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CCBE response to the public consultation regarding directive on administrative cooperation (DAC) evaluation

29/07/2024

Call for evidence

The Council of Bars and Law Societies of Europe (CCBE) would like to provide the following comments with a distinction between its assessment of DAC 1-5 on the one hand, and DAC 6 on the other hand.

The purpose of DAC 1-5 is essentially to regulate administrative cooperation between the tax authorities of the Member States in the area of direct taxation and to enable requests for official investigations in other Member States. Most of the data and information collected and exchanged under the DAC, especially under the automatic exchange of information (AEOI) pursuant to DAC 3, provides Member State authorities with information relevant to the objective of the Directive (combat tax fraud and tax evasion). They have a significant positive impact on the efficiency of the tax system for European Union (EU) citizens and businesses.

However, this is not the case for DAC 6. First, the directive should be reviewed as to whether the method of reference to hallmarks is practicable and efficient. In our view, this is not the case. Second, this directive should also be reviewed to verify whether all hallmarks are useful. They should furthermore be clarified. In the current legal state, in some Member States the provisions of the Directive transposed into the national law (e.g. Poland or Belgium) do not allow for a clear and succinct definition of taxpayers' reporting obligations. This leads, on the one hand, to taxpayers 'just in case' providing useless information or information that the tax administration already has in its possession by way of enforcement of ancillary legal mechanisms. On the other hand, it is by no means certain that a taxpayer can be effectively held liable for failure to provide relevant information due to the aforementioned uncertainty as to the scope of his obligations. It therefore creates – in addition to legal uncertainty - an unnecessary compliance and filing burden for the taxpayers without granting to the Member States' authorities useful or relevant information and data to effectively combat tax fraud and tax evasion (compared to any of the other means and materials resulting from DAC 1-5).

Moreover, the provision regarding reporting by intermediaries (Article 8ab par.5) should be reviewed in order to include an obligation for Member States to foresee a waiver from filling information for persons subject to professional secrecy/legal professional privilege. In addition, the EU legislators should take into account recent developments of the case law of the Court of Justice regarding DAC 6.

Furthermore, since the mandatory application of DAC 6 came into force, no amendment and/or revision of the hallmarks has been undertaken and as a result, it is our understanding that no additional and/or significant potentially aggressive cross-border tax planning arrangements have been further identified. Therefore, the question arises as to whether the high administrative costs associated with DAC 6 can be justified at all, both on the part of the tax authorities and on the part of the taxpayers and the stated intermediaries (especially lawyers).

Further comments are provided by the CCBE in its answer to the public consultation on the same topic. In addition, as DAC assessment and many answers to the public consultation questionnaire depend on the national implementation, the CCBE would like to refer the Commission to separate answers given by the national bars.

Answer to the public consultation

Part 1 - Overall assessment of DAC

To what extent are the following issues still a problem today?

	To a large extent	To a moderate extent	To a minor extent	Not at all	No opinion /Don't know
Erosion of the tax-base following the increased movement of people and capital in the EU	○	○	◉	○	○
Aggressive tax planning by corporations	○	○	○	◉	○
Harmful tax competition among EU Member States	○	○	◉	○	○

To what extent have the following issues improved or worsened?

	Significantly improved	Improved	No change	Worsened	Significantly worsened	No opinion /Don't know
Erosion of the tax-base following the increased movement of people and capital in the EU	○	○	○	○	○	◉
Aggressive tax planning by corporations	○	○	◉	○	○	○
Harmful tax competition among EU Member States	○	○	○	○	○	◉

To what extent do you agree with the following statements?

