QUESTIONS 1 AND 2

We have chosen not to reply to the sections relating to harmful tax practices by Member States as we believe that these would be more appropriately answered by Member States and / or the European Commission - who are better placed to provide data on the occurrences of tax avoidance structures, harmful tax practices by Member States and impacts on the tax base of Member States of such concerns.

QUESTION 7 - ARE THE TYPES OF INFORMATION AUTOMATICALLY EXCHANGED UNDER THE DAC RELEVANT?

Although income from employment tends to be one of the most heavily controlled aspects of Member States' tax systems, this is mostly from a domestic perspective. The DAC has been useful in giving Member States of residence, in particular, information about cross-border employments (even though the taxing rights would normally fall to the Member State where the income is sourced). Automatic exchange of information could also provide useful information in highlighting certain social security arrangements.

Pensions information is relevant and has been very useful for Member States that see a lot of immigration of retirees from other Member States in identifying pensions income that hasn't been taxed in their jurisdiction and, indeed, may not have been taxed anywhere. However, we note there are often differences between Member States as to what are considered to be a qualifying pension scheme and/or savings contracts, which could reduce the effectiveness of this element of the DAC.

The effectiveness of exchange of rulings and / advance pricing agreements is very dependent on where the ruling is granted and for what purpose. The automatic exchange of such information, as discussed below, acts as a disincentive to abusive arrangements mainly from the anticipation that such arrangements are likely to lead to tax audits or investigations. Quite often the details disclosed are of limited benefit to the recipient tax administration unless they have significant knowledge of the source Member State's tax system.

QUESTION 8 - COHERENCE WITH OTHER EU LEGISLATION

The main issues of EU legislative coherence are between the DAC 6 and the Anti-Tax Avoidance Directive. There are considerable differences in definitions between the two, exacerbated by different application between Member States.

QUESTION 9 - OVERALL COHERENCE WITH THE INTERNATIONAL TAX FRAMEWORK

Generally, we see DACs 1, 2 and 7 as being consistent with international tax frameworks. DAC6 is considered to be more inconsistent with international tax frameworks.

As the EU is often at the vanguard of anti-tax abuse measures, the minimum standards introduced by EU legislation are usually more stringent than those derived from international agreements and are often further augmented at a national level by additional provisions introduced by Member States.

GENERAL CONSIDERATIONS ON THE DACS

Feedback that we have received indicates that both tax evasion and avoidance have decreased, particularly in the last 5-10 years, but this is hard to attribute to a single initiative such as the DAC - especially given the amount of activity there has been on combatting tax avoidance on national, European and international levels. At this time, many of the more recent initiatives have still not had time to develop their full impact and it is anticipated that there will be further significant decreases in the types of tax avoidance that have been most targeted by these measures.

There is less indication that tax competition between jurisdictions and between Member States has decreased to a similar extent, albeit there appears to have been a shift in the manner in which tax incentives are offered.

Although it is difficult to pinpoint the exact legislative source, our respondents indicate that Member States' tax authorities do have far more data to open better targeted tax enquiries and effective tax audits. Additionally, there does appear to be more cooperation between tax authorities of Member States, at least in some cases.

The impact of the DAC appears to be very Member State specific – both in respect of the full 'suite' of the DAC as a whole and in respect of the impact of specific elements of the DAC. However, a considerable number of respondents indicate that the DAC has often led to a change in taxpayer behaviour and / or business model, the type of tax advice given by advisors and the choice of-jurisdictions used in tax planning arrangements.

Feedback that we have received is that the information received from exchanges under the DAC is more easily and effectively utilised by tax authorities when it is numerical information (such as financial accounts information) than when it is narrative based, such as disclosures of rulings under DAC 3 or tax arrangements under DAC 6.

We have had considerable feedback over the years that the full impact of the DAC is reduced due to inconsistent quality of the data being provided by Member States' tax authorities and insufficient resources in the tax authorities receiving the data to fully utilise it. However, it must be appreciated that many of the elements of the DAC are effective to some degree just by their existence.

