ETAF
European Tax Adviser Federation

ETAF NEWS

July 2020

INTRODUCTION

Philippe Arraou, President of ETAF

Dear ETAF Members,
Dear friends,

2020 is a year of challenges and thus a moment of opportunities. In the last 3-4 months, the COVID-19 showed us some of our fragilities as individuals and as countries. But it is also remarkable how flexible and ready to adapt a human being can be.

We have seen the virus impacting with different strength but with similar results countries from all over the world. It started as a health crisis and then quickly escalated into an economic one. And when it comes to economy, we all know very well the impact that a correct fiscal and tax policies can have to mitigate the issue. This is particularly true in the EU, where the economies of Member States are very much integrated from a monetary and industrial point of view, but not that much yet from a tax policy point of view.

Tax advisers have played an essential role in the past few months. Our work has been crucial in all our countries, we should not be shy to recognize it and to say it out loud. We have been the first point of contact for taxpayers who wanted to know how the respective tax administrations were dealing with the crisis. We have advised businesses on how to comply with the new rules and have given them the support they needed in order to face this difficult period in the best possible way. In our countries our work has been labelled as essential by our respective governments who asked us to continue working during the lockdown to support businesses. We should be proud of this.

As usual, we have helped companies with tax compliance. However, this time we had also to make sure that they were maintaining a certain level of liquidity when many of such companies could not generate any revenues because they were forced to close due to the lockdown. This was particularly true for many small and medium sized enterprises and consumer-facing businesses that we have particularly taken care of.

Coming to European policies, in these last weeks the work of the European institutions has resulted into an historical agreement between EU Member States. Not an easy one, due to the way our common European House is structured but for sure one that allows us to look with hope and positivity to a next phase of reconstruction. The agreement of 21 July 2020 for a €750 billion EU recovery fund mentions new own resources to support the EU budget in the form of EU taxes, confirming the raising importance of a common approach on tax matters at EU level. ETAF will contribute to shape these new tax initiatives, by making sure that the measures will help our countries and our businesses to thrive again.

Yours sincerely,
Philippe Arraou

PROFESSIONAL LAW

European Parliament Initiative on "Strengthening the Single Market: the future of free movement of services"

In May 2020, the European Parliament published an initiative report on "strengthening the internal market and the future of freedom to provide services" (INI 2020/2020) drafted by the rapporteur Morten Lokkegaard (Renew Europe). The report offers the opportunity to restructure the internal market for services, namely away from deregulation and towards tailored high standards for each individual service profession and thus towards a high-quality and sustainable services market. This would not only strengthen the European internal market for services, but would also support other important goals of the European Union, such as enhancing sustainability or tax compliance.

ETAF supports this approach. The European Union demands high standards on the safety and quality of products and it is right in doing so. It is therefore surprising that safety and maintenance of high quality are not required to the same extent in European legislation when it comes to the provision of services within the internal market.

Therefore, instead of reducing important professional law provisions, ETAF suggested that the better strategy would be to design the European internal market for services by establishing common rules or directive-based standards. After all, the professional regulations of Member States are important achievements that guarantee the quality of services, high training standards and consumer protection. They form the lifeline for countless small and medium-sized enterprises (SMEs) in Europe, counteract tendencies towards monopolization and thus secure the variety of service providers and their offers for consumers.

The report claims that regulatory restrictions would create unjustified barriers for service providers or that Member States would *"frequently* *use reasons of public interest to insulate their domestic market"*. These statements are incorrect and need to be rejected. Especially with regard to the profession of tax advisers, it should be borne in mind that, precisely in times of crisis, they provide system-relevant services to maintain the economic strength. In this context, ETAF proposed several amendments to the report which is foreseen to be voted in plenary during the course of November 2020.

