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Direct Taxation, Tax coordination, Economic Analysis and Evaluation

Company Taxation initiatives

**SUMMARY RECORD
OF
THE HYBRID MEETING
OF
THE PLATFORM FOR
TAX GOOD GOVERNANCE,
AGGRESSIVE TAX PLANNING &
DOUBLE TAXATION**

held on

07 OCTOBER 2021, 9H30 – 13H00

at

**CHARLEMAGNE EC Building,
Sicco Mansholt room**

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1. WELCOME AND INTRODUCTION

The meeting was chaired by Mr Benjamin Angel, Director for Direct Taxation, Tax Coordination, Economic Analysis and Evaluation at the EU Commission Directorate General Taxation and Customs Union. The Chair opened the meeting, welcomed all participants, expressed his pleasure at having a few members attend in person and presented briefly the agenda and its first item.

2. TAX IN AN INCREASINGLY MOBILE WORKING ENVIRONMENT: CHALLENGES AND OPPORTUNITIES (PRESENTATION BY THE EC SERVICES, FOLLOWED BY INTERVENTION BY THE REPRESENTATIVE OF INTERNATIONAL CHAMBER OF COMMERCE ICC)

A Commission speaker delivered a presentation on the mobility of workers. The speaker briefly introduced and defined the topic mentioning the main features of taxation for cross-border workers at EU level. Against the backdrop of the current pandemic crisis, this presentation was meant to specifically focus on the tax treatment of teleworking and home offices. In this regard, a number of Member States have agreed on temporary measures to avoid the tax repercussions from teleworking through a home office. This was necessary due to the impossibility for cross-border workers to carry out their work at the usual place of activity during the lock-downs or closure of borders. Some EU Member States have concluded in their Double Taxation Conventions de-minimis-thresholds under which taxing rights are only allocated to the state of residence, if the employee has exceeded the number of days without presence at the usual place of activity. The de-minimis-threshold only applies in a few cases though.

In terms of social security provisions at EU level, the speaker explained that there is in place a threshold for teleworking. In detail, employed persons are subject to the social security legislation of their Member State of residence, and not the state of usual place of activity, if the activity in the state of residence, i.e. teleworking, accounts for 25 % or more of working time and/or remuneration. In conclusion, the presentation outlined a set of four suggestions for addressing tax repercussions (e.g. setting up central one-stop- shops in tax administrations or specific regimes for mobile workers). He also briefly clarified the tax repercussions for employer companies, against the backdrop of relevant discussions taking place at OECD level.

The representative of International Chamber of Commerce (ICC) took the floor and delivered a presentation entitled “Tax in an increasingly mobile working environment: challenges and opportunities”. Differently from the Commission’s presentation, which mostly looked at the employees’ side, the focus of the ICC was on the employers. The speaker briefly analysed the advantages and risks of this phenomenon and provided a few remarks on the OECD recommendations in this regard. It was specified that remote working from abroad will likely become the new normal. For this reason, there is a need for tax reform to accommodate

evolving working conditions with clear guidance for businesses and governments alike. The speaker presented a set of recommendations and a list of items for consideration by policymakers. The goal of such recommendations is to provide clarity and legal certainty for all businesses in view of divergent tax laws across different jurisdictions. In conclusion, the speaker advocated clear guidelines on specific policies to ensure business continuity, reduce administrative burden and safeguard employee's rights.

The Chair opened the floor for questions or remarks.

A speaker from a business association shared the conclusions and concerns provided by both presentations. Businesses are becoming more and more international and, for this reason, one-stop- shops for tax issues are a welcomed solution. Personal income tax gets quite complicated if it has to be managed at cross-border level.

A trade union representative praised the content of these contributions emphasizing that clear, good and fast rules are necessary in this field.

The Chair closed the discussion on the first agenda item registering an ample consensus on the importance of the topic. He added that it is necessary to draw the consequences of this drastic change for businesses, tax authorities and citizens alike. In case of EU Member States' interest, the Commission stands ready to delve further into this topic and continue this discussion with all Platform members.

