

## **CFE Tax Advisers Europe - meeting overview**

CFE Tax Advisers Europe met in Brussels over 12-13 May 2022 for a series of committee meetings and a General Assembly. The CIOT was represented at the General Assembly by Helen Whiteman, Chief Executive of CIOT, alongside fellow UK member organisation, the ICAEW's Tax Faculty.

CIOT volunteers play a pivotal role on all of the CFE's technical committees and special thanks are extended to; Julia Cockroft and Makayla White, members of CFE's New Tax Professionals committee, Jeremy Woolf, Chair of the Fiscal committee's Indirect Taxes sub-committee, Chris Lallemand, member of the Fiscal committee's Direct Taxes sub-committee, Ian Hayes, Chair of the Tax Technology committee (and CIOT Council member) and Paul Aplin, member of the Tax Technology committee and Chair of its MTD Taskforce (and CIOT Council member), Alistair Cliffe and Head of Professional Standards, Jane Mellor who represent CIOT on the Professional Affairs committee, and Gary Ashford who is one of CFE's Vice Presidents (and CIOT Deputy President).

A wide range of topics were covered at each of those meetings including; the draft directive in relation to Pillar 2, the proposed 'unshell' directive, drafting an opinion statement on the treatment of VAT on compensation payments, the taxation of cryptocurrencies, regulation of tax advisers and findings from a CFE wide survey on MTD and progress made by the respective administrations in each jurisdiction.

This is an overview of each of the committee meeting discussions. CFE will meet again in September 2022 at which we will be considering the election of a new CFE President, our role in the climate change agenda and a continuance of the tax technical committee discussions, consultations, opinions and best practice sharing.

### **CFE Fiscal committee meeting of 13 May**

At the Direct Tax Fiscal Committee on 13 May 2022, there was discussion on a number of current EU proposals and consultations, including the draft directive in relation to Pillar 2 (one of the two pillars developed by the G20/OECD Inclusive Framework on BEPS to address the challenges of the digitalisation of the economy), the proposed 'unshell' directive (so called because it is an initiative to fight against the misuse of shell entities for improper tax purposes) and the consultation on withholding tax within the EU.

#### **Pillar 2**

It was noted that the Pillar 2 Directive (the latest draft of which anticipates that it would be implemented by the end of 2023) was currently stalled politically. In particular, Poland was currently refusing to support it, requiring that Pillar 2 is linked to Pillar 1. It was noted that Spain has introduced a 15% minimum tax, but that this tax applies on a different basis to Pillar 2. The committee agreed that it would be unhelpful if other countries followed suit, resulting in mismatches between domestic rules and the Pillar 2 rules if and when these are implemented.

### **‘Unshell’ directive**

The meeting reflected on the CFE’s Opinion Statement on the EU proposal on fighting the use of shell entities and arrangements for tax purposes (‘Unshell’ or ‘ATAD3’ proposal). The CFE welcomes the work of the European Commission in seeking to reduce tax evasion throughout the EU, the aim of which CFE has always fully supported. However, the opinion statement highlights the potential issues in practice raised by the proposed Directive, noting that the application of the existing anti-avoidance measures within the EU has become very complex in recent years. The CFE has concerns about the manner in which this draft directive intends to achieve its objectives and doubts whether these objectives will actually be achieved.

### **EU Withholding tax consultation**

The meeting agreed that, in practice, the administration around requesting a refund of withholding tax (WHT) means many taxpayers do not reclaim what they are entitled to. Therefore, it was agreed that the CFE’s response to the consultation should be supportive of the measures suggested to simplify the administration burden and make claiming WHT relief more straightforward.

