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**Opinion Statement of the CFE
on the European Commission's public consultation
on "A European Taxpayer's Code"**

Prepared by the CFE Professional Affairs Committee

Submitted to the European Commission

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CFE (Confédération Fiscale Européenne) is the umbrella organisation representing the tax profession in Europe. Our members are 33 professional organisations from 25 European countries (21 EU member states) with 180,000 individual members. Our functions are to safeguard the professional interests of tax advisers, to assure the quality of tax services provided by tax advisers, to exchange information about national tax laws and professional law and to contribute to the coordination of tax law in Europe.

CFE is registered in the EU Transparency Register (no. 3543183647-05).

SECTION 2 of the questionnaire: EUROPEAN TAXPAYER'S CODE

1. Do you think it would be beneficial to have a European taxpayer's code?

Yes

2. Please rate from 1 (greatest) to 3 (lowest) the advantages you see in having a taxpayer's code at EU level?

1. A European taxpayer's code improves access to the internal market in the case of cross-border operations due to the application of uniform principles
2. A European taxpayer's code facilitates the exercise of EU fundamental freedoms (e.g. free movement of persons)
3. Other - Please specify: Answer: Such Code could provide a global benchmark, also for non-EU countries
0. A European Taxpayer's code ensures equal treatment of European taxpayers

Please explain your position on the advantages of a European taxpayer's code

Fundamental freedoms and access to the internal market: Although EU member states are governed by the rule of law and (tax) legislations of different countries share many common principles, the prospect of becoming subject to a different tax system if moving or conducting business with another country is a source of uncertainty and therefore a disincentive for cross-border activity, especially for citizens and small businesses. A Taxpayer's Code could help reduce this uncertainty.

Global benchmark: A EU Taxpayer's Code could become a benchmark also for non-European countries and, apart from helping them to improve their tax collection, help foster the rule of law in countries where this principle is not or less established.

Equal treatment: Non-discrimination is already a principle of EU law, regardless of any Taxpayer's Code. We do not expect a Taxpayer's Code to lead to full harmonisation of taxpayer rights and obligations but hope that it can contribute to a certain degree of approximation of laws.

3. Which *general* principles should be included in a European taxpayer's code?

The following of the suggested general principles should be included :

- Lawfulness (tax levied only by virtue of law)
- Legal certainty (non-retroactivity of legislation, right to a high degree of predictability, principle of good faith, correct, efficient and timely application of double taxation treaties with other countries...)
- Non-discrimination and equality of taxpayers (no unequal treatment because of gender, nationality, religion etc.)
- Fiscal secrecy and data protection (safeguards to ensure confidentiality of taxpayer information)
- Right of privacy (taxpayers do not have to disclose private issues which are not necessary for the calculation of the tax)
- Service standards (customer satisfaction)
- Sound tax administration (tax administrations move from a control to a service approach and respect all principles like e.g. lawfulness)
- Impartiality and independence
- Responsiveness (deadlines for tax administration to reply to the requests from the taxpayer)
- Presumption of honesty and truthfulness (tax administration trust the enclosed documents, data, information... until there is a reasonable suspicion not to do so)
- Right of defence (right to be assisted and heard; right to be represented by an authorised legal professional)
- Burden of proof (general rule and circumstances justifying a reversal of the burden of proof)
- Double taxation relief (i.e. existence of provisions to eliminate double taxation under domestic law or under double taxation treaties with other countries)
- Publication of statistics and general information (publication of general information e.g. legislative amendments and statistics on the website, journals...)
- Measures to deal with breaches of taxpayer's code (by both taxpayers and tax authorities)

The following should not be included:

- Information on possible measures to combat tax avoidance and evasion (provisions on how to treat transactions and schemes aimed at tax avoidance and evasion including possible sanctions and penalties)

4. Which *procedural* principles should be included in a European taxpayer's code?

The following of the suggested procedural principles should be included :

- Legislative process and consultation (possibility for interested parties to be heard)
- Drafting standards for tax legislation (ensuring that tax legislation is clear and understandable)

- Taxpayer assistance (provision of sufficient, clear and up-to-date information to taxpayer to enable compliance)
- Rulings and interpretations (possibility for taxpayers to ask for a binding interpretation in advance)
- Taxpayer records (keeping of records by the taxpayer, search and seizure)
- Disclosure and duty of truthfulness on the part of the taxpayer (filing of tax and information returns; respect of deadlines)
- Assessment process (transparency of tax computation; information on remedies)
- Payment process (obligation for the taxpayer to pay taxes on time)
- Voluntary disclosure (possibility for the taxpayer to correct deficiencies in past filings)
- Audit process (complete information about rights and obligations; fair play provisions; duty of the taxpayer to cooperate)
- Audit result (complete information about facts and conclusions)
- Interest and penalties (interest both for late payment and overpayment; penalties)
- Internal appeals process (possibility of an internal appeal with an independent tax officer)
- Judicial review (possibility of a judiciary appeal with an independent court)

