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**Opinion Statement FC 15/2016**

**on European tax advisers' tax policy priorities 2016/2**

**Prepared by the CFE Fiscal Committee**

**Submitted to the Slovak Minister of Finance in September 2016**

*The CFE (Confédération Fiscale Européenne) is the umbrella organisation representing the tax profession in Europe. Our members are 26 professional organisations from 21 European countries with more than 200,000 individual members. Our functions are to safeguard the professional interests of tax advisers, to exchange information about national tax laws and professional law and to contribute to the coordination of tax law in Europe.*

*The CFE is registered in the EU Transparency Register (no. 3543183647-05).*

*We will be pleased to answer any questions you may have concerning CFE comments. For further information, please contact Piergiorgio Valente, Chairman of the CFE Fiscal Committee, or Rudolf Reibel, CFE Tax Policy Manager, at [brusselsoffice@cfe-eutax.org](mailto:brusselsoffice@cfe-eutax.org).*

## Introduction

This Opinion Statement is based on a letter sent on 2 September 2016 to the Slovak Minister of Finance and the Slovak EU Representation on the occasion of the EU Council presidency of Slovakia in the second half of 2016. The text was later approved for publication by the CFE bodies.

## Statement

We observe that after much of “EU-BEPS” and those elements of the Commission’s 2015 Action Plan that relate to fighting tax fraud, evasion and avoidance have been completed or proposed, the actions aimed at achieving a single market without tax borders still have not seen the light of day: Most prominently, a new CC(C)TB and a substantial improvement of double taxation dispute resolution.

We would like to encourage the Slovak EU Council Presidency to reset the balance in the EU taxation agenda by actively advancing proposals that aim at double taxation relief, in particular the expected proposal for a new **EU double tax dispute resolution mechanism**.

We believe that an improvement of double tax resolution mechanisms in the EU is urgently needed.

As important elements of such mechanism, we consider that

- its decisions be binding upon EU member states and reached within an acceptable timeframe,
- the taxpayer affected should be able to contribute to the proceedings as amicus curiae,
- it should be extended beyond transfer pricing matters, and
- the EU approach be coordinated with the major international approaches taken; to achieve this, the EU should opt to mandatory arbitration in the sense of the Recommendations on BEPS Action 14.

We have issued the following statements setting out our position more in detail:

- CFE Opinion Statement on double taxation dispute resolution, May 2016 ([link](#))
- CFE Opinion Statements on OECD BEPS Action 14, January 2015 (on the Discussion Draft; [link](#)) and April 2016 (on the Final Recommendations; [link](#), see in particular FC 4f/2016)

**Our views concerning the other topics on the Commission’s and Council agenda are as follows:**

### Country by country reporting (CBCR)

Country-by-country information on tax payments can be useful for tax authorities as a first indication of possible tax avoidance. However, we doubt the added value of such information being in the public domain, and have commented in favour of a staged approach. This would allow gathering experience with the practical implementation of CBCR before considering publication of CBC reports. This will increase the accuracy of public CBC reports, and will reduce the risk that data published will lead to misinterpretation and wrong conclusions. Therefore, it is our view that the publication of CBC reports should not be a priority.

If publication of CBC reports is agreed,

- the set of data to be published included in the Commission’s proposal of 12 April 2016 seems reasonable, as it does not contain information which raises confidentiality concerns, which would be the case for detailed information on transfer pricing or value chains.
- In order to create a level playing field, any publication duty agreed should apply to non-EU-based companies to the widest possible extent.
- the threshold of € 750 million should be kept as it is coherent with the OECD threshold for CBCR to tax authorities.

See also

- CFE Opinion Statement on further corporate tax transparency, September 2015, and Opinion Release on Country by country reporting in the EU, August 2016 ([link](#))

### **Tax Rulings**

For taxpayers, tax rulings are an essential means to obtain the legal certainty needed for long-term investments. While tax rulings must respect EU state aid rules and the equal treatment of taxpayers, any EU legislation on tax rulings should not have the effect of deterring a taxpayer from asking for a ruling.

CFE does not take a view on whether tax rulings information should be published (which is the case in some member states), but we agree that if ruling information is published, it must be anonymised in a way that does not allow identification of the entity requesting the ruling.

- See the CFE Opinion Statement on mandatory information exchange on tax rulings ([link](#))

### **CCCTB**

There is no common view among our members on whether a CC(C)TB should be introduced.

