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Proposal for a Council Directive to tackle the role of enablers that facilitate tax evasion and aggressive tax planning in the European Union (Securing the Activity Framework of Enablers - SAFE

Fields marked with * are mandatory.

1
Introduction

Complex structures, which typically include cross-border arrangements that could result in tax evasion or aggressive tax planning may be designed by some intermediaries that provide tax advisory services. These intermediaries are commonly labelled as enablers. Tax evasion involves means to evade paying taxes and is a criminal offense as defined under the national law. Aggressive tax planning involves means to decrease the overall tax liability of companies and individuals by taking advantage of differences between national legislations of different jurisdictions; or (ii) by using loopholes in national laws and/or tax treaties; while not being explicitly illegal it is against the spirit of the law and legally is thus in a grey zone. Addressing the use of complex structures set up by enablers for the purpose of tax evasion and aggressive tax planning is crucial as the estimated tax revenue losses of EU Member States remain high.

Several actions have been taken by the EU over recent years to tackle tax evasion and aggressive tax planning, including Anti-Tax Avoidance Directive (ATAD) as amended, Council Directive (EU) 2018/822 amending the Directive on Administrative Cooperation in the field of (direct) taxation (DAC6) and recently proposal Directive laying down rules to prevent the misuse of shell entities for tax purposes (UNSHELL). However, the enablers are still designing, marketing or assisting in the creation of tax schemes that erode the tax base of Member States. This initiative will focus on, establishing appropriate procedures and compliance measures in order to effectively tackle tax evasion or aggressive tax planning.

The questionnaire takes about 20 minutes to complete. The questionnaire aims to capture views from all stakeholders on the role of enablers in contributing to tax evasion and aggressive tax planning and on the magnitude of the problem. The replies will also help identify the main risks as perceived by stakeholders, as well as the priorities for policy actions.

You can submit your responses in any official EU language, and you may upload additional documents

2 About you

* 2.1 Language of my contribution

- ○ Bulgarian
- ○ Croatian
- ○ Czech
- ○ Danish
- ○ Dutch
- ◉ English
- ○ Estonian
- ○ Finnish
- ○ French
- ○ German
- ○ Greek
- ○ Hungarian
- ○ Irish
- ○ Italian
- ○ Latvian
- ○ Lithuanian
- ○ Maltese
- ○ Polish
- ○ Portuguese
- ○ Romanian
- ○ Slovak
- ○ Slovenian
- ○ Spanish
- ○ Swedish

* 2.2 I am giving my contribution as

- ○ Academic/research institution
- ◉ Business association
- ○ Company/business organisation
- ○ Consumer organisation
- ○ EU citizen
- ○ Environmental organisation
- ○ Non-EU citizen
- ○ Non-governmental organisation (NGO)

- ○ Public authority
- ○ Trade union
- ○ Other

* 2.3 First name

Klaudia

* 2.4 Surname

Piaseczna

* 2.5 Email (this won't be published)

klaudia.piaseczna@investeurope.eu

* 2.9 Organisation name

255 character(s) maximum

Invest Europe

* 2.10 Organisation size

- ○ Micro (1 to 9 employees)
- ◉ Small (10 to 49 employees)
- ○ Medium (50 to 249 employees)
- ○ Large (250 or more)

2.11 Transparency register number

255 character(s) maximum

Check if your organisation is on the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making.

60975211600-74

* 2.12 Country of origin

Please add your country of origin, or that of your organisation.

This list does not represent the official position of the European institutions with regard to the legal status or policy of the entities mentioned. It is a harmonisation of often divergent lists and practices.

- ○ Afghanistan
- ○ Åland Islands
- ○ Djibouti
- ○ Dominica
- ○ Libya
- ○ Liechtenstein
- ○ Saint Martin
- ○ Saint Pierre and Miquelon

- Albania
- Algeria
- American Samoa
- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan
- Bolivia
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Lithuania
- Luxembourg
- Macau
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar/Burma
- Namibia
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden

- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States

- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Czechia
- Democratic Republic of the Congo
- Denmark
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Lesotho
- Liberia
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Saint Helena Ascension and Tristan da Cunha
- Saint Kitts and Nevis
- Saint Lucia
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and Futuna
- Western Sahara
- Yemen
- Zambia
- Zimbabwe

The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **Fo r the purpose of transparency, the type of respondent (for example, 'business association, 'consumer association', 'EU citizen') country of origin, organisation name and size, and its transparency register number, are always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

* 2.14 **Contribution publication privacy settings**

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

- ○ **Anonymous**
  Only organisation details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.
- ◉ **Public**
  Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

☑ I agree with the personal data protection provisions

2.15 In case of follow up questions in the context of this project, would you agree to be contacted via the email address you indicated above?

