CONFEDERATION FISCALE EUROPEENNE

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To:
The Members of the European Parliament´s
TAXE Special Committee

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CFE answers to the questions by the European Parliament´s TAXE Special Committee at the hearing of 16 April 2015

Dear President Lamassoure,
Dear Members of the TAXE Special Committee,

I would like to thank you for the opportunity to present our views and to respond to the questions of the members of your Committee. We highly appreciate that the TAXE Committee is committed to hearing all stakeholders, including tax advisers.

As requested during the hearing of 16 April 2015, the CFE has tried to list the questions posed by the Committee Members to me at the hearing. I will try to respond to each question individually. If you consider that the questions have not been well transcribed or that our answers require additional explanation, please do not hesitate to contact us.

My answers generally refer to positions previously adopted by the CFE. However, as on some of the points, a formal CFE position has not yet been adopted, I would ask you to consider that some of the answers provided contain my own views.

The CFE is currently working on a position on the Commission´s legislative proposal for automatic exchange of information on tax rulings. We will make sure that you will receive this position. Information on the positions and activities can be found on the CFE website.

Let me stress that the CFE is very interested in continuing the dialogue on tax policy with the TAXE Committee.

Sincerely Yours

Henk Koller

(President of the CFE)

Preliminary remark

It should be considered that there is no uniform tax adviser profession within the EU. Substantial differences exist in

- the degree and nature of regulation: in some countries, tax advice is reserved by law to persons that hold a particular professional qualification; in others, it is regulated by professional bodies with voluntary membership; in some countries, tax adviser is not considered a distinct profession but tax advisers are commonly members of other professions such as lawyer, accountant or auditor who specialise in tax.
- characteristics of the tax adviser market: in some countries, the majority of tax advisers work in very small practices while in others, the majority work in large firms
- the activities of tax advisers: while the common ground is that tax advisers who are members of a CFE member organisation are entitled to provide the full range of tax advisory services to clients, including the submission of tax returns and representation of the client before tax authorities and tax courts/tribunals, there are large differences in practice as to whether the main part of their work consists in accountancy tasks, tax compliance, tax planning or legal representation. This depends mainly on regulatory and market conditions.

The CFE has published in 2013 a *European Professional Affairs Handbook for Tax Advisers* (link), demonstrating the diversity of the tax profession within Europe and explaining the professional rules in each of its member countries. For your convenience, we have attached a digital version of this *Handbook*.

Due to the difficulties mentioned, we are unable to provide quantifiable data that covers the whole of the tax profession within Europe, as has been requested in several of the below questions.

MEP Elisa Ferreira

1. Do tax advisers have a professional code of conduct that binds them to certain practices, apart from not acting illegally, and what are these?

   There are professional codes at different levels:

   a) There are the *CFE Guidelines on Professional Qualification and Ethics of Tax Advisers in Europe*, accessible on the CFE website (link). A national professional body that is member of the CFE has to accept the application of these principles for their own members.
   b) There are different professional codes of conduct by professional bodies, for their members. Depending on the regulatory situation in the country, these codes cover all persons who give tax advice or only tax advisers who are members of the professional body which has the code of conduct or is a member of the CFE. For more details, see p.25 of the above-mentioned *CFE Professional Affairs Handbook*.
   There may also be codes of conduct which apply to members of more than one organisation, such as the “Code of conduct in relation to taxation” in the UK (link).

c) Some tax firms, especially large ones, have professional codes of conduct that apply to their partners and employees, in addition to any codes by professional bodies.

Some tax advisers, where they (also) hold qualifications such as lawyer, accountant or auditor, may be subject to additional codes of conduct, by those professional bodies.

Professional codes commonly provide practical guidance, translating the law into rules on professional behaviour. They may differ in degree of prescriptiveness (rule-based v. principle-based approach). In principle, all limitations to the exercise of a profession must be based on the law (i.e. an act of Parliament).

The tax adviser´s responsibility to society is to ensure that the tax law is applied correctly. Beyond this, the tax adviser´s responsibility is to the client alone. This also means that where a "aggressive" tax position is likely to be ineffective or can cause damage to a client, a tax adviser has the professional responsibility to make the client aware of such risk.
One good example of how professional codes deal with the tax adviser´s responsibility in the area of tax planning and avoidance is Section 8 of the above-mentioned UK "Code of conduct in relation to taxation".

