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Fighting the use of shell entities and arrangements for tax purposes

Fields marked with * are mandatory.

1 Introduction

Several actions taken by the EU over recent years have provided new powerful instruments to tax administrations to tackle the use of abusive (often purely artificial) and aggressive tax structures by taxpayers operating cross-border to reduce their tax liability. However, even after these important developments, legal entities with no or only minimal substance, performing no or very little economic activity continue to pose a risk of being used in aggressive tax planning structures. Such risks of misuse expand to legal arrangements. This is possible because, while substance of legal entities is addressed by the Code of Conduct Group on Business Taxation within the context of specific preferential tax regimes, there are no EU legislative measures which define substance requirements for tax purposes to be met by entities within the EU. Recent investigations conducted by a consortium of journalists brought the issue again to the attention of the general public with a more pressing request to act at EU level to end this practice.

The issue at stake is the use of legal entities with no or minimum substance and no real economic activities, by taxpayers operating cross-border to reduce their tax liability. While entities with no substance and no real economic activities can be used for different abusive purposes (including for criminal ones, e.g. money laundering, terrorist financing, etc.), this initiative would focus on situations where the ultimate objective is to minimise the overall taxation of a group or of a given structure. The European Commission has received several complaints and requests for action from the European Parliament, from citizens, NGOs, journalists and the civil society in general.

In line with Better Regulation principles, the Commission has decided to launch a public consultation designed to gather stakeholders' views on the possible improvements to the EU legal framework in this field.

Responding to the full questionnaire should take about 30 minutes. The questionnaire aims to capture views from all stakeholders on the use and misuse of shell entities and arrangements in the EU for tax purposes. Stakeholders' responses will help the Commission determine if an EU initiative to target shell entities and their misuse for tax purposes is needed as well as its most appropriate design features. The replies will also help identify the main risks as perceived by stakeholders, as well as the priorities for policy actions.

2 About you

* 2.1 Language of my contribution

- ○ Bulgarian
- ○ Croatian
- ○ Czech
- ○ Danish
- ○ Dutch
- ◉ English
- ○ Estonian
- ○ Finnish
- ○ French
- ○ German
- ○ Greek
- ○ Hungarian
- ○ Irish
- ○ Italian
- ○ Latvian
- ○ Lithuanian
- ○ Maltese
- ○ Polish
- ○ Portuguese
- ○ Romanian
- ○ Slovak
- ○ Slovenian
- ○ Spanish
- ○ Swedish

* 2.2 I am giving my contribution as

- ○ Academic/research institution
- ◉ Business association
- ○ Company/business organisation
- ○ Consumer organisation
- ○ EU citizen
- ○ Environmental organisation
- ○ Non-EU citizen

- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

* 2.4 First name

Jana

* 2.5 Surname

Bour

* 2.6 Email (this won't be published)

j.bour@epra.com

* 2.10 Organisation name

255 character(s) maximum

EPRA - European Public Real Estate Association

* 2.11 Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

2.12 Transparency register number

255 character(s) maximum

Check if your organisation is on the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making.

09307393718-06

* 2.13 Country of origin

Please add your country of origin, or that of your organisation.

- Afghanistan
- Åland Islands
- Djibouti
- Dominica
- Libya
- Liechtenstein
- Saint Martin
- Saint Pierre and Miquelon

- Albania
- Algeria
- American Samoa
- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan
- Bolivia
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Lithuania
- Luxembourg
- Macau
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar/Burma
- Namibia
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden

- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States

- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Czechia
- Democratic Republic of the Congo
- Denmark
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Lesotho
- Liberia
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Saint Helena Ascension and Tristan da Cunha
- Saint Kitts and Nevis
- Saint Lucia
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and Futuna
- Western Sahara
- Yemen
- Zambia
- Zimbabwe

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○ **Anonymous**
Only organisation details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.