Those members in favour of a common tax base agree that it should contain a consolidation element. It is their concern that the Commission will let go of its stated objective to propose such element. They maintain that a proposal without consolidation should contain a possibility of a temporary cross-border loss offset, as announced by the Commission in their Communication of 17 June 2015. This is becoming increasingly relevant, as the EU Court of Justice’s case law is attaching more and more conditions to the “finalisation” and offset of losses incurred by a subsidiary resident in another member state.

We understand that the Commission is planning to propose a mandatory CC(C)TB. The CFE has argued for a CC(C)TB to be voluntary. To reduce unnecessary compliance cost, we believe that a mandatory CC(C)TB, if introduced, should only apply to genuine multinationals, while small and medium-sized enterprises and enterprises that are mainly active in one single member state should be exempted, but should be able to opt for the CC(C)TB. There should be an overall size threshold, and a second threshold that has to be exceeded in more than one member state. Proponents suggest that a timeline to reach a CC(C)TB should be agreed upon, to gather commitment.

- See the CFE Opinion Statement on the re-launch of the CCCTB, January 2016 ([link](#))

### **External strategy: Listing of uncooperative jurisdictions**

The CFE would favour a common EU approach towards non-cooperative or low-tax non-EU jurisdictions. This would help to ensure that investment decisions in the EU are taken for economic reasons rather than based on different national approaches to these jurisdictions.

Any listings that may have legal consequences for taxpayers must be regularly updated. Also beyond the EU, there should be a consistent approach to non-cooperative or low-tax jurisdictions. Such consistency requires the use of internationally recognised criteria such as the OECD Global Forum's transparency criteria.

If the effective level of taxation should become a criterion in the listing process, it should be applied in a uniform way throughout the EU, to all sectors and all third countries, to avoid further complexity for taxpayers.

### **Mandatory tax planning disclosure**

The CFE is concerned about the Commission's announcement to consider mandatory reporting rules for tax planning schemes at EU level. Our concerns are three-fold:

First, we are worried that the introduction of such rules affects the client's rights, in particular the right of effective legal defence and representation, and the right not to incriminate oneself. Both form part of the fundamental right to a fair trial. Also the taxpayer's right to privacy may be at stake (1) where an adviser has to report incriminating information, (2) where the adviser would have to report to the administration secretly, without informing the client, (3) where the adviser would have to report information going beyond the tax planning scheme itself, or (4) where this information has to be published.

Second, there is a concern that an obligation could increase the burden on mainstream tax advice, in the sense of tax planning not using artificial structures or tax havens, and not surpassing certain materiality thresholds.

Lastly, we have some subsidiarity concerns, as we fail to see why mandatory reporting rules cannot be successfully introduced at national level. The examples of the UK, Ireland and Portugal seem to demonstrate the contrary.

- See the CFE Opinion Statements on Mandatory disclosure rules (BEPS Action 12) of April 2015 (relating to the OECD Discussion Draft; [link](#)) and April 2016 (relating to the Final Recommendations; see Statement FC 4e/2016: [link](#))

### **Value added tax**

For the vast majority of businesses willing to comply, the introduction of an efficient and comprehensive internet portal for cross-border VAT compliance is a pressing need. Such portal should also contain information on the VAT rates applicable to products and services in the member states.

This will be even more important in the future, if member states will be granted more flexibility in setting VAT rates.

- CFE Opinion Statement on VAT for cross-border e-commerce, December 2015 ([link](#))
- See point 7 in European Tax Advisers` Priorities in EU Policy 2014-2019 ([link](#))

### **An EU Taxpayer`s Code / A Model Taxpayer Charter**

The European Commission has announced on various occasions (see in particular the Action Plan of 6 December 2012; [link](#)) the development of an “EU Taxpayer`s Code” of rights and responsibilities of taxpayers and tax administrations. We understand that this work has almost been completed in 2015. We believe that the Commission should be encouraged to finalise and publish the EU Taxpayer`s Code, as a common balanced document of reference could play an important role in creating a relationship of mutual trust which is urgently needed for the benefit of both taxpayers and tax administration.

To work towards this objective, the CFE has developed a “Model Taxpayer Charter”, together with two other international professional bodies of tax advisers and in consultation with the OECD and the European Commission. This Charter has been finalised and presented to the public in November 2015. We would like to invite you to take a look at the website [www.taxpayercharter.com](http://www.taxpayercharter.com) and draw inspiration from our work. We would be pleased to answer you any questions you may have in regard to the Model Taxpayer Charter and to send you hardcopies of the Final Report.

Please see also our two-page memo **European Tax Advisers` Priorities in EU Policy 2014 – 2019** ([link](#)).