

Intermediaries tax planning

Fields marked with * are mandatory.

1

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

Please note: In order to ensure a fair and transparent consultation process only responses received through our online questionnaire will be taken into account and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact: TAXUD-UNIT-D2@ec.europa.eu

The general rules on personal data protection on the EUROPA website are accessible [here](#).

Important notice: this document is a staff working paper of D.G. Taxation and Customs for discussion and consultation purposes. This document does not necessarily reflect the views of the European Commission and should not be interpreted as a commitment by the Commission to any official initiative in this area.

1.1

Introduction

Recent public discussions have shown the crucial role that certain intermediaries play in facilitating tax avoidance and tax evasion. At international level, the OECD issued in 2015 a set of best practices as regards the use and promotion of potentially aggressive tax planning schemes ([Final Report on BEPS Action 12](#)).

This consultation aims to gather views on whether there is a need for EU action aimed at introducing more effective disincentives for intermediaries or tax payers engaged in operations that facilitate tax evasion and tax avoidance and in case there is, how it should be designed.

Tackling tax avoidance and evasion is among the political priorities in the EU, with a view to creating a deeper and fairer single market. In this context, the Commission has presented in the last years a number of initiatives in order to promote a fairer tax system. Enhancing transparency is one of the key pillars in the Commission's strategy to combat tax evasion and avoidance. In particular the automatic exchange of information between tax administrations [here: [link to external doc on DAC](#)] is crucial in order to provide those with the necessary information to exercise their duties efficiently.

The Panama Papers have highlighted how certain intermediaries appear to have actively helped their clients to conceal money offshore. Whilst some complex transactions and corporate structures may have entirely legitimate purposes, it is also clear that some activities, including offshore structures, may be less legitimate and in some cases illegal.

A number of taxpayers use shell companies registered in tax havens and appoint nominee directors to conceal their wealth and income by hiding the identity of the real owners of the companies (beneficial owners). Different and complex structures are used so as to create distance between the beneficial owners from their wealth also to ensure low or no taxation.

Taxpayers are rarely experts on company or tax law in the tax jurisdictions used for these structures. They usually rely on intermediaries who assist them in the design of the most appropriate structure. These intermediaries include among others consultants, lawyers, financial (investment) advisors, accountants, solicitors, financial institutions, insurance intermediaries, and company-formation agents.

Given the nature of tax avoidance and tax evasion, the impact on total tax loss is difficult to measure. Many schemes used by taxpayers include the creation of a complex structure, often involving a company located in a low tax jurisdiction. The [Commission Staff Working Document on Corporate Income Taxation in the European Union](#) as well as the [Commission Staff Working Document for the Anti-Tax Avoidance Package](#) provided evidence of profit shifting and base erosion practices. A recent study commissioned by the European Parliamentary Research Service ("[Bringing transparency, coordination and convergence to corporate tax policies in the European Union](#)") found that revenue loss from profit shifting within the EU amounted to about EUR 50-70 billion in 2013. The UK reported that the overall cost of tax avoidance was GBP 2.7 billion in 2013-14 ("[Measuring tax gaps 2015 edition](#)").

Several calls have been made for the EU to take the lead in this field. The European Parliament has called for tougher measures against intermediaries who assist in tax evasion schemes. Following discussions at the informal ECOFIN Council of 22 April 2016, the Dutch Presidency invited the Commission to consider initiatives on Mandatory Disclosure Rules inspired by OECD BEPS Action 12, with a view to introducing more effective disincentives for intermediaries who assist in tax evasion schemes. In the May Council conclusions on the Commission Communication on External strategy and the Commission Recommendation on implementing measures against tax treaty abuse, the Council has invited “the Commission to consider legislative initiatives on Mandatory Disclosure Rules inspired by Action 12 of the OECD BEPS [here: link to external doc BEPS 12] project with a view to introducing more effective disincentives for intermediaries who assist in tax evasion or avoidance schemes”.

The [Communication on further measures to enhance transparency and the fight against tax evasion and avoidance](#) outlines the Commission's assessment of the priority areas for action in the coming months, at EU and international level, to strengthen the fight against tax evasion and avoidance. Increasing oversight of intermediaries is one of the elements of that assessment. As indicated in the Communication, the Commission believes that there is a strong case for introducing further measures which specifically focus on those who promote or enable tax evasion and avoidance schemes. The key objectives should be:

- Dissuade intermediaries and users of potentially aggressive tax planning schemes from promoting and using them to the detriment of society.
- Ensure that national tax authorities have timely access to relevant information on such schemes.
- Avoid distortions in the single market due to diverging reporting requirements as regards such schemes so as to ensure a level playing field amongst intermediaries.
- Facilitate administrative cooperation between tax authorities to tackle cross-border abuse.
- Improve taxpayer voluntary compliance by introducing reassurances on the fairness of the system

To date, tax legislation has focused on rules in order to ensure that taxpayers pay their taxes. The most recent measures adopted in the EU aim to ensure that corporate taxpayers operating cross border do not benefit from the loopholes or mismatches arising from the application of the different tax legislations of multiple jurisdictions. However, little has so far been done to introduce disincentives for those intermediaries that help, assist or advise taxpayers in the design of the adequate structure to facilitate tax evasion or avoidance.

