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# CORPORATE TAX POLICY

## Key Priorities & Q&As

**Submitted to the EU Commission Platform  
for Tax Good Governance  
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CFE Tax Advisers Europe is a leading European association of tax institutes and associations of 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, or **Aleksandar Ivanovski**, Tax Policy Manager at [info@taxadviserseurope.org](mailto:info@taxadviserseurope.org). For further information regarding CFE Tax Advisers Europe please visit our web page <http://www.taxadviserseurope.org/>

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## CFE AT THE EU PLATFORM FOR TAX GOOD GOVERNANCE

**Membership:** CFE has been a member of the Platform since its inception in 2012, and has just reappointed for its 3<sup>rd</sup> mandate at the Platform.

**Current Representatives:** Piergiorgio Valente (President of CFE and Chairman of the Global Tax Advisers Platform - GTAP) and Aleksandar Ivanovski (Tax Policy Manager of CFE and Secretary-General of GTAP).

## CFE AT A GLANCE

CFE Tax Advisers Europe represents members from over 33 national professional tax adviser organisations in 26 European countries, making CFE the most representative voice of tax professionals in Brussels. CFE invokes a broader European perspective concerning the work it undertakes, rather than representing the views of any particular industry or country. CFE is also a founding member of the Global Tax Advisers Cooperation Platform, GTAP. GTAP was established by CFE Tax Advisers Europe, AOTCA and WAUTI, who collectively represent more than 700,000 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.

CFE aims are: to safeguard the professional interests of tax advisers; to exchange information on national tax laws and contribute to the development of tax law in Europe; to maintain relations with the authorities at national and international levels, and share with the authorities of the European Union the experience and insight of our member tax advisers from all areas of taxation and professional law; to promote the co-ordination of national laws governing the profession, and to achieve the protection of each national tax adviser's title in Europe; to inform the public about the services that tax advisers provide; and to seek to provide the best possible conditions for tax advisers to carry out their profession.

The Executive Board is responsible for the devising the work priorities and output of CFE Tax Advisers Europe and reports to the General Assembly, the governing body of CFE. Work is managed through three committees, the Fiscal Committee, the Professional Affairs Committee, and the Tax Technology Committee, which are each chaired by a member of the Board.

CFE's Fiscal Committee is comprised of two Sub-Committees: the Direct Taxes Subcommittee and Indirect Taxes Subcommittee which monitor and respond to taxation developments in the EU and worldwide. The Fiscal Committee also comprises an ad hoc working group, the ECJ Task Force, a group of tax academics and renowned tax practitioners which meets regularly to discuss and issue Opinion Statements on selected decisions of the Court of Justice of the European Union. The Professional Affairs Committee engages in policy areas that concern and affect the exercise of the tax advisory profession, such as ethics, professional codes and qualification requirements, reporting requirements, cooperative compliance, amongst many others. The Tax Technology Committee was established in 2018 as a response to the importance of digitalisation and the impacts of technology on taxation and the way the tax profession is carried out.

The CFE Technical Committees produce [technical position papers](#) which are sent to significant EU and global stakeholders, including the European and OECD institutions, concerning tax policy developments and matters concerning the professional affairs of tax advisers or way technology impacts on the tax profession. In addition, the leading European tax law journal European Taxation, edited by IBFD, regularly publishes CFE Opinion Statements and articles on CFE conferences.

CFE is an active member of multiple taxation expert stakeholder groups, including the European Commission Platform for Tax Good Governance, Aggressive Tax Planning and Double Taxation, the European Commission VAT Expert Group, the European Commission VAT Forum and the UN Committee of Experts in International Cooperation in Tax Matter.

