



A. Lamassoure MEP  
Chair  
Special Committee on Tax Rulings and  
Other Measures Similar in Nature or  
Effect

Via email

8 May 2015

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Dear Mr Lamassoure,

I would like to express my appreciation to you and the distinguished members of your important committee for having invited the Federation of European accountants, FEE, to the TAXE Committee's hearing on 16 April 2015.

I hope that the hearing was beneficial to the members of the committee, and will have helped them to gather more input on a number of tax policy matters they are examining.

Further to your request, I am pleased to provide you with written responses to some of the questions that were asked. I remain at your disposal should you or the members of your committee need any further information.

As I explained in my remarks to your committee, at this stage the Federation is still working on or debating some of these matters and some of the views I express herein may still be my own only, although they are informed by the work and discussion that we are undertaking with our members across Europe. I would also like to add that I found the questions raised by MEPs very legitimate and I would like to thank them for taking such interest in the matter and the views of the Federation. It appears that not all of these questions are easy or possible to answer; as a matter of fact, the information that would be needed to answer some of these questions is simply not available or would require research and studies that would need significant time and investment. I therefore hope that you and the members of the committee will understand that I may not always be in a position to provide the expected detailed answers.

For the sake of providing reasonably concise and structured information, I have tried to regroup the topics that were raised during the meeting.

Further information about FEE and its tax related work is available on our [website](#). The Federation is committed to inform the public policy process in an objective and independent manner, taking the public interest into account. With our technical comment letters we aim at contributing to better legislation. FEE promotes the debate with all stakeholders on tax policy, notably by organising a major tax conference in Brussels. The last "[FEE Tax Day](#)" took place on 29 April 2015 in Brussels. Commissioner Moscovici, the Luxembourg Minister of Finance Mr Gramegna and Mr Pascal Saint-Amans from the OECD as well as high-level speakers from business and civil society NGOs were among the speakers. I would also like to specifically draw your attention to our new publication "[The Tax Policy debate: A matter for society as a whole](#)", which includes views from a broad array of stakeholders in the tax policy debate.

## I. The accountancy profession

### 1. The context in which tax services are provided

Depending on the national legal environment, professional accountants, certified tax advisors, lawyers, banks, and also people with no specific professional qualifications, can provide tax services.

The accountancy profession is just one of many providers of tax services. It has a number of defining characteristics, such as examinations for professional qualifications, membership of a professional institute, continued professional development and ethical rules.

The legal framework in which tax advice is given varies significantly across Europe. In some countries the provision of tax advice is regulated, subject to public oversight and strict professional laws. In others, it is unregulated by government.

Further information on how the accountancy profession is structured and organised is available in a [FEE survey](#). It provides amongst others information about the services that can be provided and indicates how the oversight system is organised. In general, the scope of services rendered by accountants ranges (depending on the Member State) from simple compliance work (preparing and filing tax returns) to tax planning and representing clients before tax administrations and before tax courts.

### 2. Services provided

Depending on the different national regulatory frameworks, professional accountants may interact with taxation systems in many different capacities. Professional accountants provide advice on the proper application of tax law, prepare tax computations and tax returns for their clients and may represent the client in case of dispute with the taxation authorities or before courts. Auditors review their clients' tax calculations and tax policies and assess their impact on the truth and fairness of the financial statements. Accountants also work with legislators to produce better and more effective tax law and with tax authorities to improve the operation of national taxation systems.

The clients of professional accountants are businesses of all sizes, including SMEs, who ask amongst others for advice from accountants on tax planning. Before accepting a client, professional accountants have a duty to carefully follow client due diligence procedures which derive, for example, from anti-money laundering rules and independence requirements.

Currently, there is a lot of debate on tax avoidance, tax planning and “aggressive tax planning”.

Tax planning is legal and to quote the OECD's definition is the “arrangement of a person's business and/or private affairs in order to minimise the tax liability”. Tax planning is legal, which has been confirmed on numerous occasions in many courts of law. The purpose of tax planning is to adopt the most cost effective and sustainable solution for a taxpayer, taking into consideration all relevant circumstances and legal requirements.

On the other hand trying to distinguish between tax planning and tax avoidance is far less easy. To again quote the OECD, tax avoidance is “a term that is difficult to define

but which is generally used to describe the arrangement of a taxpayer's affairs that is intended to reduce his tax liability and that although the arrangement could be strictly legal it is usually in contradiction with the intent of the law it purports to follow.”

In today's world, it may be difficult to identify who relevant lawmakers are - there may be more than one, they may not necessarily be aligned and they may even provide taxpayers with diverging or conflicting incentives or requirements.

