



# Opinion statement

Dear Sir/Madam,

CFE Tax Advisers Europe has issued an [Opinion Statement](#) on the EU proposal on fighting the use of shell entities and arrangements for tax purposes (Unshell or ATAD3 proposal). CFE Tax Advisers Europe welcomes the work of the European Commission in seeking to reduce tax evasion throughout the EU, the aim of which CFE has always fully supported.

In seeking to support the Commission in this objective, CFE wishes to highlight the potential issues in practice raised by the proposed Directive, noting that the application of the existing anti-avoidance measures within the EU has become very complex in recent years. While CFE embraces the objectives expressed by the unshell proposal, it has concerns about the manner in which this draft directive intends to achieve these objectives and doubts whether these objectives will actually be achieved. This opinion statement elaborates these concerns and proposes alternative solutions that would, in the view of CFE, be more proportionate and suitable to achieve ATAD3's objectives and ensure compliance with primary EU law.

The proposed Directive seems to ignore the fact that transfer pricing and CFC rules already deal with the very issues that it is purporting to address. Indeed, the past few years have seen the implementation of a trove of EU and broader international measures designed to counteract certain perceived abusive practices. These include the Multi-Lateral Instrument ('MLI'), limiting access to treaty benefits (PPT), EU Mandatory Reporting (via DAC 6), as well as two EU anti-tax avoidance directives ('ATAD'), comprising rules on CFCs, interest deductibility, anti-hybrid arrangements, exit taxes and general anti-avoidance. The effectiveness of these rules is yet to be fully seen. In the opinion of CFE, the proposed directive seems to assume that abusive situations persist, without having allowed these measures sufficient time to prove their relevance.

CFE suggest a different approach in respect of addressing the outstanding issues raised by shell entities:

- Introduce another iteration of the DAC directive by way of enhancing transparency between Member states and taxpayers, limiting the proposed directive to exchange of information (i.e. by removing the proposed articles 11 and 12);
- Create a list of Member states that have introduced the Principle Purpose Test (PPT) in their respective double tax treaties;
- Invite the European Commission to use the powers conferred on it by Article 258 of the Treaty on the Functioning of the EU to enforce the compliance by Member states with their obligation to prevent the avoidance of EU legislation (i.e. ATAD) and to do so in a manner that is compliant with primary EU law and settled ECJ case-law.

We invite you to read the [Opinion Statement](#) and would welcome any feedback or queries concerning the position paper.

Kind regards,

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