

Proposal for a Council Directive 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)

Fields marked with * are mandatory.

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Introduction

Complex structures, which typically include cross-border arrangements that could result in tax evasion or aggressive tax planning may be designed by some intermediaries that provide tax advisory services. These intermediaries are commonly labelled as enablers. Tax evasion involves means to evade paying taxes and is a criminal offense as defined under the national law. Aggressive tax planning involves means to decrease the overall tax liability of companies and individuals by taking advantage of differences between national legislations of different jurisdictions; or (ii) by using loopholes in national laws and/or tax treaties; while not being explicitly illegal it is against the spirit of the law and legally is thus in a grey zone. Addressing the use of complex structures set up by enablers for the purpose of tax evasion and aggressive tax planning is crucial as the estimated tax revenue losses of EU Member States remain high.

Several actions have been taken by the EU over recent years to tackle tax evasion and aggressive tax planning, including Anti-Tax Avoidance Directive (ATAD) as amended, Council Directive (EU) 2018/822 amending the Directive on Administrative Cooperation in the field of (direct) taxation (DAC6) and recently proposal Directive laying down rules to prevent the misuse of shell entities for tax purposes (UNSHELL). However, the enablers are still designing, marketing or assisting in the creation of tax schemes that erode the tax base of Member States. This initiative will focus on, establishing appropriate procedures and compliance measures in order to effectively tackle tax evasion or aggressive tax planning.

The questionnaire takes about 20 minutes to complete. The questionnaire aims to capture views from all stakeholders on the role of enablers in contributing to tax evasion and aggressive tax planning and on the magnitude of the problem. The replies will also help identify the main risks as perceived by stakeholders, as well as the priorities for policy actions.

You can submit your responses in any official EU language, and you may upload additional documents

2 About you

* 2.1 Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- French
- German
- Greek
- Hungarian
- Irish
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

* 2.2 I am giving my contribution as

- Academic/research institution
- Business association
- Company/business organisation
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)

- Public authority
- Trade union
- Other

* 2.3 First name

Marion

* 2.4 Surname

Fontana

* 2.5 Email (this won't be published)

marion.fontana@etaf.tax

* 2.9 Organisation name

255 character(s) maximum

European Tax Adviser Federation (ETAF)

* 2.10 Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

2.11 Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

760084520382-92

* 2.12 Country of origin

Please add your country of origin, or that of your organisation.

This list does not represent the official position of the European institutions with regard to the legal status or policy of the entities mentioned. It is a harmonisation of often divergent lists and practices.

- Afghanistan
- Djibouti
- Libya
- Saint Martin
- Åland Islands
- Dominica
- Liechtenstein
- Saint Pierre and Miquelon

- Albania
- Algeria
- American Samoa
- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan
- Bolivia
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Lithuania
- Luxembourg
- Macau
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar/Burma
- Namibia
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden

- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States

- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Czechia
- Democratic Republic of the Congo
- Denmark
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Lesotho
- Liberia
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Saint Helena
Ascension and
Tristan da Cunha
- Saint Kitts and
Nevis
- Saint Lucia
- United States
Minor Outlying
Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and
Futuna
- Western Sahara
- Yemen
- Zambia
- Zimbabwe

The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, 'business association, 'consumer association', 'EU citizen') country of origin, organisation name and size, and its transparency register number, are always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

* 2.14 Contribution publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

Anonymous

Only organisation details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.

Public

Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

I agree with the [personal data protection provisions](#)

2.15 In case of follow up questions in the context of this project, would you agree to be contacted via the email address you indicated above?

- Yes, you can contact me by email to follow up in the context of this project if needed
- No, I don't want to be contacted by email in the context of this project.

3 Problem Definition

3.1 Despite all measures taken by the EU and Member States in this area, tax evasion and aggressive tax planning continue to be a substantial problem in the European Union. To what extent do you agree with this statement?

