
CFE INPUT ON EXTENDING EU DAC TO CRYPTOCURRENCIES & E-MONEY

**Submitted to the EU Commission Platform
for Tax Good Governance**

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Responses Prepared by the CFE Tax Technology Committee

CFE Tax Advisers Europe is a leading European association of tax institutes and associations of tax advisers. CFE is part of the European Union Transparency Register no. 3543183647-05. We would be pleased to answer any questions you may have concerning our Opinion Statement.

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CFE INPUT ON EU PLATFORM FOR TAX GOOD GOVERNANCE QUESTIONS ON EXTENDING DAC TO INCLUDE CRYPTO-ASSETS AND E-MONEY

General Comments

Cryptoassets perform the same function in the economy as predigital records and currencies. So, just as with BEPS, any actions must reflect the economic and regulatory rules and regulations existing and agreed by governments.

Fear of use of the security and opacity offered by digital assets and exchanges means that revenue administrations have become hypersensitive to the use/abuse of crypto assets for nefarious reasons.

As the discussion paper that was distributed points out, one of the benefits of crypto exchanges is the removal of the need to use intermediaries for the purposes of security and transactional efficiency. This is **a weakness as regards the use of DAC8 to place a reporting requirement upon an intermediary [or an adviser] because the intermediary may be as ignorant and blind as the Revenue administration. Heavy penalties for failure placed on the intermediary would be counterproductive.**

Countries with crypto asset taxation, e.g. US, UK treat resultant gains/losses normally as subject to Capital Gains tax, though mining or persistent buying and selling does have the fundamental characteristic of trading and could be subject to income taxation. Taxation is based on self-declaration and checks where available – for example, see [here](#) for information on the US and notifications sent from exchanges.

Bearing in mind the general requirement for a taxpayer to declare income and gains from whichever source, **knowing non-compliance constitutes tax evasion and this applies with equal force to transactions in crypto assets.** Non declaration is currently feasible for a taxpayer if he/she has an intent not to pay tax, but it carries the risk of criminality.

This raises the issue of money laundering and the use of cryptoassets as a means of cross border transactions facilitating the black economy, trade in drugs, arms and modern slavery and terrorism. **All persons trading legitimately should be made aware of the compliance requirements of gains/income derived from crypto activity and this should be a joint effort by tax administrations/tax advisers and tax intermediaries. Third party information coming from crypto exchanges to Revenue authorities creates a system of check into the reporting and reflects other non-digital correlation.** Criminals will positively engineer non compliance which means it is the ignorant or negligent "non-criminal" and his/her advisers who could fall foul of the law.

We are at an early stage in the evolution of cryptocurrencies and tokens, so early movement concerning taxation and reporting requirements may have the effect of stiling that development either by location or structure. Regulation of crypto is far wider than the tax implications and **the tax systems designed to accommodate it should be followers not leaders.** The principles are already there and the lengthy debates re digital and BEPS have real relevance. Digital is a different way of doing the same things and opens up new markets for trade, profit and employment. Taxing those assets and activities will have to find digital solutions of equal strength.

Bringing assets into a digital world is inevitable. It will have huge implications for trade, banking and finance, asset ownership, sale and disposal but the principles attaching to taxing it will be the same.

Crypto activity seamlessly crosses borders and, currently, the main access to data relating to that activity derives from self-declaration and notifications from appropriate exchanges in economically advanced locations. There will soon be central bank backed cryptocurrencies which will at a stroke produce a swift move to acceptance and confidence. Amazon, Facebook and Paypal are teetering on the edge of adoption in some form or other. The ability to buy in one location with a "currency" not anchored to a political entity but with a floating exchange rate to many national currencies, will herald a major step forward to further development of global economic concepts.

Rather than move to issue DAC8 with compliance requirements which, frankly, may be unenforceable, what makes sense is to prepare the way for "crypto compliance" coupled with clear explanations of what it means. Regulation of records, exchanges and token holding would provide relevant and usable access to the data that revenue administrations are desperate to receive and which are unlikely to be attainable by DAC8 disclosure requirements alone.

Answers to Discussion Paper Questions

1. Do you agree with the objectives outlined for DAC8?

One of the most relevant takeaways from this current pandemic is the importance of digital transformation. The digital world is ever changing and evolving, and it is up to us to change with it. It is high time to facilitate digital "disruption", in terms of enabling new technologies such as Blockchain and artificial intelligence, which have the potential to revolutionise transaction registration systems and related taxation, as well as automate many of the processes that currently make up tax systems.