- ☑ Yes, you can contact me by email to follow up in the context of this project if needed
- ☐ No, I don't want to be contacted by email in the context of this project.

3 Problem Definition

3.1 Despite all measures taken by the EU and Member States in this area, tax evasion and aggressive tax planning continue to be a substantial problem in the European Union. To what extent to do you agree with this statement?

- ☐ I strongly agree
- ☐ I agree
- ☑ I am neutral
- ☐ I disagree
- ☐ I strongly disagree
- ☐ I don’t know

3.2 Please explain your reply.

We support the aim of tackling the tax evasion and aggressive tax planning in the EU. However, it is important to note that tax evasion is already recognised as a crime, and we strongly believe that it is already sufficiently recognised by the national criminal law matter at country specific, as well as on the international level. Therefore, we will not cover this issue, as national authorities must already be informed about all suspected transactions, which may lead to tax evasion and any other illegal actions.
While we acknowledge the concerns that tax avoidance and evasion pose to the public finances and the economies of EU member states, we would question the assertion that, despite all measures taken regarding tax evasion and aggressive tax planning, tax avoidance and evasion continues to be a substantial problem in the European Union. Indeed, asserting that tax evasion and aggressive tax planning continue to pose a substantial problem in the European Union despite all measures taken by the EU and Member States assumes that a detailed assessment of the effectiveness of the existing rules to fight tax evasion and aggressive tax planning has been done and that a conclusion has been reached that the existing rules are not sufficient to tackle the issue.
Such an assessment still needs to be made. For the past years, we have seen the number of pieces of EU legislation and international rules aimed at enhancing tax transparency, limiting tax evasion and erasing money laundering substantially increase (i.e. BEPS, DAC as amended, AML V Directive, the posting of workers Directive). Transfer pricing has also been on the agenda of discussions at international level, and significant new rules have been adopted and implemented worldwide (e.g. arm's length principle, transfer pricing documentation requirements or functional analysis requirements, Pillar I and II). Finally, the proposed Unshell Directive aimed at fighting the use of shell entities and arrangements for tax purposes has not even been adopted at EU level yet, and has therefore not yet been transposed into the EU Member States' domestic legislation. Its effectiveness can thus simply not be measured.
Regarding aggressive tax planning, in the last decade, we have observed a positive trend in the market, where tax advisors and investors are representing a higher level of responsibility and rather than attempting to avoid tax, these organisations are aiming for a greater tax transparency. Additionally, we should remember about the impact of positive incentives such as the ESG labelling. This tool has been over the past years a powerful indicator of commitment of group companies and investors in i.a. social fairness. The tax "footprint", in other words whether and how much taxes are paid, is an indicator that investors and stakeholders are increasingly monitoring and willing to measure at the target or investment level. We encourage the European Commission to consider in existing data the positive impact ESG labelled investments have already had on tax fairness within the European market.
Moreover, as regards Unshell Directive, any legislative initiative aimed at introducing a more burdensome compliance regime for non-UE entities must exclude foreign regulated investment funds. Otherwise, in fact, an unjustified discrimination prohibited under TFUE would occur. As a result, interests and stakeholders represented by Invest Europe should be in any case out of the scope of the issues that the proposed initiative intends to address.

3.3 The issue of tax evasion or aggressive tax planning has continued to increase recently. To what extent do you agree with this statement?

- [ ] I strongly agree
- [ ] I agree
- [ ] I am neutral
- [x] I disagree
- [ ] I strongly disagree
- [ ] I don't know

