



**CFE Tax Advisers Europe Opinion Statement PAC 2/2018 on the European Parliament
Recommendations to the Council and Commission following the inquiry into money
laundering, tax avoidance and tax evasion**

Submitted to the European institutions on 22 January 2018

CFE is the umbrella organisation of the European tax advisers. Our members are 30 professional organisations from 24 European countries with more than 200,000 individual members. CFE aims to safeguard the professional interests of tax advisers, to exchange information about international and national tax laws and policy, professional law, and to contribute to the coordination of tax law and policy in Europe. CFE is registered in the EU Transparency Register (no. 3543183647-05).

We will be pleased to answer any questions that you may have regarding the CFE comments. For further information, please contact the Chair of CFE Professional Affairs Committee Wim Gohres at wim.gohres@nl.pwc.com or the CFE Brussels Office brusselsoffice@cfe-eutax.org +32 2 761 00 91, Avenue de Tervuren 188A, B - 1150 Brussels.

1. Introduction

1.1. This CFE submission is in response to the European Parliament Recommendations to the Council and the Commission following the inquiry into Money Laundering, Tax Avoidance and Tax Evasion of 13 December 2017.¹ The CFE comments concern the recommendations related to tax advisers.

1.2. CFE welcomes the open debate and the dedication of the European Parliament in pursuing tax transparency and efforts to restore public trust in the tax systems. The parliamentary open discussion about the future of the European Union member states' tax systems as well as EU's tax framework is laudable.

1.3. CFE supports the parliamentary scrutiny of potential contraventions to European Union law stemming from various revelations in the public domain, in particular related to tax evasion, aggressive tax avoidance, money laundering and terrorism financing.

1.4. CFE highlights that the vast majority of tax advisers help individuals as well as small, medium and large sized companies to get their complex tax affairs right. By making complex tax systems work, tax advisers contribute to the fight against tax evasion and aggressive tax avoidance. Bearing in mind the inherent complexity of tax systems, taxpayers should have unconstrained access to tax advice.

1.5. CFE supports simplification of tax laws and better drafting of tax legislation. All stakeholders should be given the opportunity to meaningfully engage with legislators prior to the implementation of legislation.

2. Regulation of the profession

2.1. CFE notes the calls for regulation of all tax intermediaries. However, apart from the fact that tax advisers are organised in different ways within the EU (tax advisers *stricto sensu*, tax advisers as lawyers, tax advisers as accountants etc.), there are many tax intermediaries who are involved at providing services with regards to taxation. These tax intermediaries are very different in training, background, employment, location and so on. Some tax intermediaries are involved regularly in tax services, others incidentally. A regulation of all tax intermediaries in the whole of the EU does not seem a practical approach. Regulation if any should therefore be aimed at the services provided instead of the persons providing them.

2.2. The CFE points out that according to the 4th EU Anti-Money Laundering Directive, all tax advisers, that is all those who give tax advice including all kind of intermediaries, fall within the scope of the application of the EU's anti-money laundering legislation, regardless whether they are regulated or not. CFE recommends that this principle be more stringently adhered to in the legislation of the member states than is presently the case.

2.3. CFE also points out that taxes are ultimately paid by taxpayers, who therefore bear the ultimate responsibility for their tax matters. Tax advisers are there to advise taxpayers. If they fail to do so appropriately, the tax advisers will be subject to civil claims, professional sanctions or criminal proceedings.

2.4. The regulatory environment in which the tax advisers under the CFE umbrella work is truly diverse in respect of the form and scope of professional regulation and competences.² One-size-fits all

¹ European Parliament Recommendations of 13 December 2017 to the Council and the Commission following the inquiry into money laundering, tax avoidance and tax evasion (2016/3044(RSP))

² "CFE European Professional Affairs Handbook" (CFE, IBFD. 2013) contains information on the organisation of the tax profession across Europe, requirements for providing professional tax services in 23 European

approach would undermine the liberal nature of the tax profession in context of access to the tax advisory activities with significant implications to the European economies and therefore the competitiveness of the Internal Market.

2.5. In the context of the call for regulating the tax advisers, by providing, or withdrawing licences throughout the EU member states, CFE wishes to point out that this tendency runs against the European Commission proposed Directive that aims to establish a 'proportionality test' before introducing new legislative, regulatory or administrative requirements restricting access to or pursuit of regulated professions.³

2.6. We therefore disagree with proposals for hard-law regulation of the tax advisory profession in Europe and the "one-size-fits-all" approach.

2.7. CFE would like to add that regulation and/or certification of tax professionals only would not be a solution for preventing tax avoidance. The main solution for tax avoidance is in improving the quality of the relevant legislation. As there are many tax intermediaries, regulation of only tax advisers would provide for an uneven playing field without solving any problem while at the same time harming competition. Also, regulation in a democratic society should not be about what tax advisers may or may not advise their clients, as regulation should primarily be aimed at protecting clients whilst not acting against the wider public interest. With regards to tax evasion we note that this is a criminal offence and therefore regulation would not serve any purpose in this respect.

3. Tax Certainty and Tax Transparency

3.1. CFE believes that tax certainty must be the priority of policy makers in times of ever-changing international tax landscape. Good practices to address the issue of tax uncertainty ought to be prioritised as a contribution to the tax transparency endeavours.