1.2

Purpose of this consultation

This consultation aims to gather views on whether there is a need for EU action aimed at introducing more effective disincentives for intermediaries engaged in operations that facilitate tax evasion and tax avoidance and in case there is, how it should be designed.

This consultation wants to gather views in particular on the following:

- Need for EU action.
- The different options identified, in case EU action is appropriate.
- The key design features of a possible disclosure regime.

The results of the public consultation will be duly published, together with the responses provided.

This consultation might be complemented by further targeted consultations with Member States, experts, professional associations, think tanks and others.

1.3

Glossary

Aggressive tax planning (see also: Tax planning): In the [Commission Recommendation on aggressive tax planning](#), aggressive tax planning is defined as “taking advantage of the technicalities of a tax system or of mismatches between two or more tax systems for the purpose of reducing tax liability. Aggressive tax planning can take a multitude of forms. Its consequences include double deductions (e.g. the same loss is deducted both in the state of source and residence) and double non-taxation (e.g. income which is not taxed in the source state is exempt in the state of residence)”.

A distinction should be made between schemes that could be deemed as aggressive tax planning and ordinary tax planning. Aggressive tax planning results in an abuse of the tax system while ordinary tax planning allows taxpayers to exercise their legitimate interests to plan their tax affairs according to the national tax rules of their state of residence. Indeed, some Member States explicitly permit all taxpayers in a similar situation to use products and investment vehicles which have tax advantages and as such these are not considered to be aggressive tax planning schemes as they are not used to circumvent the spirit of the legislation. The scope of aggressive tax planning should therefore not include such schemes.

Base Erosion and Profit Shifting (BEPS Project): Tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid. The OECD has developed specific actions to give countries the tools they need to ensure that profits are taxed where economic activities generating the profits are performed and where value is created, while at the same time giving enterprises greater certainty by reducing disputes over the application of international tax rules, and standardising requirements. More information on the Base Erosion and Profit Shifting project can be found [here](#).

Confidentiality clause: A "confidentiality clause" is a contractual clause that requires the intermediary and/or the client to keep the scheme confidential.

Hallmarks: In this context, a typical characteristic or feature of an aggressive tax planning scheme. In the BEPS Report, hallmarks are divided into two categories: generic and specific hallmarks.

Generic hallmarks target features that are common to promoted schemes, such as the requirement for confidentiality or the payment of a premium fee. Generic hallmarks can also be used to capture new and innovative tax planning arrangements that may be easily replicated and sold to a variety of taxpayers. Specific hallmarks are used to target known vulnerabilities in the tax system and techniques that are commonly used in tax avoidance arrangements such as the use of losses.

Intermediaries who assist in potentially aggressive tax planning schemes: For the purpose of this questionnaire, the term "intermediaries who assist in potentially aggressive tax planning schemes" refers to any natural or legal person responsible for the design, marketing, organization or management of a potentially aggressive tax planning scheme, or who provides assistance or advice with respect to creating, developing, planning, organizing, marketing or implementing such a scheme. The term includes consultants, lawyers, financial (investment) advisors, accountants, solicitors, insurance intermediaries, financial institutions, and company-formation agents known as Trust and Company Service Providers.

Premium fee: A "premium fee" is a fee payable to the intermediary that is to a significant extent attributable to the tax advantage, or to any extent contingent upon obtaining that tax advantage.

Tax avoidance: According to the [OECD glossary of tax terms](#), tax avoidance is defined as the arrangement of a taxpayer's affairs in a way that is intended to reduce his or her tax liability and that although the arrangement may be strictly legal is usually in contradiction with the intent of the law it purports to follow.

Tax evasion: According to the [OECD glossary of tax terms](#), tax evasion is defined as illegal arrangements where the liability to tax is hidden or ignored. This implies that the taxpayer pays less tax than he or she is legally obligated to pay by hiding income or information from the tax authorities.

Tax planning (see also: Aggressive tax planning): According to the [OECD glossary of tax terms](#), tax planning is an arrangement of a person's business and/or private affairs in order to minimize tax liability.

2

Importance notice on the publications of responses

Contributions received are intended for publication "as submitted". Below, you have the possibility to indicate whether you agree to the publication of your individual responses under your name or anonymously. Furthermore, the European Commission will prepare a synopsis report summarising all responses received (including responses anonymised upon request).

* Do you agree to your contribution being published?

