides input to the calculation of the risk rating and influences DNB's supervisory judgments.

The information collected from the AML/CFT questionnaire is taken into account in the individual risk assessment of banks, with the automatic score generated based on the statistics provided in response to the questionnaire. The final risk scoring of individual banks can be adjusted by expert judgment of the AML supervisors, based on information DNB collects from other sources. For example, DNB is part of the FEC, through which concrete cases of tax crimes and tax evasion are shared between public authorities including the Dutch tax authority. Information received through the FEC is used by DNB for its supervisory work, including for the ML/TF risk assessments.

Spain (ES)

Both the national risk assessment (2020) and its addenda (2024) cover tax crimes – including tax fraud, social security fraud, customs fraud and public subsidies fraud. The NRA highlighted that in 2022 there was a significant increase (43%) in suspicious transaction reporting from the financial sector with the underlying suspicion of tax fraud. While the majority of these reports were filed by banks, SEPBLAC indicated that statistics on these frauds relate to generic tax fraud and VAT fraud mainly, and they did not involve dividend arbitrage trading schemes.

The SRA, produced by SEPBLAC in collaboration with BdE, also incorporated tax fraud as part of the inherent risk assessment.

SEPBLAC also confirmed that tax-related information feeds into the individual risk assessment of banks under the methodology of the inherent risk assessment and therefore this information is taken into account when establishing the annual inspection plans. SEPBLAC provided a concrete

case in which the ML/TF risk rating of a specific bank, specialising in wealth management, had been increased by SEPBLAC given its important ties with certain countries considered a high risk due to tax integrity issues.

4.4. Assessment of Benchmark 2

Denmark (DK)

Regarding the assessment of Criterion 4 (i.e. collection of tax-related information as a source for CAs' ML/TF risk assessment), the PRC rated the DFSA as '**largely applied**'. The DFSA collects tax-integrity-related data from DK banks. However, such data collection focuses only on geographical risks of the banks' activities. It is complemented by: 1. FIU data on suspicious transaction reports related to underlying tax crimes, filed by banks; and 2. specific cases exchanged through the ODIN network.

With regard to Criterion 5 (i.e. tax-related information used for AML/CFT supervisory purposes), the DFSA is rated as '**largely applied**'. The information collected feeds into the individual risk assessment of banks. More generally, there is a recognition that tax crimes (including tax and VAT fraud) are among the most profitable types of crime in Denmark and the FIU's annual report (2022) confirmed that they are actively prosecuted by Danish law enforcement.

Based on the above, the PRC rated the DFSA as '**largely applied**' for Benchmark 2.

France (FR)

The PRC rated the ACPR as '**fully applied**' for Criterion 4. The ACPR's data collection on tax integrity is comprehensive and based on several sources including the banking sector, the FIU and other public authorities such as the Ministry of Justice and OCLCIFF. Tax crime, including tax fraud, social security fraud and customs fraud, is recognised to represent a high ML/TF risk in France and is in the focus of both the ACPR and the FIU.

The PRC rated the ACPR as '**fully applied**' for Criterion 5. The information collected on tax integrity feeds into the NRA, the SRA and the individual risk assessment of banks. While the methodology for CIs' individual risk assessment of banks does not contain a specific 'tax integrity risk' rating, information collected is used both for the inherent and residual risk assessment of individual CIs.

The ACPR was also able to demonstrate concrete cases whereby an underlying tax integrity issue of a bank – in particular a dividend arbitrage trading scheme – triggered specific on-site visits from the ACPR, which showed the ACPR's ability to react to risks of tax crimes.

Based on the above, the PRC rated the ACPR as '**fully applied**' for Benchmark 2.

Germany (DE)

BaFin is rated as '**partially applied**' on Criterion 4. BaFin does not have structured and regular data collection on tax integrity from the banks under its supervision. The information BaFin receives

from the FIU on STRs is an important source of information but cannot compensate for the lack of data from the banks.

Tax crime has been identified as a priority neither in the NRA nor in the SRA of the banking sector.

However, BaFin was able to demonstrate its capacity to act upon tax-integrity-related risks identified in its banking sector as several (prudential) on-site and off-site visits were carried out when triggered by the suspicion of dividend arbitrage trading schemes. Also, BaFin advised that, to the extent that it is available, tax-integrity-related information and STR-related data received from the FIU may be considered in the update of the risk classification of the specific institution(s) concerned. BaFin is rated as '**largely applied**' on Criterion 5.

Based on the above, the PRC rated BaFin '**partially applied**' for Benchmark 2.

Ireland (IE)

The CBI is rated as '**partially applied**' on Criterion 4. The CBI does not currently collect tax-integrity-related information from its banks, although such data collection will commence in 2025 and the PRC was provided with an advanced draft of the future exercise.

As previously mentioned, the CBI has not identified tax integrity as presenting significant risk for ML/TF. The NRA notes that general tax compliance rates are high and cum-ex schemes are not possible in Irish banks. In line with the risk-based approach, the PRC rated the CBI as '**largely applied**' on Criterion 5. The CBI's assessment of tax risk should be further supported by relevant tax-related information and evidence. It is noted that the CBI plans to commence updating the SRA in 2024 and will in the future use data from its enhanced questionnaire to support the SRA.

Based on the above, the PRC rated the CBI as '**partially applied**' for Benchmark 2.

Netherlands (NL)

The PRC rated DNB as '**fully applied**' for both Criteria 4 and 5. DNB collects comprehensive tax-integrity-related data from banks and from other sources including the FIU and the FEC. Such information feeds into the individual risk assessment of the banks and into the SRA, and it also influences the expert judgment for the risk assessments.

In addition, DNB is informed by the tax authority or law enforcement of ongoing investigations on tax-related crimes in specific banks if such information is deemed relevant to DNB's legal tasks and responsibilities. If obtained, such information may also influence DNB's risk assessment.

Based on the above, the PRC rated DNB as '**fully applied**' for Benchmark 2.

Spain (ES)

There is a broad range of tax-integrity-related information that SEPBLAC, as an AML/CFT supervisor, collects from the banks under its supervisory remit, with data mainly focusing on geographical risks (i.e. clients resident or established in high-risk countries for tax integrity, or transactions with such

countries). The information is complemented by relevant cross-border transactional data from individual banks. The PRC rated BdE/SEPBLAC '**largely applied**' for Criterion 4.

SEPBLAC was able to explain to the PRC how such information is effectively used to feed into the ML/TF risk assessments of individual banks and illustrated, through a concrete example, how tax-integrity-related data influenced the results of its ML/TF risk assessment.

In general, both SEPBLAC and BdE demonstrated a good awareness of tax integrity risks, which are also reflected in the NRA and in the SRA. The PRC rated BdE/SEPBLAC as '**fully applied**' for Criterion 5.

Based on the above, the PRC rated BdE/SEPBLAC as '**largely applied**' for Benchmark 2.

	DK	FR	DE	IE	NL	ES
Criterion 4: Tax-related information as a source for CAs' ML/TF risk assessment	LA	FA	PA	PA	FA	LA
Criterion 5: Tax-related information used for AML/CFT supervisory purposes	LA	FA	LA	LA	FA	FA
Overall score for Benchmark 2	LA	FA	PA	PA	FA	LA

4.5. Conclusions / findings / best practices

The assessment of the level of integration of tax integrity risks into the AML/CFT supervisors' ML/TF risk assessments (both sectoral and institution-specific) split the countries under peer review into two groups. The majority of the AML/CFT CAs (DK, FR, NL, ES) collect tax-integrity-related information directly from the banks under their respective supervision as part of their regular AML/CFT questionnaire. Other sources of information – allowing the AML/CFT supervisors to collect tax-integrity-related information – are the FIU, the tax authority and/or law enforcement agencies. All AML/CFT supervisors peer reviewed gather some level of information from their local FIU on tax integrity – this usually covers an indication of STRs filed by the banks with the underlying suspicion of tax crimes. Two CAs (DE, IE) do not collect tax integrity data from banks under their supervision, though these CAs still gather information on possible indications of tax crimes from other sources. It is noted that the CBI's ongoing redesign of its AML/CFT questionnaire will allow, starting from 2025, the collection of tax-integrity-related data directly from banks under its supervision.

In terms of general findings, the EBA recommends AML/CFT CAs to:

- establish and keep up-to-date their ML/TF risk assessment on individual banks and at a sectoral level alike, based on quantitative and qualitative data and information. As part of this, AML/CFT Cas should aim obtaining tax integrity related data on a risk sensitive basis.

- act upon tax integrity-related data and information obtained as part of supervisory work (i.e. from banks under supervision) or from other sources (FIU, tax authority or law

enforcement) and define the adequate supervisory actions according to the level of ML/TF risk tax crime represents in your MB.

