

## Work on draft *Unshell* Directive on hold - member states prefer DAC6 changes

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The *Unshell* Directive (ATAD3) is about companies without significant activities. It was intended to set an EU standard for the minimum substance of companies to prevent tax avoidance.

The DAC 6 in the other hand obliges different entities (e.g. tax advisers) including, in certain cases, taxpayers to report tax schemes that may involve a risk of tax avoidance. In Poland, it has been implemented through the Mandatory Reporting of Tax Schemes (MDR).

During the May meeting of the working group on the draft *Unshell* Directive, EU member states expressed concerns that the draft could duplicate obligations under other regulations, including the DAC6.

As a result, it was decided to put the draft *Unshell* Directive on hold, while awaiting possible proposals for changes to DAC6 from the European Commission.

### What was the *Unshell* Directive and why was it controversial?

The *Unshell* Directive was intended to introduce an EU system for identifying so-called 'shell companies' - entities that are not engaged in real economic activity. Companies whose 'reality' was questionable would be required to disclose detailed information about their personnel, assets, etc. referred to as a "substance".

If the relevant substance was not disclosed, the entity could lose its right to protection under double taxation treaties and EU directives. The income of such company would be taxed directly with its owners (according to the *look-through* concept).

The aim of the directive was to tighten tax systems in the EU and to standardize the approach to assessing the substance of the overseas companies. However, critics pointed to the risk of excessive reporting obligations and duplication of obligations, particularly those already contained in the DAC6.

### Dropping the works on the *Unshell* Directive does not mean the business substance is no longer important in taxes

The decision to stop work on the *Unshell* Directive does not mean that EU member states are completely abandoning the restriction of tax exemptions for entities that do not have a sufficiently developed business.

Regardless of whether the changes will be introduced through a new directive or through modifications to existing regulations, it should be emphasised that business substance in group structures, in particular involving investment or holding companies, remains crucial. Further legislative initiatives in this respect are to be expected.

Accordingly, taxpayers with complex international structures should carefully assess whether all of their member entities are in fact indispensable, if not then liquidate or consolidate them and, if they are, whether they meet the requirements of having adequate business substance.

At MDDP, we assist corporate groups in verifying and managing their activities and structures in the best manner possible in a given situation from the tax perspective.

**If you have any questions, please contact:**

**Bartosz Głowacki**

[bartosz.glowacki@mddp.pl](mailto:bartosz.glowacki@mddp.pl)

+48 603 980 382

[LinkedIn](#)

**Jakub Sobczak**

[jakub.sobczak@mddp.pl](mailto:jakub.sobczak@mddp.pl)

+48 503 974 137

[LinkedIn](#)

or your advisor from MDDP.

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