## 10 KEY PRIORITY POLICY AREAS

1. Taxpayers Rights and Tax Certainty
2. Taxation of the Digitalising Economy
3. Common Approach to Anti-Avoidance and Substance Measures
4. Mandatory Disclosure Rules
5. Tax and Climate Change – Sustainable Tax Policies
6. Tax Systems & Tax Competition
7. Double Taxation and Dispute Resolution
8. Anti- Money Laundering
9. Simplification of Indirect Taxes
10. Global Tax Policy within the Global Tax Advisers Platform (GTAP) - [Ulaan Baatar Declaration](#) & [Torino-Busan Declaration](#)

## THE FUTURE OF CORPORATE TAX POLICY - KEY Q&A

1. What is the nature of the problems we currently face when it comes to the global tax debate?
2. What are the global tax principles that should guide any response?
3. Is there now general agreement that digital companies or a digital economy cannot be separated out from the economy as a whole?
4. Is it simply a matter of strengthening anti-avoidance rules?
5. Do we need more fundamental reform of the CT system?
6. Are there other alternatives to CT – for instance can indirect, land and other taxes be applied more effectively and fairly than CT?
7. How is any of this accomplished without “tax wars”, or adding layer upon layer of complexity or double taxation?
8. Are responses meeting future developments and challenges?
9. Are the institutions we have capable of delivering any new agenda – do they need developing or do we need new bodies?

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## POLICY AREAS FOR THE NEW EU COMMISSION – 10 KEY PRIORITIES

### 1. 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 Charter<sup>1</sup>, 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

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<sup>1</sup> <http://www.taxpayercharter.com/charter.asp?id=15>

businesses.<sup>2</sup> 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 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**

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

**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.**

## **2. 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 economy<sup>3</sup>, 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 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.

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<sup>3</sup> 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>

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](#).

### **3. 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.**

#### **4. 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.

#### **5. 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.

#### **6. 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).

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.

## **7. 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.

## 8. 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.

## 9. 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.

## **10. Global Tax Policy within the Global Tax Advisers Platform (GTAP)**

Within the GTAP, CFE takes a prominent role in promoting collaboration with our partner organisation in Africa, Asia and Australia-Oceania. GTAP was established by CFE Tax Advisers Europe, AOTCA and WAUTI, who collectively represent more than 700,000 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.

Key topics on which GTAP is focused include: domestic revenue mobilisation, capacity building, tax morale, climate policy and taxation, digitalisation of tax, and other global policy relevant issues.

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## Conclusion

1. 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.
2. 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).
3. 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.
4. 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.

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## THE FUTURE OF CORPORATE TAX POLICY – 10 Key Q&A

### 1. What is the nature of the problems we currently face when it comes to the global tax debate?

It is now widely recognised that the digital economy poses unique tax policy challenges for policymakers in a global context. The immediate concerns are twofold:

The existing international tax rules are unable to fully address the increasing reliance on data and business-to-customers sales in host jurisdictions from a tax perspective, hence their corporate tax presence in host jurisdictions is not being recognised within present framework, ie. nexus issues;

Multinational group companies with digital business models are currently subject to only a very low effective rate of tax worldwide, with a public perception that these companies are not paying “enough” tax anywhere in the world.

Taking a step back, it is worthwhile reminding ourselves that we live in a different world, to the one when today’s guiding principles of the tax system were designed by the League of Nations back in 1920s.

Current tax rules were not designed for the digital business models that rely on little, if any physical presence at all. As a result, there is a perceived mismatch between **where the value is created and where taxes are paid**, which affects the perception of **fairness** in our tax systems. Hence it is no doubt clear, as admitted by the OECD, that under the designation “taxation of the digital economy” we are witnessing perhaps the most fundamental change in history of the design and *modus operandi* of the international tax rules.

As CFE, we have supported the proposal to focus on the economic link between the users/market jurisdictions and the value created therewith. We believe that in arriving at a global solution, it is important that traditional concepts of international tax law are not forgotten in the process. The solution should remain consistent with the OECD’s long-standing approach to the international tax framework that corporate tax is due where the underlying economic activity takes place and where the value is created. From CFE’s perspective, the existing OECD proposals appear to address these issues conceptually but are legally and technically very complex.

### 2. What are the global tax principles that should guide any response?

Simplicity, administrability and fairness.

**Simplicity**, as we already operate in a global tax environment which is increasingly complex. Proverbially, tax advisers are said to be the ones who benefit from the complexity of tax rules.