In addition, the “intent of the law” is difficult to determine and often ambiguous, although there are legal concepts in the tax laws of most Member States (e.g. anti-abuse rules, substance over form rule, economic ownership, *fraus legis*) to enable tax administrations to limit unacceptable tax avoidance.

### 3. Client relationship

Professional accountants have a duty of care to act in their clients' best interest. Best interest is not solely to be measured in financial terms but also by taking risk management into account. Reputational risk in tax matters is becoming increasingly important in many jurisdictions. Consequently, many professional accountants now consider, as part of the tax advice process, whether reputational damage to their client and their firm could result from engaging in tax planning that could be perceived as “unfair”. However, “fair” is a challenging concept to apply in practice; it is not defined, and is seen differently by different people.

As in all other sectors and economic activity, it is clear that today tax services have entered the area of corporate social responsibility.

### 4. Ethical rules

A professional accountant has to comply with ethical rules that derive from a global code of ethics set by a standard setter that is independent from the profession (the [IESBA Code of Ethics<sup>1</sup>](#)) as well as national law and/or standards or codes of conduct set by national accountancy institutes. In addition, many accounting firms request partners and staff to adhere to specific guidelines and codes when providing tax services to clients. Codes of conduct are instruments that can take into account the

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<sup>1</sup> The International Ethics Standards Board for Accountants (IESBA) is an independent standard-setting board that develops and issues, in the public interest, high-quality ethical standards and other pronouncements for professional accountants worldwide. The IESBA Code of Ethics includes requirements for integrity, objectivity, professional competence and due care, confidentiality and professional behaviour. It does not include specific provisions on tax services, but sets the fundamental principles for all services rendered by professional accountants.

The International Federation of Accountants (IFAC) encourages its members to adopt and implement the code (or make it adopted by the relevant authority when the professional accountancy institute does not have this authority). Depending on how the profession is organised, a national professional accountancy body can for example implement the code into its national standards, if it is responsible for standard setting.

rapid evolution of views and circumstances and, indeed, recently we have seen many national professional bodies and accounting firms aiming at updating their codes<sup>2</sup>.

In addition to the international code and national standards, there are countries where national law explicitly defines rules on how to carry out tax services.

The enforcement of these rules is a national issue. It can vary from country to country, depending on how the profession is organised or regulated. It can, for example, be the task of a national professional institute (private body or – in some countries – a professional chamber created by law), of a competent authority (government entity) and of courts.

Given the high degree of diversity, the enforcement of the codes and of other ethical rules is difficult to assess from a pan-European perspective. The effective enforcement needs to be looked at from a national perspective. In Member States where the provision of tax services is regulated, non-compliance with professional rules/standards would trigger disciplinary action and, in serious cases, could lead to the loss of the license to operate.

Nevertheless, a code does not bring much if it is not enforceable and effectively enforced, because, as in any other profession, there might be professionals who do not comply with the rules. I believe that it is in the interest of the profession itself that ethical requirements are enforced in the strictest manner and, indeed, there are disciplinary systems in place to this end. Professional bodies also make significant investment in training and education, including in relation to ethics.

## 5. Remuneration

The basis for remuneration for a professional service like tax advice is agreed with the client, sometimes for a fixed fee agreed in advance and in other cases it is calculated on completion based on an hourly rate.

In this context it has to be noted that the provision of binding rulings by tax authorities, if they provide them, are also not necessarily free of charge: in some countries, tax administrations charge a fee for issuing a binding ruling (e.g. Germany, Austria). Where such fees are based on the value of a transaction or the turnover of a business, they can reach considerable amounts.

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<sup>2</sup> for example, the recent update to the "Professional Conduct in Relation to Taxation" jointly issued by the main UK professional accountancy institutes  
[http://www.ion.icaew.com/ClientFiles/c1db2be4-7bd5-41f3-996a-764f237080bb/TAXGUIDE%2002-14%20\(TECH%2003-14TAX\)%20prof%20conduct%20in%20rel%20to%20taxation.pdf](http://www.ion.icaew.com/ClientFiles/c1db2be4-7bd5-41f3-996a-764f237080bb/TAXGUIDE%2002-14%20(TECH%2003-14TAX)%20prof%20conduct%20in%20rel%20to%20taxation.pdf)

## 6. Interaction with tax authorities

Tax administrations often find it helpful to communicate with advisors rather than with the taxpayer because the interaction between experts on both sides can be more efficient, faster and less subject to misunderstandings, emotions and other disturbances. In many countries it is recognised that the tax system would not work properly without such expert intermediation.

