

Consultation response

Cooperation on Direct Taxation Evaluation



AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3.7 trillion in 2022, directly supports more than 4.9 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

Executive summary

The evaluation of the Directive on Administrative Cooperation (DAC) 2-6 can play a role in enhancing tax transparency, improving the Single Market, and boosting Europe's competitiveness by decluttering tax policy. By ensuring that DACs are fixed standards, and mandating greater transparency for DAC data, lawmakers can improve the DACs' functionality. Likewise, by exempting Pillar 2 companies from DAC 6, and revisiting the administrative requirements and outcomes of reporting under DAC 6, the Anti-Tax Avoidance Directive (ATAD), the Pillar 2 Directive, and the Public Country by Country Reporting (pCbCR) Directive, lawmakers can minimise additional costs for companies and tax authorities alike while sufficiently deterring aggressive tax planning by companies.

Introduction

The Directive on Administrative Cooperation (DAC) 2-6 evaluation provides an important opportunity to increase tax transparency while improving the functioning of the Single Market and Europe's competitiveness. This evaluation is a core component of decluttering tax policy to ensure that Europe remains an attractive place to do business, benefiting European tax authorities and taxpayers alike.

To ensure that that the evaluation contributes to increased transparency as well as to the functioning of the Single Market, the below comments focus on reducing the administrative burden of complying with the DACs for tax authorities and taxpayers.

Comments

General observations

Ensure DACs are fixed standards

Many DAC measures have been implemented as minimum standards across the EU, which contributes to fragmented implementation, increasing compliance costs and uncertainty for taxpayers. Such fragmentation is particularly visible in the implementation of DAC 4 (country-by-country reports) and DAC 6 (reportable cross-border arrangements presenting an indication of a potential risk of tax avoidance).

Any changes to the DACs, and any future DACs (such as DAC 9, focusing on Pillar 2 exchange of information) should be based on a **single fixed standard** that is **consistently implemented by Member States**.

Provide greater transparency for the use of DAC data

Companies have invested significant resources into building systems and processes to comply with the DACs. For example, companies have had to build systems to collate Country by Country Reporting data under DAC 4 as well as undertake due diligence to evaluate whether transactions are reportable under DAC 6. However, it remains unclear how tax authorities are using the data reported to them –

if at all. Accordingly, the benefits are unknown. Greater transparency around the use of data reported in accordance with the DACs would be welcome.

Directive on Administrative Cooperation 6

Exempt Pillar 2 companies from DAC 6

Large companies in Europe will pay a minimum 15% effective tax rate in each jurisdiction as a result of the EU adopting the Pillar 2 Directive. Due to overlap with elements of the Pillar 2 Directive, several other DAC measures will appear redundant for these businesses. As such, any review of the DACs should consider what purpose they serve over and above Pillar 2.

Exempting companies in scope of Pillar 2 from large parts of the DAC would ease compliance burdens significantly. For example, companies falling under the scope of Pillar 2 should be exempt from DAC 6 (targeting potentially aggressive tax planning), which is already addressed by Pillar 2.

Further streamline and clarify DAC 6

The co-legislators should further refine DAC 6 to support all other companies not subject to Pillar 2. At present, DAC 6 puts undue burdens on taxpayers in several ways. Efforts to further align DAC 6 with the Anti-Tax Avoidance Directive (ATAD) would decrease burdens on taxpayers and could likely accomplish the goals stipulated in the Unshell Directive Proposal.

DAC 6's burdens are well illustrated by the frequent perception that it is a tax disclosure measure for intermediaries, like external advisers, as one of its goals is to dissuade intermediaries from designing, marketing and implementing harmful tax structures. However, its implications stretch far beyond external advisers by placing significant administrative compliance burdens on taxpayers who, in many cases, carry the reporting obligation. These compliance burdens, coupled with intermediary fees, create inefficiencies and additional costs for taxpayers.

Likewise, DAC 6's hallmarks are often unclear or difficult to apply in practice. For instance, uncertainties related to Hallmark E3 – which concerns internal reorganisations within a group – cause the projected earnings before interest and taxes (EBIT) of the transferring entity or acquiring entity to decrease by more than 50% over a period of three years. It is particularly challenging to provide the required forecasted earnings when these transactions involve holding companies, since this forecasting is typically not undertaken by multi-national enterprises for holding companies.

In terms of efficiency, while DAC 6 achieves tax transparency objectives, it comes at the cost of significant extra work for intermediaries and taxpayers alike. The European Commission should revisit the hallmarks to identify areas of uncertainty and difficulty as well as look for ways to limit costs for taxpayers.

Use existing legislation to accomplish the Unshell Directive's goals

The EU has an entire suite of existing tools to reduce harmful tax structures and enhance transparency. In addition to the DACs, the existing ATAD suites 1 and 2 and the Pillar 2 Directive provide sufficient

deterrence for aggressive tax planning by corporations. Similarly, the Public Country-by-Country Reporting Directive imposes further tax transparency across the EU.

With these measures in place, it is not necessary to introduce the Unshell Directive to address tax avoidance by companies, either in directive or DAC form. The Unshell Directive is designed to tackle the misuse of shell entities for tax avoidance or tax evasion, but with so many measures already in place, it would only create more administrative burden and compliance costs for companies without bringing adding value to tax transparency and the prevention of harmful tax practice.

The ATAD and the Pillar 2 Directive sufficiently address tax avoidance and cross-border tax challenges. The European Commission should focus its efforts on streamlining and honing obligations among this suite of anti-avoidance tools instead of introducing duplicative requirements that lack added value for tax authorities.

Any additional compliance burdens, like those implemented through an Unshell Directive or DAC equivalent, should be carefully designed to ensure that there are no additional burdens on taxpayers.

Conclusion

The DAC 2-6 evaluation provides a strong opportunity to study how information collected under the DACs are used, and to streamline existing reporting requirements in order to alleviate burdens for taxpayers and tax authorities alike.

By ensuring that DACs are implemented as fixed standards and by providing clarity on information usage, the EU can make progress on reducing compliance costs and uncertainties.

Likewise, revisiting the reporting requirements under DAC 6, ATAD, the Pillar 2 Directive, and pCbCR, the Commission could provide the opportunity to streamline and hone reporting related to anti-tax avoidance without introducing new legislative initiatives.

Together, these strategic adjustments will ensure a more efficient, attractive and pro-growth tax environment in the EU.