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3 Problem definition, policy options and impacts

3.1 Despite the recent introduction of new measures against tax avoidance in the EU, tax avoidance seems to remain a problem. Please consider the **relevance of the following possible causes.**

	very relevant	relevant	neither irrelevant nor relevant	not relevant	not relevant at all	no opinion
Inadequate legislation on tax avoidance	○	○	○	◉	○	○
Insufficient information of tax administration on potential tax avoidance structures	○	○	○	○	◉	○
Insufficient capacity of tax administration to process the available information on tax avoidance structures	○	◉	○	○	○	○
Insufficient cooperation between EU Member States	○	◉	○	○	○	○
Insufficient enforcement of existing legislation in Member States	○	○	○	◉	○	○

3.2 The **EU toolbox to fight tax avoidance** has been recently enhanced and new tools came into effect from 2019 and 2020. With which of the following statements do you agree?

- (●) The impact of the new measures is not quantifiable yet. The EU should wait before taking new measures to fight tax avoidance until the impact of the existing measures is measurable.
- ( ) While the impact of the new measures is not quantifiable yet, there is margin for improvement. The EU should take action to complement the existing framework as soon as possible.

3.3 **"Shell" or "letterbox"** entities is a term often used in the tax area to describe **entities with little or no substance** in their place of establishment or elsewhere. Do you agree with this definition?

- ( ) yes
- (●) no

3.4 Please explain your reply.

We note that there is no uniform definition of a ‘shell’ or ‘letterbox’ entity at the moment. These terms are often used by different people to describe different things.

Furthermore, we note that the description in the question 3.3 does not seem appropriate. In fact, it seems to be biased and too much aiming at ‘public/political success’, without paying attention to potential valid business or economic arguments for the existence of such entities within corporate structures. For example, under the above description, most of the special purpose entities in the infrastructure and real estate business that have no employees but have specifically tailored (although limited) economic activities in that jurisdictions would be considered as ‘shell entities’. This would be notwithstanding the fact that they would have been established for a legitimate business purpose.

Regarding the above, we would like to suggest that the Commission first investigate the business landscape of ‘shell entities’ in Europe, look deeper as to whether there is an actual problem to be addressed (whether and to what extent are the shell companies in Europe being used to precisely avoid taxes rather than for valid businesses purposes) and whether existing (newly adopted and recently incorporated EU rules) rules and legal provisions have already addressed the problem at hand.

3.5 Please indicate the extent to which you agree or disagree with the following statements

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	No opinion

Shell entities are used in the EU mostly for **abusive tax purposes**.	○	○	○	○	◉	○
Current EU rules in the field of taxation already provide tools to tackle aggressive tax planning schemes including through the use of shell entities.	◉	○	○	○	○	○
Current EU rules cannot fully and effectively address the use of shell entities for tax avoidance purposes.	○	○	○	○	◉	○
While the **EU legal framework includes adequate rules** to address the use of shell entities for tax purposes, they are n**ot properly implemented and monitored**	○	○	◉	○	○	○

3.6 Can you provide examples of how shell entities are or can be used in an abusive manner for tax purposes?

We note that this question again seems to be biased, as no example is sought for 'shell entities' with legitimate purpose. It would be preferable if the Commission sought to understand both abusive and legitimate use of the 'companies with little substance' so that it can then target in any possible action to those situations which lead to abuse of the 'shell companies' for tax purpose. At the moment, we note that that the questionnaire should be more open-ended and should not guide respondents to specific answers as the purpose of this public consultation is to gather more data and information.

We list a few examples of 'shell entities' established for use in a legitimate and economic way (not in order to abuse tax):

o Real estate group A, based in country A, sells a real estate portfolio in country B, held via a subsidiary in country A, to real estate group C, based in country C; after that, real estate group C holds a real estate portfolio in country B via a subsidiary in country A (a legitimate business transaction)
o A real estate group wishes to issue a bond e.g. to finance a new development of a green asset. Then typically, a special purpose vehicle is established which will not have any employees. This is largely because employees are unnecessary as the operating functions of such special purpose entities are small and the activities are often ringfenced and may be outsourced (project entities).

Based on the current lack of uniform definition of "shell" entities, many legitimate entities in real estate may be viewed as shell entities. However, they nevertheless provide an essential platform for EU investors to provide capital to EU companies. This is done in a safe and well-regulated manner with rigorous investor protection rules governed by EU directives. They should not be designated as shell entities which are used for the purpose of tax abuse.

3.7 In your opinion, to what extent the following **elements could indicate that a certain entity could be considered a shell entity** for tax planning purposes? Please select one value for each element.

