
Opinion Statement TTC 1/2020 on Tax Administration Data Collection Practices & Digitalisation of Tax Administration Processes

Prepared by the CFE Tax Technology Committee
Submitted to the EU Institutions on 30 June 2020

This Opinion Statement discusses the implications of the digitalisation of tax administration processes, in particular with regard to the collection and protection of personal data by tax administrations.

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 Mr Ian Hayes, Chair of the CFE Tax Technology Committee or Brodie McIntosh, Tax Policy Analyst, at info@taxadviserseurope.org. For further information regarding CFE Tax Advisers Europe please visit our web page <http://www.taxadviserseurope.org/>

1. Introduction

The CFE Tax Technology Committee was established in January 2018 in response to CFE's recognition of the importance of digitalisation in the administration of taxes and the performance of the tax profession. It was and is accepted that digital transformation is, and will henceforth be, at the heart of all fiscal activity.

The evolutionary processes of digitalisation are well underway. Revenue authorities are pursuing change in differing ways under the collective banner of Making Tax Digital. Unfortunately, there are no uniform standards and taxpayers and their advisers must operate eclectically depending on the authority to which they report.

We believe that the natural forces of globalisation will act as a positive agent in coalescing over time diverse systems and software. We see our role as primary participants with revenue administrations, software companies and tax advisers in driving this evolution since we accept the inevitability of the process. By our proactive, co-operative participation, we see our commitment as working for the continuous improvement of the process and the retention of the rights and responsibilities of all parties.

2. Background

This, our first Opinion Statement, picks up on the OECD [blogpost](#) on Covid 19. The post emphasises that

"Fighting a pandemic while minimising the associated economic costs calls for appropriate digital infrastructure for the design and enforcement of containment measures, as well as to ensure access by the population and enterprises to critical government services."

The post underlines the importance of delivering public services and collecting revenue in achieving progress in the digitalisation process.

We agree with this statement.

CFE welcomes the opportunities for efficiency of tax administration that digitalisation provides. We are wholly focused on the role of tax professionals, managing the risks posed to taxpayer and administrator alike by the development of Artificial Intelligence, and exploiting the benefits direct interaction between taxpayer and revenue authority brings.

In particular, the Tax Technology Committee sees the following as vital issues to explore concerning information flow as part of digital transformation

- Maintaining the privacy of taxpayer data
- The storage of data
- Cybersecurity and the protection of personal data.
- Digitalisation development resources - the availability of personnel and capital funding sufficient both for tax administrations and taxpayers.

- Administrative and investigative powers of tax administration.
- Data analytics, especially when subcontracted to the private sector.

3. Privacy Concerns Surrounding the Digitalisation of Tax Administration

The benefits to tax administrations of digitalisation are clear: digitalisation should increase rates of compliance, streamline and improve efficiency of collection and refund processes, and ideally improve taxpayer satisfaction in the process. It reduces risk of error by humans by reducing the number of instances of interaction. However, data protection rules often apply differently for revenue authorities and taxpayers, raising many issues concerning the privacy of data collection.

Digitalisation of tax processes highlights the importance of personal data protection and privacy as we progress in this digital age. It is now that taxpayer rights need to be transposed and embedded in the digital world.

The Tax Technology Committee is of the view that, in these early days of the Digital Age, we need a clear code governing the development process, the uses to which technology is put and how taxpayer' rights may be preserved in a digital environment.

4. Cross-Border Sharing of Data by Tax Administrations

Concerns arise from the collection of data by tax administrations. They are compounded by automatic and requested data sharing between national tax administrations. This sharing of data threatens the expectation of privacy of a taxpayer, and raises issues concerning whether there should be some limits and oversight on the sharing of data.

The Committee believes there is a need for a digital charter and a protocol for data protection in cross border exchange. Security is an inherent aspect of any digital development worth considering and, currently, most taxpayers make disclosures subject to the expectation of privacy. We accept there are some States where public disclosure of taxpayer revenue occurs, but, even in those countries, non-disclosed information is private, and all taxpayers are aware of the extent of public disclosure.

Allowing access to or requiring disclosure to third party administrations of private and, possibly privileged data without the consent of the owners of the data should only be possible if properly regulated.

We think it is of vital importance that, where there is cross border exchange of information, participating revenue administrations adhere to a multilateral agreement which guarantees levels of data security equal to those applying in the State of data provision.

