The European Parliament Special Committee on Tax Rulings (TAXE)

EY responses to written questions

We have grouped the questions by topic under three headings

- The tax system
- Tax havens
- Our policies and safeguards

in order to provide our responses as clearly as possible.

The tax system

Question 13 - Elisa Ferreira – co-rapporteur

What kind of recommendations would you address the European Union and the Euro Zone in order to ensure a fair, just and transparent tax system that would prevent Members States from dodging tax revenues from neighbours through the creation of artificial tax administrative advantages?

The tax environment is currently experiencing a period of significant change; many of these changes are aimed at delivering a more coherent set of tax regimes, including within the EU.

- The G20/OECD Base Erosion and Profit Shifting (BEPS) project

  Firstly, the BEPS project is addressing many of the key risks around double non taxation. By cooperating and acting together, countries can deliver changes in a way that avoids or reduces the risk that such action could create double taxation or uncertainty which would undermine international trade. It is important to have effective processes to resolve disputes between countries about tax matters.

- Exchange of rulings

  The moves towards increased exchange of information between governments are designed to provide a shared and transparent view of the various tax regimes, allowing concerns to be raised where necessary.

- Moves towards a Common Corporate Tax Base

  Whilst competition for tax revenues between the EU Member States is inevitable and one element for a vibrant EU economy (because it can be a lever to encourage positive change), there may be scope to remove or reduce some differences between the Member States. A common corporate tax base (as opposed to a common *consolidated* corporate tax base) could be a way forward, if Member States choose to do this, provided that the base was sufficient to cater for the needs of the economies of the individual countries. These needs may differ across the various Member States and what may be an essential facet of the rules for one country might be seen as an unnecessary complication for another.

- Reviewing the Code of Conduct Group

  Reinforcement of the efforts of the Code of Conduct Group would clearly support the objectives outlined.

  It is worth noting that many changes have already occurred – many countries have tightened up their laws and their enforcement approaches. We have new General Anti Avoidance Rules,

tighter rulings processes, new exchange of information between governments. A company's tax strategy is now a matter for discussion by the most senior leadership of the company not solely the tax department. With the reforms deriving from the BEPS initiative on top of the existing changes, that is a huge amount of change in a very short period of time.

As set out in our presentation to the Committee, we would suggest that the EU might develop and issue guidance to promote best practices around tax rulings.

Question 3 - The Chair – Alain Lamassoure

If the EU was to establish a CCTB, how could we ensure that the same tax basis is interpreted (so to rulings) identically in all the Member States concerned?

The operation of a consistent tax base should result in a tax base that is readily understandable by all Member States. Rulings would still be needed to provide certainty in areas of potential uncertainty, but such areas should be limited. Since Member States using a CCTB would be operating the same (or similar) systems, the rulings should be readily interpretable by the receiving Member States.

Question 4 - The Chair – Alain Lamassoure

Can the digital economy be treated for tax purposes in the same way as other activities? The OECD thinks so, but in parliamentary hearings leaders of large digital groups have said that, given the nature of their business, they had no real tax residence. Given your experience, what is your analysis of this assertion?

We do not see any real inconsistency between the above statements. The rapid growth of the sector and its various business models have given rise to some of the boundary questions related to the existence of a taxable presence and also some of the most complex profit attribution questions from a transfer pricing perspective. Nevertheless we believe that the OECD is correct in that traditional concepts related to tax jurisdiction and profit attribution can be used for the digital economy as well as the physical economy.

Question 5 - The Chair – Alain Lamassoure

Which lessons do you draw from your experience on how federal states settle their internal tax competition issues (USA, Canada, Switzerland ...)?

The interaction of a Federal and State system depends critically on the precise formation of those systems. The Federal system may provide for a common base, but the precise allocation of profits and taxing rights to the States can still be the subject of tax competition between the States.

Question 6 - The Chair – Alain Lamassoure

You work in all Member States. What is your assessment of the capacity of tax administrations of our European States? Have you participated in one way or another, in the FISCALIS program or other community programs to improving the training and information of tax administrations in the Union?

It is difficult to generalise about 28 jurisdictions. The tax authorities in Europe have some very high calibre people and we do not see in Europe the significant problems with capacity that we experience in some parts of the developing world. However, we do have some sympathy with the calls for better resourcing of tax authorities particularly in light of the expected increased exchange of information and the tax administration's ability to effectively leverage and utilise this information. It is in the interests of taxpayers and tax advisers, as well as governments, to have well-resourced and capable tax authorities.