IMCO Committee's draft report on the Digital Services Act

As part of the Digital Services Act package, the Commission will propose new and revised rules to deepen the internal market for digital services. In particular for online platforms like social networks or marketplaces - provided in the EU from anywhere in the world - the act should increase and clarify a common set of responsibilities, namely to keep users safe from illegal goods, content or services and to protect their fundamental rights online. Measures should also provide for transparency and greater regulatory oversight over online platforms. The IMCO Committee of the European Parliament has published an own-initiative draft report with recommendations to the Commission on the Digital Services Act, 2020/2018(INL). The vote of this draft report within the IMCO Committee is expected in September 2020. ETAF welcomes this initiative as it serves as a political impetus for the European Commission and intends to anchor the idea that 'what is illegal offline, should be illegal online too' which ETAF strongly supports. However, caution should be exercised insofar as the country of origin principle is under discussion and this would result in a contradiction to the applicable services directive. Stakeholders who want to participate can give their input on the current public consultation until 8 September 2020.

TAX LAW

Commission's plan on fair and simple taxation

On 15 July 2020, the European Commission presented a package of tax measures to simplify tax compliance and better fight tax evasion. The package consists of three separate but related actions. The Action Plan on "Fair and simple taxation supporting the recovery strategy" includes 25 tax initiatives that the Commission is planning to launch between 2020 and 2023. Among others, the Commission is planning to present a complete package on "VAT in the digital age" to update VAT rules for the sharing economy, moving to a single EU registration, modernising VAT reporting obligations and facilitating e-invoicing. The Commission will also launch impact assessments on the introduction of a more consistent determination of tax residence within the Single Market and on the introduction of a common EU-wide system for withholding tax relief at source, accompanied by an exchange of information and cooperation mechanism between tax administrations. The Action Plan includes an extension of the Directive on administrative cooperation to exchange information on crypto-assets and e-money. The second measure proposed by the Commission is a revision of the Directive on administrative cooperation in the field of taxation (DAC 7). The objective is to extend the EU tax transparency rules to digital platforms. On the basis of the proposal, Member States will automatically exchange information on income generated by sellers/service providers on digital platforms. In addition, DAC 7 should strengthen administrative cooperation through the clarification and improvement of existing rules, such as an explicit inclusion of joint tax audits and group requests. Finally, the package includes a "Communication on Tax Good Governance in the EU and beyond" aiming to strengthen how the EU promote transparency and fair taxation. It proposes a reform of the Code of Conduct for Business Taxation, to ensure that it can effectively tackle harmful tax competition in a more transparent manner. The Communication aims at reviewing the EU list of non-cooperative jurisdictions for tax purposes in order to ensure that it is still effective, fit and fair to deal with today's challenges.

Tax measures to fight COVID-19

In our April Newsletter, we have listed the first set of measures proposed by the European Commission to fight the coronavirus crisis. During the second phase of the crisis, the European institutions have approved additional temporary measures to help Member States and businesses to overcome the crisis. At the end of June, the scope of the Temporary framework on state aid has been extended to micro and small companies that were already in a difficult situation before 31 December 2019. The extension will apply unless such companies are in insolvency proceedings, have received rescue aid that has not been repaid, or are subject to a restructuring plan under State aid rules.

On 24 June 2020, the Council adopted the amendment to the Directive on administrative cooperation in the field of taxation which postponed certain time limits for the filing and exchange of information due to the COVID-19 pandemic. The Directive had been already approved by plenary of the European Parliament on 19 June. Following the approval, Member States have the option to defer by up to 6 months:

- automatic exchanges of information on financial accounts of which the beneficiaries are tax residents in another member state;
- reportable cross-border tax planning arrangements.

On the same day, the Coreper (Member States' ambassadors to the EU) reached the agreement on postponing by six months the implementation of the VAT regime applicable to online companies: the implementation will start on 1 July 2021 instead of 1 January 2021. In the European Parliament, the two opinions on the postponement (respectively drafted by MEP Ondřej Kovařík and MEP Luděk Niedermayer) have been adopted by the Members of the European Parliament during the July plenary session.