5. Exchange of Data under the EU Directive of Administrative Cooperation

The tax transparency developments at EU legislative level have been welcomed by CFE. Council Directive EU/2018/822 amending Directive 2011/16/EU as regards mandatory automatic exchange

of information in the field of taxation in relation to reportable cross-border arrangements, commonly referred to as “DAC6”, poses significant questions as to security of cross-border data sharing, privacy and proportionality of use of taxpayers’ data. The Directive enables Member States to address aggressive tax planning arrangements, to undertake adequate risk assessments and to triage scarce revenue administration resources by carrying out risk-based and targeted tax inspections. Such effective disincentives for engaging into aggressive tax planning and the deterrent effect are supplemented by establishing an EU-wide central directory of taxpayer data to ensure the effectiveness of the Directive.

This policy is explicitly allowed under European Union’s General Data Protection Regulation (GDPR): the EU and Member states are allowed to restrict rights and data quality principles in order to safeguard important interests, such as taxation, which is explicitly listed as a justification for such restriction under Article 23 GDPR.

Considering the materially broad scope of reporting under DAC6 the issues of proportionality inevitably arise. The EU needs to ensure that the data is being used for legitimate, necessary and proportionate purposes by preventing ‘fishing expeditions’ of tax authorities. In reality, these standards and practices will differ among member states, which is a significant concern regarding protection of taxpayers rights.

In order to guarantee the proportionality of the use of taxpayer data, it is settled case-law of the Court of Justice of the European Union (ECJ) that transparency and privacy of data are of equal value in a Union based on rule of law.

The Court has explicitly stated as concerns the interpretation of EU law in this area that processing of personal data must be relevant and proportionate relative to the purpose for which it is stored (Schrems) and that the objective of achieving transparency does not routinely take precedence over the right to protection of personal data, even when important economic interests are at stake (Schecke).¹

CFE calls on the European Union and Member states to carefully consider procedural guarantees when implementing the DAC6 Directive as a matter of national tax procedural law, as well as the retention period and robustness of data storage. Such mechanisms will ensure implementation in line with the proportionality principles elaborated by the Court of Justice concerning mass exchange, storage and access to data.

6. Storage of Data and Cybersecurity

The collection of data by tax administrations raises concern for the cybersecurity of the data, what are the best means of securing it, how and where it will be stored, who will have access to it and how confidentiality and privilege, both in respect of cross border exchange of data and encrypted data, can be preserved.

¹ Case C-362/14 Maximilian *Schrems* v Data Protection Commissioner; Joined Cases C-92/09 and C-93/09 Volker und Markus *Schecke* GbR (C-92/09) and Hartmut Eifert (C-93/09) v Land Hessen [2010], ECR I-11063

Digital security is a key element in the services provided by a tax professional. Advisers could not work without giving their clients assurance that all details of their financial and fiscal affairs are secure and protected from cyber-attack. Insurance and technological procedures provide additional assurance but, in the event of a breach, there will always be a question of negligent behaviour by the advisor and, in particular, that not sufficient attention has been given to data security.

Tax advisers must continuously address, therefore, the issue of security for their clients' data, and have an active and important participating role in the process of digitising tax systems. In doing so, the exposure to cybercrime given by unregulated cross border disclosure of client data by revenue administrations is an area of risk which, whilst outside the advisers control, exposes all other controls for security to a risk of uncontrolled breach.

Blockchain is a shared ledger of transactions between parties in a network, specifically not controlled by a single central authority. We are of the view that a disclosure system fashioned around a blockchain network could go a long way in mitigating this risk to data security and provide an acceptable level of tax certainty.

We do though reiterate that, in order to safeguard the interest of taxpayers, it is important to have oversight regulation.

The Committee join with and support the Forum on Tax Administrations of the OECD and the European Blockchain Partnership, in their aims

“to develop a trusted, secure, and resilient European Blockchain Services Infrastructure (EBSI) meeting the highest standards in terms of privacy, cybersecurity, interoperability and energy efficiency, as well as fully compliant with EU law”

and that

“the ambition of the Partnership is to make this trusted infrastructure accessible to support digital services deployed by public and eventually in the future also private actors.”

The Committee intends that tax advisers will play a full and active role in the development of Blockchain systems and will strive to make those systems fit for purpose, and respectful of taxpayers' rights and needs.

The CFE's Tax Technology Committee publishes this paper not just as a further contribution to the debate around principles of taxation and use of data, but also as a declaration of our intent to support and lead the role of tax professionals in the exciting and ongoing digital transformation we are now experiencing.