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INTRODUCTION

Philippe Arraou, President of ETAF

Dear ETAF Members,
dear friends,



The last two months were marked by the unacceptable invasion of Ukraine by Russia. This war is a challenge for the entire international community, and particularly for Europe. That is why the European agenda has been reshuffled to take immediate sanctions against Russia and to mitigate the economic impact of the war.

At the speed of light, the EU Member States have adopted five packages of sanctions to weaken Russia's financial system, sanction Putin's allies and recently decided to ban the import of any kind of Russian coal. Those sanctions are historic. But let me be clear: Europe must continue to stand with Ukraine, this is a decisive moment!

At the same time, the European Union has taken a lot of measures to mitigate the effect of the crisis on citizens and companies, including a new temporary state aid framework allowing EU countries to support businesses hit by the crisis in Ukraine, similar to the one adopted for the COVID-19 pandemic.

With this new crisis ahead, it is needless to say that we need fair taxation more than ever. The Directive implementing the minimum 15% effective tax rate in the European Union for large multinational enterprises must start applying in 2023, as agreed at the OECD level. We urge Poland to immediately cease its blockade and to agree on this important file at the next Ecofin meeting on 24 May. Minimum taxation of large multinationals cannot wait any longer!

The regulation of tax intermediaries is also coming back into the spotlight, with several hearings organized in the European Parliament on this topic. ETAF will keep advocating for a harmonised European approach on the role and status of regulated tax advisers, as we truly believe that our profession can help reach a fair taxation.

In fact, ETAF is planning a conference entitled *“Professional regulation: a cornerstone for curbing down abusive tax avoidance”* on 14 June 2022. I cordially invite you all to participate to this event in Brussels and explore this topic with high-end decision takers on European level.

I hope you will enjoy reading our Newsletter!

Sincerely yours,

Philippe Arraou

PROFESSIONAL LAW

European Commission announces its plan to regulate tax advice in the EU

On 25 April 2022, the subcommittee on tax matters (FISC) of the European Parliament held a [hearing](#) on *“how to reinforce the regulation of intermediaries to create an intermediary sector that ensures a fair and user-friendly tax system”*. On this occasion, the European Commission publicly announced that it is working on a legislative proposal to regulate tax advice in the EU and that it will launch a public consultation on 11-12 May running until 20 July 2022 on this initiative.

During the hearing, the Commission explained that it does not want to go after a specific profession and will rather focus on the action of providing tax advice. It also said that it does not intend to regulate the tax profession as such but rather to *“put a threshold of what behaviour is acceptable and what is not, which procedures should be followed, which monitoring and enforcement measures should be in place to ensure compliance with that threshold”*. And it promised to target the “rotten apples” and not to overburden the whole tax profession.

All in all, the Commission recognized that a one-size-fit-all approach would be too difficult to achieve in the EU but nevertheless aims at finding a certain common ground on aggressive tax planning which is not acceptable and to apply it to the whole EU.

Participants like Grant Wardell-Johnson, KPMG Global Tax Policy Leader and Chair of the Global Tax Policy Leadership Group, underlined the role that correct implementation of already agreed legislation should play.

Educating future tax advisers better, especially through a more thorough cursus on ethics was also put forward as part of the solution by some participants, such as Emer Mulligan, Professor in Taxation and Finance at the National University of Ireland.

Moreover, the regulatory and cultural differences in the different Member States was underlined as a problem which should be addressed by any future EU regulation. MEPs asked the participants if professional disciplinary measures or independent oversight should be introduced.

In a [press release](#), ETAF assessed the outcomes of the hearing and the growing attention given to this topic by European decision-makers. We also welcomed the announcement of the Commission and look forward to participating to this complex debate.

ETAF authors Anti-Money Laundering amendment proposals

On 31 March 2022 ETAF submitted its own amendment proposals regarding the [Anti-Money Laundering package from July 2021](#) to the members of the ECON and LIBE committees, who oversee the legislative proposals in the European Parliament. In addition to a regulation establishing a European Anti-Money Laundering Authority (AMLA), the package will bring together the existing Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) rules fragmented among the Member States in a new regulation and a new accompanying directive.

ETAF welcomes and supports the fight against money laundering and terrorist financing, as these practices endanger the financial stability of the economy and cause considerable damage to society. ETAF also acknowledges that AML/CFT measures require continuous gathering and exchange of information and close cooperation between entities to be effective. Nevertheless, these measures must be carried out in compliance with national structures and competences of the Member States as well as within the limits of professional secrecy.