3.4 Please explain your reply.

As an introductory remark we observe that the present public consultation refers almost indistinctly to tax evasion and aggressive tax planning and seems to suggest that both behaviours shall be addressed in a single piece of legislation. However, we stress the importance to make a clear distinction between the two concepts and ensuring legal certainly given the criminal sanctions that apply when it comes to tax evasion. According to the European Commission's definition, the tax evasion "generally comprises illegal arrangements where tax liability is hidden or ignored, i.e. the taxpayer pays less tax than he/she is supposed to pay under the law by hiding income or information from the tax authorities". Invest Europe reject tax evasion and acknowledges that many countries already have criminal laws and procedures in place addressing tax evasion. Indeed, 'tax crimes' relating to direct and indirect taxes are included in the road definition of 'criminal activity' in the AML Directive.
With respect to aggressive tax planning, it is worth noting that there is no harmonized approach to defining this concept, but all are agreed that aggressive tax planning is legal. Tax laws are complex, not harmonized, and business models vary such that there can be differences in interpretation, difficulty in applying the tax law to certain situations and opportunities to plan. 'Aggressive tax planning', by any definition, may appear within this context. Invest Europe observe that the industry it represents is by far more concerned by ensuring tax neutrality, tax transparency and complying with European tax obligations rather than by investing time and resources in exploiting differences in tax laws.
Invest Europe favours an initiative that would define and address aggressive tax planning only, tax evasion already being tackled by EU Member States criminal and AML laws.

3.5 Enablers play an important role in facilitating tax evasion and aggressive tax planning. To what extent to do you agree with this statement?

- ☐ I strongly agree
- ☐ I agree
- ☐ I am neutral
- ☐ I disagree
- ☐ I strongly disagree
- ☑ I don't know

3.6 Please explain your reply.

We understand that the initiative on the role of enablers involved in facilitating tax evasion and aggressive tax planning comes as follow up initiative to the Unshell Directive with the intention to tackle aggressive tax planning that involve non-EU countries. However, it is not clear from the text of the public consultation that action that may be taken by the Commission is only or mainly aimed at tackling non-EU intermediaries that deliberately and repeatedly abuse the system and assist clients with aggressive tax planning.
In our view tax professionals play important role in the industry we represent ensuring that companies comply with their tax obligations, that tax neutrality is applied (minimizing double economic or judicial taxation) and that governments receive the correct taxes to add to their public finances. In doing so we observe that vast majority of tax professionals are either regulated or obey a code of conduct or other ethical commitments. They seek to provide the best advice to clients within the legal and tax environment involved, informing about economic substance requirements, and considering any reputational impact that could arise should the advice be challenged in a court of law.
Finally, we are of the opinion that work needs to be done prior any action being taken to define and give legal certainty to the term “Enabler”. Indeed, while we understand the origin of this term (i.e. the tax code of the United Kingdom with the Disclosure of Tax Avoidance Schemes (DOTAS) and the Promoters of Tax Avoidance Schemes (POTAS) legislations) we think that this term shall not be used in Europe (where both civil law and common law systems exist) without proper definition, delineation, guidance and consistency with other EU legislation (such as DAC6). The same holds true for the concept of “aggressive tax planning”. Development of a common EU definition is critical to ensure legal certainty as well as to minimize cost of compliance and preserve EU competitiveness.

3.7 In determining aggressive tax planning, several factors should be taken into account. In your opinion, to what extent the following elements could indicate that a company structure is resulting in aggressive tax planning?

	Very indicative	Indicative	Not very indicative	Not indicative at all	No Opinion
The main business rationale/purpose behind the company structure	○	◉	○	○	○
Other business rationale/purpose behind the company structure	○	○	○	◉	○
Minimum economic substance of the entities used in the structure	○	○	○	◉	○
Tax advantage obtained	○	○	○	◉	○
Use of preferential tax regimes/tax treaties/mismatches in national legislations across countries involved in the structure	○	○	○	◉	○
Other (please specify)	○	○	○	○	○

3.8 In case you chose the option ‘Other’ above, please specify, which alternative option you would propose.

Private equity (“PE”) typically makes equity investments into unlisted private companies. PE houses tend to make medium to long term investments which are characterised by active ownership. Investments are made by PE and similar alternative investment funds on behalf of global investors into a diverse range of companies across Europe. An investment made by an alternative investment fund, in this case a PE fund, typically involves setting up several entities to facilitate an investment or acquisition. These entities all have a commercial purpose.
Industry standards require hiring reputable tax advisers, members of professional organisations, to advise on the tax consequences and compliance obligations associated with the investment structure.
Such investment structures are critical to the fund industry and are designed to ensure that the investors benefit from the same economics that would have available if the investors took a direct stake in each underlying group. Limited partners in the fund own the underlying investments via the fund vehicle which is normally a tax transparent entity. The investments may take the form of both equity and debt designed to meet the commercial needs of investors and the underlying investments. Tax advisers are giving advice on market-based, commercial transactions with the objective to best serve their clients in achieving these key commercial objectives.
We consider that a lack of business purpose is indicative of aggressive tax planning. With respect to the level of economic substance we are of the view it shall not be considered as an indicative factor until the following points are resolved first i.e.
(i) ensuring consistency with the Unshell Directive/ATADIII which we understand attempts to define “minimum substance” (i.e. it would seem excessive to go beyond the Unshell Directive and create yet another autonomous definition),
(ii) ensuring the economic substance is assessed taking into consideration object, purpose and activity of a given entity, and
(iii) clarifying how to assess the economic substance in the context of an initiative which aims at targeting “enablers” while being silent on the responsibility of taxpayers or on whether taxpayers could be considered as “enablers”. Tax advisers in rendering advice take into consideration information and documents provided and/or available but also assumptions or representations on which they apply a professional judgment. They also consider and advise on applicable anti-avoidance measures and substance requirements. Even so the advice would be applied by a taxpayer without complying with the substance requirements it should not cause the tax adviser to be treated as an “enabler” of aggressive tax planning.

