

CCBE response to the online [Public consultation](#) of the European Commission on further corporate tax transparency

Submitted on 08/09/2015

1. Information about you

(Answers have been provided through the online questionnaire.)

2. Your opinion

Introductory questions

* 1. In terms of corporate tax transparency, which of the following assertions would you support?

- a. Current tax transparency requirements in the EU are sufficient (In the EU, enterprises have to make public their annual financial statement and consolidated financial statement which contains limited information on taxes. In addition, a country-by-country reporting has to be prepared and made public by extractive and forestry industries under the Accounting and Transparency Directives. And finally, financial institutions have to prepare and make public annually a country-by-country reporting under the Capital Requirement Directive)
- b. The EU should try to achieve that further transparency initiatives are taken at international level, but it should not act alone and should leave the implementation to Member States
- c. The EU should implement international initiatives (e.g. BEPS...) at the same pace and to the same extent as its global partners in order to ensure a level playing field
- d. The EU should be in the forefront and possibly go beyond the current initiatives at international level, for example by extending the current requirements to disclose tax information to the public to all other sectors
- e. No opinion
- f. Other

*Please specify your opinion on whether current tax transparency requirements in the EU are sufficient: 1000 character(s) maximum

2. A possible new EU initiative on corporate tax transparency would aim at a spectrum of objectives.

2A) Do you agree with the following objectives?

	Yes	No	No opinion
1. To increase pressure on enterprises to geographically align taxes paid in a country with actual profits, by enhanced scrutiny and decisions of either citizens or tax authorities (“enterprises should pay tax where they actually make profit”)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. To increase public or peer pressure on countries to take measures that contribute to more efficient and fairer tax competition between Member States, thus ensuring that the country where profits are generated is also the country of taxation (“Member States should stop harmful tax competition”)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. To assist tax authorities in orienting their tax audits in view of targeting tax evasion or avoidance, i.e. business decisions whereby tax liabilities are circumvented (“help tax authorities orientate their audits on enterprises”)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. To align corporate tax planning practices with multinational enterprises’ own commitment / statement to corporate responsibility, such as their contribution to local and social development (“enterprises should act as they communicate in terms of contribution to welfare through taxation”)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. To ensure that enterprise structures and investments are more founded on economic motivations and not exclusively on corporate tax-related motivations (“enterprises should structure their investments based on real economic reasons, not just to avoid taxes”)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. To remedy market distortions based on corporate intransparency and multinational companies’ comparative advantage over SMEs when engaging in aggressive tax planning (“fairer competition between multinational enterprises and SMEs”)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

2B) Would you add other objectives, and if so, which ones? Please explain briefly.

1000 character(s) maximum (Please note: You will be asked to provide more detailed views on specific objectives in further questions)

3A) Are there other appropriate options in relation to extending corporate tax transparency, such as reporting requirements for tax advisors? Please explain briefly.

The CCBE would like to raise its serious concerns about extending corporate tax transparency through reporting requirements. This would affect lawyers who provide legal advice or assist clients on tax matters.

European lawyers - when advising and representing clients - are subject to core professional principles, including the right and duty of the lawyer to keep clients' matters confidential and to respect professional secrecy. Without the certainty of confidentiality there can be no trust. Confidentiality serves the rule of law. This has been recognised by European and international legal instruments as well as by jurisprudence both at European and national level. According to the European Court of Human Rights, the right to confidentiality of communications between a lawyer and his or her client is a fundamental right of citizens enshrined in the European Convention of Human Rights which can be breached only in exceptional circumstances.

All European countries have provisions in order to ensure the protection of the right and duty of the lawyer to keep clients' matters confidential and to respect professional secrecy. The countries differ in the methods by which this protection is achieved. However, by whatever means protection is achieved, and whatever its nature and extent, its purpose is the same in all states. The purpose is, first, to protect every person who requires the advice and assistance of a lawyer in order to vindicate his or her rights and liberty and, second, to ensure the fair and proper administration of justice. This cannot be achieved unless the relationship between the lawyer and his or her client is a relationship of confidence.

The CCBE would like to emphasise that lawyers provide legal advice or assist clients observing the laws and rules in force. They act within the rule of law. There is no professional secrecy when the lawyer uses it for illegal purposes. If an advice is illegal, then the lawyer will be committing a tax offence or a crime and, thus, has no legal privilege or professional secrecy.

The above-mentioned implies that a lawyer may not be able to disclose information because of the assertion of legal professional privilege or professional secrecy. It should also be noted that a lawyer may not allow his or her independence to be compromised by a State authority or any other powerful interests. Hence a lawyer cannot be compelled to report to tax authorities.

In conclusion, the CCBE urges the European Commission to take into account these comments in future discussions. The CCBE, for the reasons indicated, strongly opposes any option that would put a reporting obligation on lawyers acting as legal counsel in tax matters.

3C) In your opinion, which would be the most appropriate option(s)?

Please select one or several options

- a. OPTION A: No EU Action
- b. OPTION B: Implementation of BEPS 13 at EU level
- c. OPTION C: Publication of anonymised/aggregated data by the EU tax authorities
- d. OPTION D: Public disclosure of tax-related information by enterprises
- e. OPTION E: Publicly available corporate tax policies

26. Is there anything else you would like to bring to the attention of the Commission?

Despite ticking off options in 3C), we would like to inform you that the CCBE has NO OPINION on the various options proposed. It is only because of the mandatory nature of the question and the fact that there was no option 'NO OPINION' that the CCBE ticked all the boxes in order to be able to submit its answers online.