In terms of best practices, the PRC noted the following:

- As part of the regular data collection from the banks under their supervision, both the ACPR and DNB collect a range of tax-integrity-related information that is commensurate with the level of tax crime risk in their jurisdiction.

5. Benchmark 3: Arrangements by CAs for reviewing the due consideration of tax integrity in institutions' internal governance

5.1. Introduction

Benchmark 3, the first of two benchmarks related to tax considerations as part of institutions' governance arrangements, is composed of two criteria (Criterion 6 and Criterion 7).

More specifically, this chapter looks at how the CAs under review:

- assess the integration of tax integrity issues into the corporate values of supervised entities with a specific focus on paragraph 99 of EBA/GL/2021/05 (Guidelines on internal governance), i.e.: a. how it is reflected in the policies of the institution; b. what the involvement of the management body is in setting the 'tone from the top' on this topic; and c. whether there are tax-risk metrics being compiled/used (Criterion 6);

- assess from a more granular, bottom-up perspective to what extent CAs look into the management body's guidance on tax behaviour, and at how the risk management framework applies to tax-related integrity issues and losses, if any, with a specific focus on (but not limited to) paragraph 103c of EBA/GL/2021/05 and paragraph 105j of EBA/GL/2022/03 (Guidelines on the SREP) (Criterion 7).

5.2. Integration of tax integrity into corporate culture (Criterion 6)

Denmark (DK)

The DFSA has put in place clear procedures to supervise whether and how institutions comply with the requirements of DK law, which mandates them to have adopted and implemented a written policy, mandatory by law since 2020, that ensures a sound corporate culture. The DFSA assesses whether Danish CIs have implemented this policy, which must contain a description of professional and ethical standards, with the objective of promoting and strengthening honesty and integrity, as well as reflect the risks carried by violations of financial legislation, including tax-related risks, on

the basis of their own business model and risk tolerance, with respect to professional standards, including relating to tax conduct and integrity.

The DFSA supervises how this policy formally meets the legal requirements but also how it is implemented within the organisation. In this context, the DFSA conducted a thematic review in 2022-2023 on the requirement for having a policy on sound corporate culture, resulting in a report providing guidance and best practices to the institutions on how to further develop these policies, including considerations on promoting sound corporate culture through the tone from the top.

France (FR)

The ACPR, via its participation in the ECB's Joint Supervisory Teams (JSTs), regularly assesses a range of policies and procedures relevant for tax integrity and tax conduct in CIs (e.g. ethics charter, code of conduct, and compliance policies and procedures). The existence of these policies and their adequacy, as well as any specific guidelines related to tax issues, have been verified for five French significant credit institutions ('Sis') during the ECB's horizontal project on cum-ex/cum-cum schemes. Certain CIs were requested to correct identified weaknesses.

In the same context, the ACPR regularly participated in the assessments of the roles of management bodies in setting the tone from the top, as well as overseeing and challenging the decisions of the senior management, e.g. by attending CIs' board sessions and reviewing board minutes as well as other related documentation.

The ACPR assesses CIs' internal control framework under the annual SREP exercise (internal control functions, management body, risk culture, operational risk). While tax integrity/conduct does not have a dedicated SREP module, tax integrity and potential tax evasion practices are also assessed when deemed necessary, for instance as part of ongoing supervision activities.

Tax-related risk metrics are assessed as part of the overall risk appetite framework within the annual SREP exercise. The ACPR looks at whether institutions' compliance charters mention tax as a compliance area. An example of risk metrics at one French SI is an indicator related to the cost of fraud, with an alert threshold set at 0.5% of net banking income.

For less significant institutions ('LSIs'), based on their business models, the ACPR does not generally consider tax schemes to be a topic of primary relevance. Besides, no LSIs were involved in any cum-cum cases in the past in France. Nonetheless, the ACPR assesses the quality of LSIs' governance as part of the SREP exercise.

Germany (DE)

BaFin requires that members of the management board be responsible for assessing the respective CI's risks, including risks stemming from a lack of tax integrity, in line with their responsibility to ensure the CI's proper business organisation on an ongoing basis, in accordance with BaFin's guidance notice on management board members[8].

[8] https://www.bafin.de/SharedDocs/Downloads/EN/Merkblatt/dl_mb_160808_GL_KWG_ZAG_KAGB_en.pdf?__blob=publicationFile&v=4

BaFin holds a list of institutions which have had indications or a history of tax evasion issues in the past, updated on the basis of new elements including ongoing cum-ex court cases. In particular, BaFin reviews whether management bodies ('MBs') initiated the necessary measures to reduce risks which have their origin in past tax-evasive business practices and thereby to limit future cases. If found unsatisfactory, supervision for such CIs is intensified on those aspects.

If on-site or off-site inspections have shown deficiencies in the organisation of the compliance function, BaFin requires additional reporting on mitigation measures including milestone planning and ownership for specific measures within CIs' boards. Regular follow-ups and further inspections will be conducted with the aim of assessing the suitability and efficiency of those measures.

Ireland (IE)

The CBI applies the Single Supervisory Mechanism ('SSM') SREP methodology and the LSI SREP methodology, which have both been amended to include references to tax offences including through unlawful or banned dividend arbitrage schemes. Examples of how these are assessed include when reviewing an institution's overall governance framework and codes of conduct, as well as when assessing conduct risk and reputational risk. Board involvement in setting the tone from the top is being looked at in general but not specifically against the background of tax issues / tax integrity.

The CBI considers specific checks for tax issues / tax integrity if material or severe issues arise in line with its risk-based approach.

To identify potential tax-conduct-related issues via its risk-based approach, the CBI looks at internal reports and board minutes for concrete findings, such as breaches of the institution's own internal framework (compliance and risk policies), as well as assessing CIs' risk criteria against their internal policies.

Reference to tax offences, including through unlawful or banned dividend arbitrage schemes, is expected to be included in the code of conduct. The relevant documents are obtained and reviewed as part of SREP information requests. The CBI supervisory expectations are for a zero tolerance approach to non-compliance with tax regulations.

The CBI so far did not identify any concrete examples specifically related to tax integrity, either for SIs or LSIs. If additional checks on tax issues became necessary, the CBI would look at the overall management structures (compliance, internal audit) and risk frameworks (e.g. transfer pricing and funds transfers) of credit institutions within more general supervision.

Netherlands (NL)

DNB's approach for SIs via its participation in the ECB's JSTs is to cover tax integrity as part of the SREP methodology in the relevant subcategories. As such there is no stand-alone focus on tax integrity. However, if tax integrity issues are identified, their prudential implications are assessed. Tax integrity issues would be identified following the SSM methodology on risk culture, for instance through the assessment of board minutes or reviewing the role of key managers. Tax integrity

issues may also be identified and assessed as part of the SREP assessment for LSIs within the review of more specific elements such as the risk culture and corporate code of conduct. However, tax integrity has not been a specific topic within these assessments so far. Similarly, tax integrity issues may be identified in targeted on-site investigations at both SIs and LSIs that focus on specific functions, e.g. compliance.

DNB's approach is to use signals from its own observations or other external signals (from whistle-blowers, from institutions or from other authorities) that may trigger supervisory measures. Tax risk as part of risk management is discussed if deemed necessary in SREP meetings with the head of legal, head of operational risk management and/or head of tax. Ad hoc follow-ups are used for tax-related issues only if a clear signal has been identified.

DNB verifies the existence of an MB-approved tax policy, with mentions and explanations of tax integrity. DNB also assesses the inclusion of tax risk in the risk management framework and reporting.

Spain (ES)

BdE also follows the SREP methodology in the area of taxation, based on the governance part as part of compliance / risk culture; risk culture policies and the code of conduct are assessed by BdE on an ongoing basis. BdE does not have any additional guidance on how to assess specifically tax integrity / tax conduct issues, noting that tax cannot be the main or the sole topic of the assessment due to the constraints of the SREP methodological framework, which is agreed at the SSM level. If tax issues appear through the review of governance or profit and loss ('P&L') monitoring, these would be assessed as part of this methodology.

In addition, BdE examines audit reports and minutes from meetings of CIs' delegated committees and/or reports/minutes from meetings of the board of directors, which so far have not been found to contain references to tax conduct. BdE also uses the results from on-site inspections to check for tax issues.

The MB's involvement in setting the tone from the top is generally assessed for LSIs by JSTs as part of the assessment of risk culture, though without a specific focus on tax integrity. For this purpose, JSTs verify in particular whether the MB periodically monitors dedicated indicators and reports on risk culture (e.g. based on self-assessment questionnaires or surveys) developed by the CI.

