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OPINION STATEMENT

Opinion Statement TTC 1/2022 on the OECD Public Consultation on a Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard

Issued by CFE Tax Advisers Europe
Submitted to the OECD on 29 April 2022

CFE Tax Advisers Europe is the European umbrella association of tax advisers. Founded in 1959, CFE brings together 33 national tax institutes, associations and tax advisers' chambers from 24 European countries. CFE was the initiator of the Global Tax Advisers Platform through which it is associated with more than 600,000 tax advisers worldwide. CFE is part of the EU 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 Ian Hayes, Chair of the CFE Tax Technology Committee, or Mr Aleksandar Ivanovski, Director of Tax Policy at info@taxadviserseurope.org. For further information regarding CFE Tax Advisers Europe please visit our web page http://www.taxadviserseurope.org/

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1. Introduction

CFE Tax Advisers Europe welcomes the work of the OECD in seeking to establish a crypto-asset reporting framework and exchange of information in this field in light of the development of new financial technologies. In seeking to support the OECD objectives, CFE wishes to highlight the following issues in relation to the consultation questionnaire and the policy options being considered.

2. Scope

CFE understands and supports OECD efforts to support global transparency but is also well aware of the need to focus on how this framework is implemented. It is essential to avoid issues with mismatches, differences in how each country adopts the framework, and, because some countries may not implement, the risk of creating an unlevel playing field across the globe which will be fatal to the whole enterprise. Without the right implementation, the application of the framework could become so different, from a definitional perspective, and so broad, that it will lead to highly problematic divergence.

Whilst CFE welcomes the efforts to develop a reporting framework for crypto-assets, CFE believe it is esential to agree an international taxation framework prior to the details of reporting from the exchange system being further elaborated. CFE is concerned that a reporting framework will encourage burdensome and unbalanced investigations by tax administrations, as it is not immediately apparent how the policy options for cross-border taxation of crypto-assets will develop.

At present there is a level of uncertainty as to the nature of these “things” currently treated as assets and, in consequence, on how to apply taxation of these “things”. To develop the exchange framework for taxation before identification and clarification will risk the capture of data that may not prove useful for eventual effective and conjoined taxation of them. Individual sovereign states may well find themselves lacking in the knowledge and support necessary to implement and comply with reporting requirements and oversight. It may also prove to be a significant obstacle to the continued strong evolution of an economic area of activity still in relative infancy.

The environmental impact of this exchange of information in terms of data storage energy consumption and carbon outputs must also be considered in the development of the framework.

CFE has a particular concern that, given the speed with which assets can be moved around the globe, establishing country-by-country reporting before an international taxation framework concerning these assets is in place will have a hugely negative impact. In particular it will encourage the movement of assets to countries where reporting and exchange of information does not exist. There is a significant risk that any framework and definitions will be outdated before they are finalised and in force.

Moreover, at a time when blockchain applications are emerging at pace, seeking to establish a reporting regime without ensuring it is future proof, globally adopted (or "ring fenced") and capable of ready adaptation seems foolhardy. Those taxpayers (and "non-taxpayers") who have moved to crypto currencies have done so for many reasons, some of which may be connected with the lack of transparency available either for the assets or the transaction. By creating a CARF, enabling ready and available conversion in and out of crypto assets at rates of exchange which are steady and dependable, if there are countries which do not accept the framework, those "dark users" will have, under the present state of applicable technology an impregnable home for "ill gotten gains". For this reason we are of the view that, from inception, if there is a global CARF there must be global buy-in with common rules, common values and identification.

The scale of information being sought and the access to the amount of taxpayer data by tax authorities must be considered not only with regard to the level of activity now but to its future growth. Many jurisdictions have no real tax policy concerning cryptocurrencies and crypto assets yet are driving data exchange now in order to future proof information requests. CFE is of the view that the correct starting point is to help jurisdictions understand the intricacies of crypto assets and develop tax policies for integration within their taxation system. Achieving the right proportionality balance between disclosure and protecting taxpayers' rights and data is crucial in the process of developing the framework whilst not stifling economic development.

3. Definitions

CFE does not intend to comment on the technical aspects of definitions in this consultation, but would observe that definitions in this field are a moving target and difficult from an international tax perspective to set down. From a financial services position, crypto-assets can encompass a wide range of things, and although there are currently tens of thousands of different cryptocurrencies and cryptoassets, it is likely that many will fail and only a small number will survive, namely those that are more sophisticated and have more potential uses. On that basis, definitions need to be future-proof, but not so hidebound as to hamper the developmental process of these technologies.