The following should not be included:

- External tax-related or general mediation process (e.g. Appeals Commissioner, Ombudsman)

6. Should other principles, rights and obligations in your opinion be included in a taxpayer's code?

Yes

1. Abuse of law (national, EU law or the Charter itself) is not acceptable
2. A taxpayer is responsible for the correctness of tax filings also if another person acts on his behalf
3. Taxpayer records may not be searched or seized without reason and due process of law
4. Legal privilege should apply to the communication between the taxpayer and his representative
5. The right of the taxpayer to be heard by the tax administration

7. Please rate the importance of the following *general principles*

1st most important: Lawfulness (tax levied only by virtue of law)

2nd most important: Legal certainty (non-retroactivity of legislation, right to a high degree of predictability, principle of good faith, correct, efficient and timely application of double taxation treaties with other countries...)

3rd most important: Right of defence (right to be assisted and heard; right to be represented by legal professional authorized)

4th most important: Presumption of honesty and truthfulness (tax administration trust the enclosed documents, data, information... until there is a reasonable suspicion not to do so)

5th most important: Non-discrimination and equality of taxpayers (no unequal treatment because of gender, nationality, religion etc.)

Other suggested general principles we consider very important:

- Fiscal secrecy and data protection (safeguards to ensure confidentiality of taxpayer information)
- Right of privacy (taxpayers do not have to disclose private issues which are not necessary for the calculation of the tax)
- Impartiality and independence
- Burden of proof (general rule and circumstances justifying a reversal)
- Double taxation relief (i.e. existence of provisions to eliminate double taxation under domestic law or under double taxation treaties with other countries)
- Measures to deal with breaches of taxpayer's code (by both taxpayers and tax authorities)

Suggested general principles we consider slightly less important:

- Service standards (customer satisfaction)
- Sound tax administration (tax administrations move from a control to a service approach and respect all principles like e.g. lawfulness)
- Responsiveness (deadlines for tax administration to reply to the requests from the taxpayer)
- Publication of statistics and general information (publication of general information e.g. legislative amendments and statistics on the website, journals...)

Suggested general principles that should not be included:

- Information on possible measures to combat tax avoidance and evasion (provisions on how to treat transactions and schemes aimed at tax avoidance and evasion including possible sanctions and penalties)

If you wish so, please explain your priorities:

We believe that most of the mentioned general principles are of crucial importance. In terms of priority, we tend to consider services standards and a customer satisfaction approach a “nice to have” while compliance with the principles related to fair procedures and the rule of law remain paramount.

We would welcome if tax administrations were more committed to responding swiftly to taxpayers’ requests. There could be a clause in a Taxpayer’s Code obliging member states to have a judicial remedy in place where without due cause, a decision of the tax authorities has not been taken within a reasonable time which would enable the tax payer to address the court after that term.

Concerning measures to combat tax avoidance and evasion: There is a lack of legal certainty in the area between (legal, but maybe undesirable) tax avoidance and (illegal) tax evasion, posing a threat to businesses willing to comply and their advisers. Legal certainty is not increased but actually reduced by the introduction of moral elements in a legal text. The distinction between

acceptable and unacceptable (or aggressive) tax avoidance or tax planning is not a legal but a moral distinction, subject to change according to public opinion. Moreover, a Taxpayer's Code, being based on universal principles derived from Human Rights, should aim to be a document "for eternity", while a document distinguishing acceptable from unacceptable tax practices would have to respond to the ever-changing environment in the area of tax planning and avoidance. We therefore doubt whether a Taxpayer's Code would be the right instrument to address legal but unacceptable practices. Finally, politically speaking, countries are not likely to support a Code that expressly white-lists acceptable practices and we would therefore be worried that a Code which addresses tax avoidance would take a biased approach.