3. PROFESSIONAL JUDGMENT IN TAX PLANNING (PRESENTATION BY TAX ADVISERS EUROPE, CFE)

The CFE President briefly introduced the discussion paper "Professional Judgment in Tax Planning - An Ethics Quality Bar for All Tax Advisers". The paper was submitted to the EU institutions in June 2021. The CFE paper aims at promoting ethical professional judgment across all tax advisers in Europe and possibly overseas via [GTAP](#) (Global Tax Advisers Platform). CFE welcomes views on how an ethics quality bar can create a better balance between rights and obligations of taxpayers in the EU and beyond.

The Chair of CFE Task Force/Professional Affairs Committee took the floor and emphasised CFE's commitment to ethics and high standards in the provision of tax advice. The paper acknowledges that, while tax advisers play a valuable role in the proper functioning of tax systems, this role can be undermined by the promotion of abusive tax arrangements within legal parameters. In addition, the paper underlines the need to protect the integrity of high standards

among professional tax advisers, also in relation to unaffiliated advisers. It was noted that growing society expectations, with respect to ethics and fairness in tax, often confuse the distinction between the setting of tax rules (responsibility of lawmakers) and the provision of advice (the paper's focus).

The CFE discussion paper was inspired by the central question on tax advice and tax planning: "if it is legal, is it acceptable?". The ethics quality bar concept was developed taking into account a few context elements. A few of them are: marked evolution of societal attitudes to tax avoidance and various "anti-avoidance" measures, definitions/translations challenges, different taxpayer attitudes with a strong "contra-natura" element, technological impact on tax advice, etc.

In order to trigger a discussion among the stakeholders, CFE addressed five key questions that were designed to strike an appropriate balance between rights and obligations of taxpayers while fighting abusive tax planning. These questions aim at underlining how artificial arrangements can be developed out of legitimate structures, reliefs, transactions, etc. The CFE paper investigated a few examples: abusive arrangements to reduce employers and employees' taxes or social security obligations through a misuse of service companies, abusive arrangements via artificial debt financing or balance sheets' manipulation or vehicles to avoid inheritance taxes or family wealth management. It would be advisable to have a few streams of these examples to be debated publicly. The ethics quality bar can work across jurisdictions as a common reference point for advisers with different backgrounds and/or with different affiliations. Lastly, the CFE alternate member pointed out to the CFE engagement steps in relation to the discussion paper and drew all members' attention to the CFE roundtable on 25 November.

The Chair took the chance to thank CFE for this contribution and welcomed the thinking on ethical standards. Public administrations should also have a serious discussion in order to see if existing rules are appropriate in the light of the most recent developments.

A speaker from Oxfam¹ welcomed CFE's initiative and recognition of the problem of tax advisors' role in aggressive tax planning. However, Oxfam emphasized that CFE's is not a solution in itself as there is also an urgent need for additional regulations and legal measures to strengthen, inter alia, tax transparency and efficient beneficial ownership rules. It is important to understand how the ethics quality bar will work in practice. Suggestions were made, for instance in the field of education in business schools and/or universities. Oxfam raised the question whether the CFE will develop and promote a curriculum and actively engage with business schools, universities etc. to make sure that *Tax Ethics* becomes a part of tax education. Another suggestion was to provide a

¹ Following their request, statements by representatives of Oxfam are explicitly attributed to Oxfam.

specific certification for tax advisors that will be renewed on a yearly basis and enable a public list of certified tax advisers. Research on abusive tax arrangements should be widely encouraged and disseminated. It was also enquired whether CFE's five key questions could inspire the formation of mandatory *checklists* in several domains:

- Tax advisors are obliged to answer the five questions whenever they file a tax return or audit.
- Leadership (directors) of firms within the tax advisory market are obliged to answer the five key questions for tax returns and audits above a certain threshold.
- The five questions are made a mandatory part of CSR-reporting not only tax advisory firms but for all firms publishing CSR-reports.
- Interest organisations engaging on tax matters with EU policy makers are required to answers a similar set of ethical questions before engaging with policy makers.