	To a large extent	To a moderate extent	To a minor extent	Not at all	No opinion /Don't know
AEOI is useful to reduce tax evasion by individuals earning incomes or rents abroad	○	○	◉	○	○
AEOI is useful to reduce tax evasion by individuals holding financial assets abroad	○	○	◉	○	○
Knowledge by tax authorities about where multinationals gain profits and pay taxes helps increasing tax fairness and reducing harmful tax competition among EU Member States	○	◉	○	○	○
Knowledge by tax authorities of advance pricing arrangements, tax rulings and other cross-border arrangements helps increasing tax fairness and reducing harmful tax competition among EU Member States	○	◉	○	○	○
Knowledge by tax authorities of sellers' incomes earned via online platforms is useful to reduce tax evasion	○	○	○	○	◉

Please express your view on the extent to which DAC contributed to the following objectives

	To a large extent	To a moderate extent	To a minor extent	Not at all	No opinion /Don't know
Reducing tax evasion / safeguarding tax revenues for Member States	○	○	◉	○	○
Increasing transparency of the tax system	○	○	◉	○	○
Increasing fairness of the tax system	○	○	◉	○	○
Improve the functioning of the EU Single Market	○	◉	○	○	○

To what extent do the following aspects of DAC work properly?

	To a large extent	To a moderate extent	To a minor extent	Not at all	No opinion /Don't know
Identification of the taxpayers concerned	○	◉	○	○	○
Identification of the behaviours / arrangements / agreements in scope of reporting	○	○	○	◉	○
Clear identification of the information to be collected and reported	○	○	○	◉	○
Criteria for validating or verifying the accuracy of the information collected	○	○	○	◉	○

Please explain how certain aspects could be improved.

The above responses regarding the application of DAC mainly concern the Mandatory Disclosure Rules (MDR) under DAC 6. With regard to other DAC tools, the assessment is significantly higher. However, the CCBE thinks that the method of questioning, asking to provide answers by placing a statement under the above classifications, can be quite unsatisfactory. The consultee may not provide precise and nuanced answers.

As for the MDR, the Directive should be reviewed to assess whether all and/or any of the hallmarks remain useful and/or relevant as the information collected is not proportionate to the stated cause of the Directive (i.e. to the tackling potentially harmful cross-border tax arrangements). Any hallmarks having no utility from a fiscal perspective should be deleted. Any hallmarks (such as E3) resulting in reports having no ultimate bearing on the tax liability of taxpayers should be adjusted or deleted. The hallmarks also require an impossibly broad (sometimes encyclopaedic) understanding of a wide range of often complex tax rules and matters (i.e. transfer pricing, common reporting standard, preferential tax regimes, etc.) making the implementation of the MDR by intermediaries immediately overly burdensome. They should furthermore be clarified and a detailed guidance as to their application should be provided to ensure a uniform approach between Member States.

DAC should achieve simplicity and clarity through amendment of the legislative requirements. The required reportable information requested should be accurate and not dependant upon a subjective and/or objective assessment of any imposed criteria.

The regulations should generally be clear and comprehensible. Taxpayers' obligations should be kept to a necessary minimum in order to reduce the administrative burden and bureaucratisation on both taxpayers and tax administrations.

The simplification of the tax rules indicated in the directive should be reduced to a minimum so that bureaucratic burdens are reduced to a minimum. Furthermore, this would facilitate an easier understanding of the tax legislation by taxpayers.

In your opinion, would the same results have been achieved even without DAC (i.e., by means of international agreements only)? (one answer possible, to thick)

○ Yes, the same results would have been achieved without DAC

○ Most of the same results would have been achieved without DAC

● Some of the results would have been achieved without DAC, but DAC was useful and/or instrumental to most of them

○ No, DAC was essential to achieve these results

○ Don't know

Please explain how the same results could have been achieved alternatively, and/or how DAC was useful to achieve them.

The Convention on Mutual Administrative Assistance in Tax Matters and Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting of the OECD address such requirements without any necessity for additional EU measures.

Are the types of information automatically exchanged under the DAC relevant?

	To a large extent	To a moderate extent	To a minor extent	Not at all	No opinion /Don't know
Income from employment	○	○	○	○	◉
Pensions	○	○	○	○	◉
Life insurance products	○	○	○	○	◉
Director's fees	○	○	○	○	◉
Capital gains	○	○	○	○	◉
Information on financial accounts	○	○	○	○	◉
Information on advance pricing agreements	○	○	○	○	◉
Information on advance rulings	○	○	○	○	◉
Country-by-Country reporting	○	○	○	○	◉
Information on potentially harmful cross border arrangements	○	○	○	○	◉

In your opinion, to what extent is DAC overall coherent with other EU legislation (i.e. AML Directive, ATAD Directive, VAT administrative cooperation regulation, Recovery Directive)?