	Very indicative	Indicative	Neither indicative nor not indicative	Not indicative	Not indicative at all	No opinion
Use of trust and company service providers	○	○	○	◉	○	○
Low number of employees	○	○	○	◉	○	○
Lack of own premises	○	○	○	◉	○	○
Lack of own bank account	○	◉	○	○	○	○
Passive income as main source of income (rents, interests, royalties etc.)	○	○	○	○	◉	○
Outsourcing of income generating activities	○	○	○	◉	○	○
Mostly foreign sourced turnover	○	○	○	○	◉	○
Majority of directors non-resident	○	○	○	◉	○	○

3.8 Can you indicate commercial rationales that justify the establishment and operation of shell entities?
Can you provide concrete examples?

There are many commercial reasons (financing, operational efficiencies, ring fencing different investments etc.) to use passive holding companies in a real estate structure (see examples in Q 3.6. e.g. acquisition of a portfolio held via entity in another country).

When setting up a real estate portfolio, it's perfectly normal to have a "one entity [special purpose vehicle] per one (smaller) object" approach, or order to:
(1) limit responsibility (risk management),
(2) increase flexibility in case of future disposal,
(3) requirements from banks for not mixing up properties (ring-fencing), etc. etc.
What should be important in this context is that a group structure has legitimate business objectives.

As for the listed real estate industry, we would like to point out that, by its very nature, real estate cannot be moved cross border and therefore income from real estate is taxed in the country in which the property is located. In the real estate sector, parts of a (bigger) real estate object were in the past acquired from various owners, often in the form of acquiring the respective entities owning the parts (indirect investments in real estate); as a result, not all companies will have full "substance" in every jurisdiction. These are particularly true for real estate businesses which are operating across the borders of the EU member states, i.e. within the single market. To unintentionally penalise such business operations would significantly and negatively affect the real estate sector's appetite to scale up and grow their international business, which would then equally significantly affect their abilities to raise funds to finance e.g. energy efficiency retrofit projects or to continue on developing new 'green' assets (i.e. objectives of the EU Taxonomy).

In addition, administration companies are used by real estate groups to enter into all contracts including for employees, offices etc. These are often separate from holding companies for commercial reasons, including those above. Therefore, focusing on substance in a standalone company is too limited in scope. Substance should be considered on a group basis.

Whilst understanding the wider reasoning behind the consultation we need to be very careful that real estate, infrastructure and many other compliant businesses are not caught unintentionally. There has been a huge amount of tax law change in recent years that has added a significant compliance burden to businesses, which negatively impacts productivity and, at worse, the desirability of investing in the EU.

3.9 Which of the following **business activity** do you consider most likely to be performed by shell entities for tax purposes? You can indicate several replies.

- ☐ Banking activities
- ☐ Insurance activities
- ☐ Financing/leasing activities
- ☐ Holding and managing equity
- ☐ Holding and managing real estate
- ☐ Holding and managing IP assets
- ☐ Headquarters services

- [ ] Investment Fund Management
- [ ] Shipping
- [ ] Off-balance structures

3.10 Please provide examples of any other business activity you consider likely to be performed by shell entities for tax purposes. Please consider for instance situations where a company receives types of income not related to its main business activity (e.g. interests, royalties etc. received by logistics or sales companies).

This question seems to be biased. Based on existing legislation, in today's world it's already quite hard (if possible at all) to have specific shell entities be incorporated for tax purposes only.

To our knowledge, tax authorities apply anti-abuse principles based on a GAAR (general anti abuse rule) or specific rules, as for example anti-treaty shopping rules for withholding tax refunds. Tax authorities and Tax /Fiscal courts apply principles and interpretation if and when entities are not to be treated as valid entities for tax purposes lacking the functions that they are aimed at or established for. In what is suggested to be a possible definition of 'shell entities', all these suggested entities (vehicles, arrangements, phenomenon) would be tested under GAAR and similar rules already. The European Court of Justice (ECJ) already introduced concepts for beneficial ownership matters, i.e. situations where shell entities could not be considered as owners of the functions intended (C-115 -119/16 and 299/16, "Danish beneficial ownership cases"). The ECJ has also carefully considered and ruled principles to define which criteria can be used to tackle entities with low substance/shell entities or not in light of the European Constitutions Freedoms (C-440 /17 (GS) 14.6.2018 ; C-504/16 (Deister Holding, C-613/16 (Juhler Holding).