8. Please rate the importance of the following *procedural* principles

1st most important: Judicial review (possibility of a judiciary appeal with an independent court)

2nd most important: Disclosure and duty of truthfulness on the part of the taxpayer (filing of tax and information returns ; respect of deadlines)

3rd most important: Audit process (complete information about rights and obligations ; fair play provisions ; duty of the taxpayer to cooperate)

4th most important: Taxpayer records (keeping of records by the taxpayer, search and seizure)

5th most important: Internal appeals process (possibility of an internal appeal with an independent tax officer)

Other suggested procedural principles we consider very important:

- Legislative process and consultation (possibility for interested parties to be heard)
- Assessment process (transparency of tax computation ; information on remedies)
- Payment process (obligation for the taxpayer to pay taxes on time)
- Audit result (complete information about facts and conclusions)
- Interest and penalties (interest both for late payment and overpayment ; penalties)

Suggested procedural principles we consider slightly less important:

- Drafting standards for tax legislation (ensuring that tax legislation is clear and understandable)
- Taxpayer assistance (provision of sufficient and up-to-date information to taxpayer to enable compliance)
- Rulings and interpretations (possibility for taxpayers to ask for a binding interpretation in advance)
- Voluntary disclosure (possibility for the taxpayer to correct mistakes/omissions in past filings)

Suggested procedural principles that should not be included:

- External tax-related or general mediation process (e.g. Appeals Commissioner, Ombudsman)

If you wish so, please explain your priorities

Concerning involvement in the tax legislative process, we would like to point out that we have carried out a survey on this in our member organisations in 2011. We would be pleased to share our findings with the Commission.

Concerning rulings, we would like to add that these should be irrevocable if conditions do not change. We see this as a corollary of the principle of legal certainty.

Regarding drafting standards for legislation: Any such standards should limit themselves to demanding that the legislation is generally understandable to a non-expert taxpayer (except for specialised areas like e.g. financial institutions or environment taxation) but should respect the traditions of how legislation is written in different countries, which would leave this as a very general rule within the Code.

Concerning voluntary disclosure, we remark that the decision of a country whether to offer voluntary disclosure facilities or not is highly political.

Concerning external mediation or ombudsman procedures, such procedures may lead to useful results in some cases. However, such procedures must in no way hinder access to judicial review. Already the requirement for a cooling-off period or mandatory mediation or ombudsman involvement constitutes a delay of access to judicial review. We believe that a Taxpayer's Code as a legal document should limit itself to the rights and obligations that national laws *have to* contain rather than containing "nice to have's" like the possibility of external mediation or ombudsman procedures. It has been expressed among our members that such provisions may be politically delicate in some countries and would therefore unnecessarily complicate the acceptance of a Taxpayer's Code.

SECTION 3: OTHER RELATED MATTERS THAT COULD BE INCLUDED IN A TAXPAYER'S CODE

3.1. Online tax return

Should a taxpayer's code list some elements of filing tax return online?

No (please see our comment below)

3.2. Electronic tax files

Should a taxpayer's code include all rights and obligations in relation to electronic tax files?

No (please see our comment below)

3.3. Prefilled tax returns

Should prefilled tax returns be covered by a taxpayer's code?

No (please see our comment below)

Comment on electronic tax returns or tax filings:

As stated before, we would see a Taxpayer's Code as a document "for eternity". This implies that it should not contain details which would have to be regularly updated, according to technical developments. We are in favour of the state encouraging the use of information technology in the handling of a taxpayer's affairs but stress that this must respect equal treatment of taxpayers. Therefore, we are against granting any form of advantage, monetary or procedural, to taxpayers who make use of IT. We would support a statement in the sense that the state should allow the use of electronic documents and submission and treat taxpayers equally, whether they opt for using electronic documents and submission or not.

SECTION 4: FINAL COMMENTS

If you wish so, please provide here any further comments in relation to the development of a

European Taxpayer's Code

CFE very much welcomes the European Commission's approach to treat taxpayer rights and obligations in one document with the aim of producing a balanced Code acceptable to both taxpayers and governments. We note that the Commission's questionnaire addresses rights more specifically than obligations but understand that this does not question the Commission's choice of a balanced approach, given that existing legislation at national level is often more detailed on taxpayer obligations than on rights.

We would like to refer to a joint publication of a draft Model Charter of Taxpayer Rights and Responsibilities which CFE has developed in collaboration with the Asia-Oceania Tax Consultants' Association (AOTCA) and the Society of Trust and Estate Practitioners (STEP). The European Commission shall receive this publication under separate cover. All responses to this questionnaire have been drafted in the spirit of this Taxpayer Charter.

Although we believe that taxpayer rights and obligations, given that taxpayer rights derive from Human Rights, are best introduced at global level, we would very much welcome if the EU and its member states became "first movers" in adopting such Code (or Charter) which could serve as a global benchmark and help to both ensure tax revenues and foster good governance and the rule of law in third countries. We would welcome if the EU promoted such Code (or Charter) also at international (OECD, G20, UN) level.