- Yes**, I consent to all of my answers being **published under my name**.
- Yes**, I consent to all of my answers/personal data being **published anonymously**.

* Do you declare that the information you provide in your response to this consultation is not subject to **copyright restrictions**?

- The information provided is **not subject to copyright restrictions**.
- The information provided is **subject to copyright restrictions**.

3

General information about you

* 1. Are you replying as or on behalf:

- Private citizen
- Company - other than the categories offered below
- Law firm, tax consultancy, tax advisor
- Financial institution
- Trade/business/professional association
- Academic institution, Think Tank
- Non-governmental organisation, consumer association
- Public authority, public institutions, including national or regional parliaments
- Other

* 2. Please indicate **your name, or the name of your company, organisation or institution** for which you respond to this consultation.

Accountancy Europe

3. Please indicate your email-address.
(Optional)

paul@accountancyeurope.eu

* 4. In case we have questions regarding answers or remarks you have provided, **can we contact you?**

- Yes**.
- No**.

- *5. **Where do you live, or where is the headquarter of your company or organisation** (main headquarters in case of multinational companies), or where is your public authority located?

Other

If other country, please specify:

We are a Brussels based federation with members in all EU 28 countries

- * 6. Is your organisation or the entity you represent included in the EU Transparency Register? (More information on the Transparency Register can be found [here.](#))

- Yes**
 No

- * Please indicate your Register ID number

4713568401-18

3.1

Receiving and using professional tax advice

- * 1. Do you (or the entity you represent) **receive professional tax advice**?

- Yes.**
 No.
 I don't know.

- * 4. Would you consider yourself (or the entity you represent) to be a **user of potentially aggressive tax planning schemes**?

(See the glossary for a definition of "potentially aggressive tax planning scheme".)

- Yes.**
 No.
 I don't know.

3.2

Providing professional tax advice

* 1. Do you (or the entity you represent) **provide professional tax advice**?

- Yes.
- No.
- I don't know.

Please describe the practice and indicate whether there is room for negotiation with the tax authorities.

5000 character(s) maximum

* 3. Would you consider yourself (or the entity you represent) to be an **intermediary for potentially aggressive tax planning schemes**?

See the glossary for a definition of "intermediary" and "potentially aggressive tax planning scheme".)

- Yes.
- No.
- I don't know.

4

Your opinion on the objectives of the policy initiative

4.1 Classification of "potentially aggressive tax planning schemes"

1. In your view, how useful are the following **criteria to classify tax schemes as potentially aggressive**?

	Not useful at all	Of limited use, e.g. only in combination with other criteria	Very useful	Don't know
*Confidentiality clause (See glossary)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

<p>*Premium fee (See glossary)</p>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>*Use of jurisdictions included in the (future) EU list of third country jurisdictions that fail to comply with tax good governance standards .</p>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>*Use of certain legal arrangement/entities (trusts and similar) in jurisdictions that pose difficulties to identifying the beneficial owner.</p>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
<p>*Use of entities subject to zero taxation or less than a certain % (to be defined), including hybrid entities (i.e. entities that are treated as transparent by one country but as non-transparent by another country).</p>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>*Schemes designed to circumvent the Common Reporting Standard (CRS) for automatic exchanges of financial account information.</p>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
<p>*Use of a group company in a low tax jurisdiction for intra-group financing of other group companies in high tax jurisdictions.</p>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

<p>*Use of group companies with very little substance that are nevertheless entitled to tax treaty benefits and through which large amounts of money flow.</p>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>*A general artificial arrangement or an artificial series of arrangements created for the essential purpose of avoiding or evading taxation and which leads to a tax benefit.</p>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
<p>*A transfer pricing arrangement not in conformity with the arm's length principle and/or the OECD transfer pricing guidelines.</p>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>*A profit allocation between different parts of the same group not in conformity with the arm's length principle and/or the OECD transfer pricing guidelines.</p>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>*A preferential treatment under the application of the national tax law that is not in line with the general application or interpretation of the law.</p>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>Other or additional criterion.</p>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please elaborate on other or additional criteria you would consider useful for the classification of potentially aggressive tax planning schemes.

5000 character(s) maximum

The criteria listed above are a combination of factors that could be used to identify “pre-packaged” schemes offered by promoters of tax avoidance schemes (in the UK for example) and criteria that could apply in many instances of legitimate tax planning. Many of the above criteria are more useful in identifying such pre-packaged schemes than “bespoke” tax avoidance, where the dividing line between what is “acceptable” and “abusive” tax planning is often indistinct due to poorly drafted legislation.

Exceptions to this are the criteria “artificial arrangements created for the essential purpose of avoiding or evading taxation” and “Schemes designed to circumvent the Common Reporting Standard (CRS) for automatic exchanges of financial account information”, which we consider are more indicative of tax evasion and fraud than tax avoidance.

