
Opinion Statement on European Tax Advisers' Policy Priorities for the EU Mandate 2019-2024

Jointly prepared by the CFE Board and CFE Technical Committees

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This Opinion Statement sets out the policy priorities of European tax advisers for the 2019 - 2024 mandate of the European Institutions.

CFE Tax Advisers Europe is a Brussels-based association representing European tax advisers. Founded in 1959, CFE brings together 30 national organisations from 24 European countries, representing more than 200,000 tax advisers. CFE is part of the European Union Transparency Register no. 3543183647-05. We would be pleased to answer any questions you may have concerning our Opinion Statement. For further information, please contact Piergiorgio Valente, CFE President, Ian Hayes, Chair of the CFE Tax Technology Committee, Stella Raventós-Calvo, Chair of the CFE Fiscal Committee, Wim Gohres, Chair of the CFE Professional Affairs Committee, Aleksandar Ivanovski, Tax Policy Manager, or Brodie McIntosh, Tax Technical Officer, at info@taxadviserseurope.org. For further information regarding CFE Tax Advisers Europe, please visit our web page <http://www.taxadviserseurope.org/>

I. General Remarks

The current era of taxation policy making is marked by a multitude of global players and unprecedented levels of cooperation in several areas. The international tax governance network is obtaining new members: the well-known bodies such as the OECD, with the extended BEPS Inclusive Framework, and the UN Committee of Experts on International Cooperation in Tax Matters are joined by other institutions in weighing in on the international tax policy debate: the World Bank, the International Monetary Fund and, last but not least, the European Union.

The European Commission, the Council of the EU and the European Parliament have taken up the gauntlet and pursued an ambitious anti-tax avoidance agenda in the past years. Increasingly, national tax authorities cooperate more closely at international level, creating initiatives such as Tax Inspectors Without Borders, joint tax inspections and audits, and work together on multilateral advance pricing agreements. In addition, the post-BEPS exchange of information on CbCR and tax rulings are indicators of increased cooperation, albeit in a slightly different vein. This fast-paced change poses enormous pressure on the tax profession, the existing cooperation framework mechanisms and the tax cooperation possibilities.

As the EU institutions are considering the policy priorities for the next mandate, CFE Tax Advisers Europe is taking the opportunity to set out the tax and professional affairs policy issues it identifies as significant concerning taxation and the future as follows in the Opinion Statement below.

II. Taxation of the Digitalising Economy

Under the designation 'taxation of the digitalising economy', we are witnessing perhaps the most fundamental change in the design and *modus operandi* of the international tax system. We recognise the difficulties in pinpointing all digitalising business models as current definitions are likely to become outdated in due course. However it is precisely because of the fast-paced change of the digital environment that today's solutions must be future-proof and consistent with the principles of aligning profit with underlying economic activities and value creation. As noted in CFE's submission to the OECD public consultation on the tax challenges of the digitalising economy¹, it emerges that a new international tax framework would be required to make the new profit allocation methods operational in a global setting: new legal instruments, guidance and widespread multijurisdictional consensus. Inevitably, the issue of double taxation would arise, which is already difficult to address considering the bilateral nature of double taxation treaties and inadequacy of tax dispute resolution mechanisms at present.

In absence of a common approach, we are increasingly facing an uncoordinated international tax landscape, consisting of unilateral actions being taken by individual countries. Such actions inevitably lead to misalignment of tax bases globally, resulting in double taxation and significant compliance burdens for businesses. As a consequence, such actions will stifle economic growth and innovation.

A longer-term view seems appropriate to evaluate the entirety of the remaining BEPS issues. Within the EU, a number of anti-BEPS legislative measures have been introduced, such as the ATAD directives, which significantly reduce the incentives to shift mobile tax bases to low-tax jurisdictions. From an EU

¹ Opinion Statement FC 1/2019 CFE Response to the OECD Consultation Document: Addressing the Tax Challenges of the Digitalising Economy Issued by the CFE Fiscal Committee Submitted to the OECD on 5 March 2019, available to view at: <http://taxadviserseurope.org/wp-content/uploads/2019/03/CFE-Response-OECD-Consultation-Taxation-of-the-Digital-Economy.pdf>

perspective, this is particularly the case where policy initiatives such as the introduction of CFC rules are designed to achieve the same objective as the OECD's income inclusion rule.