The knowledge by taxpayers and their advisors that automatic exchange of information exists will incentivise many to review their current arrangements / advice and change their behaviour accordingly. This is particularly the case of what may be called 'low level' tax evasion– i.e. taxpayers with small amounts of undeclared income overseas, small amounts of trading income on platforms they hadn't previously disclosed etc. This will result in collection of undeclared tax revenue that would have been uneconomic to collect using the normal monitoring and enforcement tools that most tax authorities rely on.

We would also mention that the closer the alignment between Member States' tax systems and the closer the cooperation between tax authorities, the fewer incentives and opportunities there are for taxpayers to engage in abusive tax arrangements.

We recommend that the EU establishes a regular programme of assessing the effectiveness of information exchange and to identify areas for improvement. It should also implement real-time feedback mechanisms so that the national tax administrations can provide prompt feedback on the practical challenges they face. We would recommend that such a review takes place before further elements are added to the DAC, which would enable future additions to the DAC to be more effective. In any event, before any further elements are added to the DAC, there should be a thorough cost-benefit analysis undertaken.

Such a review should also consider whether the Commission and Member States' tax authorities should publish non-confidential data on the effectiveness of administrative cooperation - such as the amount of additional tax revenue collected as a result of information exchanges, numbers of tax audits performed, amount of fines imposed etc. This could help to reduce the impression that the DAC is inefficient and fails to meet its objectives.

The Directive should take into consideration additional tax reporting rules, such as Pillar 2, the public country-by-country reporting in the amended Accounting Directive and possible tax related reporting under the CSRD. In particular Pillar 2, and the consequent EU Directive, is expected to render certain anti-avoidance rules obsolete. Therefore, certain elements of the DAC Directive should acknowledge the new realities. Tax reporting as a whole, should be simplified and streamlined across the EU.

ISSUES IN RESPECT OF SPECIFIC DACS

DAC 6 REPORTABLE CROSS-BORDER ARRANGEMENTS PRESENTING AN INDICATION OF A POTENTIAL RISK OF TAX AVOIDANCE

We would be very interested in viewing data collated on the number of reports made in different jurisdictions in respect of DAC 6. There is a view that in some jurisdictions levels of reporting under DAC 6 are low - due to a combination of the complexities of the DAC 6 hallmarks and local tax laws (including the different applications of legal professional privilege (LPP) to tax advice). This is particularly the case where the LPP rules mean that the obligation to report falls on taxpayers rather than on advisors.

Respondents from other Member States indicate that substantial numbers of DAC 6 reports are made.

However, it has been reported that many of the reports made will be of extremely limited use to tax authorities. One example is the hallmark C1, which has led to many reports being made of genuine business transactions solely because the other party is located in a jurisdiction listed as non-cooperative by Member States or under the OECD framework.

Assessment of the usefulness and administrative burden of DAC 6 is also complicated by different national interpretations of elements of certain hallmarks – for example, the main benefit test could be achieved in one Member State, but this would not be accepted by the counter-party Member State(s) due to differences in interpretation of the test.

DAC 3 – DISCLOSURE OF CROSS-BORDER TAX RULINGS AND ADVANCE PRICING AGREEMENTS

Assessment of this DAC is highly dependent on the Member States involved. For example, in one Member State the existence of a ruling in another Member State is used as an almost automatic indicator that a tax audit should be initiated.

In other Member States no, or very few, rulings are issued so few taxpayers are impacted. On the other hand, other Member States still issues very large numbers of rulings that can be overwhelming for the counter-party Member States to interpret, analyse and risk-assess.

We have received feedback that in certain Member States where rulings were common prior to DAC 3 now issue far fewer formal rulings.

It has also been noted that the contents of the ruling, as opposed to its mere existence, is often of very limited use to the tax authorities of Member States to where the ruling is transferred without detailed knowledge of the local law of the Member State in which the ruling is issued.

DAC 7 INCOME RECEIVED FROM ONLINE PLATFORMS

We have received feedback that the requirement for platforms to provide adequate and accurate taxpayer identity and residency information is proving very difficult for the platforms. Additionally, the sheer quantity of data, which includes normal B2B transactions, is overwhelming many of the recipient tax authorities.

The scope of the DAC 7 reporting is so broad that only a small percentage of the data exchanged is of use to tax authorities and is being buried under the remainder.

As a first step to alleviating the pressure on both the platforms and tax authorities, we propose that B2B transactions between registered businesses should be excluded from mandatory reporting under DAC 7.