Even where we have scored individual criterion as being “useful” or “very useful”, most of them are only useful in consideration with other criteria. There is no one single decisive criterion. The distinction between tax planning and avoidance can be very difficult to judge - it needs to consider the business and/or personal reasons that a particular tax planning structure was put into place. The concept of acting in good faith is important in judging whether tax planning is “aggressive”.

For these reasons, although we appreciate the need for clear and definite criteria to give tax authorities, taxpayers and tax intermediaries certainty as to what constitutes an ATP scheme, we believe that the usefulness of these criteria will be limited to promoted schemes and not to the vast majority of client-centric tax planning.

*2. Should any **tax planning scheme** relating to countries appearing on the [EU's \(future\) list of third country jurisdictions that fail to comply with tax good governance standards](#) automatically qualify as a potentially aggressive tax planning scheme?

- Yes.
- No.
- No opinion/I don't know.
- Other.

Please elaborate:

5000 character(s) maximum

This is one criterion that must be seen in context with other criteria. Using it as the sole determining criterion would inevitably mean that some tax planning structures that are perfectly valid, and that have genuine economic substance, within these countries are automatically labelled as ATP schemes. This would not only be detrimental to the taxpayer concerned but also to the relevant tax authority, which may then need to divert scarce resources into examining a structure that has genuine commercial purpose and is not abusive.

4.2 Objectives of the policy initiative

3. To what extent **do you agree with the following objectives** to strengthen the fight against tax evasion and avoidance?

	Disagree very much.	Disagree.	Neutral.	Agree.	Agree very much.	I don't know.
<p>*Dissuade intermediaries and users of potentially aggressive tax planning schemes from using them.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>*Ensure that national tax authorities have timely access to relevant information on potentially aggressive tax planning schemes.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

<p>*Avoid distortions in the single market due to diverging reporting requirements as regards potentially aggressive tax planning schemes so as to ensure a level playing field amongst the different intermediaries.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
<p>*Facilitate administrative cooperation between tax authorities to tackle cross-border abusee.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>*Improve voluntary compliance of taxpayers by introducing reassurances on the fairness of the system.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Other or additional objective to strengthen the fight against tax avoidance and evasion.



Please elaborate on additional or other objectives to strengthen the fight against tax evasion and avoidance.

5000 character(s) maximum

Accountancy Europe believes that an important objective is to bring some clarity to the definition of tax avoidance/aggressive tax planning across the EU as there are currently a plethora of different definitions - both at national and EU level. If such policy options as automatic reporting of ATP schemes by intermediaries (and, indeed, the automatic exchange of ATP schemes across borders) are to work then there has to be a robust and workable definition of the type of tax planning that legislators wish to disincentivise. This definition would then need to be supported by an equally robust, clear and, as far as possible, objective criteria to leave taxpayers and their advisers in no doubt as to what tax advice needs to be reported.

Additionally, an important policy objective is to create a tax system that treats tax authorities and taxpayers according to the same principles.

4. Should a potential EU policy initiative **focus on those potentially aggressive tax planning schemes only when there is a cross-border aspect**, or should it address any aggressive tax planning scheme irrespective of the location of the different elements?
(A cross border element would imply that for instance the taxpayer or client of tax advice, any of the tax advisors or any of the legal entities are resident in different Member States. Likewise, cross-border elements could be any arrangement or transaction of the tax scheme that is carried out in more than one Member State.)

- A potential EU policy initiative should address **any aggressive tax planning scheme**, irrespective of the cross-border aspect.
- A potential EU policy initiative should **focus only on potentially aggressive tax planning schemes that include cross-border elements**.
- No opinion/I don't know.
- Other opinion

Please explain the rationale for your answer

5000 character(s) maximum

Many of the tax avoidance schemes that have caused so much concern among stakeholders involve cross-border transactions and structures, especially when linked to non-taxation or double deduction. Therefore, is it logical that the EU should focus on cross-border tax avoidance, especially as tackling domestic tax avoidance schemes falls under the competency of the Member States.

*5. Currently, only a small number of EU national tax authorities receive information on potentially aggressive tax planning schemes.

In your view, **should tax authorities in all Member States be made aware** of potentially aggressive tax planning schemes?

Please explain the rationale for your answer.

- Yes**, Member States should be **made aware of any potentially aggressive tax planning scheme**.
- Yes**, Member States should be made aware of potentially aggressive tax planning scheme **if they are applied within their jurisdiction**.
- No**.
- No opinion/I don't know.
- Other opinion.

Please elaborate.

(Optional)

5000 character(s) maximum

Member States should concentrate on situations within their jurisdiction and responsibility. The national tax systems vary significantly across Europe - as, indeed, does the culture and regulation of tax advice. In our opinion, it would provide no benefit to inform other tax authorities of ATP schemes that have no element contained in their Member State, and that may not even be possible under their legislative framework.