2. Do you consider that the practices of
   - over-valuing property (real property and other assets)
   - classifying as interest payments transfers of money that don´t correspond to any underlying loan
   - over-valuing royalties in relation to the overall structure of the company
   - over- and under-valuing inter-company transfers of services
   - transfer pricing
   - declaration of an activity where it doesn´t exist

   are normal practices in the professional work of a tax adviser?

Tax advisers must refrain from making false statements. The declaration of an activity that does not exist is a false statement.

Tax planning concerns only a very limited part of the activities of tax advisers. Tax planning may consist of making use of hybrid mismatches, which again is a small part in the area of tax planning.

Transfer pricing is a necessity when related entities in different countries provide goods, rights or services to each other. It is based on international accepted principles and guidelines and not aggressive in itself. It could lead to shifting profit between related companies if unrealistic pricing is included. Tax advisers dealing with international direct taxation frequently have to deal with transfer pricing.
The application of the "arm´s length principle" which governs international transfer pricing rules is often unclear in practice, because it compares prices actually charged with (market) prices that would hypothetically be charged, if undertakings were unrelated. This is often very theoretical, as for many of these goods, rights or services, there is no market or data on market prices

available. This provides a certain scope for over- or under-valuing transactions. Better guidance would reduce this possibility and would also be helpful for tax advisers. The European Commission´s Joint Transfer Pricing Forum and the OECD are working on improving their guidance.
If a binding dispute resolution mechanism was included in the EU Arbitration Convention, this could help the development of a EU transfer pricing case-law.
A CCCTB including the element of consolidation would abolish transfer pricing problems within the EU.

Also in other areas than transfer pricing, the value of assets cannot be determined precisely, often enough because there is no market, so there may be different views on whether an asset is over- or undervalued.

3. How do tax firms recruit their personnel? How many of them have worked for civil service before?

The answer will differ from country to country and from firm to firm and there are no reliable figures showing a general picture or trend.

Many large firms try to make contact early, already with university students. Some offer trainee programmes for university graduates. It is also common that recruitment follows an internship.

Generally, there is movement both from the public to the private sector and in the other direction. While some private businesses may offer more attractive salaries, public administration often offers greater security, which can be attractive in times of economic crisis.

4. How do you calculate remuneration of your services? Is it a percentage or a standard value? Can SMEs pay and benefit from your services?

Most tax advisers in Europe mainly serve SMEs.

In most member states (MS), fees can be negotiated freely between the client and the adviser. Some professional bodies have guidelines on criteria which should be taken into account when calculating a fee, e.g. the value of the matter, the complexity of a case, the time devoted to a case and/or the seniority of the person dealing with this. Also the CFE Guidelines (answer to question 1, point a) contain general criteria. Some professional bodies have recommended fees.
In Germany, there is a remuneration regulation for tax advisers (Steuerberater-Vergütungsverordnung) setting legal framework fees with the possibility to charge lower or to agree on higher fees.
In the upmarket area of tax advice, it is common to charge fees according to the hours spent on a case.
All MS we surveyed allow for some possibility to agree on success or contingency fees, but some limit this to certain conditions.
For details, see p.38-40 of the *CFE Professional Affairs Handbook*.

5. Would you say that tax havens are legal and normal tax competition?

Like any other competition, tax competition is useful to a certain degree, where it serves cross-border business and encourages the improvement of tax rules, but can become harmful if pursued aggressively. What tax rates countries should adopt is a decision for politicians to take, not for tax advisers.

6. Why should a CCCTB be voluntary?

As stated above, we believe that a certain degree of tax competition encourages the legislator to improve tax rules. Therefore, the CCCTB should be able to compete with the existing national rules. Only a CCCTB that stands this competition will be a good CCCTB.
Another point is that the CCCTB, even if adopted, would still be at an experimental stage, as no experience has been gathered on it. It will take years to remove the uncertainty for businesses, as there will be no case law and established practices yet. Lastly, if experience should prove that the CCCTB is not workable, there is a risk that one MS vetoes any improvements.

7. Why do you propose to resolve double taxation?

Double taxation is contrary to the very idea of the single market and one of the biggest remaining obstacles. We believe that there should be a binding dispute resolution mechanism for all double taxation cases at EU level including but not limited to transfer pricing disputes.

MEP Michael Theurer

8. Has your organisation presented a concrete proposal for a “radical solution” to corporate income tax?

There may be arguments speaking in favour of replacing corporate income tax which is complex and costly to comply with and to administer by an increased reliance on other tax income like VAT, personal income tax or property taxes. However, there is no CFE position on this question which we consider a political one.

