
Opinion Statement CFE 1/2018

On the Importance of Taxpayer Rights, Codes and Charters on Tax Good Governance

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Platform for Tax Good Governance (CFE representatives:
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CFE Tax Advisers Europe have long advocated the fundamental importance of taxpayers' rights for tax good governance, and the role that clear statements of taxpayer, and tax administration, rights and obligations, can play in this respect. Taxpayer and tax administration rights and obligations are becoming an issue of global interest and for this reason, engagement in this work is of extreme and vital importance for all interested parties and stakeholders. As the leading body representing European Tax Advisers, CFE looks forward to being an active contributor to further progress in the area.

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 Mr. Wim Gohres, Chair of the Professional Affairs Committee, Ms. Stella Raventós, Chair of the CFE Fiscal Committee, or Mr. Aleksandar Ivanovski, Tax Policy Manager, at info@taxadviserseurope.org. For further information regarding CFE Tax Advisers Europe please visit our web page <http://www.taxadviserseurope.org/>

I. Introduction

CFE Tax Advisers Europe has long advocated the fundamental importance of taxpayers' rights for tax good governance, and the role that clear statements of taxpayer, and tax administration, rights and obligations, can play in this respect.

The Foreword to the November 2016 EC publication *Guidelines for a Model for A European Taxpayers' Code* set out very clearly the benefit to both taxpayers and tax administrations in establishing taxpayer codes or charters:

This European Taxpayers' Code contains guidelines that aim to ensure a balance between the rights and obligations of both taxpayers and tax administrations. It is based on the main general principles and best practices in Member States deemed useful for enhancing cooperation, trust and confidence between tax administrations and taxpayers, ensuring greater transparency on the rights and obligations of both, and encouraging a more service oriented approach of tax administrations. It encourages tax administrations and European taxpayers to adopt and apply all these principles and practices, including new developments and further ideas. As a consequence, this code is not mandatory but should be considered as a model to follow, to which Member States could add or adapt elements to meet national needs or context.

Therefore, this European Taxpayers' Code should contribute to more effective tax collection by improving relations between taxpayers and tax administrations, where the mutual understanding of tax rules will reduce the risk of mistakes with potentially severe consequences for taxpayers and subsequent costs for tax administrations.

We entirely endorse the view expressed by the Commission that a Code, or Charter, can enhance the efficiency and effectiveness of a tax system and it can also increase the tax morale of a country's citizens.

We accept that some countries will prefer to include the principles of taxpayer rights otherwise included in a code/charter in legislation and it must be for each country to determine the approach which it decides is most appropriate.

We believe that the European Commission Platform on Tax Good Governance is an ideal forum to take forward the work on Taxpayer Codes/Charters.

II. Some More Detailed Concerns

Since the EC Guidelines for a Model for a European Taxpayers' Code was published in November 2016, the global efforts to build a better international tax regime have continued and transparency has been a key element in these efforts, but in the context of taxpayer rights, we believe there needs also to be respect for the confidentiality of individual taxpayer information. We discuss some relevant issues in the paragraphs below.

CFE view the issues of taxpayers' rights and a taxpayers' charter as ones deserving of increased attention and consideration, particularly against the backdrop of recent European and international measures targeting tax avoidance and tax evasion. Although measures aimed at eradicating harmful tax practices are welcomed by the CFE, the increased reporting requirements, for taxpayers and tax advisers and disclosure of taxpayer information, which flow from these measures, pose undeniable risks to eroding taxpayers' rights of confidentiality, privacy and data protection.

To that end, the CFE welcomes the fact that the issue has been included for discussion on the work programme of the European Commission Platform on Tax Good Governance.

III. Current State of Play

Exchange of information is not a novel concept within taxation, and the majority of tax treaties since the mid-1900s have included provisions for exchange of information. However, public disquiet concerning tax evasion practices revealed in documents leaked to the press over the past decade, coupled with the perceived lack of taxation of digital and tech companies, has led to unprecedented interest in tax policy, tax legislation and tax administration. It is against this backdrop, the concept of fair taxation being paramount, that 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 administrations.

