



# Flowchart ATAD3, the new EU Directive to tackle the misuse of shell entities

The European Commission published a draft Directive to prevent the misuse of shell entities for improper tax purposes. Read more about the draft directive and explore the main reporting flow in this document.



New EU Directive: on December 22, 2021, the European Commission (“EC”) published a proposal for a Directive “laying down rules to prevent the misuse of shell entities for improper tax purposes and amending Directive 2011/16/EU.” This Directive is also referred to as the ATAD 3 Directive or “ATAD3”.

### **Objective**

ATAD3 should ensure that entities within the EU that have no or minimal economic activity (so-called “shell entities”) are unable to benefit from certain tax advantages as per the EU and national tax treaties. The clear objective is to discourage the use of shell entities which are often used for tax planning or tax evasion purposes.

### **Timing**

The EU Member States will need to implement the proposed measures into their domestic tax legislation by June 30, 2023, and apply them by January 1, 2024. To determine if a company falls within the scope of the Directive, a 2-year look-back rule shall be applied. Therefore, as of January 1, 2022, the company’s position may already be a reference point, and entities may want to consider appropriate actions on a current basis.

### **Scope**

In scope are entities residing in the EU, predominantly generate passive income and/ or predominantly hold real estate, operate cross border, and have engaged third-party service providers to act as external directors for their EU tax-resident companies will be impacted by these new rules.



### **Exemptions**

Exemptions from these rules will apply to entities with certain profiles, such as regulated investment funds and entities with at least five relevant employees that conduct relevant activities.

Who is affected? Despite the specific carveout available, the investment funds industry may be especially affected, which does not apply to intermediate holding companies held directly or indirectly by an investment fund. Other multinationals may also fall within the scope of these newly proposed rules.

### **Reporting**

In-scope shell entities will be obligated to report, together with their tax return, so-called substance indicators plus evidence. If they do not, then they will, in principle, be presumed abusive shell entities, as a result of which various adverse consequences should apply. In-scope shell entities that do not meet all substance indicators will still have the possibility to rebut the presumption of being an abusive shell entity or ask for an exemption if it can prove that there was no tax advantage.