In other words, it is high time to create all the necessary conditions for a "Digital Single Market" in terms of a public "permissioned" Blockchain in which all the relevant stakeholders are included, such as: Revenue Agencies, Customs, peripheral tax offices and agencies or

similar. In the light of a pure “decentralisation” and “tokenisation” of the entire process, the above-mentioned Digital Transformation of the Public Authorities will lift most of the tax burdens from the external stakeholders, including administrative tasks, on completing tax returns, which will certainly be more cost-effective for companies and at the same time will bring transparency to the whole process, and at the same time allow tax authorities to obtain relevant information.

However, we are at an early stage in the evolution of cryptocurrencies and tokens, so early movement concerning taxation and reporting requirements may have the effect of stiling that development either by location or structure. Regulation of crypto is far wider than the tax implications and **the tax systems designed to accommodate it should be followers not leaders.**

2. Do you have suggestions for further objectives to improve the exchange of information under DAC?

Innovative companies or MNEs today are moving items of value across blockchain networks. The above-mentioned process of “tokenisation” is therefore extremely important in exchange of information. Use of blockchain for issuing digitised invoices, for example, allows financial assets like invoices to be sent across multiple network participants, ensuring that all parties receive the same information at the same time. Everything is recorded on a blockchain ledger, which ensures trust and transparency between parties.

The application of Blockchain, in the form of a distributed ledger technology (DLT), has the potential to transform well-established financial institutions and tax administration, lower costs with the Digital Euro for example, simplify complex processes such as annual tax returns, VAT/GST, immovable property sales taxes, ensure faster execution of transactions, improved transparency, auditability of operations, and many other benefits.

Given the potential of cryptocurrency and blockchain to reform administration of tax, rather than move to issue DAC8 with compliance requirements which, frankly, may be unenforceable, what makes sense is to prepare the way for "crypto compliance" coupled with clear explanations of what it means. Regulation of records, exchanges and token holding would provide relevant and usable access to the data that revenue administrations are desperate to receive and which are unlikely to be attainable by DAC8 disclosure requirements alone.

3. Do you agree with the definition of problems outlined in this note as a basis for EU action?

As discussed above, it is imperative for the EU to create all the conditions for a “Digital Single Market”, and with it “decentralised” responsibilities. By lifting responsibilities from the companies granting access to a public and permissioned Blockchain, will allow them to focus

exclusively on their respective businesses and so anticipate their future business intentions by using “smart contracts” which will enable companies to directly execute their business wills and the tax or other competent authorities, which are an essential part of the “network”. As such the tax or other competent authorities will get all the necessary information to check by giving an appropriate consensus to the transaction, audit and manage all the necessary taxation directly on the “Digital Value Chain” in terms of indirect and direct taxation. In addition to that, mechanisms of AI (Artificial Intelligence) will collect relevant information to produce all the necessary tax declarations, returns or similar communications and eventually design a profile of the taxpayer.

4. Do you believe that the scope of the directive should be wide enough to be “future proof”?

The scope of the incoming Directive should be to facilitate the use of Blockchains and DLTs. For the digital economy to actually work, the introduction of a renewed approach is therefore necessary. The technology is ready to allow faster and more cost-effective processing of any transactions through a decentralised, distributed ledger that gives grants its users with autonomy, and security. The power of eliminating intermediaries is the ability to lower transaction costs and take back control from powerful intermediaries.

Blockchain has the potential to displace any business activity built on transactions occurring on traditional corporate databases, which is what underlies nearly every financial and fiscal service function. Therefore, building an extensive network in terms of Public and Permissioned Blockchain will “potentially” display the entire value chain which will now be managed, checked and audited and at the same time it will represent an authentic streamline of information between both counterparts and relevant stakeholders.

5. Do you agree that a proposal should cover third country intermediaries reporting obligations in order to ensure a level playing field?

A level playing field is crucial to stimulate digital evolution in the EU, and therefore coherence between reporting requirements is certainly desirable. A full and operational “Digital Single Market” needs to communicate and possibly integrate with similar third countries or better regions’ system such as US and Asia. The future of data exchange will be purely “digital” to track future global market transactions of which a crypto currency or asset is only a tool.