In addition, there are already some countries that apply co-operative compliance - a system of full and timely disclosure from taxpayers and open and intense communication with tax authorities, such as in the Netherlands and the UK.

Additionally, several countries host formal joint working groups to bring together business representatives, tax advisors and professional accountants who specialise in tax with their counterparts in tax authorities. At EU level, the European Commission has established expert groups, such as the VAT Forum and VAT Experts Group. These are regarded as essential to the development of a better tax system.

## 7. Job market

Professional accountants can work in professional practice, in business, in public sector at all levels of government including in tax administrations or in academia. A number of different opportunities can arise in the course of a professional career.

For instance, a professional accountant working as advisor may receive an offer from business and join a tax or finance department. Tax officers change to work in business or as advisors. Conversely, others decide to bring their expertise to the public sector.

We do not dispose of empirical data about these movements. It would be difficult to do so as there is little data and the free choice of a profession or activity is a fundamental individual right across Europe; it is even laid down in the constitutions of many countries. The diversity of opportunities is one of the factors that attract young people to choose this profession.

## II. Tax systems

Tax involves many different players: legislators, tax authorities, taxpayers and tax professionals.

The role of legislators is, on behalf of their electorates, to draft laws that set the obligations of taxpayers and provide the tax authorities with the necessary framework in order to collect the “right” amount of tax. In an ideal world, this would be achieved by an integrated and fair tax system that is clear in its intention, easy to understand, stable over time and that follows a logical pattern.

The role of tax authorities is to administer the tax system and to collect the tax required by law and this will include enforcement action where necessary. The amount of tax collected should be the amount mandated by the legislation – no more, no less.

The role of the taxpayer is to pay the amount of tax that is due according to the law – nothing more or nothing less.

Unfortunately, in practice, things have become extremely complex, even within a single country. Most of the time it is difficult to speak about a tax “system”, as tax systems are mostly the result of history rather than of a truly systematic approach. National legislators usually do not consider a country’s tax system from a holistic perspective and amendments are not always made with the aim of creating consistency. The current state of law is the outcome of a series of often opportunistic, piecemeal measures aiming at incentivising or dis-incentivising particular behaviours or investments and increasing government resources. Our tax systems are full of inconsistencies and grey zones. On an international level where (very) different tax systems interfere, things are even worse.

## 1. Transparency

There are increasing demands for transparency and coordination of tax systems.

FEE stands for trust and integrity. Transparency is instrumental in achieving these goals. Transparency has many facets. There has been an increasing move towards automatic exchange of information between nations, largely driven by the United States’ FATCA legislation, in order to combat tax evasion.

### a) Tax rulings

A tax ruling is normally a written statement from a tax authority to a taxpayer on the tax implications of a particular transaction. Tax rulings are, in principle, not supposed to facilitate tax avoidance or give tax authorities the possibility to treat certain taxpayers preferentially but rather to provide legal certainty (or at least reduce uncertainty) for the taxpayer in cases where the laws or their particular implications are unclear. It helps to avoid future disputes between the taxpayer and the tax authority.

In many countries, the law provides taxpayers with the right to obtain a tax ruling if certain requirements are met, for example on future transactions with a certain level of complexity.

Usually tax rulings can be obtained by all taxpayers, business of all sizes, including SMEs, and individuals.

Tax rulings, which clarify the tax treatment of a future transaction under the existing legal framework, should not be confused with

- agreements with tax authorities (e.g. in the course of a tax audit) regarding the treatment of past transactions;
- administrative rules or commentaries that clarify the interpretation of certain legal provisions in general terms;
- offers from governments to taxpayers with the aim of attracting investment.

Certain Member States publish their tax rulings. Taking into account the commercial sensitivity of the information that usually has to be provided to tax authorities during the process, where rulings are published it is often on an anonymous basis. I believe that in a single market, it seems logical that tax administrations share this information including the identity of the taxpayer for whom the ruling was issued.

## **b) Country-by-Country Reporting**

Transparency, especially in respect of country-by-country reporting of tax information by multi-national businesses, is seen by governments and civil society as an important measure in combatting tax avoidance. Business is not necessarily hostile to this as long as it doesn't result in a competitive disadvantage.

There is, however, a considerable expectation gap between civil society (who want such information to be on public record) and the current initiatives (which provide for such information to only be available to tax authorities).

Tax authorities should usually have the background knowledge to draw meaningful conclusions and correctly assess the value chain of a global business. In most countries, they will probably be appropriately trained to understand the complex business models, markets and value chains of multinational entities. However, this assumes that tax administrations have appropriate resources in terms of skills, technology and staff and it should be remembered that many national governments have been cutting resources to their tax authorities.