- ○ To a large extent
- ○ To a moderate extent
- **● To a minor extent**
- ○ Not at all
- ○ No opinion/Don't know

In your opinion, to what extent is DAC overall coherent with the international tax framework (i.e. double taxation conventions, multilateral agreements, BEPS minimum standards)?

- ○ To a large extent
- **● To a moderate extent**
- ○ To a minor extent
- ○ Not at all
- ○ No opinion/Don't know

Part 2 - Foreign incomes and assets

Following the entry into force of DAC, what is your perception of the impact on behaviour of the taxpayers?

	Most of the taxpayers concerned	Some of the taxpayers concerned	Few of the taxpayers concerned	Not at all	No opinion / Don't know
Increased reporting of foreign incomes / assets	○	●	○	○	○
More taxes paid by taxpayers on foreign incomes / assets	○	○	●	○	○
Repatriation of financial assets to the country of residence	○	○	●	○	○
Moving financial assets to non-EU countries	○	●	○	○	○

Part 3 - Tax transparency

Additional views or information

Would you like to add any comments or suggestions on the current functioning of DAC?

The CCBE wishes to clarify that the comments provided above were made keeping in mind a distinction between its assessment of DAC 1-5 and DAC 6. The replies in part 1 of the questionnaire should not be read as an endorsement by the CCBE of DAC 6, which did not prove to be an effective instrument, while putting a disproportionate burden on EU citizens and businesses and their lawyers. As DAC assessment and many answers to the questionnaire depend on the national implementation, the CCBE would like to refer the Commission to separate answers given by the national bars.

DAC 6 should be reviewed as to whether all hallmarks are useful and/or proportionate in relation to the objective of the Directive. Hallmarks should furthermore be clarified and detailed guidance as to their application should be provided by the Commission. Moreover, the provision on reporting by intermediaries (Article 8ab par.5) should be reviewed in order to include an obligation for MSs to foresee a waiver from filling information, for persons subject to legal professional privilege. It should be reviewed whether DAC 6 is proportionate and should be maintained in view of the high costs and minimal findings.

CCBE response to the public consultation regarding directive on administrative cooperation (DAC) evaluation

29/07/2024

The Council of Bars and Law Societies of Europe (CCBE) would like to clarify that the answers and comments provided in the questionnaire to the public consultation were made keeping in mind a distinction between on the one hand, CCBE's assessment of DAC 1-5 and on the other hand, of DAC 6. The responses provided to part 1 of the questionnaire should not be read as an endorsement by the CCBE of DAC 6, which in the CCBE's opinion, has not proven to be an adequate and efficient instrument and does not meet its goals, while placing a disproportionate burden on EU citizens and businesses and their lawyers.

CCBE's views on DAC in general (DAC 1-5)

The CCBE's assessment of DAC 1-5 is positive in principle.

However, the CCBE warns against overextending the contents of the rules foreseen in DAC 1-5 beyond what was intended and agreed on by the legislators. It is understandable that Member States (MSs) wish to obtain information and also to cooperate as much as possible, but the limits of the actual acquis of the Directives have to be respected in a European Union governed by the rule of law.

Most of the data collected and exchanged under the DAC, especially under the automatic exchange of information (AEOI), provides Member State authorities with information relevant to the objective of the Directive (combat tax fraud and tax evasion). They might have a positive impact on the efficiency of the tax system for EU citizens and businesses.

It needs to be perceived as positive, that the tax authorities exchange information and the cooperation between tax authorities is made easier. However, it is questionable, whether this information is used properly by the tax authorities. At the end of the day, from the perspective of a taxpayer, fulfilment of their obligations is tested within a tax audit and so far it seems that information exchanged according to DAC play a very minor role within a tax audit.