6. Are you aware of taxation of crypto assets in Member States?

CFE has not yet conducted a survey concerning any form of taxation of crypto assets in our member organisations’ jurisdictions, but plans to do so in the near future. However, CFE does not view that this should be the final aim of the Directive. Each digital currency or crypto asset represent or will represent purely a means with which to make a business transaction. The directive should not hamper the use of these crypto assets, since underneath their operational

functionality there is always a Blockchain or DLT. All the eventual public or private Blockchain will then be linked, which will also regulate the issue and governance of a Digital Euro. The Blockchain is a “distributed ledger technology” because it is formally based on a technology that reduces errors to a minimum, increases efficiency, reproduces the individual movements (blocks) in real time and in a chronological way. It will support smart contracts (Ethereum) that automatically regulate payments, adjust accounts, and coordinate records among multiple organizations. Due to its nature and great capabilities, Blockchain applications have shown great opportunities, not limited solely to finance. It can be applied to various industries, and improve many departments within and organizations. Moreover, the constant dematerialisation of business processes is one of the main challenges of the current decade.

7. Are you aware of reporting from crypto-asset intermediaries in Member States?

CFE has not yet conducted a survey concerning any form of reporting requirements for crypto assets in our member organisations’ jurisdictions, but plans to do so in the future. However, CFE believe reporting should target the use of a main public and permissioned Blockchain and the relevant stakeholders such as commercial banks, payment institutions (such as Swift), investment banks, hedge funds, private equity and a host of others, that carry out various functions using blockchain like providing businesses with access to capital, underwrite deals, hold deposits, lend money, confirm transactions both, and exchanges, and some other financial functions.

Reporting requirements should ensure transactions use point of access (make it visible) on the main public Blockchain. That process will give some important benefits in return in terms not only of collected information (reporting) but also most importantly evaluate the entire Digital Value Chain and enable it to be subject to a “*ad-hoc*” direct and indirect taxation system (Digital Taxation streamline) and also channel immediately all the necessary funds to each single stakeholder in case of emergency (pandemic or other extraordinary events). The compliance reports, for example, will not be any longer on the taxpayers’ shoulders but since each single transaction will be now visible on the Blockchain, they will be automatically collected (AI and Machine Learnings) and so create a fiscal and financial profile of the business operator.

8. The proposal needs to align with EU proposals on the crypto-assets market as well as on anti-money laundering. In addition, international initiatives need to be taken into account. How important is it to stay close to international initiatives and to what degree?

International initiatives are extremely important especially during emergency periods like the one we are currently facing. It is therefore essential to create common proposals working towards the Digital Transformation, which will empower decentralized and peripheral offices. The EU, therefore, can become a leading role model by designing and implementing a “Digital Single Market” where all the relevant transactions are visible, transparent and immutable and

most importantly all the necessary actors (tax authorities and taxpayers) are sitting at the same table. Some examples of common/international initiatives are listed below:

1. Decentralized Finance (DeFi) has grown to become one of the biggest crypto trends of 2020. The sectors boom has laid the groundwork for “enterprise DeFi” which is predicted to change financial services operations entirely. For example, tokenized assets and fiat-backed stable coins will make moving financial items of value easier and less costly. Yet in order for enterprise DeFi to become widely adopted, agreements regarding data sharing must be established to show that invoices (Digitized or Tokenized) and other financial transactions are valid and should be processed for payment.
2. Central Bank Digital Currencies (CBDC), for example, are a new form of money issued digitally by the Central Bank. Money is a special form of a promise to pay and serves as store of value, a medium of exchange, and a unit of account. Physical cash offers a certain level of privacy that digital money does not.

9. What is your opinion on the content of reporting considering the effects on intermediaries as well as administrations: Should it allow a risk-analysis or should it make more detailed assessments possible?

The creation of a “Digital Single Market” will necessarily create the conditions through which, all relevant intermediaries will get benefits in terms of a fairer and distributed taxation system, reporting tools, streamlined information and the capacity for precise calculation of taxes. The key to this lies in identifying the markets, the access and exit points and focussing taxation data collection on them.

Full tax harmonisation is inextricably tied to deeper EU “Digital” integration. As a result, companies have seen a massive increase in tax transparency requirements mandated not only at the EU level, but also at both the national and international level. For example, in respect of the European Commission, the adoption of an EU-wide common consolidated corporate tax base (CCCTB) system remains the end game for a fair, transparent and efficient tax system. The pandemic event and the inevitable response at the European level clearly highlight a necessary step towards a more common foundation for future global challenges.

