



Mr Stephen Quest  
European Commission, Directorate-General for Taxation and Customs Union  
Direct Tax Policy & Cooperation - Unit TAXUD/D2  
Rue du Spa 2, Office SPA3 06/069  
B-1049 Brussels  
Belgium

16 February 2017

Dear Mr Quest,

## **Intermediaries and disincentives for aggressive tax planning**

PwC International Ltd (PwC), on behalf of the PwC network, welcomes the opportunity to respond to the European Commission's Open public consultation "*Disincentives for advisors and intermediaries for potentially aggressive tax planning schemes*".

To be as helpful as possible in our response and to provide you our viewpoint in a comprehensive manner, we have decided to share our broader observations, in addition to addressing the questions raised in the consultation, in the form of this letter.

To the extent we are an "intermediary" ourselves, there may be business implications for us from the outcome of the consultation. Acknowledging that, we have extended our viewpoint to include the viability of the various options from the perspective of taxpayers, intermediaries, governments and tax authorities.

Tax competition plays a role in creating very challenging perceptions and risks - which will not be dealt with by the proposed options. Governments also have a role to play in the transparency of tax systems and advantages offered, which would also reduce or indeed eliminate the need for stricter disclosure regimes. Much public concern (but not all) stems from approaches which have been directly or indirectly endorsed by governments and / or tax authorities - the profession has a role to play, but the issues will not be progressed unless these broader aspects are dealt with - quite the opposite since we may have unhelpful and costly regulation which does not address the source of the concerns.

### **The current debate**

- We recognise that the Commission, prompted by the European Parliament and Council of the EU, is considering possible legislative initiatives that would introduce disincentives for intermediaries who assist in tax evasion or avoidance schemes.
- In the current debate the distinction between *criminal* tax evasion (the illegal concealment or misstatement of taxable income or gains) and *legal* tax avoidance (including perceived "unfairness" of taxpayer use of reliefs and competitive tax policies between countries) is often blurred. Both are important subjects for policy debate, but they require different solutions and the confusion hinders both clarity and accountability.
- As professional advisers we have rigorous processes in place to prevent firms that form part of the PwC network being involved in knowingly or even unknowingly assisting tax evasion.

- We understand that our advice to help clients make informed decisions on tax should include taking into account wider stakeholder impacts. When advising clients in tax matters our Global Tax Code of Conduct<sup>1</sup> guides the PwC professionals in their judgements. A governance structure has been created to support our professionals. As much as common perception is subject to changes in time, adopting a wider perspective is a constant work-in-progress and we need also to work with tax authorities in seeking to reach the correct interpretation of laws and policies, as well as contribute practical experience to improvement in tax systems and administration.

### **Ways in which action is already being taken**

- Established disincentives and sanctions are in place with regard to money-laundering and tax crimes (tax evasion), both on a global and a national level. Advisers like PwC are already part of the governance of the system. Networks like ours have very rigorous know your clients and client due diligence procedures that are supervised, monitored and evaluated continuously.
- The sanctions and disincentives mentioned above will operate in future in combination with new transparency initiatives involving (automatic) exchange of financial, beneficial ownership, country-by-country reports, rulings and other information.
- The new OECD and EU standards against tax avoidance and on transparency will have a direct effect on the risk assessment by taxpayers of tax planning that is considered “aggressive” by relevant tax authorities, albeit that we have some concerns on the impact of some of the EU measures on the single market and on tax certainty because of the incompatibility of some of the measures with primary EU law. Wider exchanges of information will also take place through other channels including the Joint International Tax Shelter Information Centre (JITSIC) and other global and regional forums in which tax administrations will participate.
- The combination of these measures with published tax strategies by multinational companies and voluntary codes like PwC’s Global Tax Code of Conduct will impact behaviours.
- It may take a year or two for current measures to come in and/ or have an effect, whether on tax behaviour or by way of side-effects on the wider economy.

### **Advantages and disadvantages in additional policy options**

The impact of the existing measures above may already be sufficient to meet the goals set out in the consultation document but this time lag will be required before they show they can work. If there is to be a further step, we think the code(s) of practice option may be most effective and efficient, for reasons summarised below. The other approaches would seem less practical or pose much additional burden (at least until we see the consequences as a result of existing measures).