In addition, the EU's objectives as set out with establishment of the 'blacklist' of non-cooperative jurisdictions for tax purposes are closely aligned with those of the BEPS project, which is to increase transparency and encourage compliance with anti-BEPS measures.

CFE believes that a *de minimis* threshold should be considered in relation to the global anti-base erosion proposals to prevent these rules from becoming a barrier to business development, innovation and new markets. This is relevant in particular as the risk of increased profit shifting concerns large global companies of a particular size, and not SMEs or emerging businesses.

As tax advisers, we would not like to see proposals which continue to put pressure on the existing transfer-pricing framework. Any disparity in the implementation of minimum tax rate proposals will inevitably lead to double taxation in instances where countries fail to take into account tax already paid under such regimes (under CFC rules or under the GILTI regime in the United States).

The outcomes of a global minimum tax rate will differ significantly depending on the chosen model: jurisdiction-by-jurisdiction approach vs. an average rate approach. The complexities in designing a minimum tax rate in a global context should not be underestimated. It will be technically very challenging and, as such, will require significant efforts by the OECD and the Inclusive Framework jurisdictions to ensure close international coordination.

CFE Tax Advisers Europe is supportive of a coordinated international policy response on the issues that arise from digitalisation in order to avoid fragmentation of the EU Single Market, and the risk of double or multiple-taxation. We therefore strongly support collaborative work towards a future-proof, longer-term reform of the international tax system that addresses the tax challenges of the digitalisation of the economy.

Given the rate of transformation of the global economy, the solutions that we discuss need to be ambitious and sustainable in the long-term, able to follow the pace of emergence of new business models. To that end, CFE Tax Advisers Europe encourages redoubling of efforts to achieve an early consensus among the Members of the Inclusive Framework on the way forward.

CFE's detailed views on the OECD consultation document can be found [here](#). CFE's views on the EU proposals that we understand may be resurrected should the interim paper fail to progress a global solution is set out in an Opinion Statement [here](#).

III. Taxpayers Rights and Tax Certainty

CFE has strongly advocated in favour of binding, or other equally effective, mechanisms that set out in clear terms the rights and obligations of taxpayers so that these can be adhered to and followed by tax administrations and relied on by taxpayers. This needs to be the case not only in Europe but also in all other countries in the world. We believe the fundamental rights of taxpayers need to be enshrined in law or in arrangements which have the full support of tax administrations. CFE has fully endorsed the EU's approach and views expressed by the European Commission that a Code or Charter on Taxpayers' Rights can enhance the efficiency and effectiveness of tax systems and can also increase the tax morale of European citizens.

After a public consultation in 2012 and an intensive work programme the EU Member States published Guidelines for a Model for a European Taxpayers' Code, which we believe could form the basis of future work by the European Commission in this area.

Certainty is one of the fundamental rights and is one of the Fundamental Principles in the broad ranging CFE Model Taxpayer Charter², which we published in conjunction with two other international organisations, AOTCA and STEP. The second Fundamental Principle is that tax systems need "to be designed and administered to provide as far as possible certainty, clarity and finality in one's tax affairs."

Taxpayers face similar tax obligations in most countries in Europe but they are not guaranteed equal rights by the different Member States of the EU. Specifically, in relation to the obligations imposed by the Directive on Administrative Cooperation and Exchange of Information in relation to reportable cross-border arrangements (DAC6), CFE has raised concerns about potentially different implementation among the Member States. To address these issues, CFE encourages the Commission and the Member States to ensure consistent transposition throughout the European Union to satisfy the tax certainty and equal treatment requirements. CFE is strongly in favour of better and earlier initial consultations taking place with stakeholders, which give consideration in particular to practical implementation issues, far in advance of proposals being released.

CFE has recently written an opinion statement on tax competitiveness touching on issues concerned with tax administration. It can be located [here](#). A further statement on tax certainty can be viewed [here](#). Recently, CFE, on behalf of the Global Tax Advisers Platform (GTAP), has strongly supported OECD's proposition that increased tax certainty and strengthened taxpayers' rights could serve as a proxy for increasing tax morale among individuals and businesses.³ To that end, in order to protect the rights of both taxpayers and tax administrations, mandatory obligations on both should be established in these charters or cooperative compliance programmes.