Member States should publish details of tax avoidance strategies that are considered unacceptable, as is already done in several Member States. Taxpayers should also be offered a process of advance clearance so that, where the intent of legislation is unclear, the interpretation followed by the taxpayer can be reviewed and confirmed by the revenue authority prior to the planning being implemented.

*6. In your view, **should national tax authorities share information** on potentially aggressive tax planning schemes with tax authorities of other EU Member States?

- Yes**, information should be **shared in any case**.
- Yes**, information should be **shared with all Member States, but only if** the potentially aggressive tax planning scheme includes a **cross-border element**.
- Yes**, information should be **shared, but only if** the potentially aggressive tax planning scheme includes a **cross-border element, and only with the Member State(s) concerned**.
- No**.
- No opinion/I don't know.
- Other opinion

Please elaborate.

(Optional)

5000 character(s) maximum

As mentioned above, Accountancy Europe cannot see the utility in exchanging details of ATP schemes with other Member States where the scheme either:

- Contains cross border elements but these are not located in the Member State in question;
- Is purely based on national legislation.

Automatic exchange of the details of such non-relevant schemes to all tax authorities in the Member States is likely to be counterproductive as details of schemes that may be relevant to a Member State's tax authority risk being buried under a deluge of those that aren't relevant.

*7. In the fight against tax evasion and avoidance, do you think that the EU should **focus on the role of intermediaries** who assist in potentially aggressive tax planning schemes?

- Yes
- No
- No opinion/Don't know
- Other

Please elaborate.

(Optional)

5000 character(s) maximum

Tax avoidance schemes often depend on the existence of unclear legislation, mismatches between the legislation covering different taxes and mismatches between tax legislation on an international scale. National tax incentive schemes and tax competition between countries can also foster tax avoidance and the perception that avoidance is acceptable. The first aim should be the development of better drafted tax legislation where the intent of the law is clear. This would facilitate the effective use of national GAARs. At the same time, there should be more international coordination to deal with tax avoidance arising from mismatches between legislation at an international level.

We can see the logic in focusing on the role of intermediaries where the intermediaries offer pre-packaged schemes based around abusive interpretations of tax legislation – as the United Kingdom has done with the DOTAS and POTAS legislation. In other instances, however, the fight against (illegal) tax evasion and (legal) tax avoidance should focus on the taxpayer as they have the sole responsibility for agreeing to the tax planning and for the tax declaration. For legal tax advice, the intermediary fulfills contractual obligations and is obliged to keep data confidential. Some form of agreed and published tax practice code or code of conduct that covers ALL intermediaries providing tax advice may help to deal with intermediaries that promote ATP schemes.

5

Tax Transparency

1. In terms of tax transparency, to what extent do you agree with the following statements?

	Disagree very much	Disagree	Neutral	Agree	Agree very much	No opinion /don't know
<p>*Current EU legislation related to potentially aggressive tax planning schemes is sufficient. The EU should leave it to each Member State whether or not to implement the recommendation issued at international level by the OECD.</p>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

<p>*The EU should implement the recommendations issued at international level by the OECD in a coordinated way in order to ensure a level playing field within the European Union.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>*The EU should implement the recommendations issued at international level by the OECD at the same pace and to the same extent as its global partners in order to ensure a level playing field.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>*The EU should be in the forefront in implementing the recommendations issued at international level.</p>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Is there anything you would like to add?

5000 character(s) maximum

Enhanced international cooperation is the only way to deal with many of the tax avoidance strategies that cause the public concern. The EU is already leading the world in policy discussions covering such matters as public reporting of Country by Country tax information so at this stage Accountancy Europe believes that countries should concentrate on consistent implementation of the OECD's BEPS provisions, analyse the impacts that these will have and then consider the need for further action at a European level.

2. In your view, **if no action was taken at EU level**, what would happen?

	Very unlikely	Unlikely	Neutral	Likely	Very likely	I don't know.
*No transparency requirements would be introduced in the majority of Member States.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Differing transparency requirements would be introduced in the different Member States.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Most Member States would likely follow closely OECD standards .	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other effects.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please elaborate on the "other effects".

5000 character(s) maximum

There is a risk that if no action is taken at EU level there will be an increased cost of compliance for taxpayers and increased costs of administration for tax authorities, as Member States implement their own provisions without considering the cross-border impact of their domestic legislation. Indeed, Accountancy Europe has repeatedly called for concerted action at a worldwide level in matters of tax transparency. This is to prevent, for example, a re-occurrence of what has occurred with country by country reporting of tax information - individual countries introducing different requirements, thereby increasing compliance costs for business.