5.3. Tax behaviour and risk management (Criterion 7)

Denmark (DK)

In 2010 the DFSA published an executive order on good governance[9]. The order concerns management, including risk management in every aspect. Among other things the order requires CIs to have standard operating procedures ('SOPs') in all significant areas of activity. The DFSA uses this executive order as a foundational block of its reviews and supervisory actions on CIs' governance and risk management, ensuring sufficient SOPs in all significant areas including tax.

[9] www.retsinformation.dk/eli/lta/2022/1103

Furthermore, in 2016 the DFSA published an executive order[10] laying down the requirements of good practice for CIs. This executive order contains a specific subsection dedicated to CIs' obligations to provide information on the consequences of the tax rules that are relevant for their customers. This provision regarding CIs' tax information to their customers is integrated into the DFSA's general supervision of consumer affairs and good business practice.

While, the DFSA has not specifically checked on the existence of examples of acceptable and unacceptable tax behaviour, it does review the CIs' governance, and, if specific tax behaviour and tax integrity issues appear or certain weaknesses become apparent as part of a review on a CI's governance, such issues or weaknesses are investigated and mitigated within the scope of the DFSA's supervisory authority. However, the DFSA has not identified such specific examples regarding tax behaviour and tax integrity in its supervision.

France (FR)

While participating in the ECB's horizontal exercise on cum-ex/cum-cum schemes in 2022-2023, the ACPR assessed whether the codes of conduct (or equivalent policies) of the respective CIs addressed the issue of tax integrity[11]. Three out of five French SIs confirmed that such provisions were present.

In general, the ACPR assesses the risk culture of CIs in the context of the SREP exercise. While this assessment, in line with the SSM manual, is broader than tax integrity specifically, specific tax behaviour and tax integrity issues would be looked at should certain weaknesses become apparent as part of this larger assessment, new information appear in the public domain or new information result from ongoing investigations into cum-ex/cum-cum schemes.

Moreover, in 2024 the ACPR asked a sample of banks exposed to tax arbitrage risks how they implemented a 2019 legal clarification on dividend arbitrage schemes[12]. The ACPR has also started an ongoing questionnaire on private banking which includes questions on the involvement of banks in tax planning for their customers.

Finally, an internal governance expert group at the ACPR held several internal workshops on the topic of provisions booked to cover potential financial losses resulting from dividend arbitrage trading schemes (following up on the ECB's questionnaire on SIs). In two cases out of five, SIs' provisions relating to ongoing tax cases were challenged.

[10] https://www.retsinformation.dk/eli/lta/2016/330

[11] The ECB's questionnaire contained the following question: Does the bank have in place clear and documented policies (e.g. code of conduct) laying out principles and examples of behaviours linked (inter alia) to fraud or ML/TF, tax offences (through dividend arbitrage schemes)?

[12] French tax law (Article 119 bis A of the General Tax Code) subjects to a withholding tax any payment made by a French tax resident to a non-resident, paid in the course of a temporary cession of securities, if such a temporary cession lasts less than a 45-day period that includes the date on which the right to a dividend is acquired, unless the non-resident demonstrates that the transaction's main purpose and effect is not to avoid withholding taxes or obtain a tax benefit.

Germany (DE)

BaFin informed the PRC that specific policies with an explicit focus on acceptable and unacceptable tax behaviour are not widespread among supervised entities, with most policies and terms covering a broader spectrum of behaviour, in comparatively general terms/wording. However, the possible involvement of CIs in such activities is discussed regularly with the MB of supervised entities. The depth of the discussions is proportionate to the known involvement of the supervised entity and, if those discussions are not deemed to provide satisfactory responses, line supervisors could mandate further actions to be taken by CIs.

BaFin participated in the ECB's horizontal exercise on cum-ex/cum-cum schemes in 2022-2023. Since it was part of the exercise, BaFin also examined whether the CIs addressed the issue of tax integrity in the respective codes of conduct. Overall, nearly all CIs involved in the exercise have put in place provisions addressing tax integrity issues accordingly.

BaFin is considering delivering guidelines for line supervisors on approaching banks and other supervised entities on governance issues in the area of tax integrity, with no details yet as to whether these guidelines would include more guidance in the area of tax avoidance schemes.

Most such cases are at least 10 years old, dating back to 2006-2011. Surveys on tax issues began in 2016, allowing BaFin to gather a comprehensive overview among all German CIs on tax-integrity-related issues. These surveys were helpful as the results clearly indicate which CIs were involved and, if so, to what extent they were involved in such tax schemes.

While no cum-ex cases have been identified in the last five years (and most are at least 10 years old, stemming from 2006 to 2011), dividend arbitrage schemes continue to constitute high-risk/high-impact events due to either ongoing criminal or civil procedures entailing high legal costs as well as substantial tax repayments and/or penalties. Consequently, BaFin focuses today on whether potential loss events (e.g. from ongoing court cases) are covered in institutions' operational frameworks and provisions are appropriately booked to cover such losses. Institutions have to classify, report and flag loss events linked to tax integrity. If an institution reports substantial loss events within those categories without having flagging them beforehand, BaFin requires additional information to determine which kind of tax-related losses have occurred and if the bank expects additional losses (out of this single event) in the future. BaFin would then take further supervisory measures if necessary, such as further adjustment of the CI's balance sheet, which has already been the case in one instance.

The operational risks identified from tax-related loss reporting serve as the basis for deciding whether additional/specific risk management measures have to be taken in order to exclude root causes or similar practices in the future, including possible reorientation of business activities. BaFin challenges institutions which do not include such possible loss events in their risk management.[13]

[13] BaFin is legally empowered to override ICAAP figures for operational risk and to take revised figures as the starting point for Pillar 2 requirements measurement.

Ireland (IE)

As detailed under Section 4.2., the CBI applies the SSM SREP methodology and the LSI SREP methodology, which include references to tax offences including through unlawful or banned dividend arbitrage schemes. The CBI's view is that specific assessments of examples of acceptable and unacceptable tax behaviour are not warranted in a risk-based approach. However, where a red flag is identified e.g. through reviews of internal bank documentation or annual external auditor reviews, this is analysed via a more in-depth review.

In relation to culture the CBI recently introduced a 'Behavioural and Cultural Risk' (BCR) framework, as a key supervision tool for the supervision of CIs. At least annually the supervisors meet to discuss BCR observations, including culture issues.

The CBI does not assess whether institutions book provisions to cover for financial losses resulting from dividend arbitrage trading schemes, as it has determined together with the tax authority that dividend arbitrage schemes such as cum-ex schemes are not permissible in Ireland, while cum-cum schemes are not identified as a significant risk – instances identified in IE date back to 2010-2012 and have been closed, with fewer than five Irish funds involved in countries outside IE, all of which have fully wound down and/or had their licences revoked.

Netherlands (NL)

DNB does not specifically check on the existence of principles and examples of acceptable and unacceptable tax behaviour in supervised entities' code of conduct or policies, as in DNB's supervision as part of the SSM there is no stand-alone focus on tax integrity. The general approach is to cover the topics of tax conduct as part of the SREP methodology, especially in relation to risk culture, and to some extent under operational risk (potential impact on losses and reputational risk). If tax integrity issues are identified, their prudential implications are assessed as part of overarching topics of risk culture or operational risk under the SREP.

If potential losses are to be expected from dividend arbitrage trading schemes, this is assessed as part of operational risk (potential impact / operational losses) and also discussed periodically with the external accountant (provisioning for ongoing legal cases).

In the case of ongoing legal or conduct cases relating to dividend arbitrage schemes, close monitoring is performed by DNB in the context of the respective JST. As one Dutch bank is involved in a legacy cum-ex/cum-cum case in Germany, DNB and the JST hold periodic follow-up meetings with the bank to discuss developments, mitigating actions, reputational impact and provisioning.

Spain (ES)

According to BdE, policies regarding specifically what can be considered acceptable or unacceptable tax behaviour are not widespread among supervised entities. Nevertheless, institutions have submitted queries to tax authorities, or to the tax department in the finance ministry, in the case of doubts on the taxation of certain instruments.

Tax conduct issues have not been proactively/specifically assessed by BdE as they have not been identified as a supervisory priority for ES banks. However, BdE in the context of the JSTs assesses whether the institutions' overall governance framework includes, as part of the code of conduct, principles relating to tax offences (including through unlawful or banned dividend arbitrage schemes). BdE could not present specific findings regarding the presence or absence of acceptable tax behaviour in CIs' codes of conduct or other policy documents.

Currently, if an institution booked provisions to cover financial losses arising from dividend arbitrage trading schemes, this would be assessed by the relevant JST. Nonetheless, so far Spanish SIs have not booked provisions to cover this aspect.