There will also be different uses adaptations and variations of these technologies as they evolve, e.g. central digital currencies being favoured by governments. Central bank digital currencies will have the backing of the State bank and, therefore a clear conversion rate to a specific fiat currency. In contrast, cryptocurrencies have no fixed conversion rates and their values will be floating. This is significant in terms of the valuation of these assets, and CFE is of the view that the absence of security of exchange will only arise when State backed crypto currency becomes readily available. Currently the massive area of fluctuations in per diem exchange values make it difficult if not impossible to deal with compliance and intermediaries are rightly concerned about pressures coming in their direction, not only for CRS but for the wider area of reporting in respect of CARF.

In the event that a CARF should emerge at this stage, because of the proposals for country by country implementation, CFE is of the view that carefully crafted safe harbour considerations are important for the framework, but with clear sunset provisions. Many governments want to encourage crypto-asset development for financial services capabilities and work in a compliant manner, but flexibility is needed to ensure the framework and taxation rules do not form a major disincentive for these assets to become a leading part of the financial services industry.

3. Intermediaries

At this formative stage of development CFE has concerns that the burden placed on marketplaces and exchanges, the time lag and volume in reporting requirements and the degree of responsibility placed on intermediaries will prove to be counterproductive. The sheer number of buyers and sellers that intermediaries would be required to provide information on, given the time lag in report, is staggering.

CFE are agreed the process will require resort to AI because the disclosure will amount to immense exchanges of data, and this will be costly for intermediaries in implementation. Similar levels of investment in AI will be required of revenue administrations, and we have reservations as to whether this capital expenditure will be a primary charge on hard pressed State finances. Both of these economic factors we think will lead to a slowing down of the use of these technologies.

In the short and medium term, certain countries will not have the ability to deal with the reporting requirements, leading to safe harbours where those who want to deal in crypto assets without reporting can choose to move their investments. CFE are concerned that based on the current framework, the OECD cannot expect the take up number of countries required to be effective. If this is the case, then it is probable that many transactions in crypto will not be captured, and, in consequence, large numbers of exchanges of information will be useless as there will be no common identifier for traders or buyers to link together the transactions.

Before introduction, the common system must cover data analysis and exchange, and use communicative software capable of handling and identifying the data being exchanged, to avoid useless disclosures and data storage.

CFE also has issues regarding the anti-money laundering reporting obligations that may arise through the currently envisaged framework, and their impact on the existing EU framework of AML reporting requirements. Exchanges are likely to be the only bodies who would be able to properly assess the currently drafted definitions in terms of reporting the transactions, but some CFE members carry out supervisory functions and may be impacted in terms of their oversight duties. This is an additional reason CFE is concerned by the scope of the framework and the risk of over-reporting, particularly as there is no international framework for taxation of the assets. It is in CFE's view a fundamental flaw in the current consultation exercise.

4. Conclusion

CFE recognises the need to understand and meet the challenges presented by the crypto revolution. For this reason we are supportive of the OECD efforts to establish global transparency but are of the view there is a clear need to focus on how this framework is implemented. CFE is concerned about the scope and nexus rules of the framework, and believes a tax framework for e-assets should be developed prior to a system for exchange of information.

It is our view that existing tax legislation establishes canons of taxation that have the capacity to deal with crypto assets and that what is needed is convertability which enables ready adaptation. Acccordingly it should be no surprise that in our view amendment to the Common Reporting Standard (CRS) is a necessary precursor for this to happen and we are wholly supportive of the OECD proposals in this respect.

We are not sure, at this stage, that the proposal for the development of a CARF, which underlies this consultation, has the necessary structural foundations to enable implementation and, therefore, risks substantial untargeted and unmatched overreporting if introduced in haste.

We note that much of the consultation is, itself, devoted to fact and opinion gathering, which, given that the marketplaces have not yet developed, is understandable and wise, but we do not think that development is in any way sufficient to warrant widespread investment, in human and monetary terms, in early project development.

We accept that the US has advanced its own CARF development, but also think that the markets it applies to are both new and are themselves evolving. Observing and digesting are in our view preferable to imitation, especially in the absence of any State backed cryptocurrency.

Release of an early CARF, which we think will not be globally accepted, will act as a disincentive for the economic and prosperous development of the sector in mature tax environments. It will act as a driver for crypto activity to develop in countries which make clear their intention not to introduce regulation and reporting in accord with a CARF.

We wonder whether a country by country implementation is necessarily the way to progress and think it far too early to form a view one way or another. That said, we reiterate our support both for a clear enunciation of a global taxation framework which includes cryptoassets, signposted by the Common Reporting Standard, and further research into what a Crypto Asset Reporting Framework which has global connectivity and matched reporting could look like.

CFE Tax Advisers Europe hopes that its feedback on this consultation provides helpful input for the OECD. CFE reiterates its position that it is supportive of the OECD efforts to establish global transparency, and remains available to assist in any further stakeholder consultation processes.