**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

 3Problem Definition

Question3.1Despite 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?

|  |  |
| --- | --- |
|  | Answer  I strongly agree |
|  | Answer  I agree |
|  | Answer  I am neutral |
|  | Answer  I disagree |
|  | Answer  I strongly  disagree |
|  | Answer  I don’t know |

Question3.2Please explain your reply.  


Question3.3The issue of tax evasion or aggressive tax planning has continued to increase recently. To what extent do you agree with this statement?

|  |  |
| --- | --- |
|  | Answer  I strongly agree |
|  | Answer  I agree |
|  | Answer  I am neutral |
|  | Answer  I disagree |
|  | Answer  I strongly disagree |
|  | Answer  I don't know |

Question3.4Please explain your reply.  


Question3.5Enablers play an important role in facilitating tax evasion and aggressive tax planning. To what extent to do you agree with this statement?

|  |  |
| --- | --- |
|  | Answer  I strongly agree |
|  | Answer  I agree |
|  | Answer  I am neutral |
|  | Answer  I disagree |
|  | Answer  I strongly disagree |
|  | Answer  I don't know |

Question3.6Please explain your reply.  


Question3.7In 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)** |  |  |  |  |  |

Question3.8In case you chose the option ‘Other’ above, please specify, which alternative option you would propose.  


Question3.9Coordination 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?

|  |  |
| --- | --- |
|  | Answer  I strongly agree |
|  | Answer  I agree |
|  | Answer  I am neutral |
|  | Answer  I disagree |
|  | Answer  I strongly  disagree |
|  | Answer  I don’t know |

Question3.10Please 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.  


Question3.11Please 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  


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

Question4.1If 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?

|  |  |
| --- | --- |
|  | 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. |
|  | Answer  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  Other |

Question4.2If you replied with ‘Other’, please provide more details.  


Question4.3Enablers 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?

|  |  |
| --- | --- |
|  | Answer  I strongly agree |
|  | Answer  I agree |
|  | Answer  I am neutral |
|  | Answer  I disagree |
|  | Answer  I strongly  disagree |
|  | Answer  I don’t know |

Question4.4Please explain your reply.  


Question4.5**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?

|  |  |
| --- | --- |
|  | Answer  I strongly agree |
|  | Answer  I agree |
|  | Answer  I am neutral |
|  | Answer  I disagree |
|  | Answer  I strongly  disagree |
|  | Answer  I don’t know |

Question4.6Please explain your reply.  


Question4.7In 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)** |  |  |  |  |  |

Question4.8In case you chose the option ‘Other’ above, please specify, which alternative option you would propose.  


Question4.9Would 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?

|  |  |
| --- | --- |
|  | Answer  I strongly agree |
|  | Answer  I agree |
|  | Answer  I am neutral |
|  | Answer  I disagree |
|  | Answer  I strongly  disagree |
|  | Answer  I don’t know |

Question4.10Please explain your reply.  


Question4.11Would 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?

|  |  |
| --- | --- |
|  | Answer  I strongly agree |
|  | Answer  I agree |
|  | Answer  I am neutral |
|  | Answer  I disagree |
|  | Answer  I strongly  disagree |
|  | Answer  I don’t know |

Question4.12Please explain your reply.  


Question4.13If 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)** |  |  |  |  |  |

Question4.14In case you chose the option ‘Other’ above, please specify, which alternative option you would propose.  


Question4.15Please 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.)  


Question4.16 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)** |  |  |  |  |  |

Question4.17In case you chose the option ‘Other’ above, please specify, which alternative option you would propose.  


Question4.18**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?

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

Question4.19In case you chose the option ‘Other’ above, please specify.  


5Enforcement of the Measure

Question5.1In your opinion, are **monetary penalties** an adequate means to appropriately sanction and deter enablers from facilitating tax evasion and aggressive tax planning?

|  |  |
| --- | --- |
|  | Answer  I strongly agree |
|  | Answer  I agree |
|  | Answer  I am neutral |
|  | Answer  I disagree |
|  | Answer  I strongly  disagree |
|  | Answer  I don’t know |

Question5.2In 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:

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

Question5.3If you replied with ‘Other’, please provide more details.  


Question5.4In 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?

|  |  |
| --- | --- |
|  | Answer  I strongly agree |
|  | Answer  I agree |
|  | Answer  I am neutral |
|  | Answer  I disagree |
|  | Answer  I strongly  disagree |
|  | Answer  I don’t know |

Question5.5Please 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.