Operational risk losses resulting from dividend arbitrage trading schemes have been assessed in the context of investigations opened in 2016 in relation to two Spanish banks by German prosecutors. One case was closed with no further action by BdE in light of the limited amount of losses. In the other case, proceedings are ongoing, with the JST kept updated through meetings with the institution on the status of the investigation.

5.4. Assessment of Benchmark 3

Denmark (DK)

Regarding the assessment of Criterion 6 (how corporate culture takes into account tax integrity and fosters a culture of sound tax conduct) the PRC noted that tax integrity is part of both the legal requirements and of the supervisory framework applicable to Danish CIs, based on the clear procedures in place and the recent supervisory actions by the DFSA, including a thematic review on corporate culture which had a broader focus on its integration with other corporate policies – particularly regarding AML/CFT – but the DFSA did not assess tax integrity in a targeted way. Consequently, the PRC rates DK as '**largely applied**' with regard to Criterion 6.

With regard to Criterion 7 (tax behaviour and risk management), the PRC could not identify findings by the DFSA on the presence of examples of acceptable and unacceptable tax behaviour in CIs' policies. The PRC nonetheless found that such issues are properly investigated if they arise and that the requirements of the DFSA executive order on good conduct for financial institutions to provide advice to their customers on the tax implications of the services provided, along with the DFSA's supervisory actions on the basis of this order, constitute a sufficient mitigation of risks resulting from tax issues. As a consequence, the PRC rates the DFSA **'largely applied'** with respect to Criterion 7 on a risk-based approach with regard to checking principles/examples of acceptable and unacceptable tax behaviour.

Overall, the PRC finds DK **'largely applied'** with regard to Benchmark 3.

France (FR)

The PRC rates the ACPR '**fully applied**' with regard to Criterion 6 on the basis of the assessment of policies and procedures relevant for tax conduct as part of corporate values, the assessment of risk culture as part of the SREP methodology, the checks with regard to the MB's role, and the

assessment of the control framework's coverage of tax integrity issues through several SREP modules and of tax-related criteria within institutions' risk frameworks.

The PRC rates the ACPR '**fully applied**' with regard to Criterion 7 on the basis of the review via the ECB questionnaire that included questions on acceptable tax behaviour, and the examination of provisions covering financial losses linked to dividend arbitrage trading schemes.

Consequently, the ACPR is rated '**fully applied**' for Benchmark 3.

Germany (DE)

The PRC rates BaFin '**fully applied**' with regard to Criterion 6 on the basis of the assessment of the role of the management body in assessing all risks including tax-related risks, the close monitoring of institutions with an history of engaging in tax evasion practices in the past, the close monitoring of the operational treatment of losses related to dividend arbitrage, and the monitoring of mitigating measures with identified board-level ownership.

Regarding Criterion 7, the monitoring by BaFin is carried out through surveys and ad hoc discussions with CIs and is embedded in BaFin's overall risk-based supervisory approach, as well as taking place through the participation in the ECB's review that included questions on acceptable tax behaviour. Consequently, the PRC rated BaFin '**fully applied**' on Criterion 7.

Overall the PRC considers BaFin '**fully applied**' on Benchmark 3.

Ireland (IE)

The CBI includes tax integrity when reviewing an institution's overall governance framework and codes of conduct, as well as when assessing conduct risk and reputational risk, as part of the SSM methodology. However, the PRC recommends that the CBI's approach could have a more developed risk prevention dimension should tax integrity materialise as a significant risk in Ireland, since the CBI's actions regarding tax integrity would, at present, only be triggered ex post by the materialisation of tax-related risk within a CI. Consequently, the PRC rates the CBI '**largely applied**' with regard to Criterion 6.

Regarding Criterion 7, the CBI's view is that specific assessments of the presence of examples of acceptable and unacceptable tax behaviour as required under EBA/GL/2021/05 are not warranted in light of its risk-based approach. Accordingly, the CBI did not present any findings about the presence or the absence of acceptable or unacceptable tax behaviour in supervised entities. Nevertheless, the current roll-out of the CBI's BCR framework is deemed by the PRC to constitute a useful tool to be able to detect and address issues of conduct, which would be able to point towards tax integrity issues even if the BCR framework does not explicitly target tax conduct. Consequently, the PRC rates the CBI '**largely applied**' with regard to Criterion 7.

In consequence the CBI is rated '**largely applied**' for Benchmark 3 overall.

Netherlands (NL)

The PRC rates DNB '**largely applied**' with regard to Criterion 6 based on the identification and assessment of tax issues in corporate culture as part of the SREP methodology, the use of a trigger (signal)-based approach to strengthen supervisory engagement as well as to decide on supervisory measures, and the verification of a tax policy with clear indications on tax integrity, meaning that the material risks related to tax integrity within the corporate culture are deemed to be addressed. Nevertheless, DNB's reliance on tax-related signals for its assessments also limits its supervisory approach to a reactive stance without a risk prevention dimension.

On Criterion 7 the PRC acknowledges that DNB approaches this topic through the possible consequences of tax behaviour within a wider prudential scope (governance, operational risk, reputational risks), but DNB would have ideally provided the PRC with some level of assurance regarding the assessment of this requirement (for instance, via discussions with credit institutions or through a specific business conduct supervisory framework). Therefore, the PRC rates DNB '**partially applied**' on Criterion 7.

Consequently, the PRC rates DNB '**largely applied**' overall for Benchmark 3.

Spain (ES)

The PRC rates BdE/SEPBLAC **'largely applied'** with regard to Criterion 6. BdE/SEPBLAC assess tax integrity issues without a specific focus or methodology, but on an ongoing basis as part of the subcategories 'risk culture' and 'compliance' of the SREP governance module as established by the SSM. The examination by BdE/SEPBLAC of board reports, minutes and other documentation. The assessment of the management body's involvement in setting the tone from the top as part of the assessment of risk culture. However, the BdE/SEPBLAC approach to tax integrity is quite general, and reactive rather than proactive, and it lacks a more developed risk prevention dimension.

Regarding Criterion 7, the PRC notes that JSTs assess the presence of principles related to tax offences as part of the code of conduct, and the presence of examples of acceptable or unacceptable tax behaviour; while BdE/SEPBLAC have not indicated that they check them directly, BdE/ SEPBLAC may advise entities to contact the tax authorities or ministry of finance in the event of doubts. Therefore, the PRC rates ES as '**largely applied**' with regard to Criterion 7.

Consequently, ES is also rated '**largely applied**' with regard to Benchmark 3 overall.

	DK	FR	DE	IE	NL	ES
Criterion 6: Integration of tax integrity into corporate culture	LA	FA	FA	LA	LA	LA
Criterion 7: Tax behaviour and risk management	LA	FA	FA	LA	PA	LA
Overall score for Benchmark 3	LA	FA	FA	LA	LA	LA

5.5. Conclusions / findings / best practices

A majority of reviewed CAs pointed out that integration of tax integrity into corporate values and tax conduct issues are not stand-alone issues subject to targeted scrutiny in their supervisory practices but can be an indicator of weaker governance. The prudential assessment of tax integrity is carried out through several supervisory routes, with the main route followed being governance, control, risk and operational frameworks. As such, tax integrity is covered as part of the assessment of risk culture in general, itself well grounded in the supervisory practices of all the CAs reviewed: the practices of attending board meetings and reviewing board minutes are, for example, well established across the reviewed CAs.

As a general finding, the PRC recommends the following:

- Supervisory actions on tax behaviour and risk management issues (e.g. reviewing examples of acceptable and unacceptable tax-related behaviour) are not as fully documented as the PRC would have expected. Over the course of the assessment of this benchmark, several CAs (FR, IE, NL) remarked in their responses that performing assessments in relation to tax law is either not within their remit, or not useful within a risk-based approach and with finite supervisory resources. The PRC recognises some level of inherent difficulty in differentiating tax law assessments, which are not in the remit of CAs, from the assessment of prudential governance requirements related to tax matters, which are the subject of this benchmark, such as the requirement for institutions to identify acceptable and unacceptable examples of tax behaviour. Nevertheless, the PRC finds that in some cases even basic checks regarding the presence of such examples in institutions' policy documents – that is without any kind of legal assessment – were not evidenced. Such basic checks, prudential in nature, should be performed without implications or limitation in terms of the CA's remit, in the PRC's view.

- CAs dealing with tax integrity as part of the risk culture assessment should have a base level of tax knowledge. CAs should aim to achieve a minimum level of tax knowledge proportionate to their supervisory activities and cooperation with other authorities, and to carry out remedial actions, including dedicated risk (and hereby tax) training, should they estimate that there is a gap. Generally, it appears that CAs also benefit from cooperation with tax authorities to proactively look at principles and examples of acceptable and unacceptable tax behaviour, and proactively advise CIs to consult tax authorities in the event of doubts.