Furthermore, the EU had established DAC 6 to report timely on tax driven structuring which would always include what is assumed as 'shell entities' use. In addition, EU territories implement the Principal Purpose Test (PPT) as designed by the OECD for the Multi-Lateral Instrument (MLI) as under Art.6 BEPS; and apply legislation against improper use of entities following the List of non-cooperative countries. Most importantly, Art.6 ATAD provides for GAAR implementation in the EU.

From the above it appears that there are already too many "weapons" based either on multi-lateral or unilateral rules (national or EU) in place. We believe another definition and criteria catalogue under a new label of "shell entities " would absolutely change nothing, but add confusion for the taxpayers and tax authorities practice as every single case has to be analysed on its own merits under multiple measures.

3.11 Which of the following **legal forms** do you consider likely to be used to create or operate shell entities that will be used for tax purposes? You can indicate several replies.

- [ ] Companies
- [ ] Partnerships with legal personality
- [ ] Partnerships without legal personality
- [ ] Foundations
- [ ] Trusts or fiduciary

- [x] Other

3.12 Please explain your response to the previous question and provide examples.

For 3.11, no specific answer could be found (none of the listed options are more likely to be abused for tax purposes), hence the “other” has been chosen.

3.13 While Small and Medium Enterprises (SMEs) can also be or make use of shell entities for tax avoidance purposes, an initiative targeting shell entities could risk to put a burden on genuine small business.

For a future intervention, which of the following options would you consider **most appropriate to alleviate any negative spill-overs to SMEs?**

- [ ] Use thresholds (e.g. on turnover or income) to exclude SMEs from the scope of such initiative
- [ ] Include SMEs within the scope of such initiative only to the extent they perform mobile activities
- [ ] No need for specific rules for SMEs
- [x] Other

3.14 Please elaborate if you replied "other" to the previous question.

Against the background of the already existing legislation, negative spill-overs for all companies should be avoided. We do not agree with a practice to assume that all entities exceeding a specific turnover should be automatically considered as “bad guys” – abusive for tax purpose. If there is a real wish to avoid negative spill-over, then it should be looked at to only focus on those activities that are mostly “at risk” – but actually, for those entities there are already specific arrangements which have been included in previous European Directives (e.g. GAAR under the ATAD, DAC6). See also the answer to Q3.10.

In addition, we note again that it would be welcomed to provide at this stage questions which are being open-ended to allow for true collection of views and experiences, rather that providing for a set of answers.

3.15 In a scenario where an entity is found not to have substantial economic activity (e.g. because it has some of the features indicated under Q.3.6) in the Member State of residence, in your view, what would be the **most appropriate consequences?**

You can tick more than one reply

- [ ] Denial of any tax advantages/benefits (e.g. relief from double taxation, deductibility of costs, application of of tax treaty benefits) for the entity
- [ ] Denial of any tax advantages for the group of entities to which the shell entity belongs

- [ ] Increased audit risk
- [ ] Making data on the shell entities public (e.g. list of shell entities)
- [ ] Monetary sanctions on the entity
- [ ] Monetary or other sanctions on the directors
- [ ] Monetary or other sanctions on the beneficiaries
- [x] Consequences to be determined by Member States as they deem fit
- [x] Other

3.16 Please elaborate.

We chose ‘other’ as we would like to advise against making the link much too easily or simplistically between ‘shell entities’ and abusive use for tax.

That being said: if an entity in the end would have no economic activity, nor any economic function, whereas the same applies to the group to which the entity belongs, then it would be logical to have that leading to a result that would have been reached if the entity would be based in “the other” country/the country where the group is based.

3.17 The use of shell entities for tax avoidance purposes can have impacts. In your view which ones are the **most relevant impacts?**
You can tick more than one reply.