The use of a tax advantage, or use of preferential regimes, are not convincing as factors when compared to genuine commercial purpose in considering if something is aggressive tax avoidance. Tax savings often arise from genuine transactions, especially when such preferential tax regime or tax advantage is considered beneficial for the economy (e.g. free trade zones, tax credits, reliefs, exemptions, etc…) or is aimed at avoiding double taxation.

3.9 Coordination at EU level, e.g. on the nature of the measure and the type of aggressive tax planning schemes to be covered, is fundamental to help prevent that enablers contribute to tax evasion or aggressive tax planning. To which extent do you agree with this statement?

- [ ] I strongly agree
- [ ] I agree
- [x]

I am neutral

- [ ] I disagree
- [ ] I strongly disagree
- [ ] I don't know

3.10 Please provide reasons for which you consider that the EU should **take** action to enhance the fight against tax evasion and aggressive tax planning by addressing the role of enablers.

We are of the opinion that, in accordance with the subsidiarity principle, the European Commission should not go beyond what is strictly necessary and should not take any measures that would go against the proper functioning of the EU Single Market.
We are of the view that tax evasion – due to its criminal nature – should be left in the hands of each Member State as most of them already having extensive provisions to identify, assess and act against such actions.
With respect to aggressive tax planning, we call for a clear assessment of the impact of the existing provisions instead of adding a new layer of legislation, which would clearly add to the complexity, administrative burden and costs.
We consider that work remains to be done on establishing harmonized definitions of "aggressive tax planning", "economic substance", "enablers" and on editing rules capable of being operationalised consistently across Member States' tax authorities. We consider this work is a necessary pre-requisite before any action shall be taken at EU level.
Finally – by nature – tax rules are complex, not perfectly harmonized and their interpretation evolves with time. This interpretation is highly dependent on the economic and political context. What is considered acceptable tax planning today in each jurisdiction may be considered aggressive tax planning in years' time or in another jurisdiction. If new legislation were to be introduced, we would favour rules that tackle those "enablers" that consistently and purportedly create, promote etc arrangements and structures that breach the agreed definitions.
We do not believe that adding an additional layer of legislation – be this a directive or regulation – will help in the fight against aggressive tax planning. More precisely, the cooperation and exchange of information between European tax administrations has been significantly enhanced and improved via the several DAC directives. These administrations have now sufficient available tools to combat systemic tax fraud and abusive tax planning. However, as the European Court of Justice rightfully stated in its Berlioz case (C-682 /15), it is nevertheless important to ensure that appropriate and proportionate measures are applied, and that taxpayers' rights are also preserved.

3.11 Please provide reasons for which you consider that the EU should **not take** action to enhance the fight against tax evasion and aggressive tax planning by addressing the role of enablers

We support the idea of the EU's taking action to enhance the fight against aggressive tax planning. Notwithstanding, any potential initiative should be coordinated with already existing and ongoing legislative frameworks. This includes DAC 6, whose effects have yet to be fully felt as a tool to combat aggressive tax planning.

4 Ways to tackle the role of enablers in facilitating tax evasion and aggressive tax planning

4.1 If the EU took new action to address the role of enablers in facilitating tax evasion and aggressive tax planning, which of the following means do you consider most likely to be effective?

- [x] 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.
- [ ] Other

4.2 If you replied with 'Other', please provide more details.

4.3 Enablers should be **prevented** from designing, marketing, organising or assisting in the creation of tax schemes that lead to evasion and aggressive tax planning. To what extent to do you agree with this statement? To what extent to do you agree with this statement?

