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To
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Brussels, 14 November 2007

Project on Tax Intermediaries- First Draft Report, CFE comments

Dear Mr Davidson,

We refer to the draft report on the OECD Study on the Role of Tax Intermediaries which was kindly circulated to us for comment on 2 November 2007. We appreciate the opportunities we have been afforded to express our views on this Study throughout its existence.

We welcome the occasion to make the following comments regarding the draft report. We also acknowledge the consultative process undertaken by the Study group and, as is reflected in paragraph 10 of Chapter 3, that the consultations had direct influence on the report.

1. Chapter 5 "Responding to Tax Intermediary Risk"

As you are aware from our submissions to the Study group of 14 September 2007 and 26 June 2007, CFE is not in favour of the concept of risk rating tax advisers as contained in the Study group's Working Paper 5, "Risk Management".

Accordingly we are happy to see Paragraph 12 of Chapter 6 which reads as follows:

"*In working paper 5 published on the OECD website, we looked at whether revenue bodies should formalise the way they consider the impact tax intermediaries have on their clients' risk assessments. While recognising that some countries already undertake work in this area, we have not pursued the subject further and make no recommendations as part of this report. It will therefore be for FTA countries to decide how to take this forward, if at all."*

CFE warmly welcomes the above approach.

2. Challenging interpretation of legislation through the courts

As mentioned in our submission of 14 September 2007, and by reference to paragraph 22 of Working Paper 5, CFE rejects any suggestion that the representation of a client in the courts should be perceived as "risky" behaviour. Accordingly we are pleased to see language of the sort included at paragraph 13 of Chapter 6, which reads as follows:

"……This is not to say that taxpayers should accept the revenue body's interpretation of the law even when they disagree with it; they are entitled to challenge revenue bodies and, where necessary, litigate."

We wish to reiterate the point that representation by a professional before the courts is one of a taxpayer's fundamental entitlements. Neither a tax adviser nor a taxpayer should be perceived as "risky" simply by virtue of the fact that they are involved in a challenge to a Revenue authority's interpretation of legislation. Any such suggestion could be perceived as a move away from the fundamental principle that the courts are the ultimate arbiter of the law.

3. National Flexibility to implement recommendations

We are conscious that the Study group has looked at myriad taxation systems around the world in preparing this report. These systems differ greatly in considering attributes such as common/civil law systems, types of tax administration, written constitutions, self-assessment systems, tax rate and many other factors. The relationship between taxpayers, Revenue authorities and tax advisers also vary a great deal amongst the different jurisdictions, as do their Revenue yield requirements and exchequer demands.

Throughout the report and in making its recommendations in Chapter 11, it is stated that it will be for each FTA country to decide on how to take the recommendations further. Given the many differences between OECD countries, some of which are detailed above, CFE commends and supports this pragmatic approach.

4. Chapter 3 The Seoul Declaration

References are made to specific taxpayers in paragraph 4 of this Chapter. We believe that objectivity is best preserved by not making reference to specific cases or named taxpayers and we believe this approach should be applied throughout the final report.

5. Chapter 8 Revenue body values and behaviours; Chapter 9 The Enhanced Relationship

CFE welcomes the acknowledgement in paragraph 3 of Chapter 8 that the enhanced relationship should not be offered to a select group of taxpayers but rather the principles it represents should be the fundamentals that underpin all interactions by all taxpayers with a Revenue authority.

We would have concern about the wording used at paragraph 37 of Chapter 9 where it is stated that "*the Revenue body is entitled to draw the inference that lack of disclosure and transparency means the taxpayer may have something to conceal*". Language of this sort could be interpreted as moving away from the fundamentals of impartiality and objectivity that must underpin all interactions with a Revenue authority. It is not necessarily fair to assume that a taxpayer has something to conceal if there is reduced disclosure as there could be other reasons for such a degree of disclosure e.g. lack of resources to deal with the issue at the particular time that is demanded.

As regards Revenue authorities' risk-management procedures, we welcome the recommendation that they should consider greater transparency around their broad approach. Notwithstanding the above we would have concerns about the recommendation that Revenue authorities should not publish the details of their computerised audit support systems. We believe openness in this area would in fact enhance tax compliance and bolster the trust on which the enhanced relationship is based.

Kind regards

Henk Koller
(Chairman CFE Subcommittee "OECD Intermediaries Project")

Susanne Metzler
(Director, CFE Brussels office)