As pointed out during my remarks in front of the committee, there is a delicate balance to be struck on the country-by-country reporting of tax information. The taxation of business is undeniably complex, especially on an international basis, therefore the information provided should be meaningful and prevent potential misunderstandings or confusion. At the same time, it will be important to avoid adversely affecting competitiveness. For instance, duplicated or conflicting requirements should be avoided, both nationally and internationally, as this would only make the information confusing, expensive and even more difficult to comprehend.

FEE is already working on this topic in order to assist with achieving this delicate balance and will provide detailed comments to inform the debate once the proposal is published by the European Commission.

## **2. Coordination**

As I noted in my remarks to the committee, the global economy is open and, from the perspective of global competitiveness, Europe is seen as a very high tax continent. The impact on Europe's global competitiveness should be taken into account when discussing tax measures.

The stability and predictability of tax laws is critical to both SMEs and larger companies, as well as for domestic and foreign investors.

Taxation remains a sovereign competence of the Member States and subject to unanimity in Council. There is tax competition within EU Member States and with other jurisdictions. Without coordination, a level playing field is difficult to achieve.

In the context of tax competition, reference is often made to tax havens. There is no clear definition of tax havens. The tax rate alone does not necessarily give an indication to classify a country as a tax haven. A tax system can have low tax rates but that may be balanced out by a broad tax base. Conversely, a country with high tax rates can still be a haven for certain types of income, certain types of taxpayers or certain activities.



It is often necessary to assess tax regimes rather than countries, but in any instance, transparency requirements should ideally be the same for everyone and no opportunities to hide should be provided to illegitimate activities and the shadow economy.

Within the EU, the Code of Conduct Group has tried to convince Member States to aim at fairer tax competition and eliminate harmful measures. We welcome the announcement by the European Commission that, as part of the Tax Transparency package announced on 18 March, that the Code of Conduct will be reviewed and modernised.

Much of the recent debate has been directed at corporate income tax, which provides a relatively small proportion of the tax yield of most developed countries. It is also necessary to consider the total tax contribution of corporate taxpayers, which usually includes many other taxes.

### **a) CCCTB**

When the initiative started more than ten years ago, the CCCTB was seen by many as a helpful simplification. It gathered significant support in the business community. A number of pros and cons have been put forward in the debate. Positive aspects include the fact that a single corporate tax system in the EU would facilitate cross-border business, provide transparency on tax competition and reduce double taxation and the difficult issue of transfer pricing in the EU. Potentially detrimental to its implementation is the fact that an optional CCCTB in addition to the existing 28 tax systems would add complexity. Business and tax administrations would face transitional costs. Member States would have to accept change and that some of their existing requirements may not be maintained. Indeed, these issues have resulted in its slow progress through Council.

In 2008, FEE analysed the European Commission's working papers and provided detailed [technical comments aimed at informing the debate and helping the design of a practicable and helpful CCCTB](#).

We at FEE are now restarting our work to develop a European accountancy profession position on a CCCTB and its potential features.

### **b) BEPS**

Given the increased complexity, mobility and digitalisation of the world economy, it is no longer possible for nations, whatever their size, to try to deal with tax issues in isolation. Increased international cooperation is seen as the key. To some extent, we are already seeing the fruits of enhanced cooperation in the enormous effort that the OECD's BEPS team are making in trying to come up with an international tax structure fit for the 21<sup>st</sup> century and beyond.

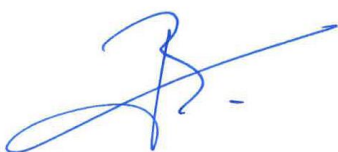
I commend the open and transparent way the BEPS process is being handled by the OECD with discussion papers, public hearings, regular webcasts and the possibility for stakeholders to contribute to the debate. All contributions are public on the OECD website. Many stakeholders provide input, including the accountancy profession, although the deadlines are challenging to meet for organisations that, like FEE, have a broad constituency and internal due process.



I hope the above responds at least to some of the many questions raised by MEPs and, although by nature incomplete, may be a helpful contribution to the important work of your committee. The Federation of European Accountants and I remain at your full disposal and that of the members of the committee to clarify any element and further inform your proceedings.

Again I would like to thank you and the members of the committee for having invited FEE to the hearing. We are fully committed to contributing to your work and helping to find the best solutions for a modernised tax system working in the European common good.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'O. Boutellis-Taft', with a long horizontal stroke extending to the right.

Olivier Boutellis-Taft  
Chief Executive