- [ ] I strongly agree
- [x] I agree
- [ ] I am neutral
- [ ] I disagree
- [ ] I strongly disagree
- [ ] I don't know

4.4 Please explain your reply.

We strongly support the idea of preventing the enablers from using the aggressive tax planning on the same basis as the managers and advisors of the fund industry. It should be made clear, that any of these actions can be held accountable on professional and personal level, which should be set by professional boards or code of conduct.
However, for effective prevention it is vital that the existing terms of "tax evasion", "tax fraud", "tax avoidance" and "aggressive tax planning" are clearly defined or at least harmonised within the European Union, which is not the case at the moment. The creation of new principles and concepts on top of a

collection of undefined – or at least not harmonised – terms will increase legal uncertainty. What needs to be prevented is tax fraud as much as tax avoidance. It makes thus sense, to concentrate on a solid definition and applicability of these two terms.

4.5 **Due diligence procedures** (as for example used in the field of anti-money laundering) would require enablers to perform a self-assessment test to demonstrate that the tax schemes do not lead to tax evasion and aggressive tax planning. To what extent would you agree that this is an effective measure?

- ☐ I strongly agree
- ☐ I agree
- ☑ I am neutral
- ☐ I disagree
- ☐ I strongly disagree
- ☐ I don't know

4.6 Please explain your reply.

The use of the tools existing already in the national law, as well as the information received through DAC6 and AML regulations, together with promoting effective implementation and enforcement of the European anti-tax avoidance legislation is, in our view, more effective rather than creating an additional instrument. We further fail to understand the logic and rationale of such tool which seems to require an "enabler" to be both "judge and party of its own trial". We also doubt whether such self-assessment would have any deterrent effect against "enablers" designing aggressive tax planning.

4.7 In case an **EU register** of enablers would be established, which of the following options do you consider as the most effective?

	Very effective	Effective	Not very effective	Not effective at all	No Opinion
Mandatory registration for enablers in order to be able to provide tax advice	○	○	○	○	◉
Optional registration that gives access to certain benefits (e.g. submitting tax return on behalf of their clients)	○	○	○	○	◉
Other (please specify)	○	○	○	○	◉

4.8 In case you chose the option 'Other' above, please specify, which alternative option you would propose.

The enablers should be hold accountable at a national level by the strict regulatory standards and the relevant code of conduct.

4.9 Would you agree that a **code of conduct for enablers** that would prohibit them to design, market, organise or assists in the creation of tax evasion and aggressive tax planning schemes without any complementary mandatory measures will be sufficient and effective in fighting tax evasion and aggressive tax planning?

- ☐ I strongly agree
- ☑ I agree
- ☐ I am neutral
- ☐ I disagree
- ☐ I strongly disagree
- ☐ I don’t know

4.10 Please explain your reply.

The code of conduct for enablers, which should be limited only to those with specific technical expertise (such as tax advisors) who actively participate in specific legal or tax structuring, should hold them to account on a national level. We do think that, as case for other regulated professions, this will only work if well considered and executed.

In respect of aggressive tax planning, consideration shall give to countries where tax advisory services are already regulated by local law and countries where provision of tax services is unregulated. Unless this initiative is an attempt to regulate the tax profession in Europe, we think that a code of conduct is sufficient and effective in fighting aggressive tax planning. However, it would need to be ensured that any code of conduct does not contradict existing legislation where provision of tax services is already regulated, and it would need to be clarified who would monitor and enforce any code of conduct.

4.11 Would you agree that a new reporting requirement for EU taxpayers of participation above 25% of shares, voting rights, ownership interest, bearer shareholdings or control via other means’ in a non-listed company outside the EU will boost transparency of EU investment abroad?

- ☐ I strongly agree
- ☐ I agree
- ☐ I am neutral
- ☐ I disagree
- ☐ I strongly disagree
- ☑ I don’t know

4.12 Please explain your reply.

Although we support the transparency boost for EU investments both on the internal market and on third markets, it is important that legitimate transactions and entities are not disrupted. We would like to highlight that do not see the added value in new reporting requirement and how it may have an impact on the role of

enablers and in the fight against tax evasion or tax planning. It would in our view just add an additional layer, and thus additional administrative burden associated with increased costs, to the already very extensive reporting EU requirements.

4.13 If new requirements were imposed on enablers, can you please provide an estimation of the **magnitude of the economic impact** that each option would entail?

