ETAF
European Tax Adviser Federation

ETAF NEWS

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INTRODUCTION

Philippe Arraou, President of ETAF

Dear ETAF Members,
Dear friends,

The European Commission has taken up speed in kicking off some of the legislative projects of its action plan on fair and simple taxation from July 2020. From a tax perspective it has been quite a busy year until now: We've had consultations on the digital levy, the extension of the DAC to the field of cryptocurrencies and e-money, taxpayer's rights but also on the use of letterbox companies for tax fraud.

In that framework the Commission in May 2021 published a communication on “Business taxation in the 21st century” where it laid out concrete plans to reform the tax system and adapt it to modern business models. It aims to tackle the patchwork of national corporate tax rules, which creates difficulties for companies that operate cross-border within the European single market. Our profession – as always – is at the forefront, processing newly implemented rules and putting them into practice. We will have to widen our scope of expertise as the EU is expanding its grip on more and more areas that touch our daily work. But we will also have to strengthen our profession in that regard and raise awareness for the need of solid and useful professional regulations.

In its update of the Industrial Strategy from May 2021, the Commission claims that while we have harmonized standards when it comes to European goods, the services sector was restricted by heterogeneous and limiting national rules such as strict entry and exercise requirements. It announced to consider harmonizing certain key business services just like legal services. Even though our profession is not explicitly mentioned, we are extremely cautious when it comes to the core of our profession. Harmonizing national regulations in the EU would probably mean lowering the quality and standards of our tax advice which would then endanger consumers. No one wants that! We will keep a close eye on the Commissions’ latest push for Europeanized regulations and voice our professions’ concerns wherever we can.

I hope you will enjoy reading our Newsletter!

Sincerely yours,
Philippe Arraou

PROFESSIONAL LAW

Update of the reform-recommendations for regulated professions

In March 2021, the Commission published a Roadmap announcing an update of the reform-recommendations for regulated professions. Back in 2017, the Commission analyzed the requirements imposed on certain professions (including tax advisers) across Member States and came up with a “regulatory-restrictiveness indicator” which was supposed to illustrate how regulated and thus restricted a profession was. It was based on factors such as protection of the title, shareholding requirements, reserved activities, voting rights, access to the profession, etc. In that previous communication of 2017, the Commission gave country-specific recommendations for each profession in order to improve and overcome the barriers within the Internal market for services. Now – 4 years later – the Commission wants to assess whether these recommendations were taken-into-account by Member States and evaluate what has changed and what remains and therefore needs to be addressed.

The feedback period for this roadmap was open until 1 April 2021. As usual, ETAF participated in the roadmap and gave the Commission valuable feedback on this matter. In a nutshell, ETAF explained that ETAF Members have followed the recommendations mentioned in the Commissions’ communication of 2017 and stated, as an example, all the amendments that ETAF members have inserted in their professional law already, which prove that the profession is willing and ready to compromise where it can.

However, ETAF also made very clear that there are certain aspects of the profession that need to stay as they are and cannot be further deregulated because they protect the quality of our services and ultimately the consumer. ETAF highlighted that requirements such as reserved activities and shareholding requirements should not be seen as a barrier but rather as an indispensable safety-net for consumers.

The new update of the reform-recommendations is expected for July 2021.

Commission evaluates harmonization of 'key business services'

On 5 May 2021, the European Commission published a Communication updating the New Industrial Strategy of 2020 which focuses on building a stronger Single Market for Europe's recovery. The update entails certain proposals for the Internal Market of Services which could have a significant impact on the profession of tax advisers amongst many others.

The Commission announces it will be regularly carrying out assessments of the remaining barriers within the services sector and put special efforts on reducing those, since progress in this sector has been too slow over the past years, according to the Commission. Therefore, the Single Market Enforcement Task Force (SMET) will take relevant actions such as making sure that the Services Directive will be fully enforced in all Member States and that the notification obligation is respected in order to identify and eliminate new potential regulatory barriers.

Last but not least, the Commission considers that, while European goods have harmonized standards which have delivered great benefits for companies and consumers, the services sector is held back by heterogenous and restrictive national rules such as strict entry and exercise requirements. Therefore, it is seriously considering to introduce harmonized standards in certain key business services (engineering, architecture, IT and legal services) through a legislative proposal. It will start by analyzing which professions can be subject to harmonization in order to fully guarantee the freedom to provide services and eventually propose a Directive or a Regulation. The Communication is further accompanied by an Annual Single Market Report which gives further insights on the actual state of play of the Internal Market today. ETAF will advocate for a strong professional regulation within this framework and will do its best to avoid a further deregulation which would only lower the quality of services and thus harm ultimately the consumers.