### **Other matters discussed**

The meeting also considered the EU Commission’s proposal for a directive laying down rules on a debt-equity bias reduction allowance and on limiting the deductibility of interest for corporate income tax purposes (DEBRA), a draft CFE opinion statement reflecting on a report by an expert group assembled by the Commission that examined methods of improving issues facing EU citizens in relation to cross border inheritance tax obstacles and had a roundup of tax developments at a national level from delegates present at the meeting. The report from the CIOT’s representative on recent UK tax changes included the Spring Statement, the UK’s own progress in relation to Pillar 2, the possible consultation on regulation of the tax profession in summer 2022 as well as recent Supreme Court decision in *NLC Investments Ltd & another* [2022] UKSC9 (which looked at the validity of tax deductions for accounting entries in respect of employee option award schemes under legislation effective prior to changes introduced in FA 2013 with effect from 20 March 2013).

### **CFE Indirect Tax Committee meeting 13 May 2022**

The new members being Tomasz Gawron from Poland and Henna Jovio from Finland were welcomed to the committee.

The first issue discussed was whether there was merit in writing an Opinion Statement on the issue of VAT Groups in the light of the discussions at the Forum. In this regard:

- (i) Chris Bourg mentioned that the Maltese Institute had prepared a paper on the issue of whether Danske Bank precluded overseas establishments from being part of a group. He considered the position was not clear, noting that the decision related to countries that took the view that foreign establishments could not form part of a group. He states he would forward a copy of the Statement;

- (ii) it was also agreed that any Opinion Statement could highlight the fact that the Commission considered that it was only groupings that were within the European Union that were relevantly recognised. In the absence of action, groupings outside the European Union are therefore effectively in a more favourable position than those located in the European Union, since they can potentially benefit from the FCE decision when undertaking a head-office to branch supply provided neither party was within an EU group when this was not possible;
- (iii) even if the whole entity approach was inconsistent with the decision in *Danske Bank*, one possible reform would be to allow such membership since none of the countries that adopted such rules found it caused significant problems. Given the points made at paragraph (ii) this would assist in achieving neutrality between groups established in the EU and those in third countries;
- (iv) Milan Tomicek raised the issue of how the triangulation rules operate when there is a transaction between A, B, C and D and B and C are both members of the same group. He had doubts about whether the rules would apply in such circumstances. Jeremy Woolf observed that the comments in *Danske Bank* at para 33 about other Member States “when appropriate” being required to recognise VAT groupings may be of assistance to contrary arguments, but accepts that there is uncertainty on the issue.
- (vi) Paul Cramer mentioned that the Netherlands enables members of a VAT group to submit their own tax returns. In submitting their returns the group companies are required to pay due regard to the consequences of the grouping provisions. It also permits them to keep their own registrations in addition to having a group registration. This is liked by business from an audit control perspective.

Jeremy Woolf said he would prepare a draft opinion statement.

Miriam Patiova then considered the VAT treatment of compensation payments. In this regard:

- (i) she highlighted the decision in *Eugine-Les-Bains* where the Court considered a forfeited deposit was not consideration. In reaching this conclusion the Court placed some emphasis on the fact that the parties would have had the same contractual rights to the accommodation and to payment for it even if the deposit was not paid. This is possibly a different basis to the basis upon which accommodation is booked today. She referred to the *Air France* (charges for flights consideration even if the customer does not fly), *Meo*, *Vodafone* (charges for failing to comply with a contractual tie in held to be consideration since paid pursuant to a contractual provision and not clearly indemnitory so sums part of the consideration client agreed to pay for the service) and *Apcoa* (penalty charges relating to parking where charges advertised) cases where the Court took the view that the payments should be treated as consideration for supplies. In all these cases the charges were preagreed, so that the position may be different where this is not the position;
- (ii) Erwan Loquet mentioned that there had been a Luxembourg case where the Tribunal had held that compensation payments made to a cyclist whose engagement had been cancelled