Therefore, ETAF demands amendments to the new AML-Regulation as well as the Directive so that necessary exceptions to the obligation to report suspicious activities and discrepancies are established and preserved. It also suggests a review of the extended due diligence duties regarding the added value in client identification and verification, in order to not further increase the bureaucratic burden for the profession. A major concern of ETAF is the far-reaching supervisory power foreseen in the AMLA-Regulation which risks being disproportionate to the various obliged entities in the non-financial sector. Consequently, ETAF advocates limiting AMLA's powers to its intended coordinating, supporting and advisory role.

The legislative proposals on the AMLA, as well as the AML-Regulation and the Directive are still being discussed in the Council. For the AML-Regulation, the rapporteurs of the ECON and LIBE committees already presented their draft report on 31 March 2022.

Overall, the topic of money laundering and terrorist financing is currently experiencing considerable momentum at EU level due to the sanctions imposed on Russia, such as the freezing of assets.

TAX LAW

EU economic countermeasures in reaction to Russia's invasion of Ukraine

The Russian invasion of Ukraine has completely reshuffled the European agenda for the past two months. The EU took several waves of economic measures in reaction to Russia's invasion of Ukraine:

- On 23 February 2022, the EU Council agreed on a [first package](#) of measures composed of targeted sanctions against individuals to respond to the decision of Russia to send Russian troops in the areas of Donetsk and Luhansk.
- On 25 February 2022, EU Member States adopted a [second package](#) with further individual and economic measures covering also Belarus.
- On 2 March 2022, the EU adopted a [third package](#) of sanctions excluding seven Russian banks from the international SWIFT system.
- On 8 March 2022, the European Commission confirmed, in its [REPowerEU package](#), that Member States can consider to temporarily impose tax on windfall profits of energy providers and exceptionally decide to capture a part of these revenue to provide consumers with relief from high energy prices.
- On 23 March 2022, the EU Member States adopted a [fourth package](#) of sanctions and the European Commission [adopted](#) a new temporary state aid framework allowing EU countries to support businesses hit by the crisis in Ukraine.
- On 25 March 2022, EU leaders [agreed](#) to set up a Solidarity Trust Fund for Ukraine and to make common gas purchases on a voluntary basis in order to strengthen their bargaining power and try to obtain better prices from suppliers.
- On 28 March 2022, the European Commission acted on another front by urging, in a [recommendation](#), Member States to immediately withdraw or refuse the renewal of the citizenships or residence permits granted under an investor residence scheme to Russian or Belarusian nationals who are subject to EU sanctions in connection to the war in Ukraine.
- On 8 April 2022, EU Member States adopted a [fifth package](#) of sanctions against Russia, including an import ban on all forms of Russian coal and a prohibition on providing high-value crypto-asset services to Russia and advice on trusts to Russian citizens.

In total, Member States have already frozen assets worth almost €30 billion, including property such as boats, helicopters, real estate and works of art. A total of 1091 individuals and 80 entities are now subject to an asset freeze and a travel ban because their actions have undermined Ukraine's territorial sovereignty.

ETAF takes a stand on the UNSHELL Directive

The European Tax Adviser Federation (ETAF) sent a [feedback](#) to the European Commission on 6 April 2022 on the Directive laying down rules to prevent the misuse of shell entities for tax purposes (UNSHELL) amending Directive 2011/16/EU.

The proposal seeks to create a new minimum economic substance test, organized in several steps, to help Member States identify undertakings that do not perform any actual economic activity and that can be misused for tax avoidance or evasion purposes. According to the proposed rules, being declared as a shell company would have consequences for the tax treatment of the transactions and assets of the entity.

As some parts of the new reporting process foreseen in the Directive will have to be carried out by the tax profession, ETAF formulated some comments about the complexity of the mechanism chosen and said that some criteria were too far reaching. As it stands, we indeed expect a significant number of companies to cross the gateway and thus to fall under the reporting requirements.

For ETAF members, it is crucial that this new Directive can be used to effectively prevent the misuse of shell companies, while contributing to the simplification of tax law and reducing the administrative burden.

To achieve this goal, a uniform and sufficiently concrete concept of minimum economic substance to which all Member States align their anti-abuse standards is an indispensable contribution to ensuring the legal certainty, ETAF said.

The burden of proof must also be reconsidered throughout the text and particularly when it comes to the rebuttal mechanism and the exemption for lack of tax motives, which are two core safeguards of the Directive.

Pillar II: several attempts at compromise at EU level

After a first attempt on 15 March 2022, EU Member States failed once again, on 5 April 2022, to agree on the Implementing Directive for Pillar II. Estonia, Malta and Sweden were able to support the new [compromise](#) text from the French Presidency of the EU Council this time but Poland maintained its blockade.

The new text foresees that Member States where no more than twelve ultimate parent entities of groups in scope are located may choose not to apply the Income Inclusion Rule (IIR) and the Undertaxed Profit Rule (UTPR) for six consecutive fiscal years. It also delays the application of the new rules from 1 January 2023 to 31 December 2023 and adds the possibility for the European Commission to assist small countries in the transposition of the Directive.

