

## Information note on the Commission's proposal for a directive

### Securing the activity framework of enablers (SAFE)

#### Overview

This is an information paper on the forthcoming Commission proposal for a directive, to tackle the role of enablers involved in facilitating tax evasion and/or aggressive tax planning in the European Union. The paper has been prepared for the purposes of the meeting of the members of the Platform for tax good governance on 13<sup>th</sup> September 2022.

#### Background to the SAFE proposal

On 22 December 2021, the European Commission presented a key initiative to combat the misuse of shell entities for improper tax purposes. The Unshell proposal will ensure that entities in the European Union that lack minimal substance and that do not carry out any actual economic activity are unable to benefit from any tax advantages. When the proposal was adopted, the Commission announced that it would propose a follow-up initiative to respond to the challenges linked to non-EU shell entities. This new initiative is therefore a response to these challenges and simultaneously represents another important step in the Commission's continued commitment to combatting tax evasion and aggressive tax planning.

#### What is the problem that this initiative aims to tackle?

This initiative aims to tackle the role that enablers can play in facilitating arrangements or schemes that lead to tax evasion or aggressive tax planning in Member States of the Union. To this end, the key objective of this initiative is to prevent enablers from setting up complex structures in non-EU countries, the purpose of which is to erode the tax base of Member States through tax evasion and aggressive tax planning.

This initiative will interact and build upon existing initiatives, which have been introduced to combat tax evasion and aggressive tax planning, notably Council Directive (EU) 2018/822 (“**DAC6**”), the Anti-Tax Avoidance Directive (“**ATAD**”), the Anti-Money Laundering (“**AML**”) Directive and the Whistle-blowers Directive. That said it is noteworthy that audit and tax consequences arising from DAC6 information are in principle addressed to the taxpayer and not the enabler involved in the reportable cross-border arrangement. Simultaneously, anti-tax avoidance mechanisms such as the “**ATAD**” target the taxpayers but do not target those who enable such structures.

Consequentially and despite these initiatives, corporate tax avoidance is estimated at between USD 90 billion and USD 240 billion per year worldwide. In the EU, tax avoidance is estimated at between EUR 35 billion and EUR 70 billion of tax revenues lost per year. A recent study

estimated the tax revenue loss for the EU in 2018 resulting from wealthy individuals evading tax at EUR 124 billion.

A key problem, which this initiative seeks to address, is the existing lack of clear and objective criteria for defining aggressive tax planning. The absence of this creates a ‘grey zone’, which some enablers exploit and in so doing design tax schemes and arrangements that erode the tax base of Member States. In addition to this problem, tax administrations also lack effective rules and mechanisms that prevent enablers, particularly those located outside the Union from facilitating tax evasion and/or aggressive tax planning in the Union.

### **What are the policy options that the Commission are considering?**

On the 6<sup>th</sup> July, the Commission published a Call for evidence for an impact assessment for this proposal. In this Call for evidence, the Commission outline three options, which are currently under consideration for tackling the role that enablers can play in facilitating arrangements or schemes that lead to tax evasion or aggressive tax planning in Member States of the Union. These options are as follows:

#### **Option 1: Requirement for all enablers to carry out dedicated due diligence procedures**

This option involves a prohibition on enablers from assisting in the creation of arrangements abroad that facilitate tax evasion or aggressive tax planning. In addition, this option foresees the requirement for all enablers to carry out a test to check whether the arrangement or scheme they are facilitating leads to tax evasion or aggressive tax planning. It also requires the enabler to maintain records of these due diligence procedures in all cases. This option could be combined with appropriate measures to address possible non-compliance.

#### **Option 2: Prohibition to facilitate tax evasion and aggressive tax planning combined with due diligence procedures and a requirement for enablers to register in the EU**

This option involves a prohibition on enablers from assisting in the creation of arrangements abroad that facilitate tax evasion or aggressive tax planning. The enablers covered by the scope would be required to carry out dedicated due diligence procedures as outlined under Option 1. In addition, enablers that provide advice or 3 services of a tax nature to EU taxpayers or residents would be required to register in an EU Member State. Only registered enablers could provide advice or services of a tax nature to EU taxpayers or residents. In cases of non-compliance, enablers may be removed from the registry.

#### **Option 3: Code of conduct for all enablers**

This option involves the requirement for all enablers to follow a code of conduct that obliges enablers to ensure that they do not facilitate tax evasion or aggressive tax planning.

## What are the next steps for the Commission's SAFE proposal?

On the 6<sup>th</sup> July, the Commission published a [Call for evidence and launched a public consultation for this proposal](#). The feedback and consultation period will conclude on 12<sup>th</sup> October and will collect views from stakeholders on the role of enablers that contribute to tax evasion and aggressive tax planning, the magnitude of the problem, the need for EU action and the potential policy responses. In this context, the Commission encourages the members of the Platform for tax good governance to contribute to this consultation.

The current indicative timing for the Commission's adoption of the proposal is first half of 2023.

## Questions for the members of the Platform for tax good governance?

The Commission welcomes the views of the members on the following key questions:

- 1. 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?**
- 2. In determining aggressive tax planning for the purposes of this proposal, several factors should be taken into account. In your opinion, to what extent could the following elements indicate that a company structure is resulting in aggressive tax planning?**

	<b>Very indicative</b>	<b>Indicative</b>	<b>Not very indicative</b>	<b>Not indicative at all</b>
<b>The main business rationale/purpose behind the company structure</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Other business rationale/purpose behind the company structure</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Minimum economic substance of the entities used in the structure</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

	Very indicative	Indicative	Not very indicative	Not indicative at all
<b>Tax advantage obtained</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Use of preferential tax regimes/tax treaties/mismatches in national legislations across countries involved in the structure</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Other (please specify)</b>	<input type="radio"/>			

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

**If not**, 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