The truth is, tax advisers are an inherent part of administering a tax system. Be it simple or complex, tax advisers make tax systems work. We would welcome solutions which are simple to understand both conceptually and practically, which as a result will provide more breathing space to focus on what really matters – helping companies to be more innovative, productive and committed to the societies where we live in.

A related point follows i.e. **the principle of administrability**. If any upcoming reform results in rules that are too difficult to administer, we will have not achieved much as a result. If tax administrations in European countries are already struggling with resources, what will happen with developing countries, how much time and effort will it take to acquire the expertise and human resources needed to administer the new rules, where the existing ones are already too complex to grasp?

**Fairness** of our tax systems has rightly taken precedence over other principles, as seen not least in the recent EU tax avoidance initiatives. There is public perception of mistrust in the institutions and more generally in the world order that we operate in.

Restoring trust and the sense of fairness that our tax systems are delivering on the goals that matter for our citizens should be a priority for policy makers. The implications of the sense of unfairness in a tax system has a potential to undermine tax collection, tax morale in general, and in particular the voluntary compliance on which most of the tax administrations rely on.

Finally, the global trends of **transparency** and the tax justice campaigners urge for public country by country reporting (public CbCR) are a corollary to the above discussion on the principles. If we address the public trust in the institutions, and we restore the public perception of fairness of our tax systems, there will be less pressure for more transparency initiatives. Transparency should not be a goal to itself. More corporate or more tax-related data and MNEs information in the public domain will not solve anything, instead restoring the trust in our institutions and improving their capacity in a meaningful way should certainly be a guiding principle of this global tax policy response.

### **3. Is there now general agreement that digital companies or a digital economy cannot be separated out from the economy as a whole?**

The problems are very complex and inevitably highly political.

It is widely understood, per the OECD BEPS Action 1 proposition, that the digital economy should not be ring-fenced from the rest of the economy for tax purposes due to the increasingly prevalent nature of digitalisation and the evolving nature of the digital business models. However, it is also evident that the taxation challenges that we are facing do not arise from the traditional business model, rather from the digital business models.

Indeed, efforts to address the whole international tax framework, rather than the specific challenges related to the digital economy, has a significant potential to defocus our efforts from the important problems, and will make it potentially more challenging to address the fundamental underlying issues.

#### 4. Is it simply a matter of strengthening anti-avoidance rules?

Indeed, the issues under scrutiny are much deeper and wider, and certainly go beyond avoidance issues and BEPS.

However, the OECD acknowledges that digitalisation of the business models does not generate unique BEPS risks, but some of the key features of digitalisation compound existing BEPS issues. Some time should be allowed to evaluate the full effect of the BEPS-related anti-avoidance measures, before any new anti-avoidance measures are being legislated. Some of these measures are still under implementation in most countries of the Inclusive Framework.

Consequently, a longer-term perspective seems more appropriate to appreciate the entirety of the remaining BEPS issues. Within the EU a number of anti-BEPS policy and legislative measures have been introduced with the ATAD and ATAD2 directives, which significantly reduce the incentives to shift mobile tax bases to low-tax jurisdictions.

#### 5. Do we need more fundamental reform of the CT system?

The larger issue at stake is what the impact of the OECD proposals will be beyond the digital economy (transfer-pricing in general), and the related question how to allocate taxing rights among jurisdictions, hence this operation is inevitably going to result in a more comprehensive corporate tax reform.

What should follow, is a debate on a common understanding of what constitutes “nexus” for taxation purposes. This must be addressed as a matter of priority, which will make it then simpler to discuss the allocation of profit rules.

As CFE, we welcome the evaluation of the merit of users’ contribution to value creation within digital business models, however, for reasons of tax certainty, CFE has called to keep as much as possible to the well-established principles of international tax law.

Whilst giving some value to users’ value participation and data for digital business models, the existing Authorised OECD Approach (AOA) that relies on **assets, risks and people functions** should likely be kept for all other business models. This approach has so far resulted in a globally accepted profit allocation standard in line with the operation of the arm’s length principle and the OECD Transfer-Pricing Guidelines.

