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European Commission
DG Taxation and Customs Union
Berlaymont
1040 Brussels, Belgium

15 February 2017

Re: Open public consultation - Disincentives for advisors and intermediaries for potentially aggressive tax planning schemes

Dear Sirs,

BDO is an international network of public accounting, tax and advisory firms which perform professional services under the name of BDO. These firms have representation in 158 territories, with almost 68,000 people working out of 1,401 offices worldwide. BDO is the brand name for the BDO network and for each of the BDO Member Firms.

The BDO tax practices provide advisory services related to international tax, corporate and business tax, transfer pricing, expatriate tax, indirect tax. BDO actively contributes to the work of policy makers in the European Union and at international level to build a robust and efficient international tax framework fit for the modern globalised economy. We believe that countries need to be able to take sovereign decisions regarding their own tax systems based on domestic preferences and public expectations of social priorities that shape their fiscal structures. In that regard, tax competition between countries is inevitable and will impact the international tax framework. However, we agree that the current international tax system needs to be improved in order to fill in the existing gaps and frictions that lead to unacceptable forms of tax competition. We agree that harmful tax practices such as using taxes as the sole impetus for moving investments should be eliminated.

In this letter we would like to provide further information on two points related to the consultation: **1) we would like to point out BDO's contribution to the G20 and OECD work on harmful tax practices 2) we would like to clarify our answer to question 3 of the consultation regarding the term "intermediary of potentially aggressive tax planning scheme".**

1) BDO contribution to the OECD BEPS project

As a large global tax advisory services provider we believe that we have an important role to play in shaping the international tax system where tax payers pay their fair share of taxes. In that regard, BDO has welcomed the G20 and the OECD work in that area.

Below we would like to show a few examples on how BDO contributes to the work of the OECD BEPS project.BDO actively participates in the work being done by the OECD with respect to transfer pricing and international tax. We believe it is essential that we provide the OECD with our commentary on its Discussion Drafts and White Papers, and to attend meetings and webcasts with the OECD, in order to ensure that an environment is developed that will help international businesses thrive and effectively manage their tax expenditures while allowing tax authorities to collect the tax revenues required to fuel their respective economies. Included, below, are summaries to some of the Submissions BDO has sent to the OECD in conjunction with the work being done on Base Erosion and Profit Shifting. The BDO full submissions can be found on our website following the link https://www.bdo.global/en-gb/services/tax/beps/bdo-submissions-to-the-oecd.

BEPS Discussion draft on revised guidance on profit splits (4 July 2016)

BDO believes additional guidance on the application of profit split methods is useful and will be helpful where other methods do not appropriately reflect the integrated nature of the functions, assets and shared risks arising in highly complex multinational businesses today. The increasingly interdependent nature of the value drivers and core business activities of multinational enterprises means that it becomes more likely that the transactional profit split will become a more common method applied in resolving transfer pricing disputes. Therefore, providing parameters and practical guidance is critical for MNEs to prepare an appropriate level of supporting analysis when applying the transactional profit split as well as achieve as much consistency as possible when Tax Authorities are reviewing such analysis.

OECD discussion draft - BEPS Action 4 -Interest deductions and other financial payments (18 December 2014)

Based on BDO's review of the proposed guidance, we suggested to the OECD that parts of the Discussion Draft could be improved through greater clarity and consideration of established rules already in place in many jurisdictions. BDO included suggestions to select topics highlighted in this Discussion Draft that we believe could help refine the proposed guidance. Our focus was to offer practical suggestions that limit the risk of double taxation, while maintaining practical solutions to taxpayers.

OECD discussion draft - BEPS Action 10: Use of Profit Splits in the Context of Global Value Chains (16 December 2014)

BDO believes that additional guidance on the application of profit split methods in the context of global value chain functions would be helpful in addressing situations where other methods may not be immediately appropriate. BDO recognizes that the profit split is a useful tool that can increase transparency, certainty, and robustness. It is also important to weigh the practicalities and administrative costs for businesses in implementing transactional profit split methods. BDO presented responses and comments to questions raised by the OECD under various sections and scenarios set out in the Discussion Draft.

OECD discussion draft - BEPS Actions 8, 9 and 10: Revisions to Chapter I of the Transfer Pricing Guidelines (Including Risk, Recharacterization, and Special Measures) (19 December 2014)

We believe that the Discussion Draft does not represent a significant departure from the historic intentions of the Guidelines, but rather reaffirms and emphasizes expectations. Overall, this should be helpful as it sets out clear expectations for both MNEs and tax authorities. However, by increasing emphasis on certain areas and by making the concept of non-recognition more explicit outside of the context of recharacterization in Chapter IX, there is a risk that this will increase the expectations for documentation and tax authority challenge across the board rather than simply focusing on the higher risk, hard to characterize or potentially inappropriate transactions which we understand are the OECD's main concern. The OECD might usefully consider increasing the level of practical guidance around how the new level of proposed scrutiny is implemented, placing this in the context of their Risk Assessment Handbook and their other recent moves towards simplification in certain areas.

OECD revised discussion draft - Transfer Pricing Aspects of Intangibles (30 July 2013)

BDO suggested further refinements to the guidance outlined in the Discussion Draft, particularly with respect to: the movement of personnel within an MNE; whether "know how" was being over-used as being a distinct intangible; ensuring that the OECD's guidance was aligned with existing and accepted tax and legal principles; the ownership of intangibles; the use of rules of thumb; potential increased reliance on profit split methods; the selection of appropriate transfer pricing methodologies; and, the accuracy of financial projections used in valuations for intangibles.

OECD White Paper on Transfer Pricing Documentation (30 July 2013)

BDO confirmed our support of the OECD's efforts to put in place a transfer pricing documentation framework that is both effective for tax authorities' risk assessment and practical for businesses. We suggested further guidance and clarity would be beneficial to ensure that the balance of transparency and practicality is achieved in practice and that requirements do not become weighted by default to the tax authority with the most onerous regulation and practice.

OECD Draft Handbook on Transfer Pricing Risk Assessment (30 April 2013)

BDO confirmed our support of the OECD's efforts to set out a clear and consistent framework for the management of transfer pricing risk by both business and taxing authorities. We suggested further consideration and potential refinement of the Handbook to ensure that its *practical implementation is proportionate for all sizes of multinational enterprise, not just those with the greatest size, complexity and resources. Similarly, we recommended that further guidance for tax authorities would be supportive to prevent the weighting of expectations towards the government with the most demanding interpretation of this risk assessment process.*

2) **<u>Further information regarding the term "intermediary of potentially aggressive tax planning scheme"</u>**

We have answered this question selecting the "I don't know" option. The reason for our answer is that the question refers to the definitions provided by the European Commission in the explanatory note accompanying the consultation. According to the text, accountants, auditors and tax advisors are such intermediaries. In our role as an intermediary, we advise businesses and individuals on how to manage their tax costs and risks in a manner consistent with tax law, and the commercial realities of how their affairs or business is conducted.

We hope that you find our contribution helpful and we remain at your disposal for further information.

Yours faithfully,

John Wonfor
BDO Global Head of Tax