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EU Commission Launches Consultation on Improving Tax Intermediaries Regulatory Framework

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The EU Commission has now launched its highly anticipated public consultation on the policy options being considered to improve tax intermediaries' regulatory framework, for a legislative proposal referred to in the consultation document as “SAFE”, a proposal to tackle the role of enablers that facilitate tax evasion and aggressive tax planning in the European Union (Securing the Activity Framework of Enablers – SAFE). According to the Call for Evidence accompanying the consultation, a legislative proposal is planned to be published in Q1 2023. The consultation will run until 12 October, and interested parties can submit feedback on the questionnaire via the Have Your Say portal.

The consultation documents sets out that the options currently being considered by the Commission for the proposed directive include:

- Option 1: **Requirement for all enablers to carry out dedicated due diligence procedures** - to perform a self-assessment test to demonstrate that the tax schemes do not lead to tax evasion or aggressive tax planning.
- 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 would combine the above due diligence procedure requirements with either mandatory registration for enablers in order to be able to provide tax advice or optional registration

that gives access to certain benefits (e.g. submitting tax return on behalf of their clients).

- **Option 3: Code of conduct for all enablers** - that would prohibit the enablers who design, market, organise or assists in the creation of tax evasion and aggressive tax planning schemes without any complementary mandatory measures.
- **New reporting requirements:** In addition to the above options, the Commission is also considering the introduction of new reporting requirements as part of the proposal, introducing mandatory reporting for EU taxpayers of participation above 25% of shares, voting rights, ownership interest, bearer shareholdings or control via other means in a non-listed company outside the EU.

The Call for Evidence details that the legislative basis being considered for the planned proposal are Article 115 and Article 50(2)(g) of the Treaty on the Functioning of the European Union (TFEU). It is likely Article 115 is being considered as the legal basis for the Code of Conduct, Due Diligence and Register aspects of the proposal, which would require unanimous approval at Council level from the Member States, and Article 50 would likely apply to the reporting requirements, which would follow the ordinary legislative procedure.

The consultation also contains questions on the issue of the measures being enforced via monetary penalties as a means of deterring facilitating evasion and sanction enablers, either as a proportion of their fees, a proportion of the amount of tax evaded or absolute fixed amounts. Additionally, the consultation includes questions on the possibility of preventing enablers who would fit the criteria from providing further services as a means of a deterrent.

EU Tax Policy Report: Semester I - January to June 2022

CFE Tax Advisers Europe has now published its EU Tax Policy Report covering the first semester of 2022. The EU Tax Policy Report is a bi-annual publication which provides a detailed analysis of significant primary law and tax policy developments at both EU and international level that have occurred in the previous six months which would be of interest to European tax advisers. It also includes an overview of selected CJEU case-law and relevant European Commission decisions.

We invite you to read the EU Tax Policy Report, and remain available for any questions or comments that you may have.

ECOFIN & Presidency of Council of the EU: Czech Tax Priorities

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The Czech Presidency of the Council of the EU will hold its first ECOFIN meeting this week on 12 July, at which it will present its Presidency Agenda for the second half of 2022.

In its Work Programme, the implementation of the OECD Global Tax Agreement is listed as a very high priority for the Presidency. Additionally, the Czech Presidency will aim to focus on unjustified tax exemptions, strengthening tax transparency and updating the EU list of noncooperative jurisdictions. It will focus on negotiations on the Carbon Border Adjustment Mechanism at Council and, thereafter, trilogue level with the aim to reach political agreement on this file under its Presidency. The current AML package is also detailed as a specific priority, as is the legislative package for reform of the Customs Union which will be presented during its Presidency.

Global Forum Holds 9th Competent Authorities Meeting

The Global Forum's Competent Authorities held their 9th annual meeting at the beginning of this month, with over 355 participants from 106 jurisdictions. Attendees discussed the implementation of both the exchange of information on request (EOIR) and the automatic exchange of financial account information (AEOI) standards and communication between competent authorities, including expected improvements to exchange channels.

The Global Forum Secretariat also updated participants on the tools developed for capacity-building purposes and available to Competent Authorities, with a specific focus on the Model Manual on Exchange of Information for Tax Purposes.

CFE Opinion Statement on Introducing a Common EU-wide System for Withholding Taxes

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CFE recently issued an Opinion Statement in relation to the European Commission's public consultation on introducing an EU-wide system on withholding taxes. The CFE Tax Advisers Europe is supportive of the initiative to introduce an EU-wide system for relief at source of withholding tax on dividend, interest, royalty payments and service fees, and for exchange of information and cooperation between tax authorities under the system.

CFE has a strong preference for a harmonized relief at source system and strongly support that there should be a harmonized means to obtain via e-request a tax residence certificate, with swift online provision of the tax residence certificate, and a digitalised verification system. Refund procedures are costly, time-consuming and often result in taxpayers having their refund claims refused for various administrative-related reasons. It is illogical that if one invests in the US, the treaty rate is automatically applied based on very simple and straightforward procedures, whereas this is not the case automatically if one were to invest in shares in another EU Member State.

In conjunction with the implementation of measures to improve the withholding tax refund procedures and establish a common EU relief at source system, CFE is of the view that there are solid public policy arguments for Option 3 (enhancing the existing administrative cooperation framework to verify entitlement to double tax convention benefits) and extending this to third countries. This could build on existing multinational arrangements including, for example, FATCA, though the focus there is on individuals. This would minimise de facto economic losses to investors etc and does the most to promote transparency and cooperation among tax authorities.

We invite you to read the Opinion Statement and would welcome any feedback or queries concerning the position paper.

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