At the international level, the Common Reporting Standard for automatic exchange of financial account information was endorsed by the G20 in 2013. Since then, 116 jurisdictions have become members of the OECD's Inclusive Framework on Base Erosion and Profit Shifting (BEPS), the implementation of which makes these jurisdictions subject to monitoring and peer review processes where tax practices are compared with standards derived from the BEPS Action Plan. The OECD Global Forum on Transparency and Exchange of Information reports that there are over 2700 relationships providing for automatic exchange of offshore account information under the Common Reporting Standard at present, which is a considerable exchange of data.

Within the European Union, in 2014 the Directive on Administrative Cooperation was extended to include automatic exchange of information, in order to emulate the OECD CRS. This was followed by further tax transparency reforms in 2015 to the Directive of Administrative Cooperation. Included were automatic exchange of tax rulings and exchange of advance pricing agreements, and in 2016 automatic exchange of country by country reports and the provision to authorities of access to beneficial ownership information, collected pursuant to anti-money laundering legislation. Most recently, the Directive has been revised to incorporate automatic exchange and reporting of tax planning arrangements by tax advisers or taxpayers themselves, where those arrangements meet the benchmark criteria contained in the Directive. This comes into force in the coming weeks.

The European Union has created the List of Non-Cooperative Jurisdictions for Tax Purposes, which identifies jurisdictions that do not meet the criteria of tax transparency, fair taxation and implementation of anti-BEPS standards. Risk of appearance on this list encourages non-compliant countries to become party to treaties which require automatic exchange of information being put in place.

Thus, in a relatively short period there has been a move from an environment with a quite limited exchange of information to what soon will be, certainly within the EU, one with a considerable exchange of information between countries and their tax authorities. It is prudent that legislators and policymakers consider the implications on taxpayers' rights when progressing these measures to eradicate tax evasion and pursue the goal of fair and equitable taxation. Effective safeguards to protect taxpayers' fundamental rights, particularly considering the exchange of information which will take place electronically, are crucial.

We note that the objective of having the right amount of tax determined and paid in the appropriate territories, especially when achieved by digital intervention, whilst respecting the territorial rights of each and all relevant territories, risks damage to the individual tax rights of taxpayers and their rights of data security. Achievement of an acceptable solution is at the top of all our labours, but it cannot be had by disregarding the crucial importance of the rights of taxpayers.

IV. European Union Guideline for a Model for a European Taxpayers' Code

The CFE welcomed the efforts of the European Union in carrying out a public consultation on the issue of taxpayers' rights in 2013, and the subsequent publication of the Guideline for a Model for a European Taxpayers' Code in November of 2016. The CFE welcomes the guiding principles that the European Union set out in the Code, namely:

- lawfulness and legal certainty;
- non-discrimination and equality of taxpayers;
- presumption of honesty;
- courtesy and consideration;
- respect of law;
- impartiality and independence;
- fiscal secrecy and data protection;
- privacy; and
- representation.

CFE also welcomes the acknowledgement in the Code that working together (paragraph 3.2), procedures (paragraph 3.3) and resolutions (paragraph 3.4) set out other important elements of well-functioning tax systems and need to be appropriately articulated in individual countries.

CFE endorsed the European Commission's approach to address both taxpayer rights and obligations in one document, which CFE believes reflects a balance acceptable to both taxpayers and governments. However, the view of CFE is that this issue has not continued to receive the necessary level of attention in light of the significant reforms which have occurred since the Code was published, in relation to disclosure of tax planning arrangements. Changes which are widely accepted as constructive and beneficial for all taxpayers risk rejection if they ignore the balances inherent in clearly understood and accepted taxpayer rights and obligations.

