european contact group

Briefing from the European Contact Group (ECG) on the EU mandatory disclosure rules– recast proposal

The ECG brings together the six largest professional services networks in Europe, providing accountancy, audit, assurance, tax and advisory services. Collectively, the firms within our networks employ more than 300,000 people across Europe in over 300 European cities. The ECG's public interest mission is to contribute constructively to European legislation and policy debates to maintain confidence in the profession and large networks in Europe.[1]

The ECG welcomes the European Commission's initiative to clarify, simplify and improve the functioning of EU rules on administrative cooperation in the field of taxation, with the aim of reducing the administrative burden for relevant stakeholders and supporting the growth and competitiveness of the EU.

We note the Commission's proposal for a Council Directive on administrative cooperation in the field of taxation (recast) – DAC recast proposal. Our observations are, however, limited to the proposed amendments to the existing DAC6 framework (EU mandatory disclosures rules (MDRs) under Council Directive (EU) 2018/822, commonly referred to as "DAC6").

The proposal is an important recognition that DAC6 should be proportionate and focused on information that adds value for tax authorities, particularly where comparable information is already available through other frameworks. The comments below highlight elements of the proposal that are likely to contribute to reducing compliance burdens and promoting greater consistency across Member States, while also identifying opportunities for further simplification.

1 Reducing procedural complexity

We support the proposed extension of the reporting deadline from 30 to 90 days. We are of the view that a 90-day deadline would reduce procedural complexity and the risk of unnecessary multiple reporting, by giving intermediaries and relevant taxpayers a more realistic timeframe to assess the facts, determine whether a reporting obligation arises and identify which person is required to report.

We are also supportive of the proposal to limit the reporting obligations to arrangements that are being implemented, i.e. arrangements in respect of which the first step in implementation has been made. This is a significant and encouraging simplification compared with the current multi-trigger framework.

2 Streamlining the application of hallmarks

We also welcome the proposed removal of the Category A hallmarks in their entirety alongside the removal of the special quarterly reporting requirements for so-called marketable arrangements, reflecting the fact that these features have generated a high volume of disclosures without

[1] The European Contact Group is registered under number 0633841538-63 in the EU Transparency Register.

necessarily providing information that is meaningful.

In addition, consideration may be given to removing or narrowing further hallmarks that are duplicative, low-risk or redundant in light of other EU tax initiatives, or that capture arrangements already known to tax authorities and therefore provide limited additional risk-indication value. Where full removal is not considered feasible, targeted safe harbours could be introduced to exclude arrangements that are purely commercial in nature, expressly contemplated by the legislator, or already subject to equivalent disclosure or reporting under other EU rules.

At the same time, we would caution against introducing additional hallmarks or layering further criteria onto the existing hallmark framework. Tax authorities already have access to substantial volume of public and non-public information, and that information base will increase further with the filling of GloBE Information Returns. In that context, additional DAC6 complexity would be difficult to justify from a proportionality perspective.

3 Application of the Main Benefit Test (MBT)

We note that, whilst the proposal does not introduce substantive changes to the legal scope or definition of the MBT, the Explanatory Memorandum indicates the Commission's intention to provide clearer guidance on the MBT with a view to reducing "defensive reporting" of standard commercial transactions. Should the Commission decide that guidance is indeed necessary, we would welcome guidance that promotes a narrow and operational interpretation and application of the MBT (e.g., clarification that the MBT only refers to tax advantages obtained in EU Member States), with the objective of reducing defensive reporting of standard commercial arrangements and ensuring that the test focuses on situations that genuinely raise tax-risk concerns.

We believe that Member States should be encouraged to commit to interpreting the rules in accordance with such guidance, to ensure EU-wide consistent interpretation and compliance in line with the objectives of the Directive. In addition, based on the statistics provided in the Impact Assessment Report accompanying the DAC recast proposal, we note that a considerable number of DAC6 reports are triggered by hallmarks that are not assessed in the light of the MBT. Very often, there will be transactions that do not have an impact on the taxpayers' tax obligations and will be of no use for tax administrations (e.g., tax-neutral share exchanges and cross-border merges under the EU Merger Directive).

Therefore, we recommend that EU Member States ensure that hallmarks unrelated to the MBT only trigger a reporting obligation where the arrangement affects the taxpayer's tax liability. Absent such a 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.

4 Carve-outs

We commend the recognition in the proposal that there are categories of taxpayers for which the risk of tax avoidance is limited and for which tax authorities already receive significant amounts of information through other reporting and disclosure frameworks. Excluding such cases from the

scope of the MDRs is a helpful step towards a more proportionate and targeted reporting framework. We encourage Member States to explore whether further opportunities exist to reduce reporting obligations in situations where the information value for tax authorities is limited or where comparable information is already available through other sources, thereby ensuring that the MDRs remain proportionate and focused on arrangements that warrant closer scrutiny.

5 Legal professional privilege

As part of future EU-level guidance, we would appreciate clarification of the interaction between the DAC6 framework and national legal professional privilege rules, particularly in light of the case-law developments and the practical differences that remain across Member States. More specifically, clarification would be helpful on the scope of the privilege exception, the notification obligations that apply where privilege is invoked, and the allocation of reporting responsibilities among multiple intermediaries and taxpayers in cross-border situations. Greater consistency in this area would improve legal certainty and reduce the risk of duplicative or missed filings.

Conclusion

We encourage the Council to preserve the ambition of the EU's simplification objectives as the legislative process progresses, ensuring that the final framework remains clear, proportionate and workable in practice and that it targets genuinely high-risk arrangements rather than generating large volumes of low-value disclosures. We place high value in the continued dialogue with policy makers, and the members of the ECG stand ready to support the Commission and the Member States in their analysis.