It should also be advisable that the Directives themselves include as a general rule that the usual protection of the rights of the taxpayers is guaranteed and that any information received by a Member State from another Member State is treated as a single factual information which remains subject to the rights of the taxpayers to challenge it in any further steps of a litigation.

Moreover, the information obtained under the DAC minimally affects the public availability of information on the operation and efficiency of the tax system and the objectives pursued by it.

When it comes to the fairness of the tax system, the CCBE is of the view that this is a difficult criteria and fairness could probably only be achieved if all the tax systems are the same, which is not the case. Currently, every country has its full right to choose its own provisions and ideas linked with its specific needs - every country has a different economic strengths and profits from different industries/services. To allow the taxpayer to carry out business, countries need a system that relies on law and rules which constitute better criteria.

Regarding relevance of the types of information automatically exchanged under the DAC, the answer of this part of the questionnaire depends on the national tax systems in each Member State. If, for example, pensions are not subject to tax in a Member State, the exchange of this information is irrelevant for such a Member State. However, for a country in which pensions are taxable under national tax law, the information is relevant.

CCBE's views on DAC 6

The CCBE's assessment of DAC 6 is negative for the reasons explained below. These reasons concern:

- doubts about relevance and clarity of hallmarks;
- lack of legal certainty;
- risks of reporting obligations for legal professional privilege (LPP)/professional secrecy of lawyers and fundamental rights of clients;
- disproportionate burden DAC 6 has introduced for EU citizens and businesses and their law firms comparing to the aim it has stated to achieve, high administrative costs for lawyers and no efficient findings or useful benefits for tax authorities.

A. Doubtful relevance and lack of clarity of hallmarks

First, the Directive should be reviewed as to whether the method of reference to hallmarks is practicable and efficient. In our view, this is not the case. Second, the Directive should be reviewed to verify whether all hallmarks are useful and/or proportionate.

It is the opinion of tax practitioners with whom the CCBE has consulted, that uncertainties on the information required to be reported remain. Therefore, the hallmarks should furthermore be clarified.

In the current legal state, the provisions of the Directive transposed into the national law (e.g. Poland or Belgium) do not allow for an unambiguous definition of taxpayers' information obligations. This leads, on the one hand, to taxpayers 'just in case' providing useless information or information that the tax administration already has. On the other hand, it is by no means certain that a taxpayer can be effectively held liable for failure to provide relevant information due to the aforementioned uncertainty as to the scope of his obligations. It therefore creates an unnecessary compliance and filing burden for the taxpayers without granting the Member States' authorities with relevant information and data to effectively combat tax fraud and tax evasion (compared to any of the other means and materials resulting, for the authorities, from DAC 1-5).

More specifically, as stated in the CCBE Guidance on DAC 6 in 2019[1], a few hallmarks are not proportionate or/and not clear and certain. For example, the description of the hallmark which provides that it is sufficient that the tax advantage is *"one of the main benefits"*. This does not appear to be a proportionate requirement, as it appears contradictory that, in taking measures to tackle potentially aggressive cross-border tax planning arrangements, the tax advantage does not have to be the *"main advantage"*. Moreover, the provisions also give rise to uncertainty with respect to the use of *"one of the main benefits"*, thus not satisfying the general requirement that laws are required to be clear and certain. In addition, hallmark E3 is a source of much frustration for intermediaries and without any real tangible benefits for tax authorities.

It would be advisable for the Commission to issue interpretative/implementation guidance after the adoption of the new legislation, as has already happened many times in other areas since the adoption of DAC 6 (e.g. on circumvention of anti-Russian sanctions; there is an implementation working group of Member States and the Commission in relation to e-evidence Regulation; work is starting in relation to the Artificial Intelligence Act), in order to avoid gold-plating and divergent implementation regarding the substantial parts of the legislation, but at the same time to preserve the instrument used - the directive - so that Member States can reflect national specificities.