This is particularly the case considering the importance being placed on personal data security and confidentiality following the European Union's General Data Protection Regulation (GDPR) which came into force on 25 May 2018. The GDPR states that individuals must be informed of the personal data being held and the purpose of it being held by an entity, to be able to access that data and to be able to request data be erased.

Though there are obviously considerations overriding some of these provisions for the purposes of carrying out effective tax administration, it is unlikely that all jurisdictions will have the appropriate processes in place to inform taxpayers of what personal data is held and to what end. This will likely result in substantial increases in legal challenges and litigation.

V. CFE Tax Advisers Europe Model Taxpayers' Charter

In recent years, the CFE has worked with other organisation to review practices involving taxpayers' charters in over 40 countries. This consultation process was carried out in collaboration with the Asia-Oceania Tax Consultants' Association (AOTCA) and the Society of Trust and Estate Practitioners (STEP) over a two-year period. Following this consultation, the parties jointly published a draft Model Charter of Taxpayer Rights and Responsibilities between taxpayers and tax administrations. The Charter and the Final Report can be accessed online at the following link: <http://www.taxpayercharter.com/>

The Model Taxpayer Charter covers many of the characteristics of a well-functioning tax system, and sets out the following 10 basic principles that are perceived as underpinning the rights of the taxpayer:

- integrity and equality;
- certainty;
- efficiency and effectiveness;
- the right to appeal and the right to dispute resolution;
- appropriate assistance;

- confidentiality and privacy;
- payment of the correct amount of tax;
- representation;
- proportionality; and
- honesty.

The Model Charter also sets out 10 taxpayer responsibilities, including:

- being truthful;
- providing information where reasonably required;
- being cooperative;
- making payment;
- complying with the law;
- maintaining accurate records;
- taking due care;
- retaining responsibility for information in filings;
- showing courtesy; and
- complying cross-border.

The overriding purpose of the Charter is to foster a relationship of mutual trust, respect and responsibility between taxpayers and tax administration by clarifying taxpayers' obligations while also clarifying the rights of taxpayers that should be upheld. The Charter aims to ensure that all taxpayers are treated equally and without bias or preference.

The CFE does not expect a Taxpayers' Charter to lead to full harmonisation of taxpayer rights and obligations but believes that it can contribute to an acceptable approximation of laws. Concerning measures to combat tax avoidance and evasion, there is, currently, a notable lack of legal certainty in the area between tax avoidance and tax evasion. The distinction between acceptable and unacceptable tax planning is not a legal but a moral distinction, subject to change according to public opinion. For these reasons, the CFE finds that protecting the legally held rights of taxpayers is all the more significant given the current state of public opinion and as important as ensuring the continuance of legally enforced compliance.

VI. Future Work

Taxpayer and tax administration rights and obligations are becoming an issue of global interest and we, as the leading body representing European Tax Advisers, look forward to being an active contributor to further progress on the Guideline for a Model for a European Taxpayers' Code within the European Union.

CFE believe that should the Code be adopted, for each Member State of the EU there would be a benchmark guiding change which will bolster tax revenues, foster good governance and the rule of law. As such each Member State and the EU will be a representative beacon throughout the world, and an encouragement for those countries adapting to the rigours of the BEPS process.

When we, CFE, collaborated with AOTCA and STEP to research and report on taxpayer rights in the book "Towards a Better Tax System, A Taxpayer Charter" our purpose was to make it clear that tax advisers around the world are dedicated to finding and supporting a global tax system that is fit for purpose and which respects the rights of nation states along with those of taxpayers. We did this because we inherently know that the absence of such a balance results in failure and a collapse of collaborative enterprise.

We know the United Nations has an active interest in this, particularly for developing countries where the impact of many of the tax changes will be strongly felt. We believe that because of the cross-border impact of the EU's work, it is a pathfinder and, in consequence, will be given opportunities to make a positive contribution to the work of the UN, the G20 and the BEPS programme of the OECD. For this reason, engagement in this work is of extreme and vital importance for all interested parties and stakeholders.