Consultation response

Directive on Securing the Activity Framework of Enablers (SAFE)

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Introduction

The Securing the Activity Framework of Enablers (SAFE) Directive aims to prevent enablers from setting up complex structures in non-EU countries, which erode the tax base of EU Member States through tax evasion and aggressive tax planning.

The added value of SAFE beyond what is successfully introduced through Base Erosion and Profit Shifting (BEPS) 1.0 (Country-by-Country Reporting (CbCR)/Master/Local file), Anti Tax Avoidance Directive (ATAD) 1 & 2, Directive on Administrative Cooperation (DAC) 6, Ultimate Beneficial Owners (UBO) registration, Anti-Money Laundering (AML), Public CbCR and pending BEPS 2.0, is unclear. Tax evasion is combatted through various Member State-level regulations that aim to target criminal offenses. DAC6 reporting provides tax authorities with all relevant data and instruments to assess cross-border transactions performed by companies within and outside the EU.

Introducing another directive that is unclear on the scope of enablers, on what will be defined as aggressive tax planning and on interaction with all in force legislation adds another layer of complexity, regulation and compliance burden on tax authorities and businesses. It may also jeopardise proportionality between the effort needed for businesses to be compliant and the intended results.

SAFE also risks undermining the competitiveness of EU Member States and of businesses operating in the EU at a time when business and investment attraction is crucial for the region. It is essential to ensure that the EU continues to have a level playing field with the rest of the world by preventing the creation of new barriers that interfere with the smooth functioning of the EU internal market.

Recommendations

- **Existing EU anti-avoidance rules must be leveraged instead of introducing a new EU directive.**
    - Review amongst others DAC6 results and number of reportings in each EU Member State and make gap analysis to understand if further action at EU-level is needed to target specific arrangements. This will facilitate a targeted approach instead of broad scope which involves businesses with real economic activity.
    - If further action is be needed, it should be assessed whether improvements can be implemented on existing rules instead of introducing a new directive. This will ease implementation significantly as existing platforms and compliance processes can be leveraged. It will also minimise additional compliance burden for tax authorities and businesses.
- **It must be ensured that if the Directive is introduced, it should now apply to companies with real economic activity.**
    - If SAFE is to be introduced as a new Directive, exemptions must be included for in-house tax functions in MNE's which are subject to CbCR, DAC6, ATAD 1 & 2 and global minimum tax.
    - The possibility for external enablers to transfer the administrative burden to the tax payer must be avoided.
    - If register is introduced for enablers, it would be important to not distinguish between EU and non-EU enablers.

- **Member States must implement rules in a consistent way.**