B. Breach of the taxpayer's right to legal certainty

It should be noted that our comments are provided on the basis of an understanding that the mandatory disclosure rules in the context of DAC 6 can indirectly frustrate the taxpayers' right to legal certainty and legitimate expectations by facilitating rapid legislative changes, affecting taxpayers including those who utilise the options provided by the applicable law.

Tax policy needs to be part of a coherent economic policy which remains a national and sovereign prerogative right, drafted according to an (ideally prospective) vision of the government and/or endorsed by the democratically elected parliament. It should represent a preferably stable environment for entrepreneurs so that such can foresee and plan their economic activities accordingly. Changes in the law should be done with fair warning and should not frustrate legitimate expectations.

Generally, the tax benefits that a taxpayer utilises are indeed entirely legal, granted by the legislator according to its current tax policy. Hence, the stated essence of DAC6 relates to the *"reporting of potentially aggressive cross-border tax-planning which can contribute effectively to the efforts for creating an environment of fair taxation in the internal market"*[2]. As a result of the newly introduced reporting requirements, the tax administration becomes aware of a certain tax practice and decides that the usage of the said benefit is found to be a loophole that must be closed rapidly. This can have a potential negative effect on the taxpayers' right to legal certainty and the protection of legitimate expectations.

In view of the above and elaborating in particular with regard to the critical concept of "loophole" as far as the DAC 6 mechanism is concerned, two inter alia interrelated critical questions arise:

a) What is the definition of a "loophole"? In other terms, what characteristics does a legal provision need to have in order to constitute a "loophole"?

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1 https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/TAX/TAX_Position_papers/EN_TAX_20181019_CCBE-Guidance-on-certain-aspects-of-the-Tax-Intermediaries-Directive.pdf

2 Recital (6) of Preamble of Council Directive 2018/822 of 25 May 2018

Admittedly, there is no widely accepted legal rule on how a loophole is to be determined. At the same time, all legal provisions (i.e. those which create a loophole and those which do not) are produced by the legislator and all of them are therefore legal. However, the only characteristic that differentiates a loophole from the other legal provisions is that it is unwanted because it produces harmful effects on the State's interests in practice.

In view of the difficulty in distinguishing a loophole from a regular legal provision, one might argue that the only relevant criterion that turns a tax provision into a loophole is the relevant authority's view of the harmfulness of its effects in practice.

b) Which is the body that attains the authority to perform such an assessment?

According to DAC 6, it is the tax administration. One has to bear in mind that the tax administration is a part of the State's institutional system whose task is to determine the taxable base, assess the tax and, finally, collect it. Since their role is revenue raising and not policy making, tax administrations will be motivated to make the distinction between acceptable and unacceptable behaviour of a taxpayer based solely on the quantity of revenue that is being lost due to the practice in question. Hence, it is not expected that such a determination can simultaneously be objective and impartial.

C. Risks of reporting obligations for professional secrecy/legal professional privilege and fundamental rights of clients

For the reasons explained below, the CCBE believes that when the directive is transposed or in case it is reviewed, it should stipulate that whenever an intermediary is a lawyer, reporting obligation falls exclusively on the taxpayer and never on the lawyer.

Tax transparency via exchange of information by Member States and relevant EU legislation should ensure that there is no infringement of the rule of law and/or the professional secrecy/LPP.

Yet, the provision regarding reporting by intermediaries (Article 8ab par.5) and its implementation at national level has given rise to uncertainties.[3]

Professional secrecy/LPP is a fundamental right of clients protected under the European Convention on Human Rights (ECHR) and the Charter of Fundamental Rights of the European Union ('the Charter'). Without it there would be no proper protection for clients and lawyers could not practice. This relationship of confidentiality is indispensable for the rule of law and the principle of fair trial. It is one of the cornerstones of protection of persons in a democratic society. It forms an essential part of the proper administration of justice, with the general interest of society on one hand, and the protection

[3] See for instance the proceedings regarding DAC6 in Belgium, ref.: Arrêt n° 1/2024 du 11 janvier 2024, Cour Constitutionnelle, available here.

of individuals, including freedom of defence, on the other.[4] Finally, it should be noted that *"Violating privilege/professional secrecy is a penal offence in many countries."*[5]

Mandatory disclosure rules in the context of DAC 6 clearly infringe on the right to legal advice of the taxpayer, which is inherently linked to the duty of professional privilege owed by the lawyer, by compromising the very prerequisite of this right, namely the issue of confidentiality.