Where possible, such measures should be agreed at an international level after consultation with appropriate standard setting bodies, regulators etc. - i.e. in the case of public country by country reporting it would be preferable if accounting standard setting bodies such as the International Accounting Standards Board and the Financial Accounting Standards Board were involved in the development of an international standard.

5.1

Direct and indirect impacts

3. In your view, **if advisors and intermediaries** were obliged to report potentially aggressive tax planning schemes, what would be the **direct consequences?**

	Completely disagree	Disagree	Neutral	Agree	Agree completely	No opinion /don't know
<p>*A more focused enforcement action to ensure tax law compliance by national tax authorities by identifying the users of the schemes and the intermediaries who assist them.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

<p>*A more focused enforcement action to ensure tax law compliance by national tax authorities by providing timely information on potentially aggressive tax planning schemes.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>*Dissuasive effect on intermediaries who assist in potentially aggressive tax planning schemes.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>*Dissuasive effect on users of potentially aggressive tax schemes.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

<p>*Contribution to improving voluntary tax law compliance in general by providing reassurances on the fairness of the taxation system.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
<p>*Easier evaluation of national tax legislation with a view to detecting and addressing loopholes allowing for tax avoidance and evasion.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

<p>*More effective cooperation between national tax authorities and thus rendering more difficult cross-border tax avoidance and evasion within the EU.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
<p>*Increased burden on providers of tax advice that would be harmful to their daily work.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

4. In your view, **if advisors and intermediaries** were obliged to report potentially aggressive tax planning schemes, what would be the **indirect consequences**?

Economic Impacts

	Completely disagree	Disagree	Neutral	Agree	Agree completely	No opinion /don't know
<p>*A better and fairer tax environment where all taxpayers pay their share of taxes.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
<p>*An increase on the taxes collected by tax authorities in the EU.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
<p>*An increase on the taxes collected by tax authorities outside the EU.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Social Impacts

	Completely disagree	Disagree	Neutral	Agree	Agree completely	No opinion /don't know
<p>*Deterrence of the use of aggressive tax planning schemes.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
<p>*Tax authorities focus their efforts on wealthy taxpayers.</p>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>*Voluntary tax compliance by taxpayers will improve.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Administrative burden

	Completely disagree	Disagree	Neutral	Agree	Agree completely	No opinion /don't know
<p>*The increase of administrative burden and costs due to the new disclosure obligations will deter using potentially aggressive tax planning schemes.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

SMEs, competitiveness and innovation

	Completely disagree	Disagree	Neutral	Agree	Agree completely	No opinion /don't know
<p>*SMEs will benefit from a level playing field as big enterprises will have fewer opportunities to use potentially aggressive tax schemes.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
<p>*An increased level playing field between all companies should result in increased competitiveness.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

<p>*An increased level playing field between all companies should result in increased innovation</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
<p>*Mandatory disclosure obligations will reduce the attractiveness of the EU Internal Market.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
<p>*EU Action would constitute a feature of a growth friendly environment and foster the attractiveness of the EU as a place to invest.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Public Administrations

	Completely disagree	Disagree	Neutral	Agree	Agree completely	No opinion /don't know
*Mandatory disclosure requirements will increase administrative burden for public authorities.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*The benefits of mandatory disclosure requirements will outweigh the burden to public administrations.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Third countries

	Completely disagree	Disagree	Neutral	Agree	Agree completely	No opinion /don't know
<p>*Decrease in the services provided by firms /professional located in the jurisdictions considered as non-cooperative jurisdictions to EU taxpayers.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Are there any other impacts you would like to indicate?

2000 character(s) maximum

6

Mandatory disclosure obligations

6.1 Existing mandatory disclosure obligations

* 1. In your national legislation, **are there mandatory disclosure obligations for taxpayers** involved in potentially aggressive tax planning schemes?

- No.
- Yes.
- I don't know whether there exists such an obligation.

In your view, **would the introduction of mandatory disclosure obligations for taxpayers change the use of tax planning schemes?**

- No.
- Yes, to some extent.
- Yes, to a large extent.
- I don't know.

Please provide further information.
(Optional)

5000 character(s) maximum

Accountancy Europe is a European organisation so is unable to comment on specific national disclosure obligations.

* 2. In your national legislation, **are there mandatory disclosure obligations for intermediaries** who assist in potentially aggressive tax planning schemes?

- No.
- Yes.
- I don't know whether there exists such an obligation.

* In your view, **would the introduction of mandatory disclosure obligations change tax advice practices for intermediaries?**

- No.
- Yes, to some extent.
- Yes, to a large extent.
- I don't know.

Please provide further information.
(Optional)

5000 character(s) maximum

Accountancy Europe is a European organisation so is unable to comment on specific national disclosure obligations.

* 3. In your legislation, **are intermediaries subject to a code of conduct or ethic rules** on the use of potentially aggressive tax planning schemes?