- were considered to be subject to VAT because he was paid the same amount as if he had continued to work. The Tribunal considered that this was very similar to the MEO decision;
- (iii) Milan Tomicek mentioned that the Czech authorities took the view that payments made by a customer for the cancellation of a contract to supply goods were treated as being consideration for the supply of services, being the work undertaken under the contract. In cases where there is a contractual provision specifying the payments to be made, he can see some force in this analysis;
  - (iv) Jeremy Woolf referred to the recent Court of Session decision in Ventgrove Ltd v Kuehne & Nagel where the Court took the view that a payment for exercising a break clause in a lease should not be considered taxable consideration. The Court considered that the Meo and Vodafone decisions could be distinguished because there was no “minimum contractual term”. Members of the committee were doubtful as to whether this case was correctly decided;
  - (v) It was agreed that compensation paid by a supplier should not give rise to a charge (a possible issue may be whether it should reduce the charge on the supplier);

It was agreed that it would be difficult to provide comprehensive guidance but that it would probably be helpful to produce an Opinion Statement highlighting the issue. Miriam Patiova said she would be happy to work with Jeremy Woolf in producing a draft.

Miriam Patiova asked how strictly tax authorities were enforcing requirements that a purchaser should own goods at the moment of import to be able to reclaim input tax. Most of the committee considered that their tax authorities probably enforced the rule. Some possibly took a more relaxed approach, but there was no clear recent guidance mandating that a more relaxed approach should be adopted.

Jeremy Woolf mentioned that there had been no formal meetings of the VAT expert group since the last meeting. Some members of the VAT expert group had made a presentation on the VEGA case to the VAT Committee a copy of which had been circulated. He could see that one issue that possibly arises is whether the cards should be considered a form of voucher. The VAT treatment of vouchers had also been the subject of decisions of the Court in Case C-607/20 GE Aircraft Services and C-637/20 Destination Stockholm cases. It was therefore possible that the issue of what is a voucher and the general treatment of vouchers might be a good subject for a future Opinion Statement. It was agreed that this issue should be kept under review.

Aleksandra Heinzer said that there had been no major developments in the VAT Forum. It was agreed that it would almost certainly make sense to produce an Opinion Statement on problems relating to the quick fixes after the Forum and completed its investigations on the issue.

### **CFE NTP (New Tax Professionals) Committee meeting – 13<sup>th</sup> May 2022**

The CFE NTP Committee met in Brussels on 13<sup>th</sup> May to discuss two main topics – the taxation of cryptocurrency in our respective jurisdictions, and how to encourage younger people to join the tax profession. As well as the UK representatives, there were committee members from Italy, Czech

Republic, Belgium, Spain, Poland, and Romania, meaning we were able to get views from across Europe.

The taxation of cryptocurrency was a topical discussion point, given the large gains some people have made on cryptocurrency in the past few years and the fact that our meeting took place in what has become known as 'Crypto Crash Week'. In the UK, up until 2018 HMRC indicated in its published guidance that it would treat cryptocurrency gains and losses as gambling, and therefore not subject crypto gains to tax. The profits arising on crypto transactions are now generally taxed under the Capital Gains Tax rules, with the gains calculated using the UK's existing pooling and "bed and breakfasting" rules.

The discussions held between the committee members showed the key differences and similarities between the jurisdictions. Some key similarities are that cryptocurrency is taxable in some form in all the representatives' countries and many of the jurisdictions apply their capital gains tax regimes to crypto assets. However, the approach to the point at which the gains are taxable and at which rate differs quite a lot. For example, in Italy, you are taxed on your gains once your cryptocurrency portfolio value reaches circa. 51,000 euros for a consecutive 7 day period, and below this no gains are taxable. In Romania however, individuals realising cryptocurrency gains are taxed at the flat 10% rate that generally applies to all forms of personal income and gains. . Another interesting point is that as well as Capital Gains Tax, individuals resident in Spain may also need to pay regional wealth tax on the value of their crypto portfolio each year (subject to the particular region in which the individual is resident and the thresholds and exemptions that apply in that region). There are also several jurisdictions whereby carrying out mining activities pushes you into the "trading" category and you are then taxed at Income Tax rates instead of Capital Gains Tax rates.