European Council agrees on the EU recovery plan and new own resources

The agreement reached on 21 July 2020 between EU head of State or Government on the Multiannual Financial Framework (MFF) 2021-2027 and new recovery instrument called "Next Generation EU" sets an unprecedented common effort by the European Union. The €750 billion post-Covid-19 Economic Recovery Plan will be financed by a joint loan from the European Commission on behalf of the EU27. Its overall budget billion will be made up of €390 billion in grants and €360 in loans.

On the side of the revenues, the plan introduces a new own-resource based on non-recycled plastic packaging (i.e. the so-called plastic tax) from 1 January 2021. Furthermore, the European Commission has been invited to present in 2021 with proposals on a carbon border adjustment mechanism and on a digital levy, to be introduced no later than 2023. The agreement mentions the possibility for the EU to introduce other own resources (directly mentioning the financial transaction tax) in the course of the next MFF (i.e. by the end of 2027). Compared to the proposal put forward by the Commission's Communication on 27 May 2020, any reference to a new corporate tax *"based on operations of enterprises"* that draw huge benefits from the EU single market has now disappeared. The introduction of new own resources was also requested by the 15 May 2020 European Parliament resolution on the recovery plan.

The turbulent path of the OECD international tax reform

During the last few months, talks and negotiations on the international tax reform at OECD level have taken a bumpy road but they never really stopped. Due to the COVID-19 outbreak, the plenary meeting of the OECD/G20 Inclusive Framework on BEPS, scheduled for 1 and 2 July 2020 in Berlin was cancelled. The meeting was supposed to end with an agreement on the main political features of the international tax reform. In May, Pascal Saint-Amans (Director of the OECD Centre for Tax Policy and Administration) confirmed that the Inclusive Framework on BEPS was having certain difficulties to find a common position on the OECD proposal on pillar 1. According to Saint-Amans, the U.S. bears some responsibility because of the contradictory messages they have sent on pillar 1, with particular reference to the U.S. proposal of December 2019 to draft pillar 1 as a "safe harbor". The European Commissioner for Taxation, Paolo Gentiloni confirmed that the European Commission will be ready to launch its own proposals in this regard in 2021.

In June the tension between the US and other countries has increased after the Office of the United States Trade Representative (USTR) initiated an investigation with respect to the Digital Services Taxes (DSTs) adopted or under consideration by 9 countries (Austria, Brazil, the Czech Republic, India, Indonesia, Italy, Spain, Turkey and the United Kingdom) and the European Union. The USTR aims at assessing whether the DSTs are unreasonable or discriminatory or restrict United States commerce according to section 301 of the Trade Act. Furthermore, on 12 June 2020, the U.S. Secretary of Treasury Steven Mnuchin sent a letter to the finance ministers of France, Italy, Spain and the United Kingdom asking to pause the discussions on Pillar 1 in view of the health crisis. The four finance ministers answered with a letter suggesting to their US counterpart that *"a phased approach, initially focused on automated digital services would considerably ease the task of achieving a consensus-based solution and make a political agreement within reach this year"*.

In July, Pascal Saint-Amans confirmed that the U.S. have requested a resumption of the negotiations on the international tax reform after the November elections. However, Robert Lightizer (U.S. Trade Representative) announced that the United States are preparing sanctions on France in dispute over the country's digital services tax. He remarked that the sanctions are going to be suspended as the collection of the tax has been suspended by France until the end of 2020. Paschal Donohoe, Irish Finance Minister and new Eurogroup President (succeeding Mario Centeno), warned that the EU should not go alone with the taxation of digital giants but rather work towards an international agreement at OECD level.