- I strongly agree
- I agree
- I am neutral
- I disagree
- I strongly disagree
- I don't know

3.2 Please explain your reply.

ETAF recognizes that tax evasion and abusive tax avoidance jeopardize the States' revenues and are unfair to the vast majority of European taxpayers and tax advisers who fully comply with the tax laws.

According to the Commission, tax avoidance is estimated at between EUR 35 billion and EUR 70 billion of tax revenues lost per year. After the Covid-19 pandemic and in the context of the current energy crisis, EU governments can't afford to lose this money and should increase their efforts to fight abusive tax avoidance.

3.3 The issue of tax evasion or aggressive tax planning has continued to increase recently. To what extent do you agree with this statement?

- I strongly agree
- I agree
- I am neutral
- I disagree
- I strongly disagree
- I don't know

3.4 Please explain your reply.

It is very difficult to say and no data from our members allows us to confirm or infirm this statement.

The EU has already adopted several pieces of legislation in recent years to fight tax evasion and aggressive tax planning (ATAD, DAC 6, UNSHELL). However, the impact of these measures have not yet been fully assessed. UNSHELL has not even been adopted and its final design remains unclear.

To our knowledge, uncertainties in the interpretation and practical application of complex provisions of ATAD and DAC 6 have contributed to reduce their efficiency. Moreover, it appeared that not all the Member States fully use the information exchanged through these mechanisms.

To really make a difference, the EU should focus on the core of the problem, i.e. the set-up of complex tax structures in third countries.

3.5 Enablers play an important role in facilitating tax evasion and aggressive tax planning. To what extent do you agree with this statement?

- I strongly agree
- I agree
- I am neutral
- I disagree
- I strongly disagree
- I don't know

3.6 Please explain your reply.

An answer to this question without a proper definition of "enablers" is not possible.

If the term "enablers" refers to professionals deliberately breaking the laws and engaged in criminal tax evasion activities, then we strongly agree.

We would, however, strongly disagree with this assessment if the term "enablers" - mainly seen as pejorative - would englobe all tax intermediaries. Regulated tax professionals in ETAF members are acting as "preventers" of tax evasion and aggressive tax planning. They are in fact the opposite of "enablers".

Such a reductive portrayal of an entire profession would create a great and undue reputational damage to a big part of the profession which is acting in line with tax laws and tax compliance requirements.

3.7 In determining aggressive tax planning, several factors should be taken into account. In your opinion, to what extent the following elements could indicate that a company structure is resulting in aggressive tax planning?

| | Very indicative | Indicative | Not very indicative | Not indicative at all | No Opinion |
|---|----------------------------------|----------------------------------|-----------------------|-----------------------|-----------------------|
| The main business rationale/purpose behind the company structure | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Other business rationale/purpose behind the company structure | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Minimum economic substance of the entities used in the structure | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Tax advantage obtained | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Use of preferential tax regimes/tax treaties/mismatches in national legislations across countries involved in the structure | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Other (please specify) | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

3.8 In case you chose the option 'Other' above, please specify, which alternative option you would propose.

In the introduction, the Commission proposes a circumscription of “aggressive tax planning”. We would like to warn that referring to the “spirit of the law” as the Commission does cannot be a suitable criterion. Such a criterion would constitute an indeterminate legal concept and thus violate the principle of legal certainty. It is the task of the legislator to exclude loopholes in the legislation which later turn out to be undesirable by means of clearer legislation.

The fact that tax evasion and "aggressive tax planning" are mentioned in the same breath in the whole questionnaire also creates a lot of confusion and makes it difficult to understand the scope of the initiative and its intended outcomes.

ETAF is concerned that such an abstract definition of the term “aggressive” tax planning would create uncertainty for tax professionals in their daily work to decide if a tax plan is appropriate or not.

Instead of having to deal with questionable definitions, a possible solution could lie in the introduction of a list of tax arrangements to be regarded as aggressive tax structuring.

3.9 Coordination at EU level, e.g. on the nature of the measure and the type of aggressive tax planning schemes to be covered, is fundamental to help prevent that enablers contribute to tax evasion or aggressive tax planning. To which extent do you agree with this statement?

