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PLATFORM FOR TAX GOOD GOVERNANCE

Proposal for a Council Directive amending Directive 2011/16/EU (DAC) as regards measures to strengthen existing rules and expand the exchange of information framework in the field of taxation to include crypto-assets and e-money (DAC8)

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1. Introduction

Having an economy that works for people, while making Europe greener and more digital, are clear political priorities for this Commission. It is more important than ever for Member States and the EU to have secure tax revenues. To achieve this, fair, efficient and sustainable taxation is key.

On 15 July 2020, the European Commission adopted a new tax package, the Action Plan for Fair and Simple Taxation Supporting the Recovery Strategy (the Action Plan), which reinforces the fight against tax abuse, helps tax administrations keep pace with a constantly evolving economy and eases administrative burden for citizens and companies.

A DAC8 proposal is part of the Action Plan and aims at improving cooperation between national tax authorities in newly developing areas as well as on existing matters. This initiative should provide tax administrations with information to identify taxpayers who are active in new means of exchange, notably crypto-assets and e-money. It will also ensure consistency with ongoing work at EU level, such as the Digital Finance Strategy adopted on 24 September 2020 and the proposal for a Regulation on Markets in Crypto-assets (MICA), and at international level on the taxation on crypto-assets and e-money. In addition, it should include concrete improvements and updates to keep the Directive on Administrative Cooperation (DAC) framework in line with national and international developments.

2. Objectives

The general objectives of the DAC8 proposal will be to ensure the proper functioning of the Internal Market, reduce tax evasion and other forms of tax abuses, simplify compliance and increase the confidence of European citizens in the fairness of the tax system while ensuring fair competition in the Internal market.

The specific objectives of the initiative are to enable tax administrations to obtain information that is necessary to control that taxpayers pay their fair share, in particular taxpayers who earn money via crypto-assets, as well as to provide for better cooperation across tax administrations and keep business compliance costs to a minimum by providing a common EU reporting standard.

1. Do you agree with the objectives outlined for DAC8 ?

2. Do you have suggestions for further objectives to improve the exchange of information under DAC?

3. Problem definition

The two main problems that the initiative should aim to tackle are:

- (i) the lack of information at the level of national tax administrations about the emergent use of crypto-assets and e-money, possibly resulting in revenue losses also for the EU budget;
- (ii) the disparity in the sanctions applied based on the current provisions and other necessary punctual adjustments/improvements to be made to the Directive on Administrative Cooperation – Directive 2011/16/EU (Directive/DAC).

In recent years, digitalisation and the use of technology in the financial sector has led to increased efficiency gains and new products for consumers. In March 2018, the G20 Finance Ministers assessed in this respect that technical innovation can improve the efficiency and inclusiveness of the financial system and the economy. However, the emergence of crypto-assets raise issues with the respect to consumer and investor protection, market integrity, tax evasion, money laundering and terrorist financing.

Crypto-assets are digital assets based on distributed ledger technology, cryptography and other digital technologies. The lack of centralized control for crypto assets, its pseudo-anonymity, valuation difficulties, hybrid characteristics and the rapid evolution of the underlying technology are challenging with regard to tax obligations. Furthermore, this form of assets can be used for payment as well as investment purposes, which makes its classification and the potential tax compliance even more difficult.

These difficulties follow from the need to identify the relevant intermediaries, the reportable event, the valuation of assets and the available information among other things. Similar to “traditional” financial instruments, income derived from crypto-assets could be subject to taxation. However, proper enforcement of tax obligation relies on a proper reporting and the ability of tax administrations to have access to the information. Overall, the level of tax transparency is very low as this new technology is also used to create, hold and transfer assets without third-party intermediaries.

E-money institutions as well as e-money (i.e. a digital alternative to bank notes and coins allowing users to make cashless payments with money stored on a card or a phone, or over the internet) is already regulated through Directive 2009/110/EC as well as by the second Payment Services Directive (2015/2366/EU).

The existing provisions of the DAC provide for an obligation for financial intermediaries to report to tax administrations and for an exchange of information between Member States. For crypto-assets and e-money, there is no such obligation to report as crypto-assets and e-money as well as the relevant intermediaries for these assets are not currently fully covered by the Directive and hence national tax authorities cannot get this information from each other. In addition, intermediaries could probably not be expected to have access to the same type of information as they would have in the case of traditional financial services. This is particularly worrying in an area where all platforms are digital and therefore easily move their activities between Member States and their activities are cross-border by nature.

Furthermore, in the light of the exchange of information from financial institutions on financial accounts set up by DAC2 in 2014, these developments may lead to the erosion of the integrity of such exchanges as a tool in tackling offshore tax evasion. The compliance of crypto-assets and e-money institutions with the DAC2 exchange requirements is essential and should be ensured through the DAC8 proposal either as a

self-standing provision or as an extension to existing DAC2 provisions or even both in order to cover all the unique particularities of these instruments.

Taking into account these different aspects, the DAC8 proposal should ensure adequate tax transparency, with a view to ensuring correct taxation. In order to do so, the proposal will need to define the crypto-assets in scope as well as to identify the relevant intermediaries for tax, common reporting framework and due diligence purposes.

Moreover, there is a need to address some inefficiencies of the current DAC. Notably the limited provisions in DAC on compliance measures leading to differences between Member States should be addressed by this proposal through a cohesive framework for sanctions. Other necessary punctual adjustments/improvements (e.g. possible updates needed to align with the OECD) will be addressed in the proposal.

3. Do you agree with the definition of problems outlined in this note as a basis for EU action?

4. Do you believe that the scope of the directive should be wide enough to be “future proof”?

5. Do you agree that a proposal should cover third country intermediaries reporting obligations in order to ensure a level playing field?

6. Are you aware of taxation of crypto assets in Member States?

7. Are you aware of reporting from crypto-asset intermediaries in Member States?

4. Specific aspects of the proposal: Crypto-assets and e-money

In order to offer a robust reporting framework for information on crypto-assets and e-money, the DAC8 proposal will take into account relevant existing EU laws as well as other proposals under discussion in order to define crypto-assets and crypto-asset intermediaries in scope. The proposal should take into account existing definitions and frameworks to ensure coherence, minimise administrative burden and ensure enforceability. However, it should not be neglected that the object of this reporting framework is the key. In this respect, a crucial element is to determine the scope and details of the reporting. On one hand, the DAC8 proposal could be a tool to provide tax administrations with a high-level indication of potential compliance risks in relation to taxpayers. On the other hand, it could allow them to directly assess the taxable income arising from crypto-assets on the basis of the reported information. It is also of great importance to take into account the GDPR requirements when deciding on an approach.

8. The proposal needs to align with EU proposals on the crypto-assets market as well as on anti-money laundering. In addition, international initiatives need to be taken into account. How important is it to stay close to international initiatives and to what degree?

9. What is your opinion on the content of reporting considering the effects on intermediaries as well as administrations: Should it allow a risk-analysis or should it make more detailed assessments possible?

5. Specific aspects of the proposal: Penalties/compliance measures

In relation to compliance measures, the Commission is of the opinion that Member States should continue to have the sovereignty to implement penalties according to domestic provisions and thus decide whether they are effective, proportionate and dissuasive. Nevertheless, the significant differences between Member States should be scaled down by better defining the terms “effective, proportionate and dissuasive” and lead Member States towards a more closely coordinated application of sanctions. Such coordination should provide taxpayers with clear and transparent rules and would at the same time aim to prevent the use of divergences as an element of tax planning schemes. Member States seem to broadly share this initiative.

10. Would a more precise definition of the requirements in the DAC for penalties/compliance measures have the effects outlined in the text?
