

European Commission  
Attn Mr Gerassimos Thomas  
Director General  
DG TAXUD

Sent by email: [Gerassimos.thomas@ec.europa.eu](mailto:Gerassimos.thomas@ec.europa.eu)

Amsterdam, October, 12th, 2022

Subject: NOB reaction on EU Commission public consultation in SAFE directive (Securing the activity framework of enablers)

Dear Mr Thomas,

The Dutch Association of Tax Advisers (de Nederlandse Orde van Belastingadviseurs, hereinafter NOB) has noted with interest the options being considered by the Commission 'to improve a regulatory framework for tax intermediaries', through a legislative proposal to tackle the role of 'Enablers' that facilitate tax evasion and aggressive tax planning in the European Union (Securing the Activity Framework of Enablers – SAFE).

With this letter we would like to respond to the consultation document by referring to CFE Tax Advisors Europe (CFE) comments on the consultation which the NOB fully endorses.

With the CFE, we believe that it is not sufficiently clear whether there is still a problem for which a solution should be found in additional legislation. The problem definition in the questionnaire seems to be based on outdated information as far as aggressive tax planning is concerned.

Tax avoidance and aggressive tax planning seems to have been dealt with quite successfully in recent years. In recent years, the EU, OECD and individual Member States have implemented measures to "enhance the fight against tax evasion and aggressive tax planning". Measures with concrete tax effects include ATAD1, ATAD2 and the MLI. Further on, measures have also been taken in the field of mandatory disclosure and information exchange. Most notably in that respect, is DAC6, DAC7 and the upcoming Unshell Directive. It should in our view first be assessed what an additional measure, addressing the role of enablers, would contribute to the fight against tax evasion and aggressive tax planning. The most appropriate (and proportionate) way forward would be to first assess whether the existing framework for the fight against tax evasion and aggressive tax planning could be enhanced, instead of proposing a new measure. This could prevent an accumulation of multiple measures that essentially aim to achieve the same goal.



The NOB endorses CFE's recommendation to undertake further analysis of the nature and extent of the problem to help better defining any measures eventually proposed and that no additional legislative action is taken by the European Commission in this area until such analysis has been performed.

We think, the most appropriate and proportionate measure is to re-assess the existing framework for the fight against tax evasion and aggressive tax planning. Generally, evasive and aggressive structures would fall within the scope of the mandatory disclosure rules (DAC6). The DAC6 rules potentially offers a useful and powerful tool in the fight against tax evasion and aggressive tax planning. Re-assessing the existing framework would prevent an accumulation of multiple measures that essentially aim to achieve the same goal. Due diligence procedures are similar to what is already in place in other sectors (such as trust companies; bank letters). Tax advisers should have procedures in place to prevent aggressive tax evasion and aggressive tax planning. Such procedures can however not be regulated under binding law throughout the EU. It requires a case-by-case assessment that depends on a multitude of factors (jurisdictions involved, businesses involved, etc.). The EU could for example provide guidance in the form of a recommendation on how these procedures should function and what practices they would capture, but it would not be proportionate to harmonize these procedures throughout the EU.

In this respect we would like to draw your attention to the [NOB Code of Conduct](#) and [NOB Tax Principles](#). These Tax Principles, which have been introduced last year, describe what is expected from and applies to NOB members in their role as advisers. All NOB members are expected to observe these principles in their advice. The Tax Principles are an integral element of the professional rules of conduct and are included in compulsory continual professional development and in the self-assessment to be conducted from 2022 onwards.

We trust our comments are useful in your call for evidence. If you have any questions or would like to discuss in more detail, do not hesitate to contact us.

Yours sincerely,

The Dutch Association of Tax Advisors

A handwritten signature in blue ink, appearing to read 'Sylvia Dikmans', is written over a faint, light blue circular stamp or watermark.

Sylvia Dikmans  
secretary