3.2. CFE supports consolidation of taxpayers' rights and obligations through establishment of binding legal instruments at EU at national level (e.g. *A Taxpayers' Charter*). A promotion of drafting of high quality tax legislation will result in clarity and simplicity of tax laws and effective mechanisms for resolution of tax disputes.

3.3. Whilst CFE appreciates the importance of measures to tackle aggressive tax avoidance schemes and base erosion and profit shifting (BEPS), it believes that a balance must be achieved in order to promote certainty for taxpayers and business and consequently the economic growth. Furthermore the CFE wants to point out that the EU has already made enormous efforts in tackling aggressive tax avoidance by adapting the Anti-Tax Avoidance Directive⁴ which should now be implemented by the different member states.

3.4. Efficient tax systems demand a delicate balance between ensuring certainty on the laws and their application on one hand and updating legislation in line with societal and economic developments on the other hand. The achievement of a desired balance is based on two main pillars: clarity of rules/uniformity of laws; no retrospective legislation and limited retroactive tax legislation.

countries, impact of EU legislation and case-law on professional regulation, and other developments in the EU and national law with relevance for tax professionals.

³ Article 6(1) of the Proposal for a Directive on a proportionality test before adoption of new regulation of professions COM(2016) 822 final 2016/0404(COD)

⁴ Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market

3.5. CFE encourages wider cooperation among EU member states/worldwide as means to achieving common understanding of the fundamental principles of taxation that stem particularly from the challenges in the taxation of the digital economy. Coordination of national rules to prevent loopholes would cut on one of the most important sources of tax uncertainty and will contribute to increased tax transparency.

4. Comments on mandatory disclosure rules

4.1. In respect of the European Parliament recommendation to Member states to consider extending the scope of the EU proposed cross-border mandatory disclosure rules⁵ to purely domestic cases, whilst coordination and exchange of information could be helpful, the principle of subsidiarity needs to be respected.⁶ CFE advocates adherence to the OECD BEPS Action 12 principles, which is not a minimum standard, whereby the member states are at liberty to define country specific hallmarks alongside a list of excluded tax regimes and outcomes that are not required to be disclosed.

4.2. Whilst mandatory disclosure rules could be a helpful instrument for the tax authorities to gather information on aggressive tax avoidance schemes, the primary focus should be on the clarity and simplicity of tax legislation. CFE believes that the most sensible approach to avoiding mismatches and loopholes that create opportunities for double non-taxation of income is clearly drafted tax laws.

5. Oversight of self-regulated tax advisers

5.1. In the context of the calls to prohibit the self-regulation of obliged entities and strengthen the oversight obligations pursuant to the 4th EU Anti-Money Laundering Directive⁷, CFE highlights the diverse scope of the anti-money laundering supervisory regime in respect of tax advisers throughout the continent.

5.2. A mix of professional bodies, national regulators, tax authorities and ministerial bodies perform the supervisory and oversight function throughout Europe, in line with the European Union anti-money laundering obligations.

5.3. Respecting this diversity, CFE welcomes a dialogue on the scope of the oversight obligations for supervisory bodies in the course of implementation of the 5th Anti-Money Laundering Directive following the political agreement of 15 December 2017.

5.4. CFE also welcomes a debate on the role of oversight bodies in the context of the anti-money laundering supervisory regime specifically in ensuring consistency of the approach by the professional body anti-money laundering supervisors.

6. Separation of accounting firms

6.1. CFE member organisations have many members who are associated with accountants. At the level of public entities, there are rules that limit the provision of audit services and advisory services such as tax advice at the same time. In practice, the combination of accountants and tax advisers in the middle market sector (non-public interest entities) has not given rise to structural issues. At the same time the clients in this market appreciate the synergies offered from a joint work environment, such as the one-

⁵ Proposal for a Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements of 21 June 2017

⁶ Article 5 of the Treaty on the European Union

⁷ Directive (EU) 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing

stop-shop, lower fees and coordinated services. A separation of these service providers therefore does not seem advisable and CFE would welcome a discussion on the arguments for such a separation.

6.2. CFE has no objections to an incompatibility regime for tax advisers to prevent them from conflict of interest in advising both public authorities and taxpayers. CFE opines however that an appropriate management of conflicts of interest could be preferable. CFE points out that such services are in practice requested by relevant authorities especially for the knowledge and experience such tax advisers have. Authorities are well aware of the background of such advisers and are well able to appreciate the advice given. CFE therefore believes that such an incompatibility would not be appreciated by authorities and would ultimately not be the best option for the general public.

7. Cooperation on tax good governance

7.1. Tax advisers working under the CFE umbrella stand ready to participate in open debate and further cooperation among relevant stakeholders that aims to promote tax transparency, good governance in tax matters, enhanced tax certainty and binding instruments for protection of taxpayers' rights.

7.2. CFE will continue contributing to the tax transparency debate by providing relevant technical and policy submissions as the most representative association of the European tax advisers.

7.3. CFE remains open to cooperation with the European Parliament and other international stakeholders in all future endeavours for increased tax transparency and tax certainty.