- [ ] Member States do not have the necessary resources to implement public policies
- [x] Tax burden is distributed unfairly within the society, at the expense of compliant and/or low income taxpayers.
- [ ] Unfair competitive disadvantage to tax compliant entities
- [ ] Unfair competitive disadvantage to SMEs that have less access to cross-border tax avoidance structures
- [ ] Other impact
- [ ] No opinion

3.19 Are you aware of any **existing national rules** targeting specifically the use of shell entities for tax purposes? Please provide reference.

We are aware of for instance Dutch rules defining minimum requirements for “substance”; or Italian rules defining minimum yield for certain assets for smaller non-listed companies.

We also refer to the new Polish rules as being particularly burdensome and too narrow. The new rules constitute very much a check list exercise. We also point out that an entity abusing the rules will spend a deal of time to answer yes, whereas compliant businesses face a true large burden, cost and uncertainty. Such rules may lead to businesses to decide not to invest in certain jurisdictions. This should be avoided, particularly considering the amount of recent legislation (see again Q3.10) which has already been introduced to address the situations where entities are established for tax abusive purposes.

3.20 **Coordination at EU level**, e.g. on what qualifies as shell entity for tax purposes and how should be treated in terms of taxation, is fundamental to tackle the problem of shell entities in the internal market.
How much do you agree with this statement?

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3.21 Please provide other **reasons** for which you consider **that the EU should take action** to enhance the fight against tax avoidance through the use of shell entities.

Regarding question 3.20 above, we would like to add that what is very important is to define the issue to be tackled which should not be the existence of shell entities as such, but the abusive use of shell entities. We should focus on the group of entities in a country rather than the standalone company within such context. In addition, we should be looking at the internal market as a SINGLE market to enable legitimate businesses to expand and growth beyond the individual EU member states.

We would like to add that the listed real estate sector represent a liquid, transparent and professionally managed asset class which allows for diversified exposure to real estate returns over the medium to long-term and high cash dividends. Fourteen European countries have already recognised a public benefit to incentivise real estate investment through public markets and have introduced 'Real Estate Investment Trusts' (REIT) legislation to maximise returns through an effective tax pass-through (https://www.epra.com /application/files/2816/1408/1959/EPRA_REITs_Leaflet_V9.pdf).
We highly recommend that the Commission is continuing to strive for a greater harmonisation, including in tax, and particularly work towards a mutual recognition of REIT legislation within the internal market. This way, the EU would contribute to creating a sound regulatory environment in which the businesses in listed real estate could continue to expand and growth within the EU single market in a sound manner.

More is available at https://prodapp.epra.com/media /EPRA_letter_on_'Cross_border_Property_Investments_and_European_REITs'_-_March_2020_signed_1583763208368.pdf.

Besides, regarding the question 3.21, we believe that no EU action is necessary at this stage and that we should allow time for recent anti-avoidance measures (as listed in Q3.10) to have an impact and also to fully investigate whether and to what extend are the shell companies still being used in the EU for the purpose of tax abuse.

If nevertheless, the Commission considers to take action, then we propose the following:
1. Allow time for recent anti-avoidance measures to have an impact;
2. Promote effective implementation and enforcement of the existing anti-tax avoidance tools;
3. Undergo a thorough investigation on whether and to what extent the shell companies in the EU are still being abused for tax avoidance.

If such actions, upon a thorough investigation of the issues, which are to be the abusive use of 'shell companies' for tax purposes, are proven to continue to exist within the EU, then we suggest the following actions:
1) Define the issue at hand, meaning that instead of focusing on all shell companies, the focus will be on those which are used for tax avoidance;
2) If all companies defined as 'shell entities' within EU are to be covered in the set of new rules (yet to be created), then they should be at the same time exempt from any existing anti-avoidance measures;
3) Use a look through approach, until you reach a country of substance;
4) Use a group approach per country rather than focusing on standalone SPVs.

3.22 Please provide other **reasons** for which you consider **that the EU should not take action** to enhance the fight against tax avoidance through the use of shell entities.

As above. Recent anti-avoidance measures introduced (e.g. anti-hybrid, interest capping, and all Q3.10) should effectively protect against tax base erosion by real estate and other investors. These law changes are very recent and time is needed to see if they are fully effective before introducing further measures.

3.23 **If the EU took new action** targeted at the use of shell entities for tax avoidance purposes, which of the following **objectives** should be pursued in priority?
You can tick more than one reply.

