ETAF
European Tax Adviser Federation

ETAF Tax Conference - Building an EU tax system

5 December 2017

The European Tax Adviser Federation (ETAF) organized its annual conference with the focus on challenges relating to "Building an EU tax system" on 5th December 2017. Approximately 100 participants from across the EU joined the ETAF members and multiple members of the EU Institutions in the Stanhope Hotel in Brussels.

The EU Institutions are under pressure to solve current problems in the international tax system, i.e. the lack of adequate taxation of the digital economy, the challenges of the digitalization or cross-border tax aversion activities by businesses. In the light of the forthcoming elections for the European Parliament in 2019 European solutions must be adopted until late 2018. A first step has been taken by the ECOFIN Council on 5 December 2017 by adopting a blacklist of 17 tax havens, including the United Arab Emirates, Tunisia, Panama, Mongolia or South Korea. A second “grey list" encompasses further 47 countries, “which are under surveillance”. The lists seek to encourage states to increase tax transparency and data exchange with EU authorities. Thus, the ETAF Conference offered *Pierre Moscovici*, EU Commissioner for Taxation and Customs Union a perfect setting to discuss the ECOFIN Council conclusions and first and foremost the freshly adopted blacklist.

Following the opening remarks by *Philippe Arraou*, ETAF President, Commissioner *Moscovici* referred to the preceding work the EU finance ministers had put into the elaboration of the blacklist. EU Member States are not on the list because they do not fall within the scope of "applied criteria", *Moscovici* said. Although the tax systems of the Netherlands, Ireland and Luxembourg provide a basis for critical tax planning models they do not fall within the definition of tax havens under the blacklist. Nevertheless, *Moscovici* reminded the audience that such intra-European practices must be "reformed". It also remained unclear, for example, how British islands, such as Jersey and the Isle of Men are treated after the Brexit.

The Commissioner further elaborated the DG TAXUD 2018 agenda. In the light of digitalization, the taxation is at a crossroads. “This is why we need to rethink the taxation in the European Union” and “the world of taxation has changed”, the Commissioner claimed. Multinational corporations do not, in his view, make their fair contribution within society and benefit from uncoordinated tax regimes between Member States on the one hand and between the EU and third countries on the other. It is the problems of "delocalization" (cross-border tax planning models) and the "dematerialisation" (above all through digitization) of the taxable activities that put high pressure on national tax systems. These problems cannot be solved by Member States alone. European measures are needed to make Member States tax systems fit for the digital world. The "revolution of transparency" is a process, the Commissioner insisted, which is of utmost importance for the Member States in establishing a fairer tax system at European and global level.

Although many of the proposed legislative measures target tax intermediaries, *Moscovici* clarified that the measures (i.e. reporting requirement tax intermediaries for certain cross-border tax arrangements) are about the "stigmatization" or "sanctioning" of individual professional groups. If anything, intermediaries occupy a “unique” position in the tax system. Their reporting of certain information shall provide a basis for Member States to gain more insight into what is “actually happening in cross-border situations” concerning taxation. With the information Member States can respond better and faster to previously undiscovered tax evasion, *Moscovici* explained. In response to the Commissioners’ revolution of transparency, *Philippe Arraou* criticised that the drive towards more transparency "should not target the intermediaries only". Making the intermediaries the target of EU activities only creates an imbalance of burdens for tax intermediaries and businesses. The goal of stricter transparency rules is preventing harmful tax-planning models applied by businesses, however. Thus, "businesses cannot be treated separately" or left out when it comes to transparency requirements.

The first panel discussed the “role of tax intermediaries in a fairer EU tax system”. *Alfred Sant*, MEP (S&D Group) and *Prof. Dr. H.-Michael Korth* representing ETAF offered an interesting discussion about tax harmonisation and the role of tax intermediaries in future regulations. Mr *Sant*, former Maltese Prime Minister favoured more regulatory competition between Member States regarding tax matters. Instead of harmonising tax rules at EU level, the focus should be on the regulation of intermediaries involved in cross-border tax planning. More severe coercive measures at *national* level should ensure that the aggressive tax planning revealed by the Panama and Paradise Papers is made illegal. *Prof. Korth* disagreed in this regard. In his more practice-oriented approach he drew a distinction between tax evasion and tax avoidance. Tax evasion, as revealed by the Panama Papers and Paradise Papers is illegal and 99.9% of intermediaries and businesses are not involved in such critical models. Tax avoidance, on the other hand, is the possibility to design tax models within the boundaries of binding laws. It implies a right to choose. Korth acknowledged that this can lead to "unfair models" both nationally and internationally. In addition, precisely because the intermediary and the enterprise are bound by law the ultimate responsibility to target “unfair models” lies with the Member States.

The second panel, composed of *Valère Moutarlier*, Director of the Directorate General for Taxation and Customs Union (TAXUD), *Hans-Joachim Oettinger*, ETAF/DStV representative to the DG TAXUD Good Governance Platform for Good Taxation, *Gabriele Annolino*, Member of the Permanent Representation of Italy to the EU and *Virginie Rozière*, MEP (S&D Group) discussed the challenges of "taxation in the digital world".

The discussion was opened by *Valère Moutarlier*, reminding that the now “28 uncoordinated national systems must be manoeuvred into safe haven and prepared for the digital age”. For this, velocity is of importance, he argued. However, a sustainable solution for the taxation of the digital economy cannot be achieved exclusively through short-term solutions (i.e. a digital equalization tax). In fact, *Moutarlier* sees the draft Common Consolidated Corporate Tax Base (CCCTB) as the only measure of "value for the single market". For this the current legislative proposals for the CCCTB first needs to be adapted to the characteristics of the digital economy. For example, the definition of the “permanent establishment” needs to undergo revision towards a definition giving due account to the more “digital or virtual presence” of digital business models. *Joachim Oettinger* went one step further: Before any tax system for the digital economy is introduced, the scope of application must be clearly defined, he demanded. This clarity is essential to avoid problems of double taxation and to protect small businesses from being overburdened. Also, short-term solutions must always contain an "expiration date", Oettinger argued. He gave the example of the tax applied to sparkling wine in Germany, which has been levied as a "short-term tax" for almost 115 years now. In response to *Valère Moutarlier*, *Gabriele Annolino* warned that a European solution must always have the global impact in mind. One should work closely with the OECD. Towards the end of the discussion, *MEP Rozière* opened the floor for a closely related topic: the protection of whistle-blowers. She claimed that currently whistle-blowers do not benefit from a level of protection that would be appropriate to their “contribution made in the light of the public interest”. The “EU Commission must act”, she said. In the concluding discussion, *Philippe Arraou* renewed his critics that the EU measures should not focus on tax intermediaries only. The targets of initiatives for more transparency are business tax-planning activities. Therefore the right targets for EU activities are businesses.

The discussion in the second panel also revealed that there is an obvious vacuum in the European tax system wherefrom the European institutions are put under considerable political pressure to deliver suitable measures to fill this gap. Furthermore, the taxation of the digital economy cannot be solved easily. The discussions revealed that the political will is high, but also that many aspects are still unclear and need further time to be adequately addressed.

Overall, the ETAF event offered a good outlook on future challenges to taxation and the profession of tax advisers at European level. It also allowed the ETAF to clarify its positions and emphasize the importance of good tax advice in society.