### **Technology**

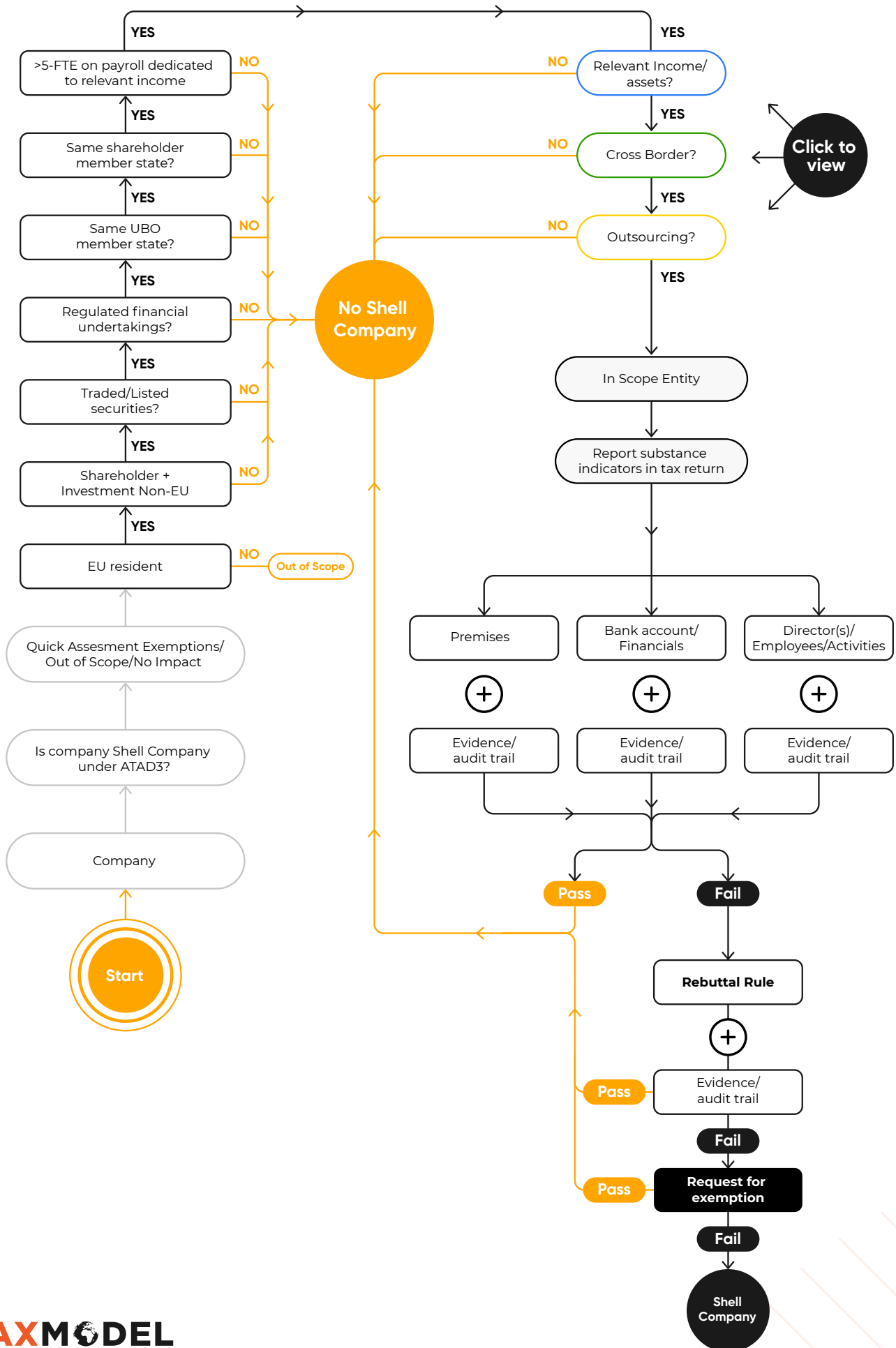
After our successful DAC6pro tool, we consider building a second tax regtech tool that eases and audit trails the assessment whether an entity is in scope and to relieve the reporting burden. Please subscribe [here](#) if you are interested in becoming an early bird user of our upcoming ATAD3pro tool.

[Go to Main Flow](#)

# Main ATAD3 Flow

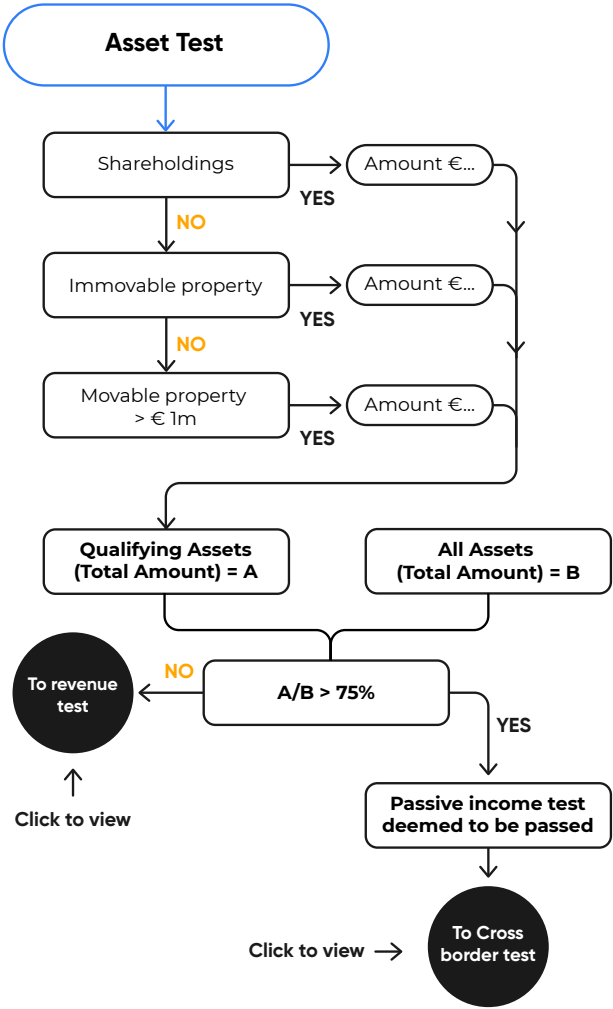
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# Main ATAD3 flow