	Strong Impact	Some Impact	Little Impact	No impact at all	No Opinion
Tax collection across the EU would increase as the rules would deter from using tax evasion or aggressive tax planning	○	○	○	○	◉
Resource allocation across the EU would be optimised through better distribution of tax burden across taxpayers	○	○	○	○	◉
Higher tax fairness as all companies would pay their fair share (levelled playing field)	○	○	○	○	◉
Improved level playing field for enablers regardless of their location (as all enablers would be prohibited from tax evasion and aggressive tax planning)	○	○	○	○	◉
Other (please specify)	○	○	○	○	◉

4.14 In case you chose the option ‘Other’ above, please specify, which alternative option you would propose.

4.15 Please describe any further major impacts you consider likely to arise from a new EU action addressing the role of enablers in facilitating tax evasion and aggressive tax planning, towards the main stakeholders (enablers, business asking for tax advice services, citizens, taxpayers, tax administrations etc.)

Assessing the collateral impacts on the main stakeholders will depend on the nature of the actions taken. This survey does not provide sufficient clarity on the terms used (e.g. “enablers”, “aggressive tax planning”) and does not give sufficient detail of the scope or the nature of the actions that are most likely to be taken, so it is not possible to assess the economic impacts (if any).

4.16 If new requirements were imposed on enablers, can you please provide an estimation of the magnitude of the impact on the compliance costs that each option would entail?

	Strong Impact	Some Impact	Little Impact	No impact at all	No Opinion
Code of conduct that would prohibit the enablers who design, market, organise or assists in the creation of tax evasion and aggressive tax planning schemes without any complementary mandatory measures	◉	○	○	○	○
EU register of enablers and the obligation to register	○	○	◉	○	○
Due diligence procedures to perform a self-assessment test to demonstrate that the tax schemes do not lead to tax evasion or aggressive tax planning	○	○	◉	○	○
New reporting requirement for EU taxpayers of participation above 25% of shares, voting rights, ownership interest, bearer shareholdings or control via other means in a non-listed company outside the EU	○	◉	○	○	○
Other (please specify)	○	○	○	○	○

4.17 In case you chose the option ‘Other’ above, please specify, which alternative option you would propose.

4.18 **If the EU took no further action** to address the role of enablers in facilitating tax evasion and aggressive tax planning which of the following scenarios do you consider most likely?

- ☐ The internal market will be more fragmented because Member States will provide their own rules addressing the role of the enablers.
- ☐ Without EU action addressing the role of the enablers, the problem will remain.
- ☑ Other

4.19 In case you chose the option ‘Other’ above, please specify.

As in many other cases, applying the national law of Member States does not mean that the internal market becomes more fragmented, especially since much domestic legislation is already influenced by EU

Directives and Regulations. Although we cannot exclude this option, in almost every jurisdiction, there are rules that could apply to enablers, e.g. tax residence, controlled foreign companies, transfer pricing, limitation of benefits of any tax treaty, beneficial ownership and OECD BEPS/ATAD/AML.

Consequently, even if EU would not take any further actions to harmonise the role of enablers, in our view, most member states have sufficient legislation to deal with them without enhancing the further fragmentation of the internal market.

Rather than focusing on “enablers” another way forward would be to open the discussion to restrict tax advisory to regulated professions within the European Union.

5 Enforcement of the Measure

5.1 In your opinion, are **monetary penalties** an adequate means to appropriately sanction and deter enablers from facilitating tax evasion and aggressive tax planning?

- ☐ I strongly agree
- ☐ I agree
- ☐ I am neutral
- ☐ I disagree
- ☐ I strongly disagree
- ☑ I don’t know

5.2 In case you answered *'I strongly agree'* or *'I agree'* in the question above, which type of monetary penalties do you find adequate to deter enablers helping their clients evade or avoid taxes? Monetary penalties:

- ☐ As a proportion of their fees
- ☐ As a proportion of amounts evaded on behalf of their clients
- ☐ As an absolute fixed number
- ☐ Other

5.3 If you replied with ‘Other’, please provide more details.

5.4 In your opinion, would **preventing an enabler to design, market, organise or assist in the creation of tax schemes that lead to evasion and aggressive tax planning from being allowed to provide services** be an efficient way to deter them from facilitating abusive tax schemes?

- ☐ I strongly agree

- [ ] I agree
- [ ] I am neutral
- [ ] I disagree
- [ ] I strongly disagree
- [x] I don’t know

5.5 Please describe any other enforcement mechanism (e.g. other type of sanctions or compliance measures against enablers that market, sell or otherwise promote tax evasion or aggressive tax planning) that you consider appropriate and effective for EU and non-EU enablers.

Contact

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