Action is expected on higher ethics by policymakers, business and civil society alike.

The Tax Justice Network representative² provided a few comments on the CFE paper, on issues of methodology mainly. It was noted that the ethics of tax advice could not be separated from the ethics of the rules themselves. As an example, the ethics of advising whether to set up a factory in one country or another should be considered in light of whether forced labor is legal in each jurisdiction. The same would apply to unethical tax rules available across the globe, such as unregistered trusts and shell companies. In relation to the contra-natura survey, it was asked to share the survey on demographics and to clarify the self-selection bias. Then with regard to the technological impact on tax advice, it was enquired whether this set of qualitative questions can be integrated into a model and optimized with tax obligations across countries.

The EuroDaD representative³ welcomed the recognition that there are ethical considerations for tax advisors. The representative mentioned that the discussed tax avoidance, which is often enabled by tax advisors, has an impact on human rights, public service and on society as a whole. Hence, a general support to the policies underlined in the discussion paper was highlighted although hard and effective tax laws, alongside transparency, are also required to prevent tax avoidance and discourage manipulation potentially undertaken by tax advisers. In terms of behavioural change, tax advisers should be made legally liable when they promote practices that encourage breaching the law and this should go hand in hand with promoting positive behaviours at EU and at national level. In this regard, prosecution also needs to be pursued. The publication of outlines on cross-

² Following their request, statements by representatives of the Tax Justice Network (TJN) are explicitly attributed to TJN.

³ Following their request, statements by representatives of the European Network on Debt and Development (EuroDaD) are explicitly attributed to EuroDaD.

border tax arrangements has been discussed for several years and there is a legal obligation for disclosure, including regimes linked to non-EU countries (like the UK). However, there are indications that reporting has not been extensive and that there might be schemes, which tax advisers have not reported. Recent developments have shown the need to oblige tax advisers and multinational corporations to publish the details of cross-border tax arrangements publicly.

A speaker from CFE welcomed the first series of comments and praised the useful convergence between tax advisers and civil society organisations, while mentioning that a few issues need to be dealt only by policymakers. The Chair of CFE Task Force/Professional Affairs Committee welcomed all comments and stressed that the grey area of non-affiliated tax advisers should be analysed by policymakers and all relevant stakeholders alike. Education is already present in the activities portfolio of CFE but this needs to be reconsidered holistically in terms of tax advisers' background. On the contra-natura survey, the speaker noted that an empirical study had yet to be done, and that ethics should go hand in hand with technological impact. The CFE President emphasized that tax morale is part of the 2021 Tax Declaration recently signed by CFE and other like-minded organisations. Tax morale is at the heart of the tax system, of Government integrity, of the corruption perception and of the redistributive effect of a welfare state. Against the backdrop of globalisation and digitalisation, all multinationals need to align their practices with the relevant OECD guidelines, both on substance and on form.

The Chair also emphasised the relevance of education in shaping virtuous tax practices. He also addressed all members in relation to the role of policymakers in this field both within and beyond the EU. Within the EU, it was enquired whether the legislation should foresee a licence suspension in case of non-compliant tax advisers. It was also noted that generally speaking, tax advisers located outside the EU can produce damages on a global scale and there is no clear solution in this respect.