EY has had some unpaid participation in FISCALIS in relation to Tax.

Question 1 - The Chair – Alain Lamassoure

Have you found that the tax authorities of certain countries have room for negotiation on the amount of tax owed by your customer, while in other countries the administration strictly enforces the legislation? Has it happened to you that you get in contact with tax administrations on several countries to help your client to optimize its tax, thus taking advantage of the different possibilities in different countries regarding exemptions or deductions?

Whilst a small number of tax regimes exist where the tax administration has the discretion to set tax rates or the taxable base, we do not believe that this is a feature of tax regimes within the EU. When we advise a client on the tax aspects of alternative locations, we do so based on our knowledge and experience of their tax systems. The client considers the relevant factors, the many important commercial factors, including tax aspects, to decide on the most suitable location. Depending on the clarity of a particular issue, they may then instruct us to assist them to obtain a level of assurance on the taxation treatment of transactions. Such comfort is regularly provided by way of written tax opinions and/or tax rulings from the relevant tax administration. Our view is that tax rulings fulfil an important role creating certainty of treatment over complex matters for the taxpayer and the relevant tax administration and that the ability to secure rulings should be retained.

Question 10 - Elisa Ferreira – co-rapporteur

Under which precise conditions do you consider that tax rulings that confer special advantages to specific firms should not be considered as state aid by the European Commission?

Tax rulings that confer special advantages to specific firms are state aid by definition. This state aid may be legally permitted under EU law where it is compatible with the single market subject to conditions or block exemptions. These conditions may vary depending on the concrete facts and circumstances, like promoting investments into underdeveloped areas, support companies in restructuring and redevelopment phases to save jobs etc.

In our experience tax rulings do not generally confer special advantages to specific firms. Rather, they provide certainty of tax treatment applied to specific, unique facts of a taxpayer as viewed by country tax law.

Question 21 - Alfred Sant

Keeping in mind the significance of tax policy for different Member States and the fact that they are facing very different economic realities, tax policy is one such tool to partly compensate for the natural and permanent disadvantages of certain countries. In this regard, what exactly would you define as "harmful tax competition", given that the current Eurozone is far from being an optimal currency area and in fact economic divergences within it are increasing, not decreasing?

We would suggest that the "Code of Conduct for business taxation" provides a sound model.

Question 23 - Pervenche Berès

Are you ready and how to ensure a swift and proper implementation of BEPS?

We have input into the various consultations by the OECD and, as Member States take action to incorporate the BEPS recommendations into national law, we will of course input into further consultations at the national level.

We are already active in preparing our clients and ourselves for the legislative changes that will follow the conclusion of the BEPS project.

Question 12 - Elisa Ferreira – co-rapporteur

As you have not answered the question I've addressed you during the hearing on the 5th of May, I take it that you confirm the figures and practices that were described in the revelations better known as LuxLeaks I and LuxLeaks II? If you diverge with their conclusions, can you explain?

The issues raised have already been well aired in public. We have made some suggestions in the hearing and under question 13 as to how to modernise the way the tax system works internationally. Indeed there have already been changes in recent years to increase transparency and enhance rulings processes.

Tax havens

There is a fundamental issue with questions 7, 11, 12, 22, 24 and 25 around what is meant by "tax havens" or "offshores". The OECD identified a list of 41 tax havens in 2000. All of those countries have since made formal commitments to implement the OECD's standards of transparency and exchange of information and been removed from the list.

Each of the countries mentioned in these questions has its own unique profile. They offer advantages unrelated to tax. Hong Kong, for example, has a population of 7 million and is commonly recognised as the gateway to the business opportunities of mainland China.

We would suggest that it is more helpful to consider scenarios that are undesirable, such as double non taxation, rather than labelling certain jurisdictions as "tax havens".

One criterion often used to identify tax havens relates to financial secrecy. It is suggested that some taxpayers have used jurisdictions with strong secrecy for tax evasion, ie to hide money illegally from other tax authorities. We do not and have never condoned tax evasion and have rigorous global policies and client acceptance criteria in place to guard against acting for clients that may be involved in tax evasion. We welcome the many moves in recent years to increase exchange of information between tax authorities, as illustrated by the progress on the OECD list of tax havens.