- I strongly agree
- I agree
- I am neutral
- I disagree
- I strongly disagree
- I don't know

3.10 Please provide reasons for which you consider that the EU should **take** action to enhance the fight against tax evasion and aggressive tax planning by addressing the role of enablers.

We agree that there should be, at EU level, a common understanding of who are the enablers and which tax planning practices should be prohibited.

At the same time, any EU action should also be proportionate. For this reason, the Commission should target non-regulated tax professionals. The professionals who are already regulated in their Member States and who prevent the behaviour considered as undesirable should not be burdened with additional requirements. These would possibly be incompatible with national regulations or even counterproductive due to the additional administrative burden they would entail.

As advocated several times, ETAF supports the introduction of a minimum level of professional regulation for tax advisers in each Member State, to guarantee a high quality of tax advice. It would be, from our point of view, a much more effective tool to achieve the Commission's goal of effectively curbing down tax evasion and aggressive tax planning.

3.11 Please provide reasons for which you consider that the EU should **not take** action to enhance the fight against tax evasion and aggressive tax planning by addressing the role of enablers

Tax evasion is a criminal offense already forbidden in all EU countries.

We believe that the Commission should refrain from taking any action if it would result in one of the following consequences:

- deter legitimate tax planning practices,
- be accompanied by a general suspicion of abuse from tax advisers,
- create legal uncertainty for tax advisers and taxpayers,
- make it difficult for law-abiding tax advisers to do their work.

Any regulatory approach must also under no circumstances affect or suspend existing tax compliance regulations in Member States, in particular professional regulations.

4 Ways to tackle the role of enablers in facilitating tax evasion and aggressive tax planning

4.1 If the EU took new action to address the role of enablers in facilitating tax evasion and aggressive tax planning, which of the following means do you consider most likely to be effective?

- New EU action should be primarily of soft law nature so as to take into account the specific circumstances of each case and the situation of each Member State.
- New EU action should be of hard law nature, i.e. a new EU Directive. This would ensure the necessary level of coordination in the EU to effectively tackle the problem.
- Other

4.2 If you replied with 'Other', please provide more details.

4.3 Enablers should be **prevented** from designing, marketing, organising or assisting in the creation of tax schemes that lead to evasion and aggressive tax planning. To what extent do you agree with this statement? To what extent do you agree with this statement?

- I strongly agree
- I agree

- I am neutral
- I disagree
- I strongly disagree
- I don't know

4.4 Please explain your reply.

We agree that everyone involved in tax evasion and aggressive tax planning should in principle be prevented from doing it. We generally share the Commission's view that acting before the undesirable behaviour happened can only be better than after.

A proper definition of "enablers" as well as of "aggressive tax planning" and more information on the means used for the prohibition would, however, be needed to fully understand all the implications of this statement.

At this stage, it is also questionable why only the support or assistance to aggressive tax planning would be subject to a prohibition whereas the main act of the taxpayer executing aggressive tax planning would remain permitted.

4.5 **Due diligence procedures** (as for example used in the field of anti-money laundering) would require enablers to perform a self-assessment test to demonstrate that the tax schemes do not lead to tax evasion and aggressive tax planning. To what extent would you agree that this is an effective measure?

- I strongly agree
- I agree
- I am neutral
- I disagree
- I strongly disagree
- I don't know

4.6 Please explain your reply.

Without a clear definition of "enablers" and "aggressive tax planning" and without more information on the steps that would have to be undertaken in the context of this self-assessment test, the full scope and thus the potential efficiency of such a measure cannot be assessed at this stage.

4.7 In case an **EU register** of enablers would be established, which of the following options do you consider as the most effective?

| | Very effective | Effective | Not very effective | Not effective at all | No Opinion |
|---|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Mandatory registration for enablers in order to be able to provide tax advice | <input type="radio"/> |

| | | | | | |
|---|----------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Optional registration that gives access to certain benefits (e.g. submitting tax return on behalf of their clients) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Other (please specify) | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

4.8 In case you chose the option 'Other' above, please specify, which alternative option you would propose.

In this case, the meaning of "enablers" is particularly important. An EU register with a mandatory registration for professionals involved in tax evasion and aggressive tax planning, that would at the same time allow them to provide tax advice in the EU, would indeed make no sense.