In cases when national court later considers a tax solution being not wanted and considers it for example a tax fraud, it could be difficult for the lawyer to disclose information as an intermediary due to professional law and duties.

Following challenges before national courts, some clarifications were brought and parts of these provisions (i.e. regarding the obligation for lawyers to notify other intermediaries) were declared invalid in light of the Charter.[6] Other actions are still pending.[7]

It has been rightly recalled by the Advocate General Kokott that *"lawyers are not only representatives of their clients' interests but also independent collaborators in the interests of justice. (13) Consequently, LPP protects not only the individual interests of lawyers and their clients but also the public interest in justice being administered in such a way as to fulfil the requirements of the rule of law. Thus, the special protection afforded by LPP is also an expression of the principle of the rule of law on which the European Union is founded, in accordance with Article 2 TEU."*[8]

The CCBE believes that in order to remove any risks of violations of the professional secrecy/LPP and rights of citizens, Article 8ab should be reviewed and amended in order to include an obligation (and not only an option) for Member States to foresee a waiver from filling information, for persons subject to professional secrecy/LPP.

Moreover, since the adoption of the Directive, the CCBE has been concerned with the inclusion of an obligation on the part of an intermediary-lawyer to inform their client of the obligation to disclose the particular arrangements. The breach of any obligation of the intermediary is, under the current draft, within the scope of the penalty provisions of the Directive. Including an obligation of notification by a lawyer which can be penalised if breached undermines the protection afforded to professional secrecy/LPP elsewhere in the Directive. Including such an obligation would permit third parties (i.e. the tax authorities) to enquire into whether a lawyer has complied with the provision. This presumably would involve an examination of the correspondence between the client and the intermediary, thereby effectively overriding professional secrecy/LPP.[9]

The CCBE is opposed to a situation whereby a lawyer could be required to prove that he or she has notified *the "relevant taxpayer of their reporting obligations ..."* given the implications that has for the integrity of professional secrecy/LPP. In the view of the CCBE, the document whereby a lawyer informs his client about the existence of legislation, explains how the said legislation is relevant for the client, and eventually issues advice as to how the taxpayer should comply with said legislation, qualifies as an opinion that is covered by professional secrecy/LPP according to the ECHR. Therefore, when the

[4] CCBE statement on professional secrecy/legal professional privilege (LPP), 15.09.2017, available here.
[5] See Paragraph (d) of CCBE guidance on DAC6, available here. Only in certain cases and under certain modalities regarding anti-money laundering reporting lawyers are not bound by confidentiality.
[6] Orde van Vlaamse Balies, 08.12.2022
[7] See especially Case 623/22
[8] Point 24 of the Opinion in the Case C-432/23, available here.
[9] CCBE Guidance on DAC6, 2018.

directive is transposed or it will be reviewed, it should foresee that whenever an intermediary is a lawyer, reporting obligation should be incumbent on the taxpayer instead of the intermediary.[10]

The DAC obligations may not conflict with the right of non-disclosure. It is legitimate to raise the question of whether lawyers should not be excluded from DAC (even if they do not have to report to the tax authorities), in order to prevent the tax authorities from having to check whether an appeal to the right of non-disclosure is justified.

D. Disproportionate burden for law firms

The adoption of the DAC legislative acts via Articles 113 and 115 of the Treaty on the Functioning of the EU do not meet the criteria of proportionality and subsidiarity as set out in this treaty and the ECHR. Indeed, we consider that DAC does not relate to the *"approximation of such laws…[which] directly affect the establishment or functioning of the internal market"* and which should be adopted in such a manner as to avoid any infringement on the fiscal sovereignty of each of the Member States within the European Community.