9. Would a compulsory CCCTB force MNEs to comply or would you fear that many of them would leave the EU.

Please see our answer to question 6.

10. Some experts say that it is a strategy of the US to support worldwide expansion of their companies by allowing them not to pay taxes on profits earned abroad. Do EU states use tax rulings to secure the competitiveness of EU MNEs?

Tax rulings are not an instrument to favour companies from third countries. They are and should be available to domestic or other member states´ businesses. Their aim should be to provide

legal certainty and not to give a competitive advantage to the company asking for them which would be conflicting with the state aid rules.

11. Should the prevention of aggressive tax planning be integrated in corporate social responsibility?

A company may decide to refrain from certain forms of tax planning, to pay more tax than is legally required and communicate this as part of its CSR strategy. Such decision should however be voluntary.
The amount of tax that has to be paid must only be based on the law. It goes without saying that this includes case law, principles of law and common methods of interpretation. Parliament´s intention at the time of adoption, if documented, may play a role when interpreting the law.

12. Could source taxation be a solution?

One should consider that the introduction of source taxation as a general principle will create less income for capital-exporting countries. This will be of disadvantage for many EU countries. It may also reduce the incentive to invest, as the return on the investment will generally be lower.

MEP Luděk Niedermayer

13. How do firms, clients and retail judge the EU anti-BEPS initiatives? Are smaller firms in favour of it, assuming it would strengthen their position towards the larger ones? (to Independent Retail Europe)

14. Would the cost of the changes to the current system and of the increased compliance requirements be higher than the benefits for SMEs? (to retail Europe)

MEP Evelyn Regner

15. Are there recommendations of the professional umbrella organisations on tax rulings and how they should be applied for in practice?

We are not aware of any specific recommendations of professional bodies on how to apply for or how to implement a tax ruling. This will be covered by the general codes of ethics and we believe that there should not be different sets of ethics for different activities in the area of tax advice.

16. (very similar question to question 3)

17. Citizens need legal certainty. Is it in the responsibility of tax advisers to provide this certainty?

Providing legal certainty to citizens, i.e. clients, is one of the main tasks of tax advisers. In an ideal world, lawmakers would provide for laws that are clear enough to make any additional advice superfluous.

18. Do you agree that CBCR will create transparency and thereby legal certainty relevant for citizens?

On the aspect of transparency, please see our answer to question 26.
Our understanding of legal certainty is that a citizen or company will know whether a law will apply in his/her/its particular situation or not. We do not see how the publication of company data through CBCR should increase citizens´ legal certainty.

MEP Bernd Lucke

19. Which role do tax rulings play in the professional practice of tax advisers? What is the share of cases in which tax rulings play a role and what is the share of these cases in the overall amount of tax that needs to be paid by companies? Are there certain types of companies or sectors in which tax rulings play a particularly relevant role? Does this concern large or multinational undertakings more than small or purely domestic undertakings?

Tax rulings are a common tool both in domestic and cross-border situations, for small and large companies of all sectors. They are needed to create legal certainty and reduce risk for the taxpayer.
In an international investment context, they may be particularly important, as their outcome may be a reason for an investment decision. There is no reliable data on the relevance of tax rulings.

20. How often does it occur that companies explicitly ask tax advisers to try to obtain tax advantages one would consider illegitimate or immoral? How often does competitive pressure force undertakings to seek such advantages? How often does it occur that undertakings are offered advantageous deals by tax administrations?

There have been examples for situation such as described above, but it can be observed that undertakings pay increased regard to sustainable tax planning. The reason for this is not necessarily moral, as also commercial considerations require the minimisation of risk, e.g.

- a position which is likely to be challenged by the tax authority may require the making of a provision in accounting, creating a less favourable picture for investors.
- a reputational risk through bad publicity with limit the business expectations.

Tax advisers have to work in the best interest of their clients. This requires making them aware of the risks that an aggressive tax paying policy may entail.

We have no information on how often undertakings are offered advantageous tax deals by countries. There are no objections to countries presenting themselves to undertakings as an

attractive investment location, as long as they do not offer a more favourable treatment than they would offer to other (local) taxpayers.

21. How good is your contact to the tax administration officials? Which degree of discretion do tax administrations apply or allow the tax adviser to apply?