As a means of providing advance certainty for taxpayers by tax administration, CFE is supportive of any programmes that establish such protection for taxpayers. We support both cooperative compliance programmes and tax ruling practices that comply with the OECD and the EU tax good governance standards and primary EU law rules. Equally, cooperative compliance was recently endorsed by the IMF/OECD, on the basis that "cooperative compliance programs could reduce uncertainty for low risk companies, assist tax administrations to better focus their resources and promote a culture of greater trust".

In the same vein, where tax administrations provide tax rulings and Advance Pricing Agreements (APAs) these have proved to be an effective tool for the prevention of tax-related disputes, especially with respect to transfer pricing issues. They provide the taxpayer with advance knowledge of the tax treatment of particular transactions and therefore allow certainty for taxpayers in planning for the future, and also prevent the risk of subsequent disputes. The EU should harmonise measures that would outline an EU framework of tax rulings. All Member States should be required to establish simple and effective procedures for the conclusion of bilateral/multilateral APAs and/or confirmative tax rulings.

Such a coordination of national procedures would benefit investment and competitiveness by providing clarity and a more predictable tax environment, as well as by simplifying the rules applicable in the EU Single Market. However, in order to balance these measures to protect taxpayers' rights, mandatory

²<http://www.taxpayercharter.com/charter.asp?id=15>

³ <http://taxadviserseurope.org/blog/portfolio-items/opinion-statement-on-the-oecd-consultation-on-draft-report-on-tax-morale-2/>

obligations on both taxpayers and tax administrations should be established, such as in the horizontal monitoring in the Netherlands. This is particularly the case considering the importance being placed on personal data security and confidentiality following the GDPR which came into force on 25 May 2018. Although the majority of tax treaties since the mid-1900s have included provisions for exchange of information, recent measures have progressed to agreement, both within the European Union and at international level, which have enhanced investigative powers of tax administrations and increased the amount of taxpayer information required to be provided to tax administration.

In a time of immense change in the international tax environment, CFE believes that tax certainty must become a priority of policy makers. Whilst CFE appreciates the importance of measures to tackle aggressive tax avoidance schemes and base erosion and profit shifting (BEPS), it believes that the balance of legislation must be redressed to promote certainty for individual taxpayers and business and, consequently, economic growth.

In redressing the balance between taxpayers and tax administrations, CFE believes that tax certainty is only one element of the equation. We would encourage EU-level measures to encourage consistency of treatment of taxpayers by tax authorities to reinforce certainty. To that end, an EU-wide charter on taxpayers' rights should encompass both the concept of certainty and the concept of consistency of application and treatment. In addition, cooperative compliance programmes, and a system of broader advance rulings would help with both certainty and consistency of treatment and application.

III.1 Common Approach to Anti-Avoidance and Substance Measures

A related point follows regarding tax certainty, which CFE would like to draw focus on, concerning issues related to anti-avoidance and substance measures. Taxpayers and tax advisers have had to ensure they are compliant with an unprecedented scale of recently introduced anti-avoidance measures, which brought with them new concepts such as the Principal Purpose Test (PPT), the GAAR introduced by ATAD, substance requirements based in CFC rules, as well as local and different approaches aimed at reducing tax evasion. These new concepts, as well as new approaches which must now be applied to some old concepts (such as beneficial ownership, given the new approach of the CJEU in the [Danish beneficial ownership cases](#)), create a hard-to-follow path where the same terms are used differently by different Member States. Moreover, the distinction between them appears to be difficult to draw in many cases. The reason is that, generally speaking, these concepts refer to "business substance" requirements – a non-defined term, currently used as a major test for granting tax benefits.

While it is fully understandable that certain actions are needed in order to preserve tax fairness, it would be highly desirable to create a common EU understanding under which substance-related terms are applied and understood. CFE would accordingly welcome and join any initiative aimed at producing further guidelines and clarifications aiming at better, fair and certain use of the anti-avoidance measures.

IV. Mandatory Disclosure Rules

Following the implementation of the European Union Mandatory Disclosure Rules Directive (DAC6) will continue to be a priority for CFE Tax Advisers Europe. In the course of the implementation of the Directive, CFE has [set out](#) its expectation that European Union Member states will fully respect the legal professional privilege reporting waiver of Article 8ab(5) of DAC6 in the transposition of this Directive, in those Member states where such rights exist for tax advisers under domestic law. As discussed *supra*, CFE would welcome a coordinated transposition across the European Union.