- No.
- Yes.
- I don't know** whether there exists a code of conduct or ethic rules on the use of potentially aggressive tax planning schemes.

Please provide further information.
(Optional)

5000 character(s) maximum

Accountancy Europe is a European organisation so is unable to comment on specific national disclosure obligations.

6.2 Need and target of mandatory disclosure

*4. Do you think that there is a need to impose **mandatory disclosure obligations** with respect to potentially aggressive tax planning schemes?

- No.**
- Yes.**
- No opinion/I don't know.
- Other.**

Please explain the rationale for your answer.

(Optional)

5000 character(s) maximum

As already mentioned, in respect of promotion of pre-packaged avoidance schemes there could be value in mandatory disclosure of such schemes as a means for tax authorities to block abusive tax planning more promptly. These schemes tend to have common characteristics (secrecy requirements, premium fees etc) that can be used as criteria to facilitate reporting.

Where avoidance arises out of bespoke tax planning, defining the criteria for determining what should be reported becomes more difficult as the planning is based around the commercial needs of the client and these needs must be carefully considered before it can be determined whether or not the planning has a genuine commercial basis. As mentioned before, we believe that establishing clear and (as far as possible) objective criteria for determining which ATP schemes should be disclosed is a pre-requisite for ensuring that disclosure meets its stated objectives.

*5. Mandatory disclosure obligations on potentially aggressive tax planning schemes can require disclosure from taxpayers (the users) and/or intermediaries.

Whom should a policy initiative oblige to disclose the relevant information?

- Taxpayers** who make use of potentially aggressive tax planning schemes, as defined in the glossary.
- Intermediaries** who assist in potentially aggressive tax planning schemes, as defined in the glossary.
- Both, taxpayers and intermediaries**, who make use or assist in potentially aggressive tax planning schemes.
- Neither taxpayer nor intermediary.**
- No opinion/I don't know.
- Other opinion.

- * 6. In some cases, there might not be any intermediary for tax planning, for instance when a tax planning scheme is developed "in house" of an enterprise.
 In other cases, intermediaries might not be subjected to mandatory disclosure obligation, as the intermediary is located in a non-EU Member State.
 In yet other cases, the intermediary might be unable or prohibited for other reasons to provide the relevant information.
 In such cases where no intermediary exists or where the intermediary can not be subjected to mandatory disclosure obligations, should **in these cases the taxpayer be obliged to disclose the relevant information** on potentially aggressive tax planning schemes, instead of the intermediary?
- No, the **taxpayer should not be obliged** to disclose the relevant information.
 - Yes, in such cases the **taxpayer should be obliged** to disclose the relevant information.
 - No opinion/I don't know.
 - Other

Please explain the rationale of your answer

5000 character(s) maximum

If disclosure of non-“pre-packaged” ATP schemes is considered, then Accountancy Europe believes that only the client is in a position to provide such disclosure. This is on the basis that:

- In some Member States it is expressly forbidden by law for tax advisers to disclose such information;
- Ultimately, it is the taxpayer’s responsibility for signing the tax return;
- Where more than one adviser is engaged, only the client will have a full overview of the tax planning (and commercial) structure. This would particularly be the case in cross-border tax planning where different advisers may be used in each of the countries involved in the structure used by the client;
- It is possible that the adviser is not cognisant with all of the relevant facts – either because these have been withheld by the client or because the advisory has only been engaged to advise on specific transactions and not on the structure as a whole. It is the tax payers’ responsibility.

Mandatory disclosure may not achieve a consistent result and achieve all of the policy objectives across the EU due to the different cultures and legal systems in the EU. A system asking for a ruling prior to a scheme, as mentioned above, is an alternative solution.

6.3

Scope of mandatory disclosure

7. In your view, what information should be provided on potentially aggressive tax planning schemes?
 How useful would you consider the individual items?

	Not usefull at all	Not useful	Neutral	Useful	Very useful	I don't know
*Identification of the taxpayer (user of the potentially aggressive tax planning scheme)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Identification of the intermediary	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Details of the potentially aggressive tax planning scheme.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Details of the provisions/ hallmark that qualifies the tax planning scheme as potentially aggressive.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Statutory/regulatory provisions on which tax advantage is based.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Identification of the different jurisdictions used in the scheme.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Description of the tax benefit or advantage.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

<p>*Amount of the tax benefit or advantage.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
<p>*Disclosure obligations only to intermediaries: List of clients advised /linked to the potentially aggressive tax planning scheme.</p>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>*Disclosure obligations only to intermediaries: Member States of residence of clients advised/linked to the potentially aggressive tax planning scheme.</p>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>Other or additional information</p>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please elaborate the other or additional information that you consider useful to be disclosed.

5000 character(s) maximum

As mentioned in our response to question 1 in section 4.1, the information provided has different levels of usefulness depending on whether pre-packaged avoidance schemes or bespoke tax planning are being considered.