Significant time and resources are spent by taxpayers and intermediaries in evaluating and assessing each arrangement to ensure compliance with the provisions of DAC 6 which we consider is not an efficient control mechanism in relation to identifying potentially aggressive cross-border tax planning arrangements. As a result, it would make more sense for national legislators to draft the tax laws in such a way that they are clear and unambiguous.

The CCBE considers that the burden imposed on professionals and companies by DAC 6 is excessive with respect to the effectiveness of the tool. It does not serve the purpose for which it was created. In the light of the Commission's recent initiatives regarding administrative burdens[11], how to reduce the burden stemming from DAC 6 should be considered immediately.

A study for the European Parliament Subcommittee on Tax Matters (FISC)[12], in 2022, found that *"impact of specific tax intermediary regulation on reducing undesirable tax avoidance remains unclear"*. The same study also found that: *"Arguably in recent years there has been some mission creep, for example, in relation to disclosure requirements. Whilst initially such requirements might have been introduced primarily to provide early signals to tax authorities (relating to certain tax planning activities), their purpose may now be perceived, rightly or wrongly, as going beyond this, attempting to play a significant role in curbing undesirable tax planning activities. Compliance with mandatory disclosure requirements can be very costly, and careful cost/benefit analyses of existing requirements and any further similar disclosure rules being considered would be recommended."*

More generally, the CCBE understands that there are doubts regarding the value of such reports for the tax authorities.[13]

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[10] CCBE Guidance on DAC6, 2018.

[11] See for example the call for evidence on Administrative burden – rationalisation of reporting requirements, available here.

[12] "Regulation of intermediaries, including tax advisers, in the EU/Member States and best practices from inside and outside the EU", 2022, available here.

[13] See for example the German Bundestag (BT-Drucks 20/6734) regarding the information on the DAC6 reporting in Germany given in response to a small enquiry by the CDU/CSU parliamentary group, 8 May 2023. According to the Federal Government, the Federal Central Tax Office (BZSt) had received a total of 26,921 reports on cross-border tax arrangements by 31 March 2023. To this date, a total of only 24 cross-border tax structuring models

DAC 6 also imposes such obligations on all professionals, those belonging to professional bodies and those who do not. In this regard, the study mentioned above also argues that "there is concern about the potential for over-regulation especially as there is some suggestion that the bulk of tax evasions/undesirable tax avoidance enabling activities may be occurring among the small pool of tax advisers who are not members of any professional bodies." The study further stresses that "it might seem counter-intuitive to continue to increase the legislative burden on law-abiding intermediaries without tightening entry to the tax advisory market".

Finally, the EU constantly adds new layers of taxation and control (DAC but also Anti-Tax Avoidance Directives) without it having been checked whether the previous measures were useful. These layers create a lot of administrative constraints and put EU businesses at a competitive disadvantage towards for example the United States and Asia.

E. Other remarks

As a general remark, the CCBE regrets that the public consultation has been launched over a period covering summer/holiday months. This factor can have an impact on the availability of various organisations to prepare their contributions and on the level of participation of various stakeholders in the consultation.

The Commission Better Regulation Guidelines[14] set a complementary requirement of sufficient time for participation which requires allowing sufficient time for planning and responses to invitations and written contributions.

In order to be fully in line with the spirit of Better Regulation Guidelines, and in order to increase the chances of obtaining good amount of and good quality contributions, the Commission should consider avoiding publishing public consultations during the months covering holiday period or consider prolonging the period for feedback beyond three months, if this period falls during the holiday months.

have been identified where there is a need for legal or policy action. These 24 cases referred to 4,268 single reports. The BZSt has forwarded the information on these arrangements to the Federal Ministry of Finance (BMF). In these 24 cases, the BMF has informed the tax authorities of the federal states about the results of the analysis, as the tax arrangements reported involved taxes that were wholly or partially due to the federal states or municipalities. No data is available on how many of the cases triggered measures by the tax authorities, such as a tax audit or tax proceedings. There are no findings as to whether additional tax revenue result from combating the identified cross-border tax arrangements.

[14] Commission Better Regulation Guidelines, 2021, available here.