When a taxpayer that complies with the law is considering the choice of location, they will consider many commercial (non-tax) issues. The tax issues they will consider include:

- Tax rates
- Definition of the tax base
- The tax treaty network, which will, for example, determine the amount of withholding tax on flows into and out of the country
- The stability and clarity of the tax system, the scope to obtain certainty in relation to the tax treatment of proposed commercial transactions and the extent of compliance burdens
- In the case of an asset management vehicle, there will be tax paid in the underlying investments and as applicable by the investors. So the promoters will wish to have a transparent vehicle which does not add another layer of taxation.

Question 7 - Elisa Ferreira – co-rapporteur

Can you explain in detail the role of offshores - including in special territories like the UK Crown Dependencies of Jersey, Guernsey and the Isle of Man, and Gibraltar - in European tax optimization? Concretely, which are the offshore jurisdictions that are useful for the tax optimization practices of European based companies?

See introductory comments above.

Question 24 - Molly Scot Cato

As I am sure you are aware, precisely defining what we mean by a tax haven, and indeed developing a map of the precise roles and interconnections of the jurisdictions both within and outside the EU that derive a large proportion of their income from tax-related activities is part of the work of our special committee. However, we are already aware of some of the key players in this network and I would like to question you with respect to your activities there. I believe there are at least 60 jurisdictions involved in the network but I would like to focus on just three: the Hong Kong, Jersey and the Cayman Islands. For each of these jurisdictions I would like to ask each of you:

- Which are the key shore offshore jurisdictions which have extensive shared activities with the UK/Netherlands?
- What is your physical presence there in terms of offices and other infrastructure and how many people work from it?
- Could you give me details of the services you provide in each of these jurisdictions and let me know your annual turnover?
- Can you explain precisely why these services are better provided there than, say, in Brussels or London?

Our network has one office in Jersey with 86 employees. It is a small office providing mainly audit and tax services. The headcount is split Assurance 61, Tax 10 and other 15.

We have one office in the Cayman Islands with 140 employees. Again the largest activity is auditing, with Assurance representing 80% of the headcount.

Hong Kong has two offices with 2,200 employees. The office provides a full range of the usual EY services - Assurance, Tax, Transaction Advisory Services and Advisory.

These offices all exist because our clients have a base of operations in that jurisdiction or have started up business operations in the jurisdiction and expect their service provider to be there as well.

Please see also our introductory comments above.

Question 22 - Pervenche Berès

Why do you need to locate your compensation activities in tax havens? What kind of measures should we take to avoid such a situation?

Question 25 - Molly Scot Cato

As a more general question, could you tell me in your judgement whether the world's multinational corporations would use these tax havens if you were not present there? Do you feel that this means you are colluding in the tax abuse that takes place there?

Taking questions 22 and 25 together, we have offices in 150 countries, wherever our clients are based. See also our introductory comments and the response to question 24 above.

Our policies and safeguards

Question 8 - Elisa Ferreira – co-rapporteur

How do you guarantee internally, in your organisations, that there are no conflicts of interest when on the same tax matters, you give advice to companies that want to minimize the tax bill, and to Members States that want to guarantee a certain tax income, to the European Commission or to the European Central Bank?

Question 9 - Elisa Ferreira – co-rapporteur

How much of your business represents the advice you give to private firms, on the one hand, and to European institutions – the European Commission, the European Central Bank and EU Governments, on the other?

Question 14 - Peter Simon

Please describe past incidents - in as much detail as possible - when your company advised public entities such as national or regional governments, tax authorities or even the European Commission on the improvement of taxation systems regarding corporate taxation whilst - simultaneously or at a later point in time - advising companies on these or related issues, possibly advising them on how to structure their companies in order to achieve lower levels of taxation. At these occasions, did you use the knowledge you obtained while working for public entities, also to the advantage of your private-sector clients?

Question 16 - Peter Simon

As you know, the recently revised 'audit regulation' (Nr. 537/2014) foresees that auditors are limited in offering certain services to certain clients in order to avoid conflicts of interest. For example, in accordance with Article 5 of this Regulation auditing companies cannot simultaneously audit a company of public interest and offer tax advice. Where do you see advantages and disadvantages, if the legislators of the European Union would enact legislative proposals, which address the avoidance of conflicts of interests arising from advice provided to companies and public authorities on tax matters?

