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**The European tax advisers' priorities in EU policy:
Goals for the next 5 years ahead**

Prepared by the CFE Fiscal Committee and Professional Affairs Committee

Submitted to the European Commission, the European Parliament

and the Council of the EU

on the occasion of the European elections in May 2014

CFE (Confédération Fiscale Européenne) is the umbrella organisation representing the tax profession in Europe. Our members are 32 professional organisations from 25 European countries (22 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).

Achieving a level playing field in the European Union, contributing to improving and clarifying the EU legal framework, and counteracting tax evasion and tax avoidance, while also fostering the efficiency and clarity taxpayers, advisers and all other stakeholders require, are crucial issues for the CFE, as the umbrella organisation of the tax adviser profession in Europe.

1. Tax must be in the law

The law will have to decide in a clear and unambiguous manner on which arrangements are acceptable and which are not. Acting within the limits of the law is a fundamental right of each individual. Taxpayers need legal certainty for planning their business and managing their assets long-term. Advisers need certainty to prevent them from incurring civil, disciplinary and criminal liability for serving their clients. Uncertainty arises from the notion of the *spirit of the law* prevailing over the *letter of the law*. The EU and member states should not seek to introduce unclear concepts like “*aggressive tax planning*” which blur the distinction between legal and illegal and are subject to the whims of public opinion. Tax systems shall ensure a certain level of flexibility to be able to respond to developments in the tax field and to minimise compliance costs.

- Clearly define key concepts such as *abuse, avoidance, artificiality or double non-taxation*;
- Tax-avoidance laws must be clear, well-known, and not open to discretion.

2. Transparency to serve fair taxation

Transparency has to be weighted against the taxpayer’s right to confidentiality. It is important that tax authorities have the relevant information to base their assessments upon and to minimize opportunities for fraud and evasion. It is the tax administration, not the public, that needs this information, as only the tax administration assesses the tax due, enforces the law and is obliged to protect the taxpayer’s privacy. Information that increases legal certainty should be public. This would apply for rulings, to the extent that this respects confidentiality concerns of the taxpayer.

- The benefit of disclosure duties should be balanced against the administrative effort for enterprises;
- Exchange of tax information must ensure that the information stays confidential in the hands of the receiving authority/state; taxpayers should have legal remedies against unauthorised information disclosure by tax administrations if real damage is substantiated;

- Specific channels/technological means for information exchange between taxpayers and tax administrations to prevent information leakages should be developed;
- Consultation (not filing) of sensitive information at the taxpayer's premises.

3. Recognise the rights of taxpayers

Taxpayer rights are not granted by the state but derived from human and fundamental rights. A balanced approach to taxpayer rights and obligations is a prerequisite for an increase in mutual trust of taxpayers, tax advisers and tax administrations. While some tax administrations have shown openness towards a relationship of mutual trust in which both advisers and administration help a taxpayer comply with the law, a change of mindset is still needed in other member states. This endeavour will only be worthwhile if the result is not a mere political statement of intent but has legal force and can be invoked by citizens and businesses.

- Member states should formally recognise the rights of taxpayers.

4. Respect the role of tax advisers

Tax advisers play an important role in ensuring taxpayer compliance. They are not only bound by law but also by codes of conduct of their professional bodies. Tax advisers' independency should be recognised by tax authorities and safeguarded. The entitlement to effective legal representation is part of an individual's human and fundamental rights to privacy and a fair trial. These rights will only be effective if clients can trust that information shared with their adviser will remain confidential and that tax advisers are not watchdogs of the tax administration.

- Tax professionals, when representing clients in tax matters, should be granted recognised privilege throughout the EU in terms of information and data, not only if they are member of the profession of lawyers;
- The specific importance of tax advisers' independence and qualification should not be ignored by applying a one-size-fits-all approach in the regulation of services.

5. Solve double taxation

Double taxation persists, although we believe that it should not, as it is contrary to the very idea of the Single Market. A multilateral agreement on double and non-taxation, even though an ambitious goal, would be a huge step in the right direction. For the time being, next to the continuation of existing measures like the Joint Transfer Pricing Forum, the CFE welcomes any legislative solution or practical tool in specific areas, such as:

- a common tax base (like the CCCTB) on a voluntary basis with an appropriate apportionment formula;
- a critical assessment and improvement of the EU Arbitration Convention;
- measures aimed at a more consistent interpretation and application of double tax conventions between member states;

- a permanent international tax arbitration tribunal in the field of the Arbitration Convention, with the possibility of extending this to other areas of tax law;
- a solution to double taxation of inheritances, including the possibility for citizens to reach binding decisions.

6. Tax sovereignty and mismatches

Many difficulties in cross-border taxation are due to different understanding of legal concepts and different classification of arrangements, due to different legal traditions. The work of the Commission should be aimed at reducing these mismatches by promoting a common understanding through agreed definitions. However, national laws that aim at creating incentives for taxpayers should be respected and member states should be allowed to compete in a not-harmful way. Non-taxation in itself is not always a ground of objection.

- A coordinated approach to achieve consistent definitions throughout the EU.

7. Facilitate VAT compliance

A very concrete and pressing need is a proper and efficient portal for cross-border VAT compliance. Whilst we note that it is on the Commission's agenda we believe it should be a priority. We see this as a prerequisite for the proper functioning of any VAT (mini)-one-stop-shop.

- The Commission should agree and work with the member states on the information to be included.
- The Commission should aim for more harmonisation of VAT compliance rules.

8. Foster competitiveness

Harmful tax competition must be addressed both at EU and international level. International cooperation with the OECD and other international organisations is desired and welcomed, as to ensure coherence among member states' policies and that the EU policies do not endanger the EU's global competitiveness.

- The EU shall take into consideration the outcomes of the OECD BEPS (base erosion and profit shifting) project and the actions required to implement it in the EU, keeping an eye on their compatibility with EU law and on the very specific nature of the EU and the Single Market.