



european contact group

Mr Gerassimos Thomas  
Director General DG TAXUD  
European Commission

Brussels 30 July 2024

Dear Mr Thomas,

**Subject: Evaluation of administrative cooperation in the field of direct taxation: open public consultation and call for evidence**

The European Contact Group (ECG), which brings together the six large professional services networks in Europe (BDO, Deloitte, EY, Grant Thornton, KPMG and PwC)<sup>1</sup>, welcomes the European Commission's initiative to evaluate the functioning of the Directive on Administrative Cooperation (DAC) in line with the better regulation criteria of relevance, effectiveness, efficiency, coherence and EU added value.

We take note of the Directive's goal to enable Member States' tax authorities to obtain comprehensive and relevant information to enable the correct assessment of taxes in cross-border situations and to provide a common system for cooperation between Member States. The ECG also welcomes the renewed focus on a well-functioning internal market. In this context, we are of the view that transparency and administrative cooperation initiatives can best support the functioning of the market when designed, implemented, and interpreted in a coherent manner that is conducive to certainty, and where they do not go beyond what is necessary to achieve those envisioned goals.

Due to the direct impact on our profession of the EU mandatory disclosures rules (MDRs) under Council Directive (EU) 2018/822 (commonly referred to as "DAC6"), our brief comments herein are limited to the fifth amendment of the DAC, but may apply more widely to other measures introduced through the Directive:

- *Proportionality: burden imposed, data quality and actual use:* DAC6 imposes a considerable administrative burden on intermediaries and taxpayers, there is, however, no transparency on the effective use of the information reported. Any obligation or burden imposed on intermediaries or taxpayers should be proportionate and shouldn't go further than what is necessary considering the effective use of the information. In this sense, we would welcome a review of the functioning of DAC6 by an independent body, such as the European Court of Auditors, and an analysis of statistics on the MDR reports received by Member States, with a view to reducing the scope of the Directive to those provisions and data points that are proven to materially assist tax authorities. This would be consistent with the findings of the European Commission's Annual Report on Taxation 2024 which refers to the quality of data exchanged and the actual use as one of the focus areas of the DAC review. We also note the European Court of Auditors' 2021 report<sup>2</sup> on the effectiveness of tax information exchange, which found that large quantities of information are not used by tax administrations –

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<sup>1</sup> See [www.europeancontactgroup.eu](http://www.europeancontactgroup.eu)

<sup>2</sup> European Court of Auditors report: Exchanging tax information in the EU: solid foundation, cracks in the implementation (January 2021) – see [eca.europa.eu/Lists/ECADocuments/SR21\\_03/SR\\_Exchange\\_tax\\_inform\\_EN.pdf](https://eca.europa.eu/Lists/ECADocuments/SR21_03/SR_Exchange_tax_inform_EN.pdf)



referring especially to country-by-country information exchanged under the Directive on Administrative Cooperation (the DAC4). Filtering at data input stage, rather than putting the burden of a subsequent assessment of a high volume of unnecessary data on the tax authorities would help strike a balance between the significant burden placed on taxpayers, intermediaries, and tax administrations, and achieving the objectives of the Directive.

- *Application of the Main Benefit Test (MBT):* in view of the objective of limiting reporting to relevant arrangements we suggest that the European Commission explore the option of extending the application of the MBT to all hallmarks under categories, A, B, C and E (and not only the generic hallmarks under category A, specific hallmarks under category B and under points (b)(i), (c) and (d) of paragraph 1 of category C). According to the preamble to the Directive, the aim of DAC6 is to identify potentially aggressive *tax* arrangements. However, DAC6 reports may be triggered by hallmarks that are not assessed in the light of the MBT. Very often, these will be transactions that tax authorities already have information on (for example from withholding tax and corporate tax returns and filings in relation to a group's transfer pricing policy) and that are carried out for valid commercial reasons that do not have an impact on the taxpayers' tax obligations. Furthermore, absent a tax benefit test, the evaluation of whether an arrangement is reportable is likely to diverge among member states and therefore lead to unnecessary and inconsistent filings, which undermines the objectives of the Directive. A narrow interpretation of the MBT coupled with its application to all hallmarks in sections A, B, C and E would serve in enhancing a coherent application of the rules and in focusing the reporting obligation (and subsequent exchange of information) strictly on those areas that support Member States' ability to safeguard their tax base.
- *Relevance in current environment:* The review of the scope of the Directive and of the Hallmarks under DAC6 should take into account the evolving international tax framework. For example, DAC6 was adopted in 2018, prior to the application of the provisions of the EU Anti-Tax Avoidance Directive (and subsequent amendment), the adoption of the EU Minimum Tax Directive and the implementation by Member States of tax defensive measures against non-cooperative jurisdictions. The combined effect of new substantive tax measures is that the framework within which multi-national companies currently operate on the EU internal market is vastly different from that when the rules were originally put in place.

We place high value in the continued dialogue with policy makers, and the members of the ECG stand ready to support the EU in its analysis. In addition to this general submission on behalf of the ECG, several members of the ECG have indicated their intention to individually provide you with more detailed responses.

We would welcome the opportunity to continue discussions at the earliest convenience.

On behalf of the European Contact Group,

Maurizio Donvito

Chairman of the European Contact Group

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