

## CALL FOR EVIDENCE FOR AN IMPACT ASSESSMENT

This document aims to inform the public and stakeholders of the Commission's future legislative work so they can provide feedback on the Commission's understanding of the problem and possible solutions, and give us any relevant information that they may have, including on possible impacts of the different options.

<b>TITLE OF THE INITIATIVE</b>	Tackling the role of enablers involved in facilitating tax evasion and aggressive tax planning
<b>LEAD DG (RESPONSIBLE UNIT)</b>	DG TAXUD Unit D2: Direct taxation and administrative cooperation
<b>LIKELY TYPE OF INITIATIVE</b>	Legislative proposal
<b>INDICATIVE TIMETABLE</b>	Q1-2023
<b>ADDITIONAL INFORMATION</b>	–

*This document is for information purposes only. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content. All elements of the initiative described, including its timing, are subject to change.*

### A. Political context, problem definition and subsidiarity check

#### Political context

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. Several leaks by the International Consortium of Investigative Journalists (ICIJ), notably the [Panama](#) and [Pandora Papers](#), have shown that complex tax structures usually involving shell entities, which lead to tax evasion and aggressive tax planning are designed by enablers. In addition, both the European Parliament and the European Economic and Social Committee have on several occasions called on the Commission to introduce targeted rules for enablers. Most recently, the [ICIJ reports](#) show how Russian individuals on the sanctions list have hidden wealth in tax havens 'with the help of Western enablers'.

#### Problem the 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. Preventing enablers from setting up complex structures in non-EU countries, the objective of which is to erode the tax base of Member States through tax evasion and aggressive tax planning is another important and necessary step in the Commission's continued commitment to combatting these activities.

This initiative will interact with existing initiatives to combat tax evasion and aggressive tax planning. [Council Directive \(EU\) 2018/822](#) amending the Directive on Administrative Cooperation in the field of (direct) taxation ("DAC6") requires EU intermediaries to report to the tax administrations of Member States information on reportable cross-border arrangements that could potentially be used for aggressive tax planning. The main aim of DAC6 is to provide tax administrations with information on potentially aggressive tax arrangements so that they can react to harmful tax practices and close loopholes by enacting legislation or by carrying out thorough risk assessments and tax audits. These audits and/or tax consequences are in principle addressed to the taxpayer and not the enabler involved in the reportable cross-border arrangement. Similarly, the tax administrations have at their disposal anti-tax avoidance mechanisms, such as the Anti-Tax Avoidance Directive (ATAD) targeting the taxpayers, but they do not cover those who enable such structures. Simultaneously, this initiative will also harness upon existing and future measures in the Anti-Money Laundering (AML) Directive and Whistle-blowers Directive.

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.

While tax evasion is defined as a criminal act under the national laws of Member States, the lack of clear and

objective criteria for defining aggressive tax planning, creates a 'grey zone', in which some enablers design tax schemes and arrangements that erode the tax base. Tax administrations also lack effective rules and mechanisms that prevent enablers, especially those located outside the EU, from assisting in tax evasion and aggressive tax planning.

In the absence of EU action to address the potential role of enablers, the estimated tax revenue losses of the Member States affected will remain high. To ensure a coherent approach and build public trust, it is essential that all taxpayers pay their fair share of taxes. Enablers should be prevented from designing arrangements or schemes that lead to tax evasion and aggressive tax planning and that undermine the capacity of Member States to finance their public policies that provide benefits for their citizens.

#### **Basis for EU action (legal basis and subsidiarity check)**

#### **Legal basis**

The Commission services are examining what would be the most appropriate legal basis for this initiative. Article 115 and Article 50(2) (g) of the Treaty on the Functioning of the European Union (TFEU) are the options under consideration. Article 115 TFEU enables the EU, acting unanimously in accordance with a special legislative procedure, to issue directives for the approximation of national laws of Member States in order to ensure the proper functioning of the internal market. Article 50(2) (g) enables the EU, acting in accordance with the ordinary legislative procedure, to issue directives in order to attain freedom of establishment as regards a particular activity, by coordinating the safeguards which are required by Member States of companies or firms so as to make them equivalent throughout the Union.

#### **Practical need for EU action**

Complex tax structures are designed by enablers that lead to tax evasion or aggressive tax planning are inherently cross-border in nature. This inhibits the ability of Member States to tackle the role of enablers unilaterally and in an efficient manner. Acting at EU level will mitigate distortions and the risk of fragmentation of the EU single market resulting from the uneven playing field among enablers. An EU-level initiative will comprehensively and effectively address the role that enablers play in facilitating the creation of tax arrangements or structures that lead to tax evasion or aggressive tax planning. It will also provide the Member States with appropriate mechanisms, including cooperation in monitoring and enforcement that are essential in ensuring effective application of the rules.

In the absence of this initiative, these problems will persist. Persons seeking to evade taxes or use aggressive tax planning schemes may also exploit different national measures applicable to enablers. An EU-level solution therefore provide more certainty to taxpayers, enablers and non-EU countries alike.