ETAF would support an EU requirement for each Member State to introduce a national register of tax advisers if it does not already have one. We, however, see little added value to introduce an EU register of tax intermediaries. On the contrary, we fear a risk of counterproductive levelling down of qualified tax experts if any tax service provider would have the right to register on the same level as regulated tax professionals.

Any registration in an EU register must under no circumstances authorize tax service providers to grant market access in any EU Member State. Instead, market access must remain under the competence of the Member States.

This option also entails several important - yet unanswered - questions such as: who should be registered? The entity providing the tax advice or the tax adviser himself?

4.9 Would you agree that a **code of conduct for enablers** that would prohibit them to design, market, organise or assists in the creation of tax evasion and aggressive tax planning schemes without any complementary mandatory measures will be sufficient and effective in fighting tax evasion and aggressive tax planning?

- I strongly agree
- I agree
- I am neutral
- I disagree
- I strongly disagree
- I don't know

4.10 Please explain your reply.

In principle, ETAF sees the development of an EU Code of conduct as a good option. To be effective, this code would have to be binding for all tax intermediaries and its enforceability would have to be guaranteed and controlled. Furthermore, it would have to be based on existing best practices, so that tax professionals who already obey to a national Code of conduct don't have to follow redundant or inconsistent principles.

We, however, recognize that a Code of conduct without any complementary measures might be insufficient to achieve the Commission's goal to curb down tax evasion and aggressive tax planning.

A more effective option from our point of view would be to make tax advice a reserved activity everywhere in the EU. The system of reserved activities protects companies, organisations and consumers from the consequences of poor advice given by less qualified people.

4.11 Would you agree that a new reporting requirement 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 will boost transparency of EU investment abroad?

- I strongly agree
- I agree
- I am neutral
- I disagree
- I strongly disagree
- I don't know

4.12 Please explain your reply.

In principle, we support all measures that could bring more tax transparency. As a general remark, we outline that this must not lead to an excessive additional burden for taxpayers or their advisers. Furthermore, tax advisers must be able to rely on the completeness and the accuracy of the informations they receive.

4.13 If new requirements were imposed on enablers, can you please provide an estimation of the **magnitude of the economic impact** that each option would entail?

| | Strong Impact | Some Impact | Little Impact | No impact at all | No Opinion |
|--|-----------------------|-----------------------|----------------------------------|----------------------------------|-----------------------|
| Tax collection across the EU would increase as the rules would deter from using tax evasion or aggressive tax planning | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Resource allocation across the EU would be optimised through better distribution of tax burden across taxpayers | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |

| | | | | | |
|---|-----------------------|-----------------------|----------------------------------|-----------------------|-----------------------|
| Higher tax fairness as all companies would pay their fair share (levelled playing field) | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Improved level playing field for enablers regardless of their location (as all enablers would be prohibited from tax evasion and aggressive tax planning) | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Other (please specify) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

4.14 In case you chose the option 'Other' above, please specify, which alternative option you would propose.

4.15 Please describe any further major impacts you consider likely to arise from a new EU action addressing the role of enablers in facilitating tax evasion and aggressive tax planning, towards the main stakeholders (enablers, business asking for tax advice services, citizens, taxpayers, tax administrations etc.)

It is very hard to quantify the impacts at this stage with the limited information available on the scope of the measures. However, we can already predict that the direction the Commission is taking will create more administrative burden for tax professionals and tax administrations without necessarily leading to an increase of tax revenues.

