Response of the Global Legal Entity Identifier Foundation (GLEIF) to the European Commission Inception Impact Assessment titled Fighting the Use of Shell Entities and Arrangements for Tax Purposes

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The Global Legal Entity Identifier Foundation (GLEIF) is pleased to provide comments to the European Commission Inception Impact Assessment titled Fighting the Use of Shell Entities and Arrangements for Tax Purposes.

GLEIF welcomes the European Commission's initiative to ensure fair and effective taxation in the EU by combatting tax abuse and aggressive tax planning of shell entities. GLEIF will focus its comments on how the inclusion of the Legal Entity Identifier (LEI) in tax schemes and information exchange modalities across supervisory authorities can enhance transparency on shell entities.

First some background on the LEI.

The LEI is a 20-character, alphanumeric code based on the ISO 17442 standard developed by the International Organization for Standardization (ISO). The LEI connects to key reference information that enables clear and unique identification of legal entities participating in financial transactions. Each LEI contains information about an entity's ownership structure, answering the questions of 'who is who' and 'who owns whom'. It provides a universally recognized identifier paired with essential entity data, rigorous verification processes and high data quality.

The LEI initiative is driven by the Financial Stability Board (FSB) on behalf of the finance ministers and governors of central banks represented in the Group of Twenty (G20). In 2011, the G20 called on the FSB to take the lead in developing recommendations for a global LEI and a supporting governance structure. The related FSB recommendations endorsed by the G20 in 2012 led to the development of the Global LEI System as a broad public good that provides unique identification of legal entities participating in financial transactions across the globe and the subsequent establishment of the GLEIF by the FSB in 2014. As outlined in the GLEIF's Statutes, the Global LEI System is designed and developed to be used by the (i) public authorities and (ii) by the private sector to support improved risk management, increased operational efficiency, more accurate calculation of exposures and other needs. The GLEIF, a supra-national not-for-profit organization, is overseen by a committee of more than 65 global regulators and 19 observers from more than 50 countries, known as the Regulatory Oversight Committee (ROC). The European Supervisory Agencies (ESAs), ESMA, EBA and EIOPA, as well as the ECB and the European Commission, are represented in the ROC.

The LEI is already required extensively in financial markets regulation in the EU. All EU corporates listed and traded in any EU marketplace already have an LEI due to the Regulation (EU) 2017/1129 (Prospectus Regulation). Moreover, many other large corporates or financial institutions have already obtained an LEI due to different EU regulatory requirements such as EMIR, MIFID II, MAR, CRR, Solvency II, AIFMD, CRAR, CSDR, Transparency Directive and Securitization Regulation.

GLEIF suggests that, in parallel to the discussions on the recent global minimum tax rate decision, the unique and unambiguous identification of (i) the subsidiaries of multinational companies, and (ii) paying entities became more important and urgent. Currently, in the Global LEI System, although most of the multinationals have an LEI, not all of these entities are reporting the LEI of their subsidiaries. The LEI can uniquely and unambiguously identify all subsidiaries in a group structure. It can then be leveraged to identify the producer, intermediary and distributor entities of a group to better understand transaction data such as buy & sell relationships. This is similar to the approach followed by the Commission when implementing transaction reporting requirements involving the LEI for the Markets in Financial Instruments Directive II (MiFID II)/Markets in Financial Instruments Regulation (MiFIR). Furthermore, the Banque de France demonstrates how the LEI can be used to analyze groups' global expansion strategies especially the use of off-shore financial centres (OFCs). The Banque de France concludes that extending the obligation to have an LEI would thus help to make global financial transactions more transparent.

Given a shell entity prone to misuse can be set up in any legal form, most of the respondents to the Commission's previous consultations seem to find trusts to be at slightly higher risk. GLEIF's Entity Legal Form Code List is based on the ISO standard 20275 'Financial Services – Entity Legal Forms (ELF). The standard "*specifies the elements of an unambiguous scheme to identify the distinct entity legal forms in a jurisdiction. Its aim is to enable legal forms within jurisdictions to be codified and thus facilitate the classification of legal entities according to their legal form.*" The ELF Code List assigns a unique code to each entity legal form. The ELF code is an alpha-numeric code of four characters from the basic Latin character set. Authorities can use the ELF Code List to precisely identify entity legal forms used by shell entities. These entity legal forms can be added in the risk analysis of tax authorities.

GLEIF agrees with the Commission's suggestion to consider Option 4 – the most comprehensive intervention, which includes enhanced cooperation, monitoring and enforcement of the new rules. The harmonization of rules and adoption of minimum standards on tax-related substance should reduce the fragmentation of administrative approaches and practices related to dealing with anti-tax avoidance measures across the Member States. Setting the same playing level for all entities should reduce uncertainty for cross-borders businesses.

With specific to the Proposal for a Directive, GLEIF would like to suggest the Commission to include the LEI under the proposed "*Article 8ad Scope and conditions of mandatory automatic exchange of information on undertakings required to report on indicators of minimum substance*". The current version of Article 8ad includes TIN and VAT number of the undertaking for information exchange. Adding the LEI would ensure that a global, open approach is taken for entity identification. This is especially important when dealing with entities that operate cross-border. Additionally, it enables more effective analysis and data sharing. Further supervisory authorities would benefit from the corporate hierarchy information freely available in the Global LEI System. As noted by the European System Risk Board, Identifying such groups, as well as their legal entities and overall structure, is crucial to ensuring financial stability. The LEI creates the worldwide infrastructure for the digital age in the domain of legal entities, just as the telephone book did for the analogue age.

GLEIF suggests that the addition of the LEI in the proposed Directive will complement existing measures and is an important foundational element for effective monitoring of tax abuse and aggressive tax planning.