In that sense, under the functional transfer-pricing analysis that underpins profit allocation between different arms of a multinational group company, the AOA approach takes into

account the distinct contributors to the value creation, such as functions performed by people, which takes into account the used assets and the assumed risks.

As a reminder, Article 7 and Article 9 OECD Model embody the international tax policy consensus under which countries exercise taxing rights on the business of resident taxpayers (Article 9) and the circumstances under which business profits are attributable to a non-resident PE in a source country (Article 7).

Revision of these fundamental principles of international tax law should remain as close as possible to the existing OECD framework, ie. the OECD Model and the accompanying Commentary.

## **6. Are there other alternatives to CT – for instance can indirect, land and other taxes be applied more effectively and fairly than CT?**

Some commentators have advocated to abolish Corporation Tax altogether, considering that the incidence of all taxes falls on the final consumer from an economic perspective. In that sense, sales taxes and other forms of indirect taxation remain thought-provoking as a tax policy alternative to the whole debate on reforming corporate taxation, which increasingly yields less revenue compared to indirect taxes. At present, however, such alternatives are not worth pursuing given the absence of political support, hence the viability of such ideas.

## **7. How is any of this accomplished without “tax wars”, or adding layer upon layer of complexity or double taxation?**

In absence of a common agreement, we are increasingly facing a tax war indeed, 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 burden for businesses. Therefore, unilateral actions will stifle economic growth and innovation.

The issue of double taxation is already difficult to address at present, considering the inadequacy of tax dispute resolution mechanisms. We therefore welcomed the developments with the EU Tax Dispute Resolution Mechanisms and have called on expediting existing MAP procedures.

We have called on the EU to give due consideration to the possibility to extend the existing mechanisms to double tax disputes arising from the unilaterally introduced digital services taxes (DST) around the EU. DST are not income taxes, but revenue or turnover taxes. It is widely accepted in the academic literature that turnover taxes do not fall within the scope of the OECD Model and tax treaties. Considering that revenue or turnover taxes are substantially similar to indirect taxes, they do not qualify for treaty relief. Specifically, if a tax is not a “covered tax” under article 2 of the OECD Model Tax Convention, it would consequently not

be covered by either the “distributive” articles of the OECD Model, nor would it qualify for dispute resolution under the mutual agreement procedure (MAP) of Article 25 of the OECD Model. Accordingly, such indirect taxes would not qualify for relief from double taxation under Article 23 of the OECD Model in the residence jurisdiction of the taxpayer, and will involve double or multiple taxation.

In recognition of the disputes and double taxation that any new solutions could give rise to, CFE advocates for **early certainty mechanisms for taxpayers**. Increasingly, taxpayers in different States are facing equal tax obligations but are not treated equally by tax administrations in terms of their rights in different states.

Consequently, the administration of the new OECD proposals should not give rise to double taxation in multiple jurisdictions or entail significant compliance burden for businesses.

## **8. Are responses meeting future developments and challenges?**

We recognise the difficulties in pinpointing the features of all the digital business models as current definitions are likely to become outdated in due course. Digital business by its nature is a fast-paced environment. We should not forget still that precisely because of the fast-paced change of the digital environment, today’s solutions ought to be future-proof and consistent with the principle of aligning profit with underlying economic activities and value creation.

## **9. Are the institutions we have capable of delivering any new agenda – do they need developing or do we need new bodies?**

Considering that the issues under scrutiny will inevitably involve reallocate taxing rights among jurisdictions, we support the work of all involved institutional actors, such as the UN, the OECD and the European Commission. They all seek to explore the extent to which these new forms of business activity generate value and how will such value be attributed among jurisdictions for taxation purposes.

The OECD has played a prominent role in evaluating international tax standards in the context of the BEPS process and is becoming a global forum which brings together governments, stakeholders like CFE and citizens, seeking to address issues such as the taxation challenges of the digitalising economy.

As a next step, we need to restore trust in the institutions again and to work on building capacity where this is nonexistent or insufficient.

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