**Asset Test**  
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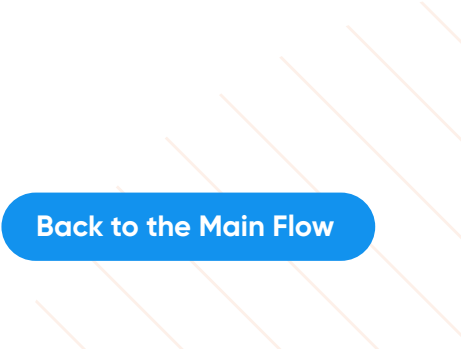
# Assets Test



# Revenue Test

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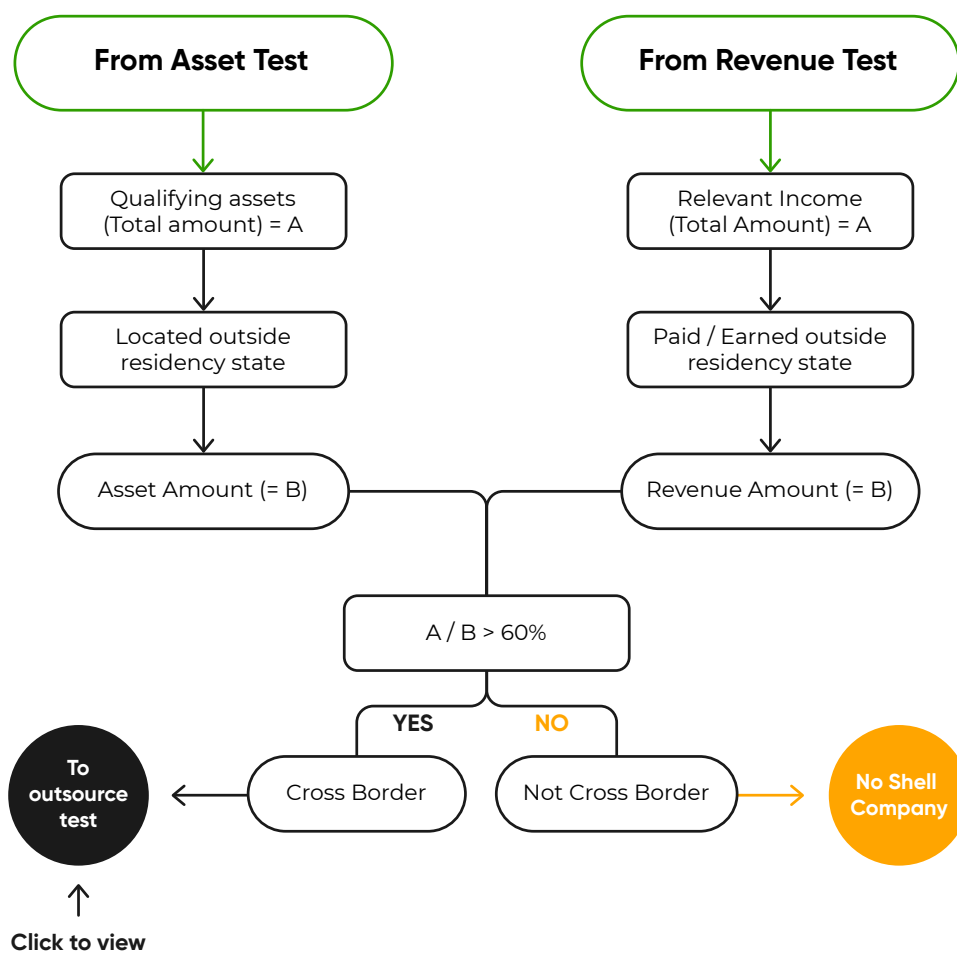