Personal contact between the tax official and a tax adviser may foster a good understanding of the tax official of an undertaking´s activities. Such understanding is important for the tax administration´s risk assessment and effective use of resources. A number of countries have assigned specific contact persons for specific taxpayers, usually large companies. A close contact between taxpayers, tax advisers and tax authorities is also advocated by the OECD, in their 2013 report on "cooperative compliance".
Tax administration should have appropriate rules and procedures in place to ensure that such contact will not lead to a more favourable treatment of some taxpayers.

MEP Marisa Matias

22. Should the taxes not be paid in the country where all the economic activity takes place?

The question where the economic activity takes place is often much more difficult to determine than residence. For companies operating cross-border, countries may have very different views on what percentage of an undertaking´s overall economic activity relates to their territory. Without internationally agreed standards to measure this, taxing economic activity is very complex and would lead to double taxation (and probably double non-taxation) even more often.
It should be clear that "economic activity" is not limited to production, marketing and sales. For example, an increasing part of the value of products and services is due to intangibles, especially IP rights. It can be efficient for a multinational to centralise its IP in one location and to have the people involved in its creation and protection (i.e. researchers, product designers, patent and trade mark lawyers etc.) centralised in a location which may be different from where the product is (mainly) manufactured and sold. There would be a valid economic reason for such structure.

23. Is it consistent with the professional ethical principles if some taxpayers have to pay higher effective tax rates to subsidise those companies that receive professional tax advice?

The effective tax rate is a result of legislative decisions. The tax adviser´s responsibility is to ensure that these decisions, i.e. laws, are applied correctly. Beyond this, his responsibility is to the client alone.

24. What happens if professionals breach professional principles?

Professional codes provide for sanctions for breaches of the professional rules. In 8 of 22 countries CFE surveyed in 2012, these can be monetary fines ranging from a maximum of

3,300 € to 50,000 € per infraction. 18 of these 22 codes contain a provision that the tax adviser can be excluded from the professional organisation (which in regulated countries means the prohibition to provide tax advice).
In addition, there may be civil and criminal law sanctions in national law on which we have no information.

MEP Philippe Lamberts: no questions

MEP Michal Marusik: no questions

MEP Thomas Mann

25. Should there be a CBCR obligation? How does professional secrecy relate to this?

For part 1 of the question, please see our answer to question 26.

The publication of CBCR data in the categories that already apply for banks would not affect professional secrecy.

CBCR would conflict with professional secrecy if companies or advisers were obliged to report or publish their communication with the adviser or legal opinions prepared by the adviser. Such requirement would be incompatible with an individual´s and a company´s fundamental right to a fair trial and effective defence and legal representation. Such obligation however is not part of the current tax policy debate.

MEP Anneliese Dodds

26. It has been found that CBCR information has been valuable for investors and useful for the efficient allocation of capital in the area of banks, while it seems not to have caused major disruptions in the sector. The same goes for companies that have opted for voluntary CBCR. Would this not apply to other sectors as well? It seems that the reasons to oppose this are rather political.

The answer depends on the set of information required. Assuming that only large undertakings would be required to provide the set of information required already for banks (turnover, profits or losses, taxes paid on these and subsidies received), we estimate that this would be technically possible.

We also do not expect this set of information to create any concerns regarding confidentiality and distortion of competition, which would be the case if CBCR required more detailed information, e.g. on the value chain.

CBCR could be useful to the extent that it can help governments in their risk assessment, as it may suggest an initial indication of tax avoidance. This however does not require publication of the data.

Our doubts concern the benefit of this information being public as it will not be sufficient to assess whether an undertaking has paid the amount of taxes legally due (or indeed considered fair), but at most a vague feeling. If the aim of the disclosure is to generate trust, this will not be achieved.
Without knowing the exact nature of the profits, the business models used and the provisions of tax law applied, information on the tax paid is more likely to give rise to prejudice, making undertakings vulnerable to reputational damage. Information is a weapon. It should be kept in mind that not all parties seeking to „name and shame" undertakings are operating for the benefit of society. Rogue businesses or persons acting on behalf of these may intentionally misinterpret data and arouse suspicions to damage competitors. Even well-intentioned persons lacking the information to interpret the data published will draw wrong conclusions, blaming compliant operators while overlooking clever avoiders.

27. Tax havens: How can action at political level be taken and couldn´t business be more vocal on that? (question directed to Independent Retail Europe)