

On behalf of the Public Affairs Executive (PAE) of the EUROPEAN PRIVATE EQUITY AND VENTURE CAPITAL INDUSTRY

27 August 2021

Response to the European Commission's [Consultation](#) on Fighting the use of shell entities and arrangements for tax purposes

3 Problem definition, policy options and impacts

Question 3.1 - Despite the recent introduction of new measures against tax avoidance in the EU, tax avoidance seems to remain a problem. Please consider the relevance of the following possible causes.

Answer:

	very relevant	relevant	neither irrelevant nor relevant	not relevant	not relevant at all	no opinion
Inadequate legislation on tax avoidance					X	
Insufficient information of tax administration on potential tax avoidance structures						X
Insufficient capacity of tax administration to process the available information on tax avoidance structures						X
Insufficient cooperation between EU Member States						X
Insufficient enforcement of existing legislation in Member States						X

Question 3.2 - The EU toolbox to fight tax avoidance has been recently enhanced and new tools came into effect from 2019 and 2020. With which of the following statements do you agree?

Please choose between: (only one option possible)

- The impact of the new measures is not quantifiable yet. The EU should wait before taking new measures to fight tax avoidance until the impact of the existing measures is measurable.
- While the impact of the new measures is not quantifiable yet, there is margin for improvement. The EU should take action to complement the existing framework as soon as possible.

Answer:

The impact of the new measures is not quantifiable yet. The EU should wait before taking new measures to fight tax avoidance until the impact of the existing measures is measurable.

Question 3.3 - "Shell" or "letterbox" entities is a term often used in the tax area to describe entities with little or no substance in their place of establishment or elsewhere. Do you agree with this definition?

Please choose between: (only one option possible)

- yes
- no

Answer:

No.

Question 3.4 - Please explain your reply.

Answer:

We support the aim of tackling the use of abusive and aggressive tax structures and discouraging the use of entities without legitimate purposes. However, it is important that legitimate structures are not disrupted, and entities with purely commercial purposes should thus not fall under the definition of shell entities.

Therefore, we believe that further clarification is needed, e.g. on what are the objective criteria in order to evaluate substance of companies.

Furthermore, we would like to stress that substance in terms of employees, offices, etc. is not the only relevant indicator for determining whether an entity is a shell entity or not. The commercial purpose and commercial rationale for establishing the entity is a much better indicator, and any definition of shell entities should thus clearly articulate that entities or vehicles with genuine commercial purposes are not included.

There are many valid reasons why companies have entities "without substance" when defined narrowly as suggested. Such entities are in most cases established for valid commercial reasons, and are in no way used

for aggressive tax planning or tax evasion. As an example, holding companies do not need a lot of “substance” for them to function.

With regard to the entities used in the private equity industry, please find in the appendix attached an outline of a typical private equity investment structure and the commercial purposes for establishing each of the various entities.

Question 3.5 - Please indicate the extent to which you agree or disagree with the following statements.

Answer:

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	No opinion
Shell entities are used in the EU mostly for abusive tax purposes.				X		
Current EU rules in the field of taxation already provide tools to tackle aggressive tax planning schemes including through the use of shell entities.	X					
Current EU rules cannot fully and effectively address the use of shell entities for tax avoidance purposes.					X	
While the EU legal framework includes adequate rules to address the use of shell entities for tax purposes, they are not properly implemented and monitored			X			

Question 3.6 - Can you provide examples of how shell entities are or can be used in an abusive manner for tax purposes?

Answer:

As an association, we are not aware of such abusive structures. However, in the appendix attached, you will find ample examples of why so-called shell entities can be established in a non-abusive way for perfectly legitimate reasons, albeit that we would not indicate such entities as ‘shell entities’; we refer to question 3.4. above and question 3.8 below.

Question 3.7 - In your opinion, to what extent the following elements could indicate that a certain entity could be considered a shell entity for tax planning purposes? Please select one value for each element.

Answer:

	Very indicative	Indicative	Neither indicative nor not indicative	Not indicative	Not indicative at all	No opinion
Use of trust and company service providers					X	
Low number of employees				X		
Lack of own premises				X		
Lack of own bank account		X				
Passive income as main source of income (rents, interests, royalties etc.)					X	
Outsourcing of income generating activities				X		
Mostly foreign sourced turnover				X		
Majority of directors non-resident		X				

Question 3.8 - Can you indicate commercial rationales that justify the establishment and operation of shell entities? Can you provide concrete examples?

Answer:

There are many valid reasons why companies have entities without substance in terms of employees, offices, etc. Such entities are in most cases established due to various commercial reasons, and are in no way used for aggressive tax planning or tax evasion. As an example, holding companies do not need a lot of substance for their function.

In the private equity industry, an investment made by a private equity fund typically involves setting up multiple entities in order to facilitate an investment or acquisition. These entities all have a commercial purpose, which can include both an existing purpose from the outset or a future anticipated purpose to achieve certain objectives or facilitate transactions going forward. Such purposes could for example be to offer lenders single point of enforcement, to organize governance amongst various shareholders, in order to ring fence investment by a category of investors (e.g. management), for regulatory purposes, in order to launch an IPO, etc.

Please find in the appendix attached a further outline of a typical private equity investment structure and the commercial purposes for establishing each of the various entities.

In continuation of this, while we agree that the use of entities without legitimate purposes should be discouraged, it is important that legitimate structures are not disrupted, and entities with genuine commercial purposes - such as the examples listed above - should thus not fall under the definition of shell entities.

Question 3.13 - While Small and Medium Enterprises (SMEs) can also be or make use of shell entities for tax avoidance purposes, an initiative targeting shell entities could risk to put a burden on genuine small business.