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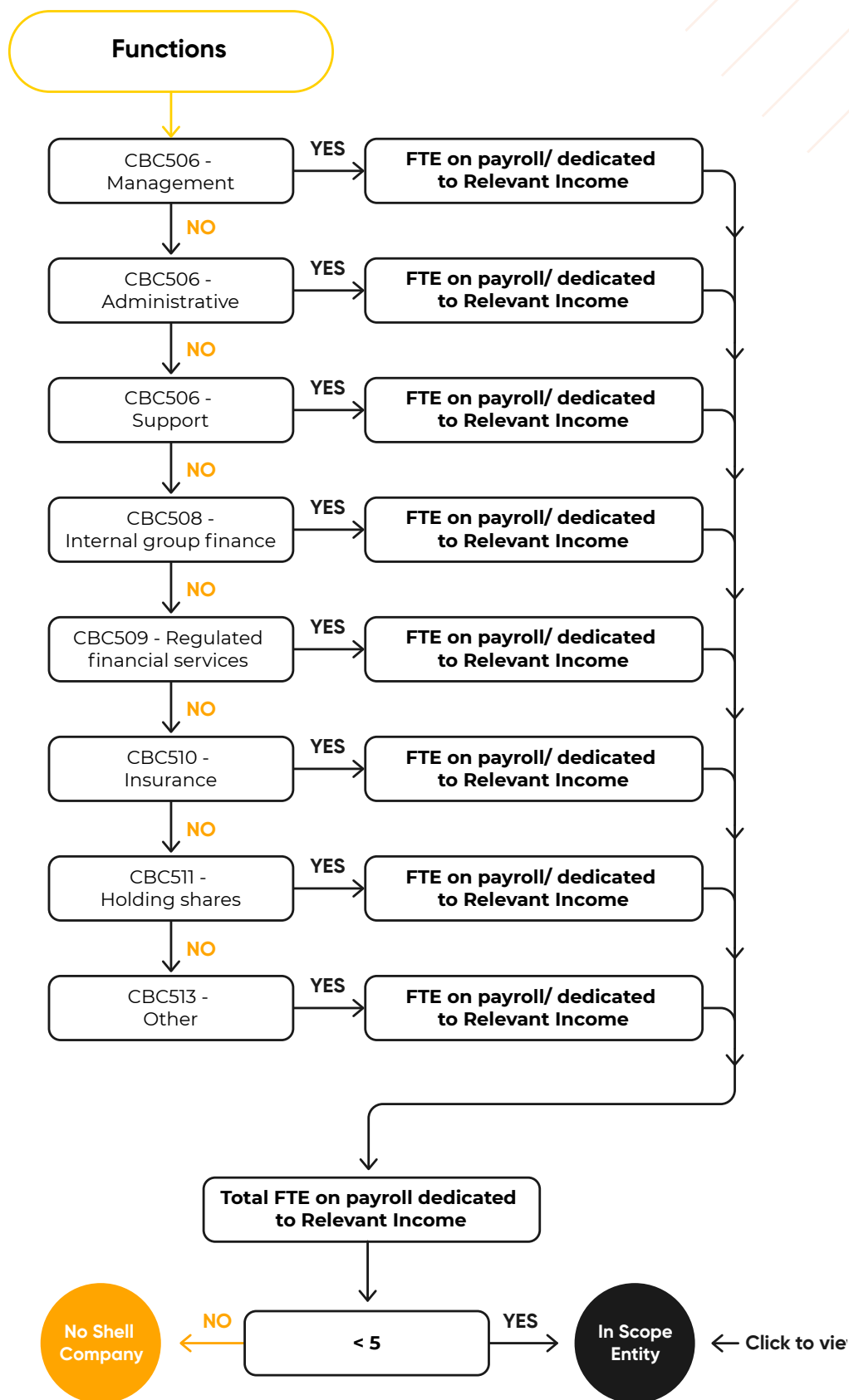
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# Cross Border Test



**Outsourcing Test**  
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# Outsourcing Test



# Main ATAD3 flow