### **B. Objectives and policy options**

The overall objective of this initiative is to prohibit enablers who design, market and/or assist in the creation of tax arrangements or schemes in non-EU countries that lead to tax evasion or aggressive tax planning for the EU Member States. The proposal will include clear and objective criteria for defining the forms of aggressive tax planning that are prohibited This initiative is in line with the Commission's continued commitment to fighting tax evasion and aggressive tax planning.

The baseline scenario used as a benchmark assumes that the current national legislative rules and administrative practices on enablers remain unchanged. The Commission will assess a range of policy options, which may lead to a legislative initiative, to achieve the objectives based on the principle of proportionality. A range of policy options might include the following:

#### **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

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.

In addition and regardless of the policy option chosen, a new measure to boost transparency and combat possible tax evasion and aggressive tax planning related to EU investments abroad could be developed. This would require EU taxpayers (both individuals and legal persons) to declare in their annual tax returns any participation above 25% of shares, voting rights, ownership interest, bearer shareholdings or control via other means (the level commonly used in the EU AML legislation) in a non-listed company located outside of the EU.

## **C. Likely impacts**

### **General**

The impact will vary depending on the ultimate design of the initiative and, in particular, on the exact scale and scope of the initiative and on who will bear its burden. Importantly, the monitoring and enforcement mechanisms will need to be carefully designed and calibrated so that they are both proportionate and effective. The initiative is likely to have an impact on the following stakeholders, which should be analysed as far as possible:

- businesses engaging and operating in the EU, including those that avail of and provide tax advice or services;
- individuals resident in the EU, including those that avail of tax advice or services;
- the tax administrations of EU Member States.

### **Likely economic impacts**

The initiative should have two main economic impacts: (i) on Member States' tax revenues and (ii) on the level playing field and, therefore, competitiveness in the Union. The intended economic impact of the options proposed should curb tax evasion and aggressive tax planning facilitated by enablers, and thereby increase the tax revenue available to the Member States, leading to sounder and more sustainable public finances in the medium and the long term. Limiting the scope for aggressive tax planning and evasion opportunities should dissuade enablers from engaging in tax evasion and aggressive tax planning on behalf of their clients. This should also eventually improve tax fairness within the EU.

Closing of loopholes by addressing the role of enablers is also expected to lead to an improved level playing field among companies operating within the Internal Market, especially for small and medium enterprises.

### **Likely social impacts**

By addressing the role of enablers, the initiative aims to fight tax evasion and aggressive tax planning. It will therefore boost revenue generation, improve the sustainability of Member States' public finances and improve the (perceived) social fairness of the tax system. To the extent that individuals use these schemes, it could also reduce wealth distribution inequalities in the EU.

### **Likely environmental impacts**

No environmental impact is expected.

### **Likely impacts on fundamental rights**

No impact on fundamental rights is expected.

### **Likely impacts on simplification and/or administrative burden**

In principle, enablers are likely to be affected by additional compliance costs, although the Commission will look carefully at the design of the options to limit the administrative burden and keep the measures proportionate. National tax administrations could face additional administrative obligations to implementing the new system, in particular because of enforcement and collection requirements. The analysis that will underpin the initiative will seek to identify and mitigate to the maximum extent possible the expected regulatory, administrative and compliance costs associated with adopting and implementing the initiative. The initiative is addressed to all enablers as natural persons and in such way does not distinguish the SMEs. Still, the Commission will assess the impact of the measure to avoid unnecessary burden on enablers.

## **D. Better regulation instruments**

<b>Impact assessment</b>
<p>An impact assessment is being prepared to feed into the work to prepare this initiative and the Commission's subsequent decision. The work on data collection and the economic analysis will build upon the work done for the <a href="#">Unshell initiative</a> and will potentially be complemented by statistics collected under existing Directives on administrative co-operation, possibly both on Member State- and hallmark- (type of cross-border tax arrangement) levels.</p> <p>This economic analysis will be included in the impact assessment and will focus on evaluating the numbers of tax arrangements and intermediaries affected. The economic analysis will also aim to estimate the compliance costs for companies, enablers and for public authorities.</p>
<b>Consultation strategy</b>
<p>The public consultation is structured in the form of a questionnaire to collect the views of stakeholders on the role of enablers that contribute to tax evasion and aggressive tax planning. The public consultation will run for a period of 10 weeks and will be accessible via the Commission's, <a href="#">Have your say Portal</a>. The responses can be submitted in any official EU language, and participants may upload additional documents.</p> <p>In particular, the Commission will seek the input of stakeholders and promote this consultation to their affiliates. It will publish a factual summary report on the consultation page within eight weeks of closing the public consultation and will draw up a synopsis report with a summary of all consultation results.</p>
<b>Why we are consulting?</b>
<p>The aim of the public consultation is to 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.</p>
<b>Target audience</b>
<p>The main expected stakeholder groups to be consulted through the public consultation are:</p> <ul style="list-style-type: none"> <li>• Member States / public authorities</li> <li>• Business associations, including those representing persons that avail of and provide advice or services of a tax nature</li> <li>• Non-governmental / civil society organisations</li> <li>• Individuals</li> <li>• Academia</li> </ul> <p>In addition to running an open public consultation, the Commission could run a few targeted consultation processes (e.g., with the European Parliament, the European Economic and Social Committee, or with stakeholders).</p>