

CFE Tax Advisers Europe Intervention – European Parliament, Subcommittee on Tax Matters (FISC) – Public Hearing 25 April 2022

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1. CFE Tax Advisers Europe is the European umbrella association of European tax institutes and associations of advisers. Founded in 1959, CFE brings together 33 national tax institutes from 24 European countries. CFE does not represent a particular interest, as many of our member organisations represent advisers who help taxpayers and SMEs with their tax obligations. Tax is very complex, and tax advisers make tax systems work in practice. CFE therefore strives to provide objective feedback to the EU institutions on all matters fiscal and communicate input from our members, representing the profession of tax advisers, for the benefit of better policy making in Europe and wider.
2. Tax advisers' work, broadly speaking, consists of three areas:
 - a. tax advice,
 - b. tax compliance, and
 - c. tax litigation.

Tax advice, the area we are apparently discussing here today, can be provided by various professionals and intermediaries. We therefore believe that any international policy efforts on improving the regulatory framework for tax intermediaries should focus not on a particular profession, rather on the provided service.

3. One of the key objectives of such initiatives, in our view, should be seeking to further strengthen the integrity of our tax system and steer professionals away from taking part in abusive practices.
4. CFE unequivocally condemns tax evasion in all its forms, regardless of the jurisdiction or actors involved in this type of criminal activity. The work undertaken by the EU and the OECD in this regard, in particular regarding tax evasion, tax transparency and anti-money laundering, has been instrumental in ensuring a steady decline in this type of illegal activity.
5. This is the so-called "black zone".
6. CFE acknowledges that there is also the "grey zone"- an element that in spite of the best possible regulation or legislation, will inevitably continue to exist due to the nature of the legal systems. Mismatches will continue to exist, because tax is jurisdictional. Every country retains tax sovereignty and therefore legislates on tax. Much has been done to align these mismatches, but the grey zones will continue to exist in spite of our collective efforts aimed at harmonisation and addressing aggressive tax avoidance with legislation.
7. The EU has done significant work on addressing aggressive tax avoidance, targeted by a number of legislative initiatives, notably ATAD, as well as the disclosure and transparency

requirements as imposed by the subsequent revisions of the Directive on administrative cooperation in the EU (DAC). Whether Member states' tax administrations make good use of the instruments at their disposal, made possible by these progressive initiatives of the European Commission and this House, is a question better suited for a separate debate.

8. To address the outstanding issues in this "grey zone", as argued by CFE in our paper Professional Judgment in Tax Planning, a synergy of actions can take place between governments, organisations, tax professionals and taxpayers alike. We all bear responsibility to protect the integrity of our tax systems.
9. Legislators design tax laws; tax administrations apply the law in collecting taxes due; and taxpayers comply with the law, while availing themselves of applicable rights. Tax advisers play a critical role by exercising professional judgment on taxpayers' rights and obligations in advising across a range of areas, for example, the relevant aspects of the law, jurisprudence and administrative matters, as well as the consequences of taking or not taking their advice.
10. In October 2021, we were pleased to be able to demonstrate CFE's role in setting tax professional standards, when we presented to the European Commission's Expert Group, the Platform For Tax Good Governance, Aggressive Tax Planning and Double Taxation our key project on ethical judgment in tax planning, which sets out an ethical quality bar for all tax advisers.
11. As CFE, we seek to promote ethical professional judgment across all tax advisers in Europe, and our approach seeks to steer all advisers in the direction of an appropriate balance between the rights and obligations of taxpayers. CFE's work on the matter is expected to continue throughout the next couple of years, taking onboard feedback from both internal and external stakeholders.
12. CFE believes that the continuing alignment of tax advice with societal expectations, as well as legislative action aimed at simplification of tax laws and reduction of complexities, will increasingly be a factor in the attractiveness of the profession of tax adviser as a career.
13. We propose an establishment of an ethics quality bar, which constitutes a major opportunity for all intermediaries to proactively complement the range of EU and national measures taken to date to address abusive tax avoidance, and move the dial forward in solving the problems we so passionately discuss today.
14. Indeed, when we speak about the so-called "grey zone", professional judgment will always play a critical role in the equation. Even with perfect laws, or perfect 'regulation', there will always be a "grey zone", a zone where good professionals must exercise their best judgment, and this is where ethical behaviour plays a crucial role.
15. This is what CFE believes: that the ethics quality bar could serve as a common reference point for all intermediaries, of whatever affiliation and background, capable of evolving with agility as tax systems and businesses change constantly.

