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# Opinion Statement CFE 1/2020 on the potential Commission initiative to strengthen the Directive on Administrative Cooperation in Direct Taxation

Prepared by the CFE Fiscal Committee  
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This Opinion Statement discusses the EU Commission consultation undertaken in Q1 2020 concerning a potential initiative to strengthen the Directive on Administrative Cooperation in Direct Taxation, concerning the ability of tax administrations across the EU to obtain tax-related information on taxpayers who generate income via the digital platform economy.

CFE Tax Advisers Europe is a Brussels-based association representing European tax advisers. Founded in 1959, CFE brings together 33 national organisations from 26 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 Ms. Stella Raventós-Calvo, Chair of the CFE Fiscal Committee or Brodie McIntosh, Tax Policy Analyst, 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/>

This Opinion Statement concerns the Commission consultation stemming from its Inception Impact Assessment on a Proposal for a Council Directive amending Directive 2011/16/EU as regards measures to strengthen the exchange of information framework in the field of taxation. CFE Tax Advisers Europe welcomes the opportunity to contribute to this public consultation of the European Commission. This statement supplements the CFE responses submitted to Commission's questionnaire.

The CFE notes that the consultation and Inception Impact Assessment examine in particular the ability of tax administrations across the EU to obtain tax-related information on taxpayers who generate income via the digital platform economy. The Commission states in its Inception Impact Assessment *"Member States' tax administrations have little information to correctly assess and control gross income (revenues) earned in their country via activities (such as renting a property via a web platform or giving a ride to a person who needs a lift and/or other cases) made via the intermediation of some digital platform which basically matches demand and supply. This is especially the case when the income or the taxable amount passes via platforms established elsewhere."*

The CFE supports the European Commission's policy approach for increased transparency and efforts to strengthen the integrity of the tax systems, and the pivotal role of the European Union in seeking to reduce instances of tax avoidance. However, the CFE observes that digitalisation continues to be an evolving process and an opportunity for society at large. As such, the digitalisation of business models by the use of digital platforms and the consumer value it brings, should be welcomed. Excessively burdensome compliance and disclosure rules at an EU level could potentially decrease the attractiveness of the EU Internal market, which would run counter to efforts at making the EU the most dynamic and innovative market in the world.

## Tax Avoidance Risks Associated with Digital Platforms

The CFE accepts that there are risks of tax avoidance that can arise from the use of digital platforms. However, the CFE also observes that risks also arise from other methods of selling of goods and services. The CFE does not believe that the risk of tax avoidance is inherently higher for businesses using platforms to sell their goods or services, than for other digitalised businesses or for businesses where payment is made in cash. The CFE does not believe that it is clear that there is any higher risk of tax avoidance simply because a seller is using a digital platform.

The CFE does accept that use of a digital platform may provide easier access to a client base, and that the increased ability to provide goods and services by sellers may increase tax avoidance for that reason. In particular, it may make it easier for non-compliant businesses based outside the Union to make supplies of goods and services to consumers who are resident in the Union. That obviously raises issues about how compliance can be ensured when a business is not established within the Union. However, particularly when a business is established in the Union, the use of digital platforms

by sellers can make it easier for tax authorities to discover more easily persons using these platforms and detect and investigate tax avoidance in this manner. In relation to supplies by businesses established within the Union, the CFE is of the view that the risk or actuality of tax avoidance should in principle be no higher than the risk of those not using a digital platform to market or sell similar goods and services.

## Reporting Requirements Associated with Digital Platforms and Joint Audits

If specific reporting requirements were introduced concerning digital platforms, the CFE accepts that a harmonised approach to reporting is to be preferred. The CFE would equally point out that harmonised measures do not necessarily reduce compliance burdens, and can indeed increase complexity and compliance burdens. This can be illustrated by the recent quick fixes to the VAT system. A number of businesses have complained that the new harmonised procedures in relation to call-off stock are more onerous than the unharmonized provisions that previously existed in some Member States and that they are administratively so burdensome that the procedures are not attractive to use in practice. For those reasons, they may no longer want to use the harmonized procedures in circumstances where they may have used the simpler procedures that had previously existed in some Member States.

Problems are also caused by the fact that directives are not necessarily implemented in a harmonised manner. The CFE believes it would be advantageous to introduce any reporting requirements by way of a Regulation at EU level agreed by Member States to minimise implementation issues. Any measures should also be implemented in a manner that seeks to ensure that they do not impose disproportionate burdens on businesses.

In relation to joint audits, the CFE has concerns about making joint audits mandatory at the request of either the taxpayer or another Member State's tax administration. This is partly because of the resource implications of such requests on a tax administration that in consequence of the request will then be required to undertake an audit that it would not otherwise have undertaken. It may oblige under-resourced tax administrations to carry out unnecessary audits. Similarly, it may also encourage overly zealous tax authorities to carry out cross-border audits as a fishing expedition. However, in cases where a joint audit is undertaken, the CFE does consider that it would be desirable for the joint audit process to be concluded by a single report containing a summary of the facts and the legal consequences drawn from the facts, as agreed between the two tax administrations.

If harmonised reporting were to be required within the EU, the CFE also believes that there ought to be certain exemptions to the reporting requirements, such as exemptions for start-ups and for platforms and/or sellers making supplies under a certain monetary threshold. Additionally, the CFE is of the view that certain services should be exempt, such as provision of professional services where those professionals are already subject to some sort of oversight by a professional standards body.

Additionally, reporting requirements should also not be imposed where any reporting obligation would be in breach of professional privilege under national laws.

Before new EU-wide reporting requirements are introduced on top of what are already complex compliance obligations, the CFE also considers that further time should be allowed to assess the effectiveness of recently introduced EU anti-avoidance and reporting legislation, including the EU Anti-Tax Avoidance Directives (“ATAD 1 & 2”), the Directive on administrative cooperation on advance cross-border rulings (“DAC 3”), the Directive on administrative cooperation on country-by-country reporting (“DAC 4”), the Directive on Double Taxation Dispute Resolution Mechanisms and the Directive as regards mandatory automatic exchange of information in the field of taxation in relation to cross-border arrangements (“DAC 6”). The CFE are of the view that the EU should continue to facilitate administrative cooperation between Member States to tackle tax abuse, by encouraging Member States to use the existing instruments under EU law for cooperation and exchange of information, tax rulings, GAARs, the Parent-Subsidiary Directive, and the Anti-Tax Avoidance Directive.

Notwithstanding the above, CFE expects that tax advisers will continue to assist their clients with fulfilment of existing and newly introduced disclosure obligations, where applicable. Tax adviser members of the national associations under the umbrella of the CFE stand ready to continue making complex tax systems work.