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European Commission: Public consultation on strengthening the exchange of information framework in the field of taxation

Introduction and scope of our response

PricewaterhouseCoopers International Limited on behalf of its network of member firms (PwC) welcomes the opportunity to respond to the European Commission ("the Commission") with respect to its consultation to *Strengthen the exchange of information framework in the field of taxation*. This includes two significant elements for comment:

- reporting by digital platforms facilitating peer-to-peer sale of goods or services between users – including the "collaborative economy" or so-called "sharing" and "gig" economy, and
- enhanced co-operation between tax administrations through conducting joint audits, whereby two or more administrations form a single audit team in order to examine an issue/set of transactions that pertain to one or more related taxpayers (with cross-border economic activities).

While we agree that the areas that the consultation focuses on are well chosen, we believe that our views are better represented through a freeform response to these areas, as opposed to answers to multiple choice questions. We therefore particularly welcome the opportunity to provide all our comments under section 6 of the consultation, through this concise paper, and accordingly have not completed the optional questions in sections 4 and 5.

Reporting by digital platforms

It is important that reporting rules are applied consistently between countries and, as far as possible, take into account not only direct tax needs but also indirect tax requirements. This will avoid an unnecessary burden of businesses and tax administrations having to develop different systems where there are

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relatively small additional pieces of information required by one or the other. While the Commission may seek to ensure consistency across the EU, the principles need to be applied more broadly.

On the direct tax side, the OECD's recent consultation on model rules in this area indicates some progress may be likely on a more global basis. However, the draft model rules focus on a different range of services to those listed by the Commission. The scope is limited to the rental of immovable property and a narrow range of personal services that involve time or task-based work performed by one or more individuals for the benefit of a user, including the provision of transportation and delivery services. The rationale is stated to be that these are the sectors that pose tax compliance risks in light of their scale, the income they generate and the profile of the sellers involved.

On the VAT front concrete measures have already been implemented in the EU from 2015 for digital products (introducing specific rules for telecoms, broadcasting and electronic services, including the Mini One Stop Shop simplification), whilst additional measures targeting the cross-border sale of low value goods are to come into effect from the beginning of 2021. Both sets of rules contain specific provisions to clarify the role of the platform in facilitating online sales and bringing them directly in scope of the tax within the supply chain in certain circumstances and subject to additional reporting requirements. Furthermore, data sharing rules for payment service providers were adopted by the Council at the end of last year. These new rules will take effect from 1 January 2024 with the aim of further enabling tax authorities to detect non-compliance and VAT fraud with regard to online cross-border transactions. Some Member States have also introduced national data sharing obligations for digital platforms to ensure VAT compliance by the underlying suppliers.

The OECD has also already undertaken extensive work on digital platforms exploring the possible roles (including data sharing) they can play in the VAT collection process, as set out in its report "The role of digital platforms in the collection of VAT/GST on online sales". Chapter 3.2 of the report deals with information sharing obligations and looks at the scope and application of the obligation and also the type of information to be shared/reported (Box 3.1. List of possible information). Following publication of that report, the OECD has also started to examine the VAT challenges of the sharing/gig economy, considering as well whether some of the roles outlined in the report (including the provision of data) can also be further explored when it comes to the sharing/gig economy.

There are countries that would seek to go much further with reporting than the list of specific services listed in the Commission's consultation document, although the final category of 'other services' leaves it difficult to define the exact scope. An aligned scope by the OECD and the EU would really add to tax certainty and reduce complexity.

The reporting rules need to provide legal certainty, ensuring clear and consistent definitions, including safeguards for reasonable efforts, keeping in mind that platforms quite often have to rely on third party data. Moreover, consultation with business in the design and implementation phase and an appropriate lead time to implement the new rules (to develop automated systems and processes and allow for testing) is of high importance.

Finally, there is considerable uncertainty in business at the moment as a result of Covid-19 and introducing any new measures before some considerable period of consolidation may risk further instability, both for platforms and sharing/gig economy businesses.

Joint audits

The current legal framework (EU DAC) is insufficient for joint audits, given the fact that in order for a Member State's tax official to be allowed to actively perform a tax investigation (e.g., the right to interview people) in another territory depends upon the domestic legislation of that territory. Within the EU, the domestic legislations of the Member States are not aligned on this matter. In practice, the prior permission of the taxpayer is asked by the tax authorities if they want to carry out a joint audit. The revision of the legal framework could the process more straightforward. However, this will be a challenging exercise since various aspects will need to be taken into consideration.

Currently, tax audits are regulated by the domestic procedural legislation of the different Member States. These contain many differences in terms of audit periods, investigation powers, taxpayer's rights (e.g., right to be heard, right to consult the tax authorities' file, protection of confidentiality and business secrets, etc.), access to judicial instances, etc. The lack of harmonization of these rules, poses challenges for tax authorities as well as for taxpayers when dealing with joint audits and is an obstacle for streamlining the audit process. Hence, a revised legal framework should deal with these issues but without affecting the rights of the taxpayers.

In our opinion, the obligation for the tax authorities to agree upon one single audit report as an outcome of a joint audit is crucial to avoid double (or multiple) taxation and to achieve administrative cost-saving (in terms of preventing multiplication of MAP procedures). These should be the objectives of joint audits. Currently we see that in practice each of the participating authorities often appear to be more focused on seeking to maximize their own share of the taxable income as much as possible.

Although it could be beneficial for the taxpayer to consider the outcome of a joint audit as a guideline for future years and limiting tax exposure in the future (e.g., an Advance Pricing Agreement), we are not in favour of installing this as a principle. Instead, the aim of an APA should be to avoid a multilateral audit and, as noted above, the objective of a joint audit should be to avoid double (or multiple) taxation and thus the application for MAP procedures. We think that using MAP rather than the outcome of a joint audit to resolve disputes for past periods may better preserve the existing rights and powers of taxpayers and tax authorities.

The obligation for tax authorities to reach a joint conclusion is in our opinion inseparable from the obligation to launch a joint audit or participate in it, which is a condition sine qua non for the taxpayer to request a joint audit. We often see now in practice that tax authorities of certain jurisdictions are teaming up against one group entity established in another jurisdiction whose tax authorities are not involved in the joint audit (e.g., because it is not a member state of the EU, often Switzerland). Therefore, when implementing a legal framework for joint audits within the EU, agreements regarding this matter should also be sought with non-EU countries.

The previous pilot of the Forum on Tax Administration's ICAP project and the initial indications of ICAP2 suggest there is energy for a collaborative approach to dispute prevention and resolution for multinational businesses. It could be considered whether EU member states might adopt a common understanding of a risk assessment agreed by two or more member states following a review of a multinational's tax control framework, under DAC or otherwise. This could involve an adapted or targeted joint audit approach being used to support the development of co-operative compliance in the EU (as mentioned in the Commission's Roadmap on the 'Action Plan to fight tax evasion and make taxation simple and easy').

Next steps

For any clarification on this response, please contact me or any of the contacts below. We look forward to discussing any questions you have on the points we raise above. We would welcome the opportunity to contribute to the discussion.

Yours faithfully,

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