For a future intervention, which of the following options would you consider most appropriate to alleviate any negative spill-overs to SMEs?

Please choose between: (multiple answers possible)

- Use thresholds (e.g. on turnover or income) to exclude SMEs from the scope of such initiative
- Include SMEs within the scope of such initiative only to the extent they perform mobile activities
- No need for specific rules for SMEs
- Other

Answer:

Other.

Question 3.14 - Please elaborate if you replied "other" to the previous question.

Answer:

As investors investing in SMEs, start-ups, scale-ups and other small and innovative companies, we would be in favour of the idea of measures designed to simplify and ease the burden on smaller companies. SMEs have less resources to deal with complex tax laws, and a lighter regime would help them develop and grow.

Question 3.19 - Are you aware of any existing national rules targeting specifically the use of shell entities for tax purposes? Please provide reference.

Answer:

In almost every jurisdiction, there are rules that could apply to shell entities. Most member states have a raft of anti-tax avoidance legislation that can be deployed against the activities of shell companies with no

real substance or business purposes. These include rules on e.g. tax residence, controlled foreign companies, transfer pricing, limitation of benefits of any tax treaty, beneficial ownership and OECD BEPS/ATAD.

Consequently, it is our view that most member states have sufficient legislation to deal with shell companies and abuse.

Question 3.20 - Coordination at EU level, e.g. on what qualifies as shell entity for tax purposes and how should be treated in terms of taxation, is fundamental to tackle the problem of shell entities in the internal market.

How much do you agree with this statement?

Please choose between: (only one option possible)

- 0 (Do not agree at all)
- 1
- 2
- 3
- 4
- 5 (Agree very much)

Answer:

4.

Question 3.23 - If the EU took new action targeted at the use of shell entities for tax avoidance purposes, which of the following objectives should be pursued in priority? You can tick more than one reply.

Please choose between: (multiple answers possible)

- Provide more incentives for voluntary tax compliance to taxpayers akin to use shell entities.
- Promote effective implementation and enforcement of the existing anti-tax avoidance tools.
- Ensure coordination of all Member States on what qualifies as shell entity for tax purposes and how it should be treated in terms of taxation.
- Promote transparency on shell entities across the EU.
- Monitor the implementation by Member States of any new EU rules targeted at shell entities.
- All of the above
- Other

Answer:

Promote effective implementation and enforcement of the existing anti-tax avoidance tools.

Ensure coordination of all Member States on what qualifies as shell entity for tax purposes and how it should be treated in terms of taxation.

Question 3.26 - If the EU took new action to target the use of shell entities for tax avoidance purposes, which of the following means do you consider most likely to be effective?

Please choose between: (only one option possible)

- New EU action should be primarily of soft law nature so as to take into account the specific circumstances of each case and the situation of each Member State.
- New EU action should be of hard law nature, i.e. a new EU Directive. This would ensure the necessary level of coordination in the EU to effectively tackle the problem.

Answer:

New EU action should be primarily of soft law nature so as to take into account the specific circumstances of each case and the situation of each Member State.

Question 3.27 - Please describe any other means or combination thereof that the Commission should consider for EU action in this field.

Answer:

Any potential initiative should be considered in light of, and coordinated with, the already existing framework (e.g. OECD MLI, ATAD 1 and ATAD 2) as well as the ongoing initiatives (e.g. implementation of Pillar 1 and Pillar 2).

Question 3.28 - If the EU took no further action in the short-term to target the use of shell entities for tax avoidance purposes, which of the following scenarios do you consider most likely?

Please choose between: (only one option possible)

- Member States are keen to implement the existing tools against shell entities. In a few years they will have gained the necessary experience to tackle the problem themselves.
- Without EU action targeted at shell entities, the problem will remain.

Answer:

Member States are keen to implement the existing tools against shell entities. In a few years they will have gained the necessary experience to tackle the problem themselves.

4 Final remarks

Although not necessary, you can upload a brief document, such as a position paper in case you think additional background information is needed to better explain your position or to share information about data, studies, papers etc. that the European Commission could consider to prepare its initiative.

Please note that the uploaded document will be published alongside your response to the questionnaire, which is the essential input to this public consultation. The document is optional complement serves as additional background reading to understand your position better.

Question 4.1 - Please upload your file.

Contact

For further information, please contact Martin Bresson (martin.bresson@investeurope.eu) at Invest Europe.

About the PAE

The Public Affairs Executive (PAE) consists of representatives from the venture capital, mid-market and large buyout parts of the private equity industry, as well as institutional investors and representatives of national private equity associations (NVCAs). The PAE represents the views of this industry in EU-level public affairs and aims to improve the understanding of its activities and its importance for the European economy.

About Invest Europe

Invest Europe is the association representing Europe's private equity, venture capital and infrastructure sectors, as well as their investors.

Our members take a long-term approach to investing in privately held companies, from start-ups to established firms. They inject not only capital but dynamism, innovation and expertise. This commitment helps deliver strong and sustainable growth, resulting in healthy returns for Europe's leading pension funds and insurers, to the benefit of the millions of European citizens who depend on them.

Invest Europe aims to make a constructive contribution to policy affecting private capital investment in Europe. We provide information to the public on our members' role in the economy. Our research provides the most authoritative source of data on trends and developments in our industry.

Invest Europe is the guardian of the industry's professional standards, demanding accountability, good governance and transparency from our members.

Invest Europe is a non-profit organisation with 25 employees in Brussels, Belgium.

For more information please visit www.investeurope.eu.

