



## Background

### The EC's SAFE initiative

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## **KPMG responds to European Commission public consultation on the SAFE initiative**

### **European Commission – Tackling the role of enablers – SAFE – Anti-tax avoidance – Unshell – Non-EU jurisdictions**

On October 11, 2022, KPMG<sup>1</sup> member firms in the EU submitted a [response](#) to the European Commission's (EC's) public consultation on the "Tax evasion & aggressive tax planning in the EU – tackling the role of enablers" (SAFE) [initiative](#).

KPMG supports the European Commission's efforts in addressing the behavior of the minority of intermediaries which engage in poor behaviors that reflect badly on the tax profession as a whole. We are of the view that the need for EU-wide action should be assessed in the context of the current tax landscape, which should be mapped out comprehensively to assess the impact of existing rules (such as the EU Mandatory Disclosure Rules and the Whistleblower Directive, as well as current and proposed anti-abuse rules and relevant EU jurisprudence), to identify the hallmarks of 'bad apples' and to determine the most effective counter-measures against unacceptable behavior by this group of intermediaries. We also stress the importance of an in-depth understanding of the current regulatory landscape across the EU when deciding on the need for further action, the most appropriate instrument to be used (in case such a need is revealed) and the merits of harmonization.

## **Background**

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This comment paper is produced on behalf of KPMG member firms located in the EU forming part of KPMG's Europe, the Middle East & Africa (EMA) region. Throughout this submission, "we", "KPMG", "us" and "our" refer to the network of independent member firms operating in the EU.

On April 25, 2022, the European Parliament's Subcommittee on Tax Matters (FISC) organized a [hearing](#) on "How to reinforce the regulation of intermediaries to create an intermediary sector that ensures a fair and user-friendly tax system". Stakeholders invited to contribute to the hearing included KPMG, CFE-Tax Advisers Europe, members of academia and representatives of the European Commission's (EC) Directorate General for Taxation (DG TAXUD). As part of their intervention, DG TAXUD noted that the EC was working on an initiative aimed at addressing the behavior of the minority of intermediaries that engage in unacceptable behavior and that a public consultation on this initiative will follow.

The Commission had previously announced that it would propose action to address the misuse of shell entities located outside of the EU. This initiative was discussed in the context of the EC's proposal for rules to combat the misuse of shell entities for tax purposes – the so-called 'Unshell' proposal, which only addresses the use of entities based in the EU. Please refer to [Euro Tax Flash Issue 471](#) for more information on Unshell,

### **The EC's SAFE initiative**

On July 6, 2022, the EC launched the SAFE initiative, which is split into two sections:

- A call for evidence for an impact assessment, which sets out the following three policy options:
  1. Requirement for all enablers to carry out dedicated due diligence procedures
  2. Prohibition to facilitate tax evasion and aggressive tax planning, combined with due diligence procedures and a requirement for enablers to register in the EU
  3. Code of conduct for all enablers
- A public consultation, which seeks input on the role of enablers in contributing to tax evasion and aggressive tax planning and on the magnitude of the problem.

The call for evidence is framed in the context of the EC's Unshell proposal and the Inception Impact Assessment refers to the aim of preventing 'enablers' from setting up complex structures in non-EU countries, the objective of which is to erode the tax base of Member States through tax evasion and aggressive tax planning. However, in the introduction to the questionnaire that stakeholders are invited to complete as part of the public consultation it is noted that the initiative will focus on establishing appropriate procedures and compliance measures in order to effectively tackle tax evasion or aggressive tax planning resulting from complex structures designed by some intermediaries that provide tax advisory services. This wording suggests that the EC may be looking to collect views on a broader range of issues than those described in the Inception Impact Assessment.

### **KPMG's contribution**

KPMG member firms in the EU were pleased to provide comments on the European Commission's SAFE initiative. Given that the call for evidence and the public consultation were published simultaneously, our combined response aimed to address the issues noted in the Inception Impact Assessment as well as the points raised in the targeted questionnaire. The European Commission's initiative deals with a multifaceted issue that raises a number of complex questions, which warrant in depth and nuanced comments. We found that the framework of the questionnaire did not permit such detailed input and have therefore attempted to tackle the questions raised through a free-form response.

In line with the observations made as part of our contribution to the April 25, 2022 FISC hearing, we note that the role of tax intermediaries is extensive and substantially positive. We do acknowledge that recent reports published by the

OECD<sup>2</sup> and the European Parliament<sup>3</sup> suggest that, despite an environment that has changed significantly over the past 10 years, there is still a minority of intermediaries which cause significant reputational damage to the tax profession as a whole. KPMG supports the conclusions of the recent study commissioned by the European Parliament that further research is required to determine the characteristics of these ‘bad apples’ and to assess the effects of existing anti-abuse principles and of rules targeting the behavior of tax intermediaries.

Once the current landscape has been mapped out comprehensively, lawmakers will be in a better position to single out those professionals that undermine the rule of law and to determine the most effective measures to address unacceptable behavior, including the feasibility of EU-wide measures in this respect.

In light of the above, the KPMG contribution highlights areas where we believe additional monitoring and evaluation is needed before deciding on the need for an EU-wide instrument, as well principles based on which any regulation in a tax environment should be built. We have therefore noted:

- the need to clarify the aim of the SAFE initiative, which is critical both for designing the rules and determining the most appropriate type of instrument used for its implementation;
- the need to map out comprehensively and assess the impact and the effectiveness of existing rules, such as the EU Mandatory Disclosure Rules and the Whistleblower Directive, as well as current and proposed anti-abuse rules and relevant EU jurisprudence;
- the need to ensure that any action taken is targeted and is effective in addressing the behavior of the small segment of professionals that pose a problem;
- concerns around creating an additional administrative burden on the bulk of intermediaries, which are law abiding and also generally already subject to codes of conduct;
- that any initiative in this sphere should consider the diverse approaches adopted by EU Member States in terms of regulating the activity and addressing the behavior of tax advisors.

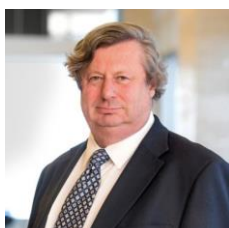
## ETC Comment

Based on the EC’s public consultation [page](#), the current indicative timing for the Commission’s adoption of the proposal is the first quarter of 2023. KPMG welcomes the opportunity to contribute to the European Commission’s initiatives and are ready to elaborate on the comments included in our contribution and to discuss further based on our practical experience and understanding of the European environment.

Should you have any queries, please do not hesitate to contact [KPMG’s EU Tax Centre](#), or, as appropriate, your local KPMG tax advisor.



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<sup>2</sup> OECD, 2021, Ending the Shell Game: Cracking Down on the Professionals who Enable Tax and White Collar Crimes – see [here](#)

<sup>3</sup> Study commissioned by the European Parliament’s FISC Committee on the “Regulation of intermediaries, including tax advisers, in the EU/Member States and best practices from inside and outside the EU”, July 2022 - see [here](#)

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