During the [debate](#), Poland said that it does not support the separation of the two Pillars of the OECD tax deal and wants to introduce a binding link between them directly in the Directive, although the legal service of the EU Council and the Commission said that it is not legally feasible. For some [commentators](#), the country would be using this agreement as a mean of pressure to get its recovery plan approved by the European Commission. The French Presidency very much regretted Poland's position and said that this file will be on the agenda of the next Ecofin meeting on 24 May again.

In the European Parliament as well, opinions differ. The French MEP Aurore Lalucq (S&D) published on 14 March 2022 her [draft report](#) for an opinion on the Implementing Directive for Pillar II. Among other changes, Ms Lalucq proposed a minimum effective tax rate of 21% instead of 15%. But this proposal created strong [disagreement](#) between the political groups and has finally been dropped out. The opinion of the European Parliament also adds some safeguards around the domestic top-up tax, reduces certain transitional periods for the carve-outs, asks for an ex-post study and for a review clause. It will be voted on in plenary in June.

The European Tax Adviser Federation (ETAF) also took part in the debate, by sending on 18 March 2022 its [feedback](#) to the European Commission on the proposed Directive. One remaining concern of ETAF is the way the Directive will take into account the work being finalized at OECD on Pillar II, i.e., the '[Implementation Framework](#)', which will address certain significant administrative and compliance issues.

Work on Pillar I is advancing at OECD

The work on Pillar I (reallocation of taxing rights) of the OECD Tax Deal is advancing. For Amount A, the OECD/G20 Inclusive Framework on BEPS decided to proceed with public consultations in stages, with the release of Secretariat working documents on each building block to obtain feedback quickly and before the work is finalised.

On 4 February 2022, the OECD published the [draft rules for Nexus and Revenue Sourcing](#). The purpose of these rules is to establish the profit (or loss) of an in-scope multinational enterprise. These profits will be used for the Amount A calculations to reallocate a portion of its profits to market jurisdictions. Given that Amount A is a new taxing right which is determined based on the profits of a group, it is necessary to use consolidated group financial accounts as the starting point for computing

the Amount A tax base, according to the OECD. This approach also has the advantage that the Amount A tax base is less affected by controlled transactions, it argues.

On 4 April 2022, the OECD opened a second public consultation on the draft Model Rules for domestic legislation to determine whether a Group will be in scope of Amount A. According to the [draft rules](#), a Group will be in scope of Amount A if the Group's Total Revenues exceed an absolute amount of EUR 20 billion (or equivalent) in a certain period and if the Group's relative profitability as measured against its Total Revenues exceeds 10%.

On 14 April 2022, a third public consultation was launched on the [draft rules](#) for excluding extractive activities profits from the scope of the new taxing right under Pillar I. The exclusion would apply where a group derives revenue from the exploitation of extractive products and the group has carried out the relevant exploration, development or extraction.

As for Amount B of Pillar I, a public consultation document will be issued in mid-2022.

The European Commission is planning to present a proposal to implement Pillar I in the EU on 27 July 2022, depending on the signature of the multilateral convention at the OECD, expected around June.

EU Member States agree on the Carbon Border Adjustment Mechanism

EU Finance Ministers agreed on 15 March 2022 on the Carbon Border Adjustment Mechanism (CBAM), proposed in July 2021. CBAM would function in parallel with the EU's Emissions Trading System (EU ETS), to mirror and complement its functioning on imported goods. Initially, CBAM will cover direct emissions of selected sectors: iron and steel, cement, aluminium, fertilisers and electricity but could be extended in the future to cover also indirect emissions.

The companies concerned will have to buy emission certificates (or CBAM certificates) according to the carbon intensity of the imported products. In order to make this monitoring possible, companies will have to declare their imports to a competent national authority.

The [agreed text](#) is generally in line with the Commission's [initial proposal](#). One difference is that the Council opted for a greater centralisation of the CBAM governance. For example, the new registry of CBAM declarants is to be centralised at EU level. It also foresees a higher fine than what the Commission proposed for economic actors importing goods without being declared or approved by the competent authorities. According to the text, fraudsters would have to pay three to five times the basic fine.

However, EU Finance Ministers noted in an [annex](#) that further work will be needed on certain other sensitive issues discussed in other legislative texts before the interinstitutional negotiations can start.

This is notably the case for the phasing in of CBAM certificates. It is indeed linked to the phasing out of free allowances that EU companies get under the current EU ETS, which is part of a separate legislative proposal. Other issues are the risk of carbon leakage linked to exports, which requires some additional solutions, as well as the use of CBAM revenues to finance EU budget, as announced by the Commission in December 2021, and the idea of an alliance on carbon pricing between international partners in a 'climate club', as suggested by Germany.