V. Tax and Climate Change – Sustainable Tax Policies

Climate changes affects us all. CFE members aspire to share their unique knowledge on tax with governments and other international stakeholders in the process of transition to a low carbon global economy. Tax policy is a key tool to internalise environmental costs and foster the transition to a low carbon economy, for the generations to come. CFE can accordingly see merit in policy proposals being subject to a thorough climate change and environmental assessment. Future-proof tax systems are an equilibrium between today's public finance needs and tomorrow's sustainable policies.

VI. Sustainable Tax Systems & Tax Competition

Tax competition and competitiveness is a question of balance in tax policy in general. It is not only a matter of EU Member States following primary and secondary EU law, but all Inclusive Framework jurisdictions (in the case of BEPS initiatives) implementing and adhering to agreed initiatives. If this is not the case, issues of competitiveness arise. The EU is at the forefront of providing equilibrium in this respect.

Reducing complexities and distortions in the tax system is crucial to improving tax competitiveness. It requires the introduction of simple and easy to understand tax laws which ultimately work well in practice. In this respect, legislation should set clear general principles, which seek to prevent misinterpretation of the rules by both taxpayers and tax administrations. At EU and international level, coordination should be pursued in order to avoid mismatches and loopholes that create opportunities for double interpretations. The established standards should also provide for best practices within the legislative process. In particular, stakeholders should be given the opportunity to meaningfully engage with legislators prior to the introduction of legislation and during the implementation stage of new legislation.

Additionally, tax policy choices between Member States (and within Member States) should be able to support quality healthcare, security, public safety, education and infrastructure, as basic pillars of the social model underpinning the European Union. From our perspective, sustainability of tax systems should be seen as an equilibrium of investment and growth-friendly tax policies that support the social goals of each Member State and the EU Single Market as a whole. We welcome coordinated measures that reduce cross-border tax barriers on doing business and compliance burdens, such as the introduction of instruments such as the Mini One-Stop-Shop (MOSS) (soon to become OSS). We also welcome any measures that ensure clear guidance and that are fit for purpose to allow taxpayers to do business in a simple, efficient and coherent manner throughout the EU. CFE is pleased to be part of the [Human-Centred Business Model](#) Project, which seeks to create a practical business model that provides a real choice for entrepreneurs who are looking for an opportunity to conduct their enterprises in a sustainable manner (creating an alternative approach to doing business that potentially combines profit-seeking with the social and environmental sustainability [link](#)).

Notwithstanding the above observations, we would also like to emphasise that it is not only the process of achieving harmony in tax competition and competitiveness which may, ultimately, boost economic growth and benefit EU citizens. It is also a question of balancing other policy areas from safety through to judicial systems, transport policy and a properly functioning financial market, to name but a few. Achieving economic growth which will benefit EU citizens can only be achieved if the system is balanced across these complex and interrelated areas.

VII. Double Taxation and Dispute Resolution

Given the ever-increasingly complex interplay of tax legislation for taxpayers involved in cross-border trade, dispute resolution will become a more significant issue in taxation. To that end, CFE's Forum in June examined issues concerning dispute resolution and a statement surrounding the outcomes of the panel discussions at the Forum will be produced. A previous statement concerning disputes can be found [here](#).

Double non-taxation remains an issue, as does the problem of double taxation and the negative effect on the world economy, consumers and taxpayers. In particular, in relation to new proposals addressing the tax challenges of the digitalising economy, any new tax measures must be designed in a manner to avoid double taxation, and must come within the ambit of double taxation treaties. Otherwise, the whole tax treaty system, which the international taxation is built upon, and network will be completely undermined. CFE understands the challenges in designing new tax rules that are not going to produce unintended consequences and lead to double taxation.

VIII. Anti- Money Laundering

CFE Tax Advisers Europe is closely following EU developments in relation to the European anti-money laundering framework and will continue to participate in the ongoing dialogue with the European Commission and other stakeholders at EU level, putting forward experts' opinions of tax advisers as obliged entities for anti-money laundering purposes. CFE continues to support the baseline scenario that would entail full implementation and enforcement of the existing EU anti-money laundering framework that is already in force (4th and 5th Anti-Money Laundering Directives) as well as the introduction of more robust feedback mechanisms, where appropriate.

