Attn Mr Benjamin Angel
DG TAXUD
European Commission
1049 Bruxelles
Belgium

2 June 2021

Dear Mr Angel

European Commission: DAC - crypto-assets/e-money and enhancing compliance

PwC International Ltd (PwC) welcomes the opportunity to share its views on the consultation document on strengthening rules on administrative cooperation and expanding the exchange of information for crypto-assets/e-money and on enhancing compliance.

As discussed with various governments and international organisations or supranationals, in the crypto-asset/e-money space, we have come across a number of the challenges in determining the appropriate tax treatment of crypto-assets and ensuring tax compliance in various jurisdictions. The various challenges and tax compliance issues are highlighted in our Annual Global Crypto Tax Report 2020 (2020 Report). The 2020 Report evaluated and reviewed the digital assets tax guidance globally and identified tax guidance gaps or where guidance may need to be refined and added. With a slightly different scope and adding a specific section on tax reporting, it complemented the OECD's Taxing Virtual Currencies: An Overview of Tax Treatments and Emerging Tax Policy Issues which was published a couple of weeks later.

The premise of the DAC8 consultation is that reporting is necessary for fair and appropriate taxation where information asymmetries exist with regard to the taxation of relevant variables. This must be balanced with the principle that reporting must never become an end in itself, and should only be legally obligatory where information

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asymmetries actually exist and must be eliminated in favour of fair and appropriate taxation. Accordingly, any information reporting regime should be evaluated based on (1) the **clarity** of the information requested (is the data requested sufficiently differentiated to permit its direct use); (2) the **necessity** of its collection (requesting the least data required to fulfil the goal of the regime, and not soliciting additional information); and (3) its **direct utility** to the enforcement of the tax laws by the relevant tax authority.

We consider that our most constructive contribution to the consultation is in the form of the following narrative, setting out our views and experience on the two areas on which feedback is sought.

Crypto-assets and e-money

A. Perceived issues and approach

- In our 2020 report, we note that the guidance that has been issued to date is often focused on how to apply existing tax laws or policies to transactions, situations and structures that are unique to digital assets — rather than passing new legislation. As a result, there are currently significant differences between jurisdictions on how crypto-assets and e-money are categorised for tax purposes and on the guidance available to market participants seeking to comply with their tax obligations. This can cause issues if, for example, certain tax treatments or concessions are only available to transactions in a defined asset class, but where digital assets do not meet that specific definition. Common tax base rules across the EU on digital assets or at least a recommendation to publish guidance could reduce this problem.

- Much of the available legislation and guidance also lags a number of years behind the industry. For example, most of it focuses almost exclusively on payment tokens, such as Bitcoin. It deals with capital gains and VAT issues around the spending and exchange of such tokens, as well as the taxation of proof of work mining income. The result is that businesses that are pushing the boundaries of this technology to explore new business models — especially when it is cross-border — are often faced with significant tax uncertainty. Consequently, they will have to go back to first principles to predict how policy makers and tax authorities are likely to react in three to four years' time. This can be very challenging, especially for a start-up. The use of sustainable principles for taxing digital assets could mitigate the effect.

B. Goals for tax policy and information reporting

- There is a real need for **clarity** on the legal framework itself, in order to assess the risks of non-compliance. The need for information reporting should be allied to overall tax policy in order to address the areas in which there are deficiencies.

- Having a reporting regime may also help tax morale in the context of improving voluntary compliance with the perception that all those involved in taxable transactions are being identified.

- Further, the **necessity** of the information requested must be specifically assessed in the context of a distributed ledger, as well as the size of the transaction.
    - With assets on public distributed ledger technology (DLTs or blockchains), the transactions carried out are accessible to everyone, including tax authorities. There is no or limited information asymmetry between taxpayers, intermediaries and tax authorities in this respect. The data is completely transparent. The only information regarding which there is an asymmetry in cases of public DLTs is the (tax) identity behind the corresponding wallet ID. There are therefore good reasons, not least the proportionality of public interventions and obligations to cooperate, to limit the reporting of tax obligations in cases of public DLTs to the communication of the wallet IDs belonging to them.
    - Further, a carve-out for those assets that pose limited tax risks (e.g., stablecoins) or that are only issued and transferred in a very limited setting (see further below) seems quite prudent.