The disclosure by the intermediary of a list of their clients would be illegal in some EU Member States.

7

Policy options and their impacts

The European Commission identified in an [Inception Impact Assessment](#) the following possible options for policy initiatives:

OPTION 0: No action at EU level

OPTION A: European Commission to encourage Member States to gather information on potentially aggressive tax planning schemes and to share/exchange it with other Member States

The Directive on Administrative Cooperation (DAC) does not contain explicit provisions requiring Member States to collect and to exchange information with all the other Member States on tax evasion and tax avoidance schemes that come to their attention. However, the DAC contains a general obligation for tax authorities of EU Member States to spontaneously communicate information to the other EU tax authorities in certain circumstances, including the loss of tax in a Member State or savings of tax resulting from artificial transfers of profits within groups of companies (see article 9 of Council Directive [2011/16/EU](#)). The Commission could encourage, through a non-legislative non-binding act, Member States to gather information on such schemes and to exchange it with other Member States when appropriate using the spontaneous exchange of information mechanism provided in the Directive on Administrative Cooperation.

OPTION B: Require Member States to impose mandatory disclosure obligations on intermediaries and/or taxpayers when using or providing advice on potentially aggressive tax planning schemes

There are different ways of introducing mandatory disclosure obligations. One could be through an amendment of Directive on Administrative Cooperation, which since 2014 also requires Member States to impose on financial institutions the obligation to report financial account information to tax authorities.

Another option could be to lay down these mandatory disclosure obligations under financial legislation regulating the behaviour of certain providers of tax advice or through a stand-alone provision that would apply horizontally to providers of tax advice. In case of financial institutions, the reporting could be done either directly to tax authorities or to supervision authorities, who would convey the information to tax authorities. To avoid the risk of creating an uneven playing field, this option should be carefully designed to ensure that all the relevant service providers are covered by the obligation.

OPTION C: Require Member States to impose mandatory disclosure obligations on intermediaries and/or taxpayers when using or providing advice on potentially aggressive tax planning schemes and to automatically exchange the information with other Member States

The Directive on Administrative Cooperation could be amended in order to (i) require Member States to impose on intermediaries an explicit mandatory disclosure obligation on potentially aggressive tax planning schemes to tax authorities and, (ii) to ensure that tax authorities automatically exchange this information with the tax authorities of other Member States, by using the mechanism provided in Directive on Administrative Cooperation.

OPTION D: Mandatory disclosure (Option B) or Mandatory disclosure & Exchange of information (Option C) + Publication

Another option would be to combine OPTION B or OPTION C with a requirement on certain taxpayers to publish (elements of or all) the information to be disclosed to Member States' authorities, in order to add an additional element of public scrutiny.

OPTION E: EU Code of Conduct for intermediaries

To ensure that Member States, in cooperation with the Commission, take measures to encourage the drawing up at EU level of codes of conduct aimed at facilitating the provision of tax and legal advice services and establishing rules restricting the provision of potentially aggressive tax planning services that could facilitate tax avoidance or tax evasion.

Codes of conduct are regularly found in the sector of regulated professions and are normally adopted by the professional themselves; however they are not present in all Member States, and their nature, scope, and role differ.

A European code would have declaratory value. In order to guarantee its effectiveness, it would need to be transposed into the codes of conduct of the national professional associations - some of which have been approved by law. National professional organisations can monitor and act in the event of infringements by professionals of the provisions of the code.

1. In your view, which policy option is best suited for obtaining the objectives?

Please rate below how well each option would achieve the identified primary objectives (+ (plus) achieves the objective, 0 (zero) has no effect with respect to the objective, - (minus) runs counter to the objective)

0. No action at the EU level
A. Encourage MS to use currently available exchange of information mechanisms (DAC)
B. Reporting
C. Reporting and Exchange of information
D. Reporting (Option B) or Reporting and Exchange of information (Option C) + Publication
E. EU Code of Conduct.

2. In your view, how effective would the policy options be in terms of introducing disincentives for tax payers using and intermediaries assisting potentially aggressive tax planning schemes?

	Not effective at all	Of limited effectiveness	Neutral	Effective	Very effective	I don't know.
*Option 0: No action at the EU level	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Option A: Encourage Member States to use currently available exchange of information mechanisms	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Option B: Disclosure of information	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Option C: Disclosure and Exchange of information	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

<p>*Option D: Disclosure (Option B) or Disclosure and Exchange of Information (Option C) plus Publication</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
<p>*Option E: EU Code of Conduct</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

8

Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) here.

Please upload your file

474206ff-66b0-40ec-93a3-9a5218485545

/Accountancy_Europe_Cover_letter_EC_Public_Consultation_on_tax_intermediates.pdf

Contact

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