CFE would also welcome a discussion on the effectiveness of the EU AML Directives in reducing the risk of money laundering and terrorism financing. CFE [has invited](#) the European Commission to consider why, with all the existing AML directives and procedures, the risk for tax advisors as a whole, has not reduced over the years, compared to the initial risk assessments.

IX. Simplification of Indirect Taxes

CFE Tax Advisers Europe supports proposals that aim to simplify and streamline the operation of the VAT system within the EU, and views engagement on the topic of the proposed definitive VAT regime as a key priority for the organisation. CFE also believes it is important that efforts are taken to minimise double taxation and to minimise the increasing burdens placed on business by new non-harmonised reporting requirements, payment obligations and systems that have been implemented by some Member States.

Even in a national context it can frequently be very difficult to determine the appropriate rate at which to tax supplies. This can be particularly true with supplies of services, when difficulties can arise in determining whether there is one composite or multiple supplies for VAT purposes, or whether supplies are closely linked to supplies that are exempt. Particularly in relation to small and medium sized businesses, the CFE is therefore concerned about the implications of enacted and proposed reforms which will increasingly require suppliers to account for VAT in the country where their customer is established. The issue will clearly be particularly serious if traders become subject to penalties, particularly significant penalties, on account of errors. If care is not taken, the CFE is concerned that such measures may discourage businesses from operating in the internal market.

CFE Tax Advisers Europe considers that it would be desirable to ensure that innocent errors are not penalised and certainly not unduly penalised (this might be done by having harmonised maximum penalties). Furthermore, it is of fundamental importance that accurate, and preferably binding, guidance is available to traders who are not established in that state. This should ideally be available in a number of languages, otherwise a business established in another state may find the information difficult to locate. Ideally it should be available from a single portal, so that traders throughout the EU know that there is one source to which they can turn for guidance.

X. Global Tax Policy – Global Tax Advisers Platform (GTAP)

As a response to the globalised tax governance environment, CFE would also like to promote the Global Tax Advisers Cooperation Platform, GTAP. GTAP was established by CFE Tax Advisers Europe, AOTCA and WAUTI, who collectively represent more than 600,000 tax advisers in Europe, Asia and Africa. GTAP is an international platform that seeks to bring together national and international organisations of tax professionals from all around the world. GTAP serves a unique purpose: to encourage tax professionals to take up the challenge of proposing a new system: simple, flexible, and fit for purpose, a system that can reclaim taxpayers' confidence.

XI. Conclusion

The EU should take the lead in helping Member States create tax systems which contribute to an environment which is business friendly and attracts investment. Private sector investment creates growth and jobs, whilst the current state of the economy calls for tax policies that give priority to an investment-friendly environment. Ideally, tax policy decisions would as little as possible distort the investment forms and choices, in the longer-term interests of the EU internal market. In absence of common EU action the investment decisions could be driven by fiscal factors, and Member States should retain their powers to influence such decisions to the extent these decisions take into account EU's criteria for tax good governance and the commitments made in the OECD BEPS process.

A common approach for the Single Market is crucial. On the other hand, fiscal sovereignty of Member States and their liberty to design tax policies fit for their social and economic systems needs to be respected, to the extent these policies comply with primary EU law (fundamental freedoms and State aid rules) and secondary EU law. The latter concerns harmonised areas of taxation (such as VAT, the DAC framework and directives relating to corporate tax that affect the functioning of the Single Market).

Simpler and more coherent tax rules throughout the EU would also contribute to making the EU Single Market a more dynamic and business-friendly environment. As such, coordinated measures among EU Member States' rules would prevent mismatches among national legislations, which is an element to consider for a competitive tax environment, taking the interest of the Single Market as whole. From CFE's perspective, simplicity must be a key design-element in relation to the tax challenges of the digitalising economy in particular. We will not have achieved much if in reality it becomes impossible for tax administrations, taxpayers and tax advisers alike to work with any new rules on a multilateral basis.

By continuing to work together, as we have done for many years in CFE Tax Advisers Europe, tax policy stakeholders will meet the challenges of inclusive policy making, whether they concern the taxation of the digital economy, addressing tax avoidance and evasion, helping our respective governments detect and deter money laundering, assisting governments to develop stable economic environments in which businesses can start, grow and prosper or indeed with issues yet to emerge.