Furthermore, coming up with a solid “Digital” plan including building a European Blockchain Platform will channel all the necessary “resources/funds” to the real economy and will effectively lead to important infrastructure projects in relation to the European Green Deal and Digital Agenda.

10. Would a more precise definition of the requirements in the DAC for penalties/compliance measures have the effects outlined in the text?

The definition of requirements of the incoming DAC and the next DACs on the subject will inevitably create compliance burdens on the entire system. On the other hand, there is an opportunity to create the necessary conditions for a “regulatory” sandbox in which relevant stakeholders, especially Tax administrations, Tax Advisors/Intermediaries and Taxpayers, can communicate with different tools and protocols.

A common platform (Blockchain) on which to exchange data, tokenisation (digitized invoices and all the other relevant financial and fiscal information), use of smart contracts, market place experiences should be implemented within a limited time framework, say three years minimum. This could be achieved by using a regulatory sandbox in which MS may learn the fundamentals, the problems and trial potential solutions. The incoming DAC should therefore not be focused on indicating penalties in case of non-compliance, but a system of rewards and collaboration should be contemplated aimed at creating a complete system integration which is accepted and appreciated by all stakeholders.

CFE AT THE EU PLATFORM FOR TAX GOOD GOVERNANCE

Membership: CFE has been a member of the Platform since its inception in 2012, and has just reappointed for its 3rd mandate at the Platform.

Current Representatives: Piergiorgio Valente (President of CFE and Chairman of the Global Tax Advisers Platform - GTAP) and Aleksandar Ivanovski (Tax Policy Manager of CFE and Secretary-General of GTAP).

CFE AT A GLANCE

CFE Tax Advisers Europe represents members from over 33 national professional tax adviser organisations in 26 European countries, making CFE the most representative voice of tax professionals in Brussels. CFE invokes a broader European perspective concerning the work it undertakes, rather than representing the views of any particular industry or country. CFE is also a founding member of the Global Tax Advisers Cooperation Platform, GTAP. GTAP was established by CFE Tax Advisers Europe, AOTCA and WAUTI, who collectively represent more than 700,000 tax advisers in Europe, Asia and Africa. GTAP is an international platform that seeks to bring together national and international organisations of tax professionals from all around the world.

CFE aims are: to safeguard the professional interests of tax advisers; to exchange information on national tax laws and contribute to the development of tax law in Europe; to maintain relations with the authorities at national and international levels, and share with the authorities of the European Union the experience and insight of our member tax advisers from all areas of taxation and professional law; to promote the co-ordination of national laws governing the profession, and to achieve the protection of each national tax adviser's title in Europe; to inform the public about the services that tax advisers provide; and to seek to provide the best possible conditions for tax advisers to carry out their profession.

The Executive Board is responsible for the devising the work priorities and output of CFE Tax Advisers Europe and reports to the General Assembly, the governing body of CFE. Work is managed through three committees, the Fiscal Committee, the Professional Affairs Committee, and the Tax Technology Committee, which are each chaired by a member of the Board.

CFE's Fiscal Committee is comprised of two Sub-Committees: the Direct Taxes Subcommittee and Indirect Taxes Subcommittee which monitor and respond to taxation developments in the EU and worldwide. The Fiscal Committee also comprises an ad hoc working group, the ECJ Task Force, a group of tax academics and renowned tax practitioners which meets regularly to discuss and issue Opinion Statements on selected decisions of the Court of Justice of the European Union. The Professional Affairs Committee engages in policy areas that concern and affect the exercise of the tax advisory profession, such as ethics, professional codes and qualification requirements, reporting requirements, cooperative compliance, amongst many others. The Tax Technology Committee was established in 2018 as a response to the importance of digitalisation and the impacts of technology on taxation and the way the tax profession is carried out.

The CFE Technical Committees produce [technical position papers](#) which are sent to significant EU and global stakeholders, including the European and OECD institutions, concerning tax policy developments and matters concerning the professional affairs of tax advisers or way technology impacts on the tax profession. In addition, the leading European tax law journal European Taxation, edited by IBFD, regularly publishes CFE Opinion Statements and articles on CFE conferences.

CFE is an active member of multiple taxation expert stakeholder groups, including the European Commission Platform for Tax Good Governance, Aggressive Tax Planning and Double Taxation, the European Commission VAT Expert Group, the European Commission VAT Forum and the UN Committee of Experts in International Cooperation in Tax Matters.