Taking questions 8, 9, 14, 16 together, we would like to make a number of points.

In conducting any part of its business, EY avoids conflicts of interest that might compromise our business or professional judgment and any other activity that could possibly threaten our objectivity, our integrity, confidentiality or the reputation of EY or the profession. We recognise that conflicts of interest can arise in client engagements and secondments, as well as any situation in which we enter into business relationships, including procurement, acquisitions and alliances. Professional standards require us to take reasonable steps to identify circumstances that could pose a conflict of interest, and apply appropriate safeguards to eliminate threats or reduce them to an acceptable level.

We have a Global Conflicts Policy with supporting enablers including a conflicts checking process to identify and manage any conflicts, for example where multiple parties to a transaction may ask us to act.

We have a professional and indeed a legal duty to each client to provide them with professional and competent services which are in their interests.

Engagements with EU institutions / governments

The majority of our engagements for the EU institutions are in Advisory or Assurance rather than Tax. Our main Tax services have been under a framework contract with TAXUD for 2012-2015, under which we have earned approximately euro 2.9 million. The purpose of the studies we have undertaken is primarily to support the Commission in detecting the flaws and hindrances to the internal market principles which exist due to the interplay of 28 different tax systems and the need to implement VAT rules in all 28 Member States. We have not seen any conflict with our engagements for taxpayers – we have advised both TAXUD and taxpayers on what is the current state of the law.

We assist very large numbers of taxpayers to complete tax returns, comply with tax law and carry out transactions. Were the EU institutions to conclude that this activity was incompatible with providing any tax services to the EU institutions, we would regrettably have to withdraw from any future tenders for EU tax projects. Whilst we always consider the facts and circumstances before accepting any particular engagement, we believe that a prohibition is not necessary. It would also have a negative

impact on the EU institutions, which are looking for providers with tax knowledge and capabilities across 28 Member States.

We have not surveyed our Tax practices in the 28 Member States in the time available, but we would anticipate that there are relatively few engagements with governments on tax policy matters and that both the government and our Member Firm have in each case been satisfied that there was no conflict of interest.

Secondments

We occasionally provide secondees to Ministries of Finance or Tax Administrations (the "Host") in a few Member States. These secondees have a duty to act in the interests of Host whilst they are on secondment and to respect the confidentiality of Host on their return to EY and in this respect, Host is treated as a client. The professional standards applying to the UK tax profession, *Professional Conduct in Relation to Taxation*, provide further guidance on the professional issues around secondments. Whilst this is a UK professional standard, we would regard it as best practice in any jurisdiction.

Lobbying on tax matters

We do not undertake any lobbying on behalf of our clients on tax matters at the EU level. We occasionally have engagements at the Member State level where a client or group of clients (e.g., in a particular industry) engage us to assist them with the analysis of particular changes to tax law. In many cases the clients approach the authorities themselves and our role is to assist them to develop their positions from a technical, policy and costing perspective. We comply with legal requirements around transparency of lobbying activities, where these apply.

We also assist clients in lodging complaints to the European Commission dealing with discriminations and restrictions in tax laws of Member States, on a named basis or a "no names" basis.

Other interactions with EU institutions, tax authorities, governments etc

We take a proactive approach to tax policy developments and respond to a significant number of consultation documents, attend working groups etc to help national and international authorities develop their understanding of the potential impact of their proposals and make better informed decisions about changes to the tax rules.

Our representations draw from our experience and will take account of the insights of our clients who include all business sectors – SMEs as well as MNCs, different industries and, in any given country, inbound, outbound and domestic businesses.

Question 15 - Peter Simon

Please provide us with the rules/procedures or code(s) of conduct, that your company adheres to and that are designed to

a) keep you from advising clients on aggressive tax planning
b) avoid conflicts of interest including of the nature mentioned in the previous question

If such rules do not exist in writing or cannot be shared, please provide us with a detailed description. If such rules do not exist at all, please explain the reason for their absence and whether their introduction was ever considered.

Question 18 - Ana Gomes

Would you say that paying of democratically agreed taxes is included in your notion of corporate social responsibility, and what concrete measures have your firms taken to ensure that your compliance and corporate ethics departments have a say concerning the tax consulting services which you sell and in your own tax compliance policy? Do they reach the higher level, how does it work?

