

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

Philipp

* 2.5 Surname

Gmoser

* 2.6 Email (this won't be published)

p.gmoser@bdi.eu

* 2.10 Organisation name

255 character(s) maximum

Federation of German Industries

* 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.

1771817758-48

* 2.13 Country of origin

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

- | | | | |
|-------------------------------------|--------------------------------|-------------------------------------|--|
| <input type="radio"/> Afghanistan | <input type="radio"/> Djibouti | <input type="radio"/> Libya | <input type="radio"/> Saint Martin |
| <input type="radio"/> Åland Islands | <input type="radio"/> Dominica | <input type="radio"/> Liechtenstein | <input type="radio"/> Saint Pierre and
Miquelon |

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

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

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

The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, ‘business association’, ‘consumer association’, ‘EU citizen’) country of origin, organisation name and size, and its transparency register number, are always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

* 2.15 Contribution publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

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.

Public

Organisation details and respondent 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. Your name will also be published.

I agree with the [personal data protection provisions](#)

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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Insufficient information of tax administration on potential tax avoidance structures	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Insufficient capacity of tax administration to process the available information on tax avoidance structures	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Insufficient cooperation between EU Member States	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Insufficient enforcement of existing legislation in Member States	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

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.

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 .	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Current EU rules in the field of taxation already provide tools to tackle aggressive tax planning schemes including through the use of shell entities.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Current EU rules cannot fully and effectively address the use of shell entities for tax avoidance purposes.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

While the **EU legal framework includes adequate rules** to address the use of shell entities for tax purposes, they are **not 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?

An abusive manner of usage of a shell company would mean that the DEMPE functions are not in line with the remuneration of the shell company meaning that Transfer Pricing is not conducted at arm's length

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	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Low number of employees	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lack of own premises	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lack of own bank account	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Passive income as main source of income (rents, interests, royalties etc.)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Outsourcing of income generating activities	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mostly foreign sourced turnover	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Majority of directors non-resident	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

Can you provide concrete examples?

- The establishment of a shell company preceding any operations can help to start a new business activity quicker, as the required corporate veil is already available.
- Holding companies can be used to keep the nitty gritty of shareholder activities out of AGMs of the listed ultimate holding companies

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).

If there is business activity, the acting entity cannot be considered as a shell company

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

- Other

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

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
- Other

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 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
- Consequences to be determined by Member States as they deem fit
- Other

3.16 Please elaborate.

We would like to stress that the most appropriate consequences are currently being discussed under Pillar II of the OECD project. This is why we do not see the need for any EU activity in this field.

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
- 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.

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?

0

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.

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.

Both collecting taxes and combating tax fraud and evasion are competences of EU Member States. In addition, there are sufficient measures in place or are currently being implemented that will take care of the - real or alleged - tax avoidance through the use of shell companies

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.
- 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
- Other

3.24 Please indicate other objectives that should be pursued.

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

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.

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.

We would like to point out that new EU action against shell entities would come along with increased compliance burden for taxpayers resident in the EU. However, this would not come along with any added value to the Member States' tax bases because the abusive use of shell companies is already addressed. Therefore, this would only increase the cost of doing business in the EU and, as a consequence, drive prices for the consumers up.

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.
- 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)
- 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

Contact

[Contact Form](#)