ETAF in close collaboration with Chair of FISC Committee Paul Tang

In July 2020 the European Commission published its action plan to fight tax evasion and make taxation simple and easy. It aims at combating tax fraud, facilitating com¬pliance with tax rules and further exploiting new technical developments and the increasing digitalization in order to achieve these goals.

ETAF positioned itself and pointed out that tax compliance in Europe had to be improved in the long term. Tax evasion is a criminal offence which is detrimental to the general interest of the Union and therefore has to be combated with determination.

As a reaction to our Tax Compliance paper, ETAF was approached by the office of MEP Paul Tang, Chair of the FISC Committee in the European Parliament. The Dutch MEP had shown great interest in the ETAF opinion on tax compliance and especially on the role of professional law within this context. He is evaluating the added value of introducing a professional code within his own country (the Netherlands). To this end ETAF provided the MEP with detailed information on professional regulations in ETAF member countries and held several informal exchanges on this matter.

In this joint long-term project, ETAF can and will use its excellent relations with the European Parliament to advocate for the interests of European tax advisers. The constructive relationship with MEP Paul Tang is a unique opportunity to highlight the benefits of a strong professional code on the European level.

A new international tax framework is taking shape

The discussions on a renewed international corporate tax system have received a major boost in recent months thanks to a shift in attitude of the US administration. In February, Janet Yellen (US Treasury Secretary) confirmed the intention of Washington to drop the call for a "safe harbour" (which had blocked the discussions in 2020) and she remarked that the US are committed to multilateral discussions on both pillars to reach a global solution. Few weeks after, the US sent new proposals to the countries involved at OECD level. The proposal would tax the world's largest multinational with revenues above $20 billion per year within the countries where they sell goods or services. Ms. Yellen also remarked the US support towards a global minimum corporate tax rate, targeting a possible tax rate of 21%. In April, the European Parliament adopted by a large majority the own-initiative report by Andreas Schwab (EPP, Germany) and Martin Hlaváček (Renew Europe, Czech Republic) on digital taxation and minimum effective corporate taxation. The report remarks that the EU should develop a plan B to be implemented should the countries negotiating at OECD level fail to reach an agreement by mid-2021. In June, the Finance Ministers of the G7 countries (Canada, France, Germany, Italy, Japan, the United Kingdom and the United States) reached an agreement to set a minimum 15% global corporate tax rate (slightly lower than the original US proposal). The Finance Ministers and Central Bank Governors Communiqué clarifies that market countries would be awarded with "taxing rights on at least 20% of profit exceeding a 10% margin for the largest and most profitable multinational enterprises". The French Finance Minister, Bruno Le Maire, spoke of a "historic agreement" after four years of negotiations. The G7 countries are committed to find an appropriate compromise between the new international tax rules and the removal of all Digital Services Taxes and to progress on both Pillars discussed at OECD level at the July 2021 meeting of G20 Finance Ministers and Central Bank Governors.

Agreement on public Country-by-Country-Reporting

On 1 June 2021, representatives of the Council of the EU and the European Parliament reached an agreement on the Directive on public Country-by-Country Reporting (pCbCR). Based on the agreement, businesses that are active in the EU with an annual turnover of more than €750 million will have to disclose country-specific information, such as the company's turnover and net profit, the number of employees, income tax paid and the amount of accumulated profit, on an annual basis. The obligation will also apply to third countries on the black list of non-cooperative jurisdictions from a fiscal perspective, as well as to third countries that have been on the 'grey' list for at least 2 years. The country reports will be available free of charge, in an official EU language, using a common template and in machine readable electronic formats. Member States will have 18 months to transpose the directive into national law.

The European Parliament will give its green light for the directive in September 2021, after the ECON and JURI committees on 14 June 2021 approved the deal that was reached between chief negotiators of the EP and the Council.

European Commission proposes a Business Taxation Framework fit for the 21st century

On 18 May 2021, the European Commission has unveiled its Communication on Business Taxation in the 21st Century. The Communication has two main areas: (i) the implementation of the OECD international tax reform at EU level (Pillar 1 and Pillar 2) and (ii) further