16. To address society's concerns that businesses and citizens alike are paying their fair share of tax, wider action is needed from all stakeholders. The dialogue needs to involve policy-makers and tax authorities. Ethical judgment will ultimately be effective in individual interactions between tax advisers and their clients only if it can be credibly shown that the quality bar is effective across European jurisdictions, and perhaps beyond.
17. CFE therefore seeks cooperation of all actors in the tax arena in our proposed ethics quality bar, as well as those who take a direct interest from a broader societal perspective and are committed to the same end goal of ethical professional judgment.
18. A 'one-size-fits-all' approach in regulating tax professionals is difficult to achieve in Europe, and we must ensure it suits the objectives of the initiative. The regulatory culture differs significantly among European states. It is important in this discussion to recognise the significant differences between tax intermediaries. We therefore need to ensure that ALL intermediaries operate to high standards. It is a question which calls for a holistic policy approach.
19. We would like to highlight some key elements of the CFE paper on introducing an ethical quality bar for all advisers and the merits of discussing this approach as a qualitative standard. We do note that "acceptable" is highly subjective, however it does resonate within individual countries.
20. CFE would continue to discuss with this House and the European Commission what is the best possible way to integrate these recommendations in a framework and how to obtain a balance of rights and obligations between the tax administrations and taxpayers.
21. *"If it is legal, is it acceptable?"* is the central ethical question which inspired the paper's focus on professional judgment. It relates directly to tax advice which is abusive within the law – often referred to as "aggressive tax avoidance". Our proposed "answer" - an "ethics quality bar" for all advisers - is put forward on the grounds that we need a practical way forward that can make a difference.
22. The principal objective of the paper is to seek feedback on a proposed "ethics quality bar" based on five short questions that all tax advisers should reflect on when undertaking their advisory role in the overall tax system. The ethical quality of this professional judgment is therefore critical on the question "If it is legal, is it acceptable?".

Setting an Ethics Quality Bar for Professional Judgment in Relation to Tax Planning

Five Key Questions for Tax Advisers to Reflect on When Preparing and Providing Advice:

1. Is there a genuine economic purpose for the tax planning apart from achieving a tax benefit, either now or in the future?
2. Are the arrangements artificial or manipulated in a form-over-substance approach to achieve a tax benefit?
3. Is the tax planning based on interpretations of applicable international and national tax law which are likely to be considered credible by the courts and informed stakeholders?
4. Would the arrangement be implemented if the relevant tax authority had a full overview of every aspect of the planning?
5. Are there any other potential reasons why the tax planning could be perceived by policy-makers and the general public as abusive?

23. CFE believes that it is essential for the envisaged dialogue to encompass the role of tax advisers who work outside of any professional affiliation and to consider the significant evolution of the tax services market in light of technological change.
24. CFE member bodies across Europe are engaged in various efforts to draw their members' attention to ethics in their mandatory professional training and other updates, as part of ongoing efforts to support high-quality work among their members in a way which provides confidence to the market and helps to distinguish them from other tax service providers. It should be noted that anti-money laundering (AML) rules are directed at all providers of tax advice, and there is considerable focus on AML matters at the current time.
25. CFE underlines the importance of having tax authority participation in the open dialogue. It will be beneficial to receive input on any areas where the initiative to raise the quality bar for ethics should place emphasis, and where relevant, how the quality bar could be pursued with respect to unaffiliated advisers.
26. It could also address collaborative working to achieve efficiencies when addressing aggressive avoidance, for example, in the implementation of DAC6 and any subsequent evolution of this legislation. It will also be helpful to discuss the overall working practices of the tax authorities in the context of the broad characteristics of the tax environment with respect to taxpayer attitudes and expectations of tax advisers.
27. This also links to wider questions regarding how to support a culture of voluntary compliance and remedy problems of specific non-compliance, where they exist, without undermining business activity in the Single Market. In these areas, CFE is supportive of the EC's pursuit of a Model Charter on Taxpayers' Rights.
28. CFE would welcome a continued dialogue involving all stakeholders, seeking to promote a pan-European framework that would apply these standards across all advisers and intermediaries.