Professional Judgment in Tax Planning:
Ethics Quality Bar for All Advisers

EU Platform for Tax Good Governance
Presentation

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CFE Tax Advisers Europe represents **33 European tax institutes and associations of tax advisers** from 26 European countries and is associated with more than 700,000 tax professionals via the Global Tax Advisers Platform (GTAP)

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Professional judgement in tax planning: an ethics quality bar for all tax advisers

• Based on CFE’s commitment to ethics and high standards in the provision of tax advice

• 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

• Aims to promote ethical professional judgment going forward across all tax advisers in Europe, irrespective of their status

• Underlines the need for engagement with all stakeholders including policy makers—a holistic approach is required to ensure high standards among professional tax advisers are not undermined within the market (cf. unaffiliated advisers)

• Notes growing societal 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 (focus of our paper)
An ethics quality bar for all advisers as a practical way forward

• The CFE paper was inspired by the central question often posed with respect to tax advice and tax planning: ‘If it is legal, is it acceptable?’

• The paper aims to promote a practical way forward for ethical professional judgment in the provision of advice - recognising that “acceptable” is highly subjective

• The paper therefore proposes an ethics quality bar (threshold) based on five key questions (next slide) to steer all tax advisers away from abusive tax arrangements based on manipulation and artificiality in the design of transactions, structures and arrangements.

The ethics quality bar concept was developed in the context of:

• the marked evolution of societal attitudes to tax avoidance and various “anti-avoidance” measures over the last years
• acknowledged limitations of definitions and translation challenges – “aggressive avoidance”, “avoidance”, “acceptable” etc.
• differing taxpayer attitudes across countries but with a strong “contra-natura” element in most jurisdictions
• growing awareness of taxpayers’ rights: Charter on Taxpayers’ rights
• differing legal obligations on tax advisers across countries
• the absence of market access rules in many countries: unaffiliated and unregulated advisers
• the transformative impact of technology on tax services
• the importance of proportionality in tax transparency and disclosure/reporting to ensure vibrant business environments
Ethics quality bar: concept and key questions

• CFE proposes an ethics quality bar focused on the qualitative reflections of all tax advisers when exercising their professional judgment.
• The quality bar consists of the five key questions to steer tax advisers to an appropriate balance between the rights and obligations of taxpayers, avoiding abusive tax planning.

5 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 policymakers and the general public as abusive?

To demonstrate the relevance of the key questions, our paper includes some illustrative examples – which underline how manipulated and artificial arrangements can be developed out of legitimate structures, reliefs, transactions etc.
Ethics quality bar – relevance for the market

• The quality bar can have a positive impact on the level of trust between policy makers, tax authorities and tax advisers – with benefits going forward for the design and functioning of our tax systems

• The quality bar could be the minimum common reference point for all advisers, of whatever background and whether or not with a professional affiliation

• The quality bar can serve as a reference point to help advisers justify and explain the exercise of their professional judgment to clients

• For the functioning of the market overall and the public interest, there should be no gaps in the application of the quality bar

• An effective quality bar will also need to maintained as a “live document” to ensure relevance in the face of market developments and evolving ethical challenges faced by the tax community
CFE stakeholder engagement and next steps

- Launch of publication and internal & external engagement - June 2021

- Internal CFE webinar and CFE Member organisations encouraged to use the paper to engage proactively their membership, representations and governments

- Communication with European Commission, OECD, EC Platform for Tax Good Governance

- Proactive engagement with relevant key-stakeholders - IOTA, IFAC, IESBA, Accountancy Europe etc.

- Incorporation of feedback from wider stakeholders and use at CFE roundtable - 25 November 2021

- CFE is seeking wide stakeholder feedback on the concept of the ethics quality bar and on the drafting of the key questions – as well as on all other issues in the paper which demonstrate the need for a holistic approach.