A think tank representative pointed out that the reality of tax advice does not leave any room to ethics and is mainly profit-oriented. Taxation involves a level of complexity that one often relies on professional services. The core of the issue is not necessarily adherence to the law by tax advisers or their ethical standards but rather the role of lawmakers at national level, alongside EU institutions, in simplifying tax rules for every typology of economic operator. The CFE alternate addressed the latest remarks, specifying that a few EU Member States are heavily regulated and pointed out that professional affiliation and higher ethical standards are often linked. The Chair of CFE Task Force/Professional Affairs Committee addressed the Platform Chair's remarks highlighting the need to deepen the general understanding of tax advisers' legal obligations within the EU. Furthermore, stricter international standards for tax advisers should be pursued globally.

A Member State representative reiterated his country's clear commitment to fighting aggressive tax planning, namely via the swift implementation of ATAD or amendments to the DAC. The market of tax advisers should provide professional assistance and support to taxpayers in pursuing tax compliance rather than tax saving or artificial tax structuring with dubious legal or ethical grounds. This could expose taxpayers to extra costs stemming from tax audits.

A speaker from an academic association concurred with the CFE paper on the role of education as one of the main drivers in creating tax morale. He also mentioned that usually there are more university courses teaching tax planning than tax ethics.

A speaker from a business association emphasised what has been achieved so far within the EU, for instance eight 'DAC' directives in the field of administrative cooperation, two 'ATAD' directives in the field of aggressive tax planning. The focus should be on tax administration efficiency, more robust rules (e.g. OECD new rules), tax certainty and strengthening of economic impact assessment for businesses and society in general. It is important to weigh the pros and cons of additional regulation on compliance and good practice taking into account that it is primarily the companies that bear the administrative costs of additional regulation.

The Chair agreed that a lot has been achieved although it was emphasised that all possible routes to fight against tax avoidance and evasion have to be explored and they are not mutually exclusive. The CFE President drew all members' attention on the CFE Academy, created in 2018, as a powerful tool in creating knowledge and good behaviour among affiliated tax advisers. He added that greater transparency and more intelligence are needed to increase prosecution across the EU. Most recent cases of corruption and money laundering show the need for better investigation also in relation to new issues such as block chain, digitalisation and profits matching economic activities. Another business association representative reminded all members that ethical behaviour could not be prescribed by the law and that ethics change over time. The representative gave the example of tax loss carry forward, indicating that the measure stems from a clear economic rationale and that businesses share this rationale.

The representative of EuroDaD agreed with the Chair that the fight against corporate tax avoidance present a margin for improvement. The pandemic crisis made this even more relevant. In relation to the loss carry forward, the starting point is the improvement of tax laws by policymakers and, if they fail to do so, it will be the task of the society to advocate more ethical behaviour by all economic actors. Nonetheless, laws are the first step.

The representative of a professionals' association praised CFE for its contribution. It was reminded that laws should help the fight against tax abuse while allowing taxpayers to be compliant. However, the co-existence of different laws at national, EU or international level makes it difficult

for taxpayers to remain compliant. For instance, tax abuse instruments that could soon be superseded once Pillar 2 is agreed and implemented at EU level. Legal drafters should not underestimate simplification. The Chair thanked all members for the engaging discussion and confirmed that the EU has relevant legislation in the pipeline. There is a black zone which corresponds to tax evasion and a grey zone that is tax avoidance where a few practices are not completely prohibited. The need of clarity is well noted and policymakers should not leave tax advisers alone to navigate through the intricacies of tax regulations at national and EU level.

4. THE “DEBRA” INITIATIVE: TOWARDS AN ALLOWANCE SYSTEM FOR EQUITY FINANCING TO MITIGATE THE DEBT-EQUITY BIAS INDUCED BY TAXATION (PRESENTATION BY THE COMMISSION SERVICES)

The Chair briefly introduced the DEBRA initiative providing background information on its evolution in the past years (e.g. CCCTB). The Commission will table this initiative during Q1 2022. A Commission representative took the floor presenting its state of play. DEBRA aims at mitigating the tax induced debt-equity bias in corporate investment decisions as was announced under the Communication Business Taxation for the 21st Century. Definition of debt-bias and EU reasons behind this initiative were provided alongside the main features of this proposal. A few clarifications were given on the following: notional interest rate, allowance base, relevance of DEBRA vis-à-vis SMEs and, anti-abuse framework as defined by this legislative proposal. The Commission speaker raised a few questions in relation to the main elements under discussion and the Chair opened the floor for questions or remarks.