Poland did not support the text but as this file is not considered as a genuine "tax" file, it follows the ordinary legislative procedure and can be adopted by a qualified majority of Member States. The European Parliament should adopt its position in June.

Ten more third countries on the EU grey list for tax purposes

The EU Council decided on 24 February 2022 to [add](#) ten countries to the EU grey list of jurisdictions with tax risks but which have committed themselves to take corrective measures: Russia, Belize, Israel, Tunisia, Vietnam, the Bahamas, Bermuda, Montserrat, the British Virgin Islands and the Turks and Caicos Islands.

In total, 25 countries are now on the grey list. This extension follows the adoption in November 2021 of the Directive to increase country-by-country reporting. Russia is for the first time on this list because of its preferential tax regime for international holding companies. But the country has committed itself to changing this regime by 31 December 2022.

However, the EU blacklist of jurisdictions that are uncooperative on tax matters has remained unchanged. American Samoa, Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago, US Virgin Islands and Vanuatu remain on the list.

Although Turkey has still not met all the requirements set by the Ecofin Council in February 2021, the country escaped once again the blacklist and remains on the grey one.

ETAF NEWS

Philippe Arraou participates in the French Presidency's conference on e-invoicing

On 10 February 2022, ETAF President, Philippe Arraou, participated to a ministerial [conference](#) on electronic invoicing, organized by the French Presidency of the EU Council in Paris.

Participants discussed the upcoming French reform of e-invoicing, which will start applying to large companies on 1 July 2024 and expand progressively to all companies in 2026 as well as the existing systems in Italy, Spain and Portugal.

During the conference, Maria Elena Scoppio, Director for 'Indirect Taxation and Tax Administration' in the European Commission, recalled that the Commission is working on a package on VAT in the digital age, which could be adopted by the end of October 2022. The Commission is looking at the best options to propose to Member States while recognizing the need for flexibility due to national particularities, she said.

According to its [call for evidence](#) for an impact assessment, the Commission is indeed considering the introduction of partial (limited to cross-border transactions) or fully harmonised (covering domestic and cross-border transactions) digital reporting requirements, including e-invoicing but recognizes that new digital reporting requirements will require a longer implementation period, which could run until 2030.

Olivier Dussopt, Minister Delegate, reporting to the Minister for the Economy, Finance and the Recovery, with responsibility for Public Accounts, recognized the many advantages of an EU initiative on e-invoicing such as reducing the VAT gap and fighting the carousel fraud but outlined that the difficulty is to combine the harmonisation of rules, the compatibility of systems and ensuring that each Member State must be able to keep its own timetable and be free for a number of choices in terms of implementation. In particular, each Member State must be free to put in place its own accompanying solutions for businesses, he stressed.

For his part, Philippe Arraou, ETAF President, regretted the lack of political will from Member States to advance together at EU level on e-invoicing.

14 June 2022

ETAF Conference

Professional regulation: a cornerstone for curbing down abusive tax avoidance

15:00 - 16:30 CET



Coffee reception at 14:30
@ Stanhope Hotel, Brussels

The Pandora Papers revealed an excessive worldwide misbehaviour of persons and organisations belonging to a consulting sector without respect for tax compliance and without responsibility towards society. ETAF and its members strongly condemn such a misbehaviour and recognize that the dubious abusive tax avoidance arrangements jeopardize the States' revenues and are unfair to the vast majority of European taxpayers and tax advisers who comply with the tax codes.

To find a solution at EU Level, however, a definition of "abusive tax avoidance" remains problematic because under the rule of law, legal definitions such as "dubious" or "harmful" are basically unsuitable to draw a clear demarcation between legality on the one hand and illegality on the other hand. Moreover, many EU jurisdictions have enshrined the principle that every taxpayer has the right to choose the least taxed route and only illegal activities are punished by the law.

In this situation, we would like to discuss with you how a regulated tax consultancy sector can make a difference, with tax advisers helping the businesses to pay their fair share of taxes, playing an important role in ensuring tax compliance and hence contributing to the tax revenues of the States.

SPEAKERS TO BE ANNOUNCED SOON

Simultaneous interpretation EN-FR-DE
The conference will be livestreamed on ETAF social media

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ETAF is a European umbrella organisation for more than 215,000 tax professionals from France, Germany, Belgium, Romania, Hungary and Austria. ETAF was launched in January 2016 as an international non-profit organisation (AISBL), governed by Belgian law and located in Brussels. The main role and mission of ETAF is to represent the tax profession at European level in liaising closely with European policy makers to promote good legislation in tax and professional matters. ETAF is a registered organisation in the EU Transparency Register with the register identification number 760084520382-92