- [ ] Provide more incentives for voluntary tax compliance to taxpayers akin to use shell entities.
- [x] Promote effective implementation and enforcement of the existing anti-tax avoidance tools.
- [ ] Ensure coordination of all Member States on what qualifies as shell entity for tax purposes and how it should be treated in terms of taxation.
- [ ] Promote transparency on shell entities across the EU.
- [ ] Monitor the implementation by Member States of any new EU rules targeted at shell entities.
- [ ] All of the above
- [x] Other

3.24 Please indicate other objectives that should be pursued.

As stated, the EU should, on the one hand, first use and assess the (long) list of anti-abuse measures that have been enacted recently and, on the other hand, continue to strive for (more) (tax) harmonization and a mutual recognition of REITs (as per our comments on the Q3.20.

3.25 Please provide here any comments regarding your response to the previous question and available examples.

No comment.

3.26 **If the EU took new action** to target the use of shell entities for tax avoidance purposes, which of the following **means** do you consider most likely to be effective?

- ( ) New EU action should be primarily of soft law nature so as to take into account the specific circumstances of each case and the situation of each Member State.

- ○ New EU action should be of hard law nature, i.e. a new EU Directive. This would ensure the necessary level of coordination in the EU to effectively tackle the problem.

3.27 Please describe any other means or combination thereof that the Commission should consider for EU action in this field.

See also 3.23 & 3.32.
Questions 3.26 and 3.29 do not provide for an appropriate answer we would wish to suggest. Please see EPRA answer to Q 3.21.

3.28 **If the EU took no further action in the short-term** to target the use of shell entities for tax avoidance purposes, which of the following **scenarios** do you consider most likely?

- ◉ Member States are keen to implement the existing tools against shell entities. In a few years they will have gained the necessary experience to tackle the problem themselves.
- ○ Without EU action targeted at shell entities, the problem will remain.

3.29 If **new requirements** were imposed on EU taxpayers and tax administrations to tackle the use of shell entities for tax avoidance purposes, what would be the **main economic impact** in your view?
You can tick more than one reply.

- ☐ Tax collection across the EU would increase.
- ☐ Resource allocation across the EU would be optimised through better distribution of tax burden.
- ☐ Competitiveness of the internal market would increase.
- ☐ Competitiveness of individual companies would increase.
- ☐ Shell entities would be moved and set up outside the EU to maintain tax avoidance structures.

3.30 Please describe any **further major impacts** you consider likely to arise from a new EU action against shell entities, towards the above stakeholders (taxpayers, tax administrations etc.) or other.

Please, consider the implications (unintended consequences) on the complying companies:
o Further increase of unnecessary tax compliance, leading to additional costs and hence lower profits, meaning lower taxes as those are calculated on those profits.

Compliance burden is increasing for compliant businesses which should be avoided.

3.31 If new **monitoring mechanisms** were envisaged to check Member States' implementation of tax avoidance rules against shell entities, what would be the **main consequence** in your view?

- [ ] A level playing field would be encouraged. Member States would have more incentives to implement effectively the rules.
- [x] Member States would face a new burden, while instead they should be free to implement the rules as best fits with their legislation and practice.

3.32 Please select which of the following you would consider to be an **effective monitoring system** as regards Member States' implementation of EU rules to fight tax avoidance.
You can tick more than one reply.

- [ ] Peer review mechanism, e.g. in the context of Code of Conduct Group on Business Taxation
- [ ] Regular publication of anonymized data on compliance of entities in each Member State and on enforcement actions (audits performed, sanctions imposed)
- [x] Commission scoreboard on Member States' performance on the basis of regular reporting by Member States to the Commission
- [ ] Other

4 Final remarks

Although not necessary, you can upload a brief document, such as a position paper in case you think additional background information is needed to better explain your position or to share information about data, studies, papers etc. that the European Commission could consider to prepare its initiative.

Please note that the uploaded document will be published alongside your response to the questionnaire, which is the essential input to this public consultation. The document is optional complement serves as additional background reading to understand your position better.

In case you have chosen in the section "About you" that your contribution shall remain anonymous, please make sure you remove any personal information (name, email) from the document and also from the document properties.

4.1 Please upload your file

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

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