The European Parliament TAX subcommittee is ready to work

The European Parliament has finally created its long-awaited subcommittee on taxation. On 11 June 2020, the Conference of Presidents of the European Parliament has approved the creation of the permanent subcommittee on taxation. The subcommittee of ECON will be responsible for "tax related matters and notably the fight against tax fraud, tax evasion and tax avoidance as well as financial transparency for taxation purposes". The subcommittee was already expected in Spring but the action taken by the European Parliament to limit the spread of the coronavirus, resulted in the modification of the annual calendar of the institution. One of the consequences was the postponement of the Conference of Presidents that was supposed to discuss the mandate and composition of the subcommittee.

On 10 July 2020, the names of the 30 members of the subcommittee have been announced during the plenary session of the European Parliament. The MEPs selected by the EPP group are: Herbert Dorfmann (Italy), Markus Ferber (Germany), José Manuel García-Margallo y Marfil (Spain), Enikő Győri (Hungary), Christophe Hansen (Luxembourg), Othmar Karas (Austria), Luděk Niedermayer (Czech Republic), Lídia Pereira (Portugal). For S&D: Marek Belka (Poland), Jonás Fernández (Spain), Aurore Lalucq (France), Pedro Marques (Portugal), Paul Tang (the Netherlands) and Irene Tinagli (Italy). Renew Europe: Gilles Boyer (France), Hlaváček Martin (Czech Republic), Billy Kelleher (Ireland) and Drago Pîslaru (Romania). Identity and Democracy: Francesca Donato (Italy), Hélène Laporte (France) and Antonio Maria Rinaldi (Italy). The Greens/EFA: Sven Giegold (Germany), Kira Marie Peter-Hansen (Denmark) and Ernest Urtasun (Spain). ECR: Patryk Jaki (Poland), Eugen Jurzyca (Slovakia) and Roberts Zīle (Latvia). GUE/NGL: Manon Aubry (France) and Marti Schirdewan (Germany). Non-attached member: Clara Ponsatí Obiols (Spain). The chair and vice-chairs of the committee will be decided at the inaugural meeting in September.

The results of the Croatian and the tax priorities of the German Presidency

On 1 July 2020, Germany published its Programme for the Presidency of the Council of the European Union. In the area of taxation, the programme highlights the need for a fair and transparent distribution of the tax burden at EU level. In particular, Germany is committed to follow the OECD work on the international tax reform and to implement the outcome of the negotiations. The German Presidency will also take a leading role in the revision of the directive on administrative cooperation in the field of taxation and in introducing a financial transaction tax at European level.

During its six months of Presidency of the Council, Croatia advanced on a number of tax files, such as digital taxation, rules on mandatory transmission and updates to the EU list of non-cooperative jurisdictions for tax purposes. Regarding indirect tax, the Croatian Presidency have achieved progresses on exchange of VAT-relevant payment information, simplification of VAT rules for small enterprises and on the EU rules on structures of excise duties on alcohol.

MISCELLANEOUS

ETAF Web-Conference on the role of tax policy in response to the COVID-19 crisis

On 30 June 2020, the European Tax Adviser Federation (ETAF) hosted a web-conference on "the role of tax policy in response to the COVID-19 economic crisis". During the event, Philippe Arraou (President of ETAF) discussed with Patrice Pillet (Head of Unit Value Added Tax of the Commission's DG TAXUD) and David Bradbury (Head of the Tax Policy and Statistics Division at the OECD) about the lesson learnt from the coronavirus crisis and possible future developments at European and international level from a tax policy perspective. In his welcoming speech, Mr Arraou highlighted the crucial role played by the tax advisers, who are acting as first point of contact between taxpayers and tax administrations who are dealing with the crisis. Mr Pillet highlighted how taxation (and in particular VAT) has been used at EU and national level as a tool to react to the health and to the economic crisis. Mr Bradbury has remarked the work performed by the OECD to gather information and provide recommendation to OECD countries on how to use the different tax tools in the various phases of the crisis. Answering to questions from the audience, the speakers have also elaborated on the OECD international tax reform and on the need to shift towards qualified majority on tax matters at EU level.

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