- Consistency of reporting regimes is also critical to limiting the burden of reporting, and ensuring any new reporting has a direct **utility** to addressing a gap in reporting without duplication with other regimes.
    - The OECD's Working Party 10 (WP10) is currently defining the key design features of a new reporting framework for virtual assets, either pursuant to the CRS regime or under a comparable standalone third party reporting regime.
    - The day to day operations of most are highly automated and display the characteristics of digitally automated services. They could therefore be impacted by digital service taxes or other digital levies or by the OECD proposals under Pillar One & Two (sometimes collectively referred to as BEPS 2.0) or the UN's Article 12B treaty recommendations, many of would shift taxing rights away from the location where such services are delivered, to the location of the customer.

C. **Clarity** - Scope of crypto assets to be addressed:

- The definitions of assets which are to be subject to reporting will need to be **clear** and, ideally, to cope with further development of the market in the near future (new coins, new business models, new technology, etc.). Given the potential risks envisaged for which reporting is a potential aide there might, for example, be a case for limitation to financial assets or convertibles, ie assets that have a readily ascertainable market value by virtue of there being a sufficiently liquid market for them.

D. **Necessity** of Collection - Use cases and exemptions

- New use cases (such as many of the new Decentralised Finance – or 'DeFi' – applications) are constantly being introduced. With the pace of innovation, it may be more effective to establish various other criteria for determining the intermediaries that are required to be reporters and for the nature of the activities in relation to which they would have to report, as well as the specific assets/transactions as noted above.

- There will be considerable interest in including high value items, so some sort of monetary threshold (or de minimis limits) may be appropriate. The more difficult issue may be how to identify how and where these transactions take place.

- Trading activities will generally be highly visible to the tax authorities who will be aware of and will have invested resources in understanding the nature of the business involved. Including these within reporting rules may not be necessary.

- Subject to impact assessment, the risk from so-called peer to peer (or peer to business) transactions may be regarded as more significant by jurisdictions. Targeting of such activity may require a mixture of rules, including the potential use of thresholds or exemptions to ensure the omission of data that will be of limited interest to the tax authorities.

E. **Direct Utility** of the Collection - Good principles for collecting this data

- Suitable guardrails could also be included to prevent intermediaries being asked to report information that is not in the ordinary ambit of their activities. For example, intermediaries that safekeep or administer virtual assets for their clients, such as wallet providers, would often not be in a position to reliably report information on specific transactions, or the number/value of virtual assets held, or on the income derived from such assets.

- The usability of the data gathered should be weighed against the burden and sustainability of reporting. There may be in some cases advantages in requiring aggregated reporting by default with the possibility subsequently of requesting transactional or cost basis information rather than having a general transaction-by-transaction and/or cost basis reporting requirement.

Enhancing DAC compliance

- In our experience, tax compliance generally will be facilitated if the penalty regime that is imposed for non-compliance is proportionate to the effect of the non-compliance involved.

- The impact over recent years of moves in the EU (and more widely) to reduce tax avoidance or aggressive tax planning, to increase tax transparency and to encourage voluntary tax compliance have changed the outlook of many taxpayers and advisers. The specific penalty provisions associated with non-compliance have not been a significant driver in this change. While Member States have had different monetary penalties for particular reporting offences, we are not aware that this has been a key consideration in the location of taxpayer activities across the EU. However, an alignment of monetary penalties across Member States has the logic of there being an equal degree of dissuasion across the board unless it is clear taxpayers based in some states behave and react to penalties differently from those in other states.

- To be proportionate, a monetary penalty should be based on the number and severity of the instances of non-compliance. It has also been effective in our view for there to be a degree of mitigation of monetary penalties according to the nature of the mistake or intent involved.

- The applicability of a criminal code to some tax activities has been a particularly controversial subject and it is more prevalent in some countries than others. In any case, one may wish to consider a distinction between a case involving a significant degree of fraud with a clear intention to hide large sums of money from the tax authority responsible for collecting it and a dispute as to whether or where taxation arises. DAC-based reporting regimes are a further step removed and a criminal offence for failure to report would only seem remotely relevant where it was part of, or there was active collusion in, such a fraud. Consistency in the limitation of criminal penalties to extreme cases may have some merit in reducing complexity and increasing tax morale.

- Automatic sharing by a Member State of information about the penalties it imposes on a taxpayer in relation to non-compliance with DAC obligations might be relevant if tools and processes exist to determine where it may be relevant to a tax obligation or liability in another Member State. The 'reasonably foreseeable' relevance test for requests for information might otherwise apply.

Next steps

We would be pleased to discuss any element of our response in relation to crypto-assets and e-money or enhancing DAC compliance. Please also let us know if you would like us to share with you for discussion further upcoming survey data that we report on the tax treatment of various virtual currency transactions or assets. Please do not hesitate to contact me or any of the additional contacts set out below.

Yours sincerely

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