- Tax-related risk metrics (including within the remuneration criteria) can only be assessed by CAs to the extent that they are present within an institution's risk management framework. Although not previously mentioned, while all CAs indicated that they reviewed tax-related metrics if they were part of a risk management framework, only one CA (FR) was able to present an example of a tax-related risk metric. This is likely mostly due to institutions' preference for other risk factors when designing and implementing their risk framework, although the PRC could not totally rule out that this might also be indicative of

a somewhat insufficiently deep look by CAs into the tax dimension of credit institutions' risk frameworks.

Some additional good practices found were:

- liaising with CIs to assess how changes in tax law are being implemented (FR);
- monitoring the board-level ownership of mitigating measures with regard to tax integrity (DE);
- the establishment of a dedicated 'Behavioural and Cultural Risk' framework (IE) where supervisors monitor and assess BCR issues, including on tax issues;
- the employment of seconded personnel from the tax authority in the prudential authority (ES).

As such, the PRC finds that the methodologies of the reviewed CAs are able to detect and deal with prudential tax-related issues, such as risk culture, conduct and advice provided to the institutions' client base.

6. Benchmark 4: Tax integrity in the assessment of the reputation, honesty and integrity of members of the management body and key function holders

6.1. Introduction

This chapter analyses whether and how far CAs have integrated tax integrity and dividend arbitrage trading schemes into their own and the institutions' assessment of the reputation, honesty and integrity of members of the management body and key function holders (KFHs), based on the following criteria:

- Criterion 8: the assessment of reputation, honesty and integrity within the meaning of paragraph 72 of EBA/GL/2021/06, considering, in particular, the required information as set out in paragraph 74.
- Criterion 9: cooperation between competent authorities in accordance with paragraph 198 of EBA/GL/2021/06. This criterion also covers different ways of cooperating with other CAs and how this cooperation is used for integrating tax integrity into the fit and proper ('F&P')

assessment to fulfil the requirements set out under paragraph 74 of the above-mentioned EBA Guidelines[14].

6.2. Reputation, honesty and integrity (Criterion 8)

Denmark (DK)

The DFSA's assessment of suitability of members of the MB and KFHs covers breaches of the tax legislation, including violations regarding dividend arbitrage schemes.

Members of the MB and KFHs in CIs are required not to be subject to criminal liability for breaches of the criminal code, financial legislation or other relevant legislation, where the breach carries a risk that they cannot fulfil their duties or hold their post in a reassuring manner according to the DK Financial Business Act. Breaches of other relevant legislation are, for example, violations of punishable provisions in money laundering, tax and company legislation[15]. The DFSA makes a concrete assessment of whether such violation(s) will lead to the person being considered not to fulfil the necessary reputation criteria.

For the F&P assessment, the DFSA, among other facts,

- asks for the applicant's criminal record; if a member of the MB and a KFH has lived abroad or if the applicant has been living abroad during the last 10 years, an official criminal record from that country regarding this period is required;
- searches the internet as well as internal databases;
- asks foreign authorities if the applicant has undergone an F&P assessment with them;
- asks the applicant if they have been / are registered in the debt register, have participated / have been participating in a civil lawsuit, have been under bankruptcy, debt relief or composition, have been sanctioned by other financial authorities, or have been excluded from or restricted in the right to carry out business.

Regarding ongoing judicial proceedings, the DFSA receives voluntary and public information (e.g. from the media) and information from whistle-blowers), as the prosecutor's office cannot share such information due to confidentiality rules. Besides, the DFSA would expect to obtain information about ongoing proceedings or investigations from the individuals or the CI itself, in particular from the auditors or the MB. Generally, the persons to be assessed step down of their own accord rather than being removed.

The DFSA published guidance on the F&P assessment as a good practice in April 2022, aiming to increase transparency and foster further understanding of the DFSA's interpretation of the rules on directors' professional conduct. The guidance in particular outlines key elements to be taken into account when assessing the good repute of a member of the MB. This guidance also refers to the

[14] ESMA database on administrative penalties : https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_upreg

[15] Cf. section 64 (1) (no. 3) and section 64d (4) of the Danish Financial Business Act.

risk of reputational damage resulting from management failures where a company's gross violation of money laundering rules has led to the company being misused for laundering illicit funds or tax evasion. While there are several references specifically to AML practice, tax compliance is, however, not further addressed in the guidance document.

In recent years, the DFSA has not identified any case where a member of the MB or KFH had been involved in unlawful or banned dividend arbitrage schemes.

France (FR)

During the assessment of suitability of members of the MB and KFHs, the ACPR covers tax integrity in two ways:

- By checking on criminal records: the criminal offences listed in the Monetary and Financial Code (MFC) include, among others, swindle and related offences, tax fraud and money laundering. Cum-ex schemes would qualify as a swindle or tax fraud under French law. Cum-cum schemes may in some instances qualify as tax fraud under the MFC. In cases where the appointee is/was resident or holds a mandate outside France, the ACPR asks them to provide their criminal record for this country. In this regard, the ACPR assumes that tax-related issues would be included in this criminal record.

- By taking into consideration administrative and disciplinary procedures as stated in the MFC, which is standard procedure for the ACPR.

The MFC imposes suitability requirements on CIs' MB members and in particular an automatic refusal in the case of a criminal conviction of an MB applicant. Tax authorities and the judiciary have in general no legal basis for informing the ACPR directly of ongoing investigations in individual cases. Both authorities may, however, decide to publish information on investigations, in which case the ACPR will take them into account.

So far France has not had any cum-ex/cum-cum cases that led to convictions, nor has the ACPR had any cause so far to refuse an applicant or revoke a licence based on tax integrity grounds (including involvement in cum-ex/cum-cum schemes). Nonetheless, the ACPR would take into account sanctions taken abroad on dividend arbitrage schemes in its F&P assessment of an applicant.

Germany (DE)

BaFin integrates tax integrity into its F&P assessments of MB members of CIs by checking that institutions present a declaration of the candidate(s) indicating whether, to their knowledge, they are or have been the subject of criminal proceedings for a felony or misdemeanour, including possibly for tax offences. BaFin also checks that the candidate presents a certificate of conduct and an excerpt from the central commercial register.

For criminal tax law matters, BaFin is dependent on the concrete findings from the tax authorities or public prosecutors. Against that background, BaFin has strengthened its contacts with the public prosecutor's office in Cologne (where most of the cum-ex cases are located) since 2022, with BaFin

requesting the list of ongoing relevant cases twice a year, as well as regularly receiving a list of accused persons in the context of the cum-ex cases handled in the respective court(s). BaFin then cross-references which people on the lists provided currently hold an important position (management board member / supervisory board member / other important position) at CIs. Where relevant, the supervisors in charge request access to the court investigation files to examine matters in more detail. Moreover, BaFin will formalise its F&P procedure for KFHs as part of the implementation of CRD VI.

In terms of concrete examples, based on findings during off-site and on-site supervisory actions, in many cases CIs affected by the enhanced supervisory scrutiny took all the pre-emptive steps (e.g. stepping down as members of the board) to avoid facing supervisory actions. In rare cases BaFin ordered further prudential measures depending on the nature of those findings, e.g. in 2019 the removal of members of the management and/or supervisory board, and prohibition of the holders of a qualifying holding from exercising voting rights.

Ireland (IE)

The CBI does not specifically enquire about tax integrity, applying a 'zero tolerance' approach to non-compliance with tax regulations. The F&P assessment is carried out by the following means:

- A comprehensive questionnaire, which must be completed by all applicants applying for pre-approved controlled functions (PCFs), such as MB roles in SIs, LSIs and third-country branches. It includes an addendum which aims to align the questionnaire with the ECB's F&P questionnaire. Both documents include questions about previous convictions in criminal proceedings or relevant civil or administrative proceedings as well as about pending proceedings, including pending criminal or relevant civil or administrative proceedings, pending disciplinary actions or pending bankruptcy, insolvency or similar procedures. The questionnaire also includes offences involving money laundering, terrorist financing, fraud, misrepresentation, dishonesty and breach of trust. However, it does not explicitly refer to tax compliance/integrity. Further details are required if an applicant declares themselves subject to such proceedings/measures. Lastly, it should be noted that the questionnaire also seeks information regarding whether the applicant has been refused such a role by another regulator, as this is considered a red flag requiring further assessment by the CBI.

- Checks on criminal records for Irish nationals.

- Internet searches on individuals to check for any negative media reports in relation to the applicants or entities they are or have been related to.