The representative of TJN enquired whether the DEBRA impact assessment sufficiently covered environmental aspects. Fossil fuels industry is largely debt-financed, in some instances up to 90% according to research and estimates provided by Cambridge University. It was asked whether the environmental impact assessment considered the opportunity cost of choosing a notional interest deduction policy over an interest-deduction limitation solution to the debt/equity bias. In addition, it was asked whether the Commission had considered the impact of restricting the applicability of notional interest deductions to companies fulfilling one of the requirements specified under the [EU taxonomy of sustainable finance](#).

The representative of EuroDaD asked clarifications on the rationale and timing of this proposal. Against the backdrop of the pandemic crisis, public funding is crucial in all recovery efforts and, consequently, it will be necessary to raise more tax revenues, to achieve this objective. It is important to be transparent and specify how much this type of initiative can cost and make it clear what scale the Commission is expecting in terms of notional interests being deducted. It is also

important to bear in mind that there are two ways of correcting the debt equity bias. Instead of introducing tax-related incentives to make equity financing as attractive as debt financing, the Commission could propose stronger limitations on the debt related tax incentives. Especially in times of crisis, it is hard to understand why there is an urge to introduce additional tax incentives for corporations.

The representative from Oxfam started by emphasising that the main objective of this proposal seems to be to avert the risk of over-indebtedness for some companies. However, companies exploit the tax treatment of equity and debt financing as tools for aggressive tax planning. The other solution, which was considered in previous impact assessments, was to eliminate the deductibility on debt altogether. This NGO advocated in favour of this solution as the introduction of a notional interest deduction would add a layer of complexity that could be exploited by multinational companies. Different studies show that this happened in Belgium. This also seems in contradiction with the current international efforts taking place at the OECD level and creates a budget concern, as raised by the EuroDaD representative. Another unwelcome effect could be more indirect taxation at national level, increasing regressiveness. The IMF has calculated a few years ago that this kind of measures could reduce tax revenues by 5-12%. How this tax revenue gap will be filled has consequences on (in) equality. Under the [2021 Corporate Tax Havens Index](#), TJN ranked jurisdictions that are complicit in helping multinational corporations underpay their corporate income tax. A few examples were provided and it was stressed that these jurisdictions should not be taken as benchmark. If the EC decides to go for a notional interest deduction, anti-abuse measures should be included and further investigated, e.g. the ones introduced by Italy. Major deductions for SME would also be preferable.

The Chair clarified that a few of the mentioned jurisdictions are zero tax rate jurisdictions. It was also clarified that, in terms of tax losses, the Commission's purpose was to design a tax neutral system between interest and debt. Either you go for equity financing or you go for debt financing; under the latter scenario, interests are deductible and debt has a cost for tax administrations. The designed formula intends to offer companies a neutral choice that, as such, does not affect public financing. Tax avoidance measures are high on the EU agenda and so, is their scope on investments (e.g. corporate acquisition by equity increase could give rights to notional interest deductions).

The TJN representative explained the methodology of 2021 corporate tax havens index in relation to zero-tax rate jurisdictions. Moreover, the representative indicated that the two only jurisdictions having implemented a notional interest deduction outside the European Union are Switzerland and Liechtenstein. It was noted that, through ATAD, the EU has already walked the path of limiting interest deductions. A 2016 research by the IMF indicates that partial intra-group deduction

limitations might only be helpful in addressing profit shifting rather than debt bias. Hence, only eliminating interest deductions would be useful in this regard. The options are either to generalise ATAD to all companies or to introduce this notional interest deduction with its whole set of anti-abuse measures. The former would be simpler.