Question 19 - Ana Gomes

What measures have you taken since past scandals to ensure transparency of your own corporate organisation, your lobbying activities, and the transparency of the products which you sell?

Taking questions 15, 18 and 19 together, the primary code for describing how we work with clients is set out in EY's *Global Code of Conduct* and this document is publicly available**.** Principle 2 sets out how EY works with clients and others. Key to this is that "No client or external relationship is more important than ethics, integrity and reputation of EY". This is supported by extensive more detailed policies. Some relevant points:

- We only act for clients who expect us to help them arrange and report their affairs in compliance with applicable rules.

- Our tax services to clients are based on determining positions that are supportable under applicable law and also satisfy other criteria set out in our policies, such as meeting appropriate technical standards. Factors to be taken into account under our policies include business purpose and commercial substance. Clients should fully understand how their stakeholders might view their actions. We aim to be proactive in helping clients articulate their tax strategy at board level, help the board to consider the tax and wider implications involved in this strategy and ensure that they consider whether challenges to their tax profile could arise from various stakeholders.

- We provide clients with tax advice in accordance with our tax policies to support their commercial activities. We are precluded from providing tax advice in certain instances, for example, we should not advise clients to engage in planning where the only purpose is tax avoidance and the tax treatment is not supported by applicable laws. Our tax advice must not rely on non-disclosure or non-collectability of taxes.

- Our professionals are required to observe all applicable ethical standards and professional rules of the relevant local professional organizations, in addition to our own standards and rules.

With effect from June 2008, every EY audit practice in every EU Member State prepares a specific Transparency Report. These Transparency Reports are required by law for an audit firm that provides audit services to one or more Public Interest Entities. We also publish on a voluntary basis a *Transparency Report* for our global organisation. Whilst this is primarily focused on our audit activities, the governance structures described therein cover all of our activities.

We have a sanctions framework in the case of breaches of our policies as outlined in the *Transparency Report*. In addition many of the requirements outlined above are prescribed by external authorities and subject to external enforcement measures.

For conflicts see the answer to questions 8, 9, 14 and 16 above.

Question 11 - Elisa Ferreira – co-rapporteur

What kind of adjustments have your institutions made in the follow up of the recent revelations – better known as LuxLeaks, SwissLeaks, OffshoreLeaks, etc.?

Swiss leaks and offshore leaks largely concerned tax evasion. We do not and never have condoned tax evasion.

On "aggressive tax planning", see the response to questions 15, 18 and 19 above.

Question 17 - Ana Gomes

Could you put in a percentage point an estimative of the income your firm makes from selling tax consulting products?

We do not mass-market tax "products". The services and advice we provide to our clients are tailored to their particular facts and circumstances. All our tax services are compliance or advisory, although many of our advisory services are also advising clients what the law means and how to comply.

Question 2 - The Chair – Alain Lamassoure

How do you optimize the tax treatment of your own group? Is full fiscal transparency, including a CBCR, actually part or could it be part of the code of conduct of your group or profession?

We allocate all our profits to our partners annually and do not defer profits for the purpose of tax optimisation.

We are reviewing how CbCR would apply to EY. We do not have a global corporate structure where ownership, legal control or profits are consolidated at a central parent entity. We are a global organisation of member firms of Ernst & Young Global Ltd (EYG). Member firms remain solely responsible for their own work, but they are part of a highly integrated global organization, which enables them to deliver enhanced service. Their obligations and responsibilities to the organization are governed by EYG regulations and various other agreements. Further details can be found in our Global *Transparency Report*.

We have for several years had a globally applied Internal Tax Policy which requires:

- An annual certification for every EY Entity to confirm that amongst other things all tax returns have been timely filed and all taxes paid

- An annual certification for every EY Partner to confirm that amongst other things all tax returns have been timely filed and all taxes timely paid

Question 20 - Ana Gomes

What is you policy concerning political financing? Do you disclose your political donations and the goals of your lobbying activities?

We have made checks relating to the last two years and believe our member firms have not made any political donations in the EU in that period. We do not have a policy on political donations, but would comply with local laws governing political contributions if applicable.

For lobbying, see the response to questions 8, 9, 14 and 16 above.