- Performing an individual assessment process includes the following steps:

    - Checking if information received with an application is accurate.

    - Completion of the F&P assessments by a specialist team in the CBI, examining incidents of prosecutions and convictions of an offence, proceedings, civil findings,

judgments and orders against the candidate as well as any refusal, prohibitions or restrictions regarding the right to carry out a licensed trade, business or profession.

Where any concerns are identified, the CBI may conduct an interview with the applicant to further assess them.

Furthermore, each year institutions are required to make a declaration on the ongoing F&P of MB members (already holding their functions). Where there is a change in the probity status, the standards require the CBI to be updated.

The F&P standards provide that, where a regulated financial service provider / holding company becomes aware that there may be concerns regarding the F&P status of a person performing a PCF, or a controlled function (CF) that does not require pre-approval, the CBI expects the CI to investigate such concerns and take action as appropriate without delay. Such action may necessitate the removal or non-renewal of the person's status as certified at the time of the annual review.

Netherlands (NL)

When checking the integrity and reputation of MB candidates, DNB determines whether the candidate has been fined by the tax authorities. To this end, an automated check on the name of the candidate is carried out with the records of the tax authorities, which will inform DNB whether an administrative fine measure has been imposed in the last seven years. This check does not specifically point out fines related to dividend tax offences. In addition, DNB also carries out a regular check with the national public prosecutor for criminal antecedents of a candidate. This includes any convictions for criminal tax offences. Finally, in the integrity questionnaire for the F&P assessment, the candidate is also asked about tax and criminal antecedents.

DNB has encountered few F&P checks in which there were indications of involvement of a candidate in dividend arbitrage schemes. These candidates were subsequently scrutinised to ensure that no criminal charges or other supervisory objections (related to dividend arbitrage) had been filed against them.

The public authority in charge of dividend arbitrage trading scheme investigations informs DNB about any ongoing investigation upon receiving a request from DNB that is duly justified by the usefulness of such information for the execution of DNB's legal tasks and responsibilities. At least one case was shared with DNB.

Spain (ES)

BdE covers tax integrity (incl. dividend arbitrage schemes) during the assessment of suitability of members of the MB and KFHs. A suitability assessment may be affected by tax integrity issues mainly in the following cases:

- The supervised entity or the appointee has disclosed in the suitability questionnaire (or in any of the documents accompanying it) that they have committed a criminal offence, that an administrative sanction has been imposed on them or that a criminal or relevant

administrative investigation is ongoing or has taken place. This also applies with regard to tax integrity issues (including, for instance, dividend arbitrage schemes).

- The information described above comes to BdE's attention after checking sources that it deems credible and reliable, such as databases they have access to, whether internal or external (i.e. World-Check or Google). For example, any adverse information coming from well-known or 'top tier' national or international media (including the press) is taken into consideration in the context of a suitability assessment. In the case of adverse information, BdE double-checks such information with the supervised entity, either informally or, in most cases, through an additional information request asking for further details.

- During ongoing supervision or after consultation of other national or foreign authorities where necessary.

This assessment includes cases where the appointee is or was directly or indirectly involved in the (alleged) offences, misconduct or infringements, including where the appointee is or has been a member of the MB, KFH, senior manager, owner, partner, associate or qualifying shareholder of corporate entities, partnerships or unincorporated entities involved in any of the above-mentioned situations.

So far, BdE has not identified any case of involvement in unlawful or banned dividend arbitrage schemes, nor has AEAT detected any cases of these types of schemes, which relates to the fact that dividend arbitrage trading schemes are not deemed relevant in ES since AEAT operates a centralised refund process for dividends, making this crime more difficult to commit, and easier to detect. The centralisation of the refund process is considered to largely prevent it. In any case, all authorities (tax, and prudential and AML/CFT supervisors) as well as CIs collaborate to ensure that such practices do not occur.

6.3. Cooperation between competent authorities (Criterion 9)

Denmark (DK)

The DFSA indicated that EBA and ESMA databases are not sufficient to be used in its suitability assessments. As an integral part of the DFSA's assessment process of F&P applications, the DFSA contacts foreign authorities (CAs) in cases where an MB member or a KFH has lived abroad within a period of the previous 10 years. Furthermore, the DFSA requires and receives criminal records from all relevant foreign authorities in cases where an MB member or a KFH has lived abroad within the past 10 years.

France (FR)

The ACPR checks the EBA database but has no direct access to the ESMA database. The ACPR policy is to ask the French market supervisor, the AMF, which is able to consult the ESMA database.

If an applicant is living abroad, the authorisation department of the ACPR contacts the CA of that country to complete the F&P assessment.

Germany (DE)

BaFin has a dedicated (sub)process for the use of databases for its suitability assessments. First, BaFin performs a basic scan of several databases for all applicants, including the EBA database and commercial databases. If the person is flagged in a database, or if the data scan reveals any suspicious facts, a deep dive is triggered.

BaFin's Securities Supervision / Asset Management Directorate consults the ESMA database and informs the Banking Supervision staff if a person is flagged in the ESMA database.

Ireland (IE)

The CBI does not check the EBA and ESMA databases for staff in LSIs as part of the F&P assessment for PCFs and CFs. The CBI relies on the expectation that the onus is on the applicants to be transparent and forthcoming in their responses in their application. Additionally, the CBI requires institutions to complete due diligence to ensure that applicants meet F&P standards.

To ensure the completeness of F&P assessments for SIs, the CBI takes into account the EBA and ESMA databases as well as relying on other tools such as F&P interviews and questionnaires. The CBI also engages with other CAs where an applicant is currently / has previously been approved to check if they are aware of any adverse information regarding the applicant.

Netherlands (NL)

DNB could not confirm that the EBA and ESMA databases on administrative penalties are checked as part of the suitability assessment. DNB outlined other types of cooperation with other CAs including information requests to other CAs during the F&P assessment process, on top of cooperation with Dutch authorities (public prosecutor, tax authorities, Authority for the Financial Markets (AFM)).

Spain (ES)

BdE checks the EBA database on administrative penalties as part of the suitability assessment. If tax arbitrage schemes are detected, the information is shared at the CPBCIM. Investigations would typically come from the tax authority (AEAT), though these investigations may be triggered by financial intelligence reports from SEPBLAC as the FIU. If any of the other authorities come across information about investigations, those would be shared. According to the PRC's knowledge, BdE does not check the ESMA database.

6.4. Assessment of Benchmark 4

Denmark (DK)

With regard to Criterion 8, DK is rated '**largely applied**'. The PRC found that DK, in general, applies paragraph 74 of EBA/GL/2021/06, taking into account convictions or ongoing prosecutions for criminal offences and other findings and measures including administrative and disciplinary procedures. Tax integrity could be tackled in a more focused way by applying a more detailed

methodology to assess candidates' overall reputation, honesty and integrity. If, in particular, the candidate has not been convicted, the F&P needs to be carried out in a differentiating, prudent way as the candidate, ultimately, might be deemed dishonest or lacking in integrity despite no conviction.

With regard to Criterion 9, DK is rated '**largely applied**'. The PRC concluded that, while the DFSA does not directly consider the EBA and ESMA databases in the F&P assessment with specific regard to tax integrity, this criterion is met in a risk-based approach by more targeted approaches to receiving appropriate information about applicants relating to tax integrity, including information exchange with other CAs as the DFSA directly contacts foreign authorities (CAs) in cases where an MB member or a KFH has lived abroad within a period of the previous 10 years.

Furthermore, the DFSA requires and receives criminal records from all relevant foreign authorities in cases where an MB or a KFH has lived abroad within the past 10 years. Lastly, the DFSA contacts other national authorities, e.g. the Danish Tax Agency and the Danish Business Authority, to gather further information if the DFSA becomes aware of issues/cases regarding an applicant or persons already assessed as suitable.

Overall, DK is rated '**largely applied**' for Benchmark 4.

France (FR)

With regard to Criterion 8, FR is rated '**largely applied**'. The PRC found that FR, in general, applies paragraph 74 of EBA/GL/2021/06, taking into consideration both convictions and ongoing prosecutions for criminal offences as well as other findings and measures including administrative and disciplinary procedures. FR's view, given in the SAQ, is that, in the absence of convictions, the seriousness of offences in tax matters varies significantly, and may not always be a reason for considering that the individual does not meet integrity criteria.

With regard to Criterion 9, FR is rated '**largely applied**'. While the ACPR checks the EBA database, it does not proceed in like fashion with the ESMA database, and therefore does not fully comply with the given requirements: bilateral consultation, such as with the AMF, does not replace double-checking with the ESMA database in an individual assessment case, in particular as the ACPR is subject to the legal constraint that tax authorities and the judiciary have in general no legal basis for informing the ACPR directly of ongoing investigations in individual cases.