The Commission speaker explained why it was decided not to go for a complete refusal of interest deductions under DEBRA. Previous impact assessments, e.g. CCCTB in 2016, investigated explored this. Unfortunately, there are negative effects on growth and employment. On the environmental impact, the first assessment by all Commission Services did not have this issue raised by the relevant services at the Commission but public consultation is still open for input. Considering the impact on Member States' budget, the Commission opted for new equity (i.e. equity increases), to reduce Member States' costs.

A business association representative highlighted that they provided their input via the DEBRA public consultation, hoping that this instrument will be as practical and as business-friendly as possible.

An academic association enquired to what extent the debt-equity bias translates in a shortage of finance for SMEs. A recent survey by the European Central Bank showed that shortage of finance is not an issue for SMEs. Empirical evidence on Member States' allowance should be provided in relation to a potential increase of financing or other effects. This new instrument would apply to new equity. Equity has two functions: withdrawal and provision of finance. It is unclear whether this new equity would be with or without voting rights.

A professional association reiterated its organisation's support for the new proposal's allowance and noted that they also expressed their support at the time of the CCCTB in 2016. This proposal could be a great boost for SMEs.

The Chair acknowledged that the quoted ECB survey shows that financing is not a primary concern of the SMEs. Nonetheless, the stock of debt after the pandemic has dramatically increased across the EU. Today debt does not cost much but the future is uncertain, e.g. current tensions on energy prices. Hence, higher inflation could be a reality in the future. There are many drivers behind the choice between debt and equity. Pertaining to SMEs, there is reluctance on some equity due to the ownership's dilution. The role of the Commission is to design a neutral tool, neither in favour of equity nor of debt.

A speaker from an academic association enquired whether this initiative is unilateral or rather part of a larger strategy that aims at easing the credit access for EU companies. Assuming that access to financing does not seem a primary concern for SMEs, it was asked whether this problem could be solved only via tax measures. In terms of piece-by-piece harmonisation, the success of a tax

incentive at EU level will very much depend on its effects at national level. Access to credit and borrowing conditions vary depending on EU Member States. Given this tax incentive created at EU level, access to equity in a Member State should be analysed taking into account the spillover effects on all Member States. Beyond the DEBRA scope, EU incentives could be envisaged in other areas such as employment rates due to current high unemployment levels across the EU, especially after the current pandemic crisis.

The TJN representative asked whether a generalisation of interest deductibility limited threshold would be simpler or more complex than the current DEBRA proposal with its set of anti-abuse measures.

The Chair acknowledged that it would be simpler to go for a more extensive limitation to the deductibility of interest than introducing a notional interest deduction for equity. However, this would not be necessarily better from a sound economic point of view. Regarding the access to equity by SMEs in particular, it was explained that this has been a long-standing policy objective of the Commission. So far, the success has been limited. Taxation is only one of the tools that the European Commission has to address distortions or biases in the market.

5. ANY OTHER BUSINESS

The representative from a NGO enquired whether the next Platform meetings will cover topics such as the EU List of non-cooperative jurisdictions for tax purposes and taxation & development. The Chair confirmed that these topics will be part of the next meeting's agenda. He also praised the CFE contribution inviting all members to make proposals for future meetings and engage as much as possible during the exchanges. The Chair also added that a few interesting developments by the end of the year may warrant discussions, for instance Pillar 2 or shell companies. It was also announced that the Commission will increase its activity in relation to "Business in Europe: Framework for Income Taxation" initiative (or [BEFIT](#)). In this regard, the Commission will shortly launch a working group involving all EU Member States. This legislative proposal will arrive at the end of a very thorough preparatory process involving all EU Member States and relevant stakeholders. The Commission counts on all Platform members for providing their input on this initiative, to make sure that this is fit for purpose. The Chair thanked again CFE and all other members for their contributions as well as for their active participation and confirmed that the next meeting will take place on 8 December 2021.