The second half of the committee meeting centred around getting younger people to join the tax profession. It was great to see more European countries setting up local New Tax Professionals committees and there was a lot of discussion around the remit of those committees and how they operated within the wider tax bodies. A number of recurring challenges were identified, including how to reach young tax advisors outside of the major cities due to the distance needed to travel to events, and the impact of covid on events and committee meetings. Some interesting ideas were deliberated, including hosting talks at schools and universities on what a tax career looks like, and implementation of a buddy/mentor system on completion of your entrance exams.

### **Professional Affairs Committee meeting 13 May 2022**

Whilst the United Kingdom is no longer part of the EU, tax advisers throughout Europe share common areas of interest in relation to professional standards and ethics. It was therefore helpful to be able to meet in person and share developments in regulation and guidance.

The main focus of the meeting was on the CFE project on "Professional Judgment in Tax Planning – an Ethics Quality Bar for all Tax Advisers". Through this project the CFE is seeking to promote high standards of professional judgement in the delivery of tax services. The ethics quality bar seeks to set out questions which an adviser should ask themselves when undertaking tax planning work. Many tax advisers already follow national and international ethics codes, including the CIOT and

ATT's adoption of Professional Conduct in Relation to Taxation (PCRT). However, the adoption of such standards is not universal, and the meeting discussed the presentation by CFE representatives to the EU Parliament's Permanent Subcommittee on Tax Matters in April 2022 (<https://www.europarl.europa.eu/committees/en/regulating-intermediaries-to-ensure-a-fa/product-details/20220331CHE10043>). This subcommittee works on legislative proposals put forward by the European Commission, which is considering potential regulation of the provision of tax advice across the EU.

The project is against a backdrop of calls in the EU (and the UK) for there to be regulation of tax advisers or tax services. Committee members reported how useful the CFE project had been in informing initiatives in their own countries and professional bodies. Frequently asked questions setting out the ethics quality bar questions and linking them to PCRT guidance are available on the CIOT website (<https://ciotmktgprodeun.azureedge.net/professional-conduct-in-relation-to-taxation-pcrt>).

EU officials are in close contact with counterparts in the UK considering issues around the regulation of tax advisers and the CIOT delegates updated the meeting about recent UK consultations on raising standards and the expected 2022 consultation on exploring options for improving the regulatory framework in the tax advice market.

At present the European Commission appears to be in favour of setting standards of behaviour for tax advisers with appropriate monitoring rather than regulation. How sanctions could be imposed for failing to meet these standards of behaviour is likely to present challenges which were discussed in the meeting. The next step is for a consultation to be issued by the Commission and we await further details.

The meeting also discussed some EU AML requirements, DAC6 and the implications of the Payment Services Directive on some EU member states.

### **CFE Tax Technology Committee 13 May**

The meeting covered three main issues:

- Making Tax Digital
- Cybersecurity
- Cryptoassets and Taxation

Paul Aplin, who chairs the MTD task force, reported back on the results of the questionnaire circulated to members and which enables us to begin comparing countries and how revenue administrations are progressing. The report is being populated with graphic examples (PowerBi) and will be circulated to all member bodies shortly.

A second questionnaire, with fewer questions but concentrating on the reaction of taxpayers to their Revenue proposals, is being prepared, to be followed by a third "social" questionnaire to elicit views of taxpayers on their experiences and their views on the merits of MTD.

We then had a detailed presentation by Toreon, a Belgian cyber security organisation, which addressed the general issue of cyber risks associated with data, how to preserve confidentiality, integrity of data, maintenance of availability and establishing a fail-safe security system. The presentation covered weaknesses, asset identification, threats, risks, and compliance requirements. In discussion it was agreed that this area of work needs further attention and should be elevated to a task force.

Our response, submitted by CFE to OECD's consultation on a Crypto Asset Reporting Framework (CARP) and amendments to the Common Reporting Standard (CRS), was briefly discussed, Gary Ashford, who was unable to attend the meeting, was confirmed as chair of a mini task force handling the issue of crypto assets and taxation.

Through our connection with FTA and IOTA we agreed to develop and extend our co-working with them on issues relating to MTD. To this end, once the first report has been produced, specific contact will be made with FTA in Paris with a view to a face-to-face meeting in the autumn.