Overall, FR is rated '**largely applied**' for Benchmark 4.

Germany (DE)

Regarding Criterion 8, the PRC finds BaFin to be '**largely applied**' on the basis of the checks performed for any criminal proceedings of MB candidates either in their management function or supervisory function, both on a declaration basis and by liaising with the prosecutor's office. Other evidence is the prudential supervisory measures ordered by BaFin based on findings from on-site

and off-site inspections, which included actions up to the removal of members of the management and/or supervisory board.

Regarding Criterion 9, the PRC finds BaFin to be '**largely applied**' since BaFin consults the EBA database on administrative penalties during the course of its F&P assessments while also consulting commercial databases. The required ESMA database, while not accessed directly by BaFin's prudential supervision department, is consulted by BaFin's Securities Supervision / Asset Management Directorate, which relays relevant information to BaFin's prudential supervision department.

Overall, DE is rated '**largely applied**' for Benchmark 4.

Ireland (IE)

With regard to Criterion 8, IE is rated '**largely applied**'. The PRC found that, in general, IE applies paragraph 74 of EBA/GL/2021/06, with convictions or ongoing prosecutions for criminal offences appearing to be identified and taken into account. Findings and measures taken by any regulatory or professional body for non-compliance with relevant provisions relating to tax issues, from a general methodological point of view, appear also to be reflected in the F&P assessment.

With regard to Criterion 9, IE is rated '**largely applied**'. For SSM (SI) entities the checks against the EBA/ESMA databases are performed in conjunction with the ECB. The PRC weighs the fact that on the one hand the CBI does not check the ESMA and EBA databases on administrative penalties for LSIs, but on the other hand it does take into account information from other NCAs. Nevertheless, the requirement of checking both databases is not entirely fulfilled and, ultimately, cannot be replaced by the fact that the CBI applies detailed individual questionnaires and assessment processes for all credit institutions. In particular, since the CBI mainly relies on trustworthy applicants providing full, fair and accurate information, there is a gap in receiving information from official databases against which the individual's information could be at least double-checked.

Overall, IE is rated '**largely applied**' for Benchmark 4.

Netherlands (NL)

With regard to Criterion 8, NL is rated **'largely applied'.** The PRC found that NL, in general, applies paragraph 74 of EBA/GL/2021/06, taking into consideration both convictions and ongoing prosecutions for criminal offences as well as other findings and measures including administrative and disciplinary procedures. NL also takes into consideration specific misconduct fined by tax authorities through consulting the records of the tax authorities. When assessing the integrity of directors, DNB carries out a standard check with the national public prosecutor in the investigation of criminal antecedents. This also includes any convictions for criminal tax offences.

The PRC understands that the national public prosecutor, if conducting dividend arbitrage trading scheme-investigations informs DNB on ongoing investigations upon request if this information is deemed useful for the execution of DNB's legal tasks and responsibilities. Moreover, upon request

DNB is informed by the national public prosecutor and/or Tax Authority regarding tax integrity issues.

With regard to criterion 9, NL is rated "**largely applied**". The PRC found that while NL does not directly consider the EBA and ESMA databases on administrative penalties as part of the suitability assessment with specific regard to tax integrity, this criterion is met on a risk-based approach by more targeted approaches to receiving appropriate information about applicants relating to tax integrity, including information exchange with other CAs, on top of cooperation with Dutch authorities (public prosecutor, tax authorities, AFM).

Overall, NL is rated '**largely applied**' for Benchmark 4.

Spain (ES)

With regard to Criterion 8, ES is rated **'largely applied'**. The PRC found that ES, in general, applies paragraph 74 of EBA/GL/2021/06, taking into consideration both convictions and ongoing prosecutions for criminal offences as well as other findings and measures including administrative and disciplinary procedures. So far, BdE has not identified any case of involvement in tax-related misconduct/offences.

With regard to Criterion 9, ES is rated '**largely applied**'. The PRC observes that ES only checks the EBA database on administrative penalties as part of the suitability assessment and thus does not fully comply with the requirement under paragraph 198 of EBA/GL/2021/06. However, the PRC also evaluated the fact that BdE can refer to an established information exchange with and within the CPBCIM due to its membership and an MoU between BdE and the CPBCIM. This factor relativises the lack of information from the EU-wide harmonised databases but does not replace the requirement of taking into account the information in the EBA and ESMA databases on administrative penalties.

Overall, ES is rated '**largely applied**' for Benchmark 4.

	DK	FR	DE	IE	NL	ES
Criterion 8: Reputation, honesty and integrity	LA	LA	LA	LA	LA	LA
Criterion 9: Cooperation between competent authorities	LA	LA	LA	LA	LA	LA
Overall score for Benchmark 4	LA	LA	LA	LA	LA	LA

6.5. Conclusions / findings / best practices

Criterion 8 on paragraph 74 of EBA/GL/2021/06 reveals a dichotomy between the necessity for a sound and well-justified suitability assessment of MB members' / KFHs' rights, on the one hand, and the risk of approving unsuitable applicants who prove to be, in fact, not compliant with tax integrity rules, and are thus to be regarded as dishonest and lacking good repute and/or integrity,

on the other hand. Hence, a positive F&P assessment should not merely be based on the fact that a candidate has so far not been convicted of committing a (tax) crime. Conversely, a negative F&P assessment must be based on sufficient proof that this person has acted in non-compliance with tax rules. Non-compliance with tax rules may not only affect the overall F&P assessment of the candidate but can also have a significant impact further down the line on the internal governance of a CI in terms of potential (operational) risks. This makes the F&P even more complex and requires diligence when assessing data as being relevant for the reputation, honesty and integrity of the candidate.

Criterion 9 is connected to Criterion 8 as when carrying out the F&P assessment both the EBA and ESMA databases should be verified to fully check for administrative penalties which either of the databases may not cover.

No CA has been rated 'fully applied on either criterion set out for Benchmark 4, leaving room for improvement in the integration of tax-related issues into the F&P assessment. In particular, checking tax misconduct and offences mostly appears to be covered only by general checks of convictions, prosecutions or other findings and measures which may relate to non-compliance with applicable laws.

Even though CAs (as prudential supervisors) – unlike tax authorities – are not competent to investigate cases of tax misconduct/offences, the PRC deems information research and analysis as well as cooperation with relevant authorities to be crucial for an appropriate F&P assessment.

Consequently, as general findings:

- All CAs should tackle tax integrity in a more focused way by applying a more detailed methodology to assess candidates' overall reputation, honesty and integrity, in particular in the absence of conviction for a tax offence of a candidate.

- All CAs should complement their approaches with more focussed actions with regard to tax integrity. This could include established cooperation procedures with tax and other relevant authorities, in terms of (ongoing) criminal investigations, and, in particular where no conviction for a tax offence exists, processes for additional tax-related checks.

The PRC has identified the following elements in terms of best practices:

- using official information from other authorities (FIU, prosecutor, courts and also other supervisory authorities such as the securities market supervisor (the ACPR)), e.g. certificates of conduct and information from the central commercial register (BaFin), as systematically as possible within national (legal) frameworks to ensure credible and reliable information for the F&P assessment;

- contacting foreign authorities to request official criminal records if the candidate/KFH to be assessed has lived abroad within the last 10 years or is still living abroad when applying (DK, FR);

- if possible, under the respective national set-up, conducting specific checks of tax offences by liaising with tax authorities with regard to the candidates in question to verify if any administrative measure(s) have been taken (DNB);

- on a regular and systematic basis, using public information such as from the press and other media, internal databases and analysis tools to help with scanning and selecting relevant information (the DFSA, the CBI and BdE/SEPBLAC);

- setting out good practice guidance for F&P assessments (the DFSA) and a comprehensive questionnaire for applicants (the CBI, BdE/SEPBLAC) also covering specific tax-related checks and cooperation procedures, e.g. among AML, horizontal and individual supervisory units.

7. Conclusions and recommendations

The assessment of the four benchmarks and verification of the application of the underlying requirements by the respective CAs provided a mixed outcome especially for certain criteria. On the one hand, two CAs were rated as **'partially applied'** for Criterion 2; two CAs were **'partially applied'** for Criterion 3 and two CAs were rated **'partially applied'** for Criterion 4. In addition, one CA was **'partially applied'** for Criterion 7. On the other hand, for most other criteria, the PRC found adequate implementation from CAs, generally rated "largely applied" or "fully applied", hence overall performing well.