#### ***No action now***

- An unnecessary burden on taxpayers, intermediaries and tax authorities will be avoided if a thorough evaluation of the impacts of the current measures shows those measures are working effectively without any additional changes being required.
- The threat perceived by the Commission if no additional action is taken immediately is in our view much reduced by other actions already directed at aggressive tax planning as noted above.

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<sup>1</sup> [www.pwc.com/gx/en/services/tax/global-tax-practice/code-of-conduct.html](http://www.pwc.com/gx/en/services/tax/global-tax-practice/code-of-conduct.html)

#### *Existing exchange of information mechanisms*

- Adding to plans in place for tax authorities in Member States to exchange tax information may appear relatively straightforward. However, as planned they will impose a considerable administrative effort on tax authorities and increasing that further may be difficult for many Member States.
- The agreed measures will help to identify the role played by particular intermediaries, including 'outlier' intermediaries, even if they are targeted more at particular transactions or structures.

#### *Mandatory Disclosure Requirements (MDR)*

- Action 12 of the OECD BEPS project already outlined key "hallmarks" and building blocks for potential consideration in any new attempt to construct an MDR.
- It has not so far been practically possible, nor do we think it feasible for an EU-wide test, to find a system which avoids widely different interpretations, between countries and in relation to different groups of intermediaries. In our experience of MDRs, inherent vagueness can lead to an excessive burden on tax authorities and taxpayers alike from over-reporting (the majority of conservative taxpayers and intermediaries) or ineffectiveness from under-reporting (the minority of less conservative taxpayers or intermediaries). Therefore, MDRs have probably not been as effective as intended as a disincentives to aggressive tax planning.
- An MDR could also have an adverse impact on investment into, and within, the EU, on the basis of criteria generally set out by the OECD: "Complexity, lack of clarity, inconsistency and frequency of changes".

#### *Publication of disclosures*

- Given the important role taxpayer confidentiality plays in trust of the tax system in many Member States, a mandate to require publication of information captured by tax authorities either from an MDR or more widely, would potentially necessitate consequential changes of other legal regimes, adding to complexity also in other areas.
- Information concerning particular arrangements entered into by taxpayers may be disclosed to the extent it is set out in court proceedings or, in very broad terms, in relation to characteristics that a tax authority considers should be treated in a certain way (whether interpretative or concessionary).
- Some countries do 'name and shame' taxpayers convicted of tax offences and this may be useful provided there are suitable safeguards, but doing so in relation to information before thorough investigation would damage trust between taxpayers and tax authorities (and would possibly be unlawful).

#### *Role of Codes of Practice, professional standards, etc.*

- A principles-based Code of Practice implemented at Member State level might be part of a response, if the bodies representing accountants, bankers and lawyers were all to agree to adopt it or if it were feasible on a 'comply or explain' basis. This may have advantages over any rules-based system which: (a) is problematic to design in a way that works for all situations; and (b) can encourage a culture of taxpayers targeting being 'just on the right side' of the strict wording of the rules.
- A principles-based code could, for example drawing on the efforts of various representative bodies, require intermediaries to carry out (and document) only tax planning that is client specific, to discuss the wider risks and the implications of any courses of action, to take a credible view of the law, to ensure advice does not rely for its effectiveness on the tax authority having less than the relevant facts and that disclosure must fairly represent all relevant facts.



- Intergovernmental monitoring could take place through the Code of Conduct Group (Business Taxation).

#### **Further consultation**

Good tax legislation at the outset is the best deterrent against undesired tax avoidance and the Commission should do further work on this with Member States. Particularly in the light of the uncertainty arising from changes, both at global and EU level, the Commission might encourage Member States also to invest more in tax certainty through ruling-and advance pricing agreement (APA) programs and co-operative compliance programs that have the potential to help raise matters with tax authorities on a timely basis, and to allow changes to legislation in advance of any potential loss of revenue.

If the Commission decides there is a case that it should put forward more specific proposals applying to intermediaries/ aggressive tax planning, we would be eager to participate in further consultation on the details and how to achieve the targeted outcome as effectively as possible for all.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'Stef van Weeghel', written over a horizontal line.

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