

Brussels, 1 August 2017

CFE Comments on the European Commission Tax Intermediaries Proposal of 21 June 2017

CFE, the European association of tax advisers, has adopted an [Opinion Statement PAC 3/2017](#) on the [European Commission proposal of 21 June 2017](#) on Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation COM/2016/025 final - 2016/010 (CNS). CFE's preliminary remarks in respect of the European Commission initiative on introducing mandatory disclosure rules and effective disincentives for tax advisers have been stated in the [Opinion Statement PAC/FC 1/2017 of 15 January 2017](#).

Key points

- i. CFE welcomes the European Commission policy approach for increased transparency and efforts to strengthen the integrity of the tax systems, in particular the renewed efforts for increased tax certainty;
- ii. The design of certain aspects of the proposal leaves scope for uncertainty and faces the challenge of divergent implementation in the member states. Definitions need to be clear and concise, as rules that are too widely drawn are overly burdensome for taxpayers and unhelpful for tax authorities, which stand to receive massive numbers of disclosures but very little useful information; in particular the definitions of 'cross-border arrangement', 'taxpayer' and 'made available';
- iii. The proposal could benefit from including a requirement for member states' tax administrations to issue implementation guidance, providing clarity in relation to determining what is required to be disclosed;
- iv. CFE advocates adherence to the OECD BEPS 12: 2015 Final Report principles, whereby the member states define country specific hallmarks together with a list of excluded tax regimes and outcomes that are not required to be disclosed. These hallmarks could then be assembled on EU level and become reportable except for the excluded arrangements;
- v. Bearing in mind that hallmarks define what constitutes a reportable cross-border arrangement, these essential features should be well-defined, clear and concise. Hallmarks should be part of the main text of the directive;
- vi. CFE believes that the main benefits test also belongs to the main text of the directive. The main benefits test needs to be applicable to all hallmarks in order to ensure that the reporting obligation is limited to relevant arrangements only;
- vii. The directive should specify a range of penalties applicable to infringement of national provisions adopted pursuant to the directive concerning *Article 8aa*) and *Article 8aaa*). Conversely, penalties that are 'effective, proportionate and dissuasive' could be subject to different interpretation by member states;
- viii. CFE welcomes the professional privilege waiver as well as the non-retroactivity of the proposal;
- ix. Bearing in mind the intrinsic complexity of tax systems, the EU legislation should not undermine ability of taxpayers to seek tax advice, and for tax advisers to provide it. A clear distinction needs to be acknowledged between ordinary tax advice (as it is provided by the vast majority of tax advisers) and marketed, 'off-the-shelf' schemes (provided by a small minority). This difference should also impact the timing and deadline of the reporting. In all situations the CFE proposes that reporting should be done no later than 20 working days after the start of reporting obligation.