As mentioned previously, due to the different legal and institutional set-ups for information exchange and the respective competences of tax authorities, FIUs and supervisors in the reviewed countries, it is not possible to provide 'one-size-fits-all' recommendations for CAs on tax integrity issues. For example, the investigation of (criminal) cases, or the obtention and follow-up on STRs is not in the competence of either prudential or AML/CFT supervisors. These aspects, being outside the scope of the CAs' mandate, cannot be part of the PRC's recommendations.

However, strengthening consistency and effectiveness in supervisory outcomes across the EU also entails the question of how CAs can address issues relating to tax offences and tax crime. It covers the requirement for CAs to understand the ML/TF risks resulting from illegal tax schemes (including dividend arbitrage schemes such as cum-ex) to which the respective banking sectors, under the CAs' supervisory remit, are exposed.

Tackling tax issues should be built on a set of minimum standards which in the past have proven or are likely to prove to be an efficient/effective way to integrate tax issues (dividend schemes included) into banking supervision.

7.1. Follow-up measures / recommendations for CAs

The PRC has identified the following specific follow-up measures / recommendations for CAs:

7.1.1. Benchmark 1: Integration by national AML/CFT CAs of tax integrity into risk-based supervisory work

- To DE: BaFin should enhance its cooperation with the tax authority for its supervisory planning and actions. Given the implication of several German CIs in the past in dividend arbitrage schemes, BaFin should consider taking the steps necessary to satisfy itself that its assessment of the level of tax crime risk in DE is reliable and, if necessary, define supervisory actions commensurate with that assessment. In this regard, the PRC welcomes the confirmation, received from BaFin in September 2024, that it has launched the revision of BaFin's sectoral risk assessment to assess the level of ML/TF risk the German financial sector is exposed to, including with regard to tax crimes.

  BaFin should also consider issuing specific AML/CFT-related guidance to its CIs on tax integrity including, for example, by providing red flag indicators to help CIs identify potential cases.

- To IE: the CBI should continue to enhance its cooperation with the tax authority by requesting data useful for its supervisory actions. In respect of the CBI's assessment that tax crime is not a significant risk, it should use the forthcoming collection of tax integrity data as part of the revised annual risk evaluation questionnaire to satisfy itself that this assessment is reliable. If the level of tax integrity risk in relation to IE CIs were to increase, the CBI should increase the intensity of its supervisory actions as well as resources allocated to tax integrity accordingly.

  The CBI could also consider improving its existing AML/CFT-related guidelines to help CIs to assess the level of money laundering and tax fraud risks they are exposed to.

- To NL: DNB should continue enhancing its cooperation with the tax authority in both ways, by transmitting useful information in the case of suspicion of tax fraud, and by requesting information useful for its supervisory actions in a larger scope than the fit and proper assessment.

  DNB should maintain the current level of in-house tax integrity expertise and knowledge by regularly providing supervisors with dedicated, tax-related training delivered by external tax experts.

  To DK: taking into consideration the findings of the most recent NRA, indicating that tax crimes represent high ML/TF risks in Denmark, the DFSA should reassess whether the level and intensity of its supervisory activities covering tax integrity are commensurate with this identified risk and increase those activities, if deemed necessary. In addition, the EBA supports the DFSA's intention to use future findings of the ongoing off-site review on dividend arbitrage trading schemes in Danish banks as an input when defining the DFSA's future approach to tax integrity, in general, and to dividend arbitrage trading schemes, in particular.

- To ES: given the overall assessment of the most recent NRA, that tax fraud (alongside social security fraud, customs fraud and public subsidies fraud) is an identified risk for ML in Spain, BdE/SEPBLAC should reassess whether the level and intensity of their supervisory activities covering tax integrity are commensurate with this identified risk and increase those activities, if deemed necessary.

  In addition, taking into consideration the significant number of tax-integrity-related STRs filed by the banks, and their recent sudden increase in numbers, the CAs should consider issuing guidance to their banks on tax integrity, including red flag indicators.

7.1.2. Benchmark 2: Integration by CAs of tax integrity into their sectoral and institution-specific ML/TF risk assessments

- To DE and IE: BaFin should be more proactive in collecting tax integrity data in a structured way and both BaFin and the CBI should ensure that this data is effectively used in their supervisory actions, where warranted by the risk.

- To ES: SEPBLAC could consider enlarging the list of tax-integrity-related questions in the AML/CFT questionnaire to cover data on the banks' systems and controls in place to prevent tax crimes. Such information, if collected, could be useful for the residual ML/TF risk assessment of individual banks in the same way that the current data collection helps the inherent ML/TF risk assessment.

7.1.3. Benchmark 3: Arrangements by CAs for reviewing the due consideration of tax integrity in institutions' internal governance

- To DK, IE, NL and ES: where warranted by the level of risk, to achieve more targeted and proactive interaction with CIs on the tax dimension of their business model and the identification of board-level ownership of tax integrity issues and actions.

- To DK and NL: where warranted by the level of risk, to check more specifically the presence of examples of acceptable and unacceptable tax behaviour as part of the code of conduct or other policies of supervised credit institutions. This check does not have to be a technical assessment against applicable tax law but should lead to institutions being asked to correct deficiencies when such examples are not present, and such actions monitored.

- To all reviewed authorities: to increase, or continue to leverage, cooperation with tax authorities in order to proactively advise CIs to consult tax authorities in the case of doubts regarding principles and examples of acceptable and unacceptable tax behaviour, and in order to benefit from knowledge transfer in the form of dedicated training or the employment of seconded personnel from the tax authority.

7.1.4. Benchmark 4: Tax integrity in the assessment of the reputation, honesty and integrity of MB members and KFHs

- To DK: to incorporate specific tax-related checks and cooperation with other authorities into the guidance already set on the F&P assessment as good practice, since risks resulting from tax evasion are currently only mentioned in the DFSA F&P guidance in connection with violation of money laundering rules.

- To DK and NL: to check the EBA and ESMA databases in the suitability assessment, in general and specifically to check potential tax-related penalties against the institutions in order to accurately assess, in accordance with paragraph 198 of EBA/GL/2021/06, the severity of the underlying cause and the responsibility of the assessed person.

- To FR, ES: to check both the EBA and ESMA databases. To DE: to check EBA and ESMA databases within the prudential supervisory department. To IE: to check EBA and ESMA databases for LSIs.

- To IE, ES: to point out and specify tax compliance issues in their questionnaire; in the case of IE, instead of expecting further details only if the applicant affirms respective measures.

Annex 1. Peer Review Committee

Peer reviews are carried out by ad hoc peer review committees composed of staff from the EBA and members of competent authorities, and chaired by the EBA staff.

This peer review was carried out by:

Jonathan Overett Somnier – Head of Legal and Compliance Unit, EBA

Alex Herr – Legal Officer, Legal and Compliance Unit, EBA

Aniko Hrubi – Policy Expert, AML/CFT, Innovation, Conducts, and Consumers (ICC) (Co-Chair)

Alexis Jordan – Policy Expert, Prudential Regulation and Supervisory Policy (PRSP)

Gisela Alsleben – Senior Advisor, BaFin

Marie Laffont – Tax specialist, CSSF

Annex 2. List of competent authorities subject to the peer review

Country	Competent authority
Denmark (DK)	Finanstilsynet / Danish Financial Supervisory Authority (DFSA)
Germany (DE)	Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)
France (FR)	Autorité de Contrôle Prudentiel et de Résolution (ACPR)
Ireland (IE)	Central Bank of Ireland (CBI)
Netherlands (NL)	De Nederlandsche Bank (DNB)
Spain (ES)	Banco de España (BdE); Spanish Financial Intelligence Unit (SEPBLAC)

Annex 3. Benchmarks and assessment criteria

Benchmark	Assessment criteria
1. The effectiveness of integration by national AML/CFT competent authorities of tax integrity into risk-based supervisory work on credit institutions	Cooperation with tax authorities including legal obligations of the CA and tax authorities (such as information duties) (Criterion 1) Supervisory activities covering tax integrity (Criterion 2) CA's verification of systems and controls credit institutions put in place to prevent tax crimes (Criterion 3)
2. The effectiveness of integration by CAs of tax integrity into their sectoral and institution-specific ML/TF risk assessments	Tax-related information as a source for CAs' ML/TF RA (Criterion 4) Tax-related information to be effectively used for AML/CFT supervisory purposes (Criterion 5)
3. The effectiveness of arrangements by CAs for reviewing the due consideration of tax integrity in institutions' internal governance arrangements	Integration of tax integrity into the corporate culture (Criterion 6) Tax behaviour and risk management (Criterion 7)
4. The effectiveness of consideration of tax integrity in the assessment of the reputation, honesty and integrity of members of the management body and key function holders	Reputation, honesty and integrity (Criterion 8) Cooperation between competent authorities (Criterion 9)

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