4.16 If new requirements were imposed on enablers, can you please provide an estimation of the magnitude of the impact on the compliance costs that each option would entail?

| | Strong Impact | Some Impact | Little Impact | No impact at all | No Opinion |
|---|----------------------------------|-----------------------|----------------------------------|-----------------------|-----------------------|
| Code of conduct 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 | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| EU register of enablers and the obligation to register | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 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 | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

| | | | | | |
|--|-----------------------|----------------------------------|-----------------------|-----------------------|-----------------------|
| <p>New reporting requirement 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</p> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| <p>Other (please specify)</p> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

4.17 In case you chose the option 'Other' above, please specify, which alternative option you would propose.

4.18 **If the EU took no further action** to address the role of enablers in facilitating tax evasion and aggressive tax planning which of the following scenarios do you consider most likely?

- The internal market will be more fragmented because Member States will provide their own rules addressing the role of the enablers.
- Without EU action addressing the role of the enablers, the problem will remain.
- Other

4.19 In case you chose the option 'Other' above, please specify.

5 Enforcement of the Measure

5.1 In your opinion, are **monetary penalties** an adequate means to appropriately sanction and deter enablers from facilitating tax evasion and aggressive tax planning?

- I strongly agree
- I agree
- I am neutral
- I disagree
- I strongly disagree
- I don't know

5.2 In case you answered '*I strongly agree*' or '*I agree*' in the question above, which type of monetary penalties do you find adequate to deter enablers helping their clients evade or avoid taxes? Monetary penalties:

- As a proportion of their fees
- As a proportion of amounts evaded on behalf of their clients
- As an absolute fixed number
- Other

5.3 If you replied with 'Other', please provide more details.

5.4 In your opinion, would **preventing an enabler to design, market, organise or assist in the creation of tax schemes that lead to evasion and aggressive tax planning from being allowed to provide services** be an efficient way to deter them from facilitating abusive tax schemes?

- I strongly agree
- I agree
- I am neutral
- I disagree
- I strongly disagree
- I don't know

5.5 Please describe any other enforcement mechanism (e.g. other type of sanctions or compliance measures against enablers that market, sell or otherwise promote tax evasion or aggressive tax planning) that you consider appropriate and effective for EU and non-EU enablers.

Remark on question 5.1: We generally agree that sanctions can play an important role in preventing undesirable behaviours. However, as the subjects and the scope of the measures have not yet been fully determined, it is hard to answer if monetary penalties would be appropriate. Moreover, when we speak about sanctions, the combination of tax evasion with aggressive tax planning that the Commission is using in its questions is particularly problematic. We cannot have the same sanctions for tax evasion, which is a criminal offence and is punishable by law in all Member States, and for aggressive tax planning, which is legally legitimate, although it might be ethically doubtful.

Remark on question 5.4: We do agree that a tax intermediary which repeatedly designed, marketed, organised or assisted in the creation of tax schemes regarded as abusive by a national tax authority and who had been forewarned about the possibility of sanctions should be prevented from continuing to act as such.

However, as the terms "enabler" and "aggressive tax planning" are not defined, we find the current formulation problematic and dangerous. We want to avoid any catch-all provision which would unintentionally prevent law-abiding tax advisers from providing services.

Moreover, market access must remain under the competence of the Member States.

Answer to question 5.5: The profession of a tax adviser is not harmonized within the European Union. Professional regulations, if existing at all, differ widely from one Member State to another. The spectrum ranges from full liberalization in some Member States, e.g. in the Netherlands, to a distinguished level of regulation in other Member States, e.g. in Germany, France and Austria.

ETAF strongly recommends to the European Commission to encourage every EU Member State to introduce or strengthen national binding professional law frameworks.

In the ETAF Members, where the profession is regulated, tax advisers are already legally obliged to practice their profession conscientiously, diligently and in full compliance with all applicable laws. They must respect a binding and enforceable professional code and are subject to a disciplinary sanctions system in the case of infringements.

High levels of access qualification, continuous mandatory professional training, mandatory membership to a professional organisation with sanctioning competencies and guarantees for an independent exercise of the profession throughout the EU would lead to a high quality of tax adviser's services and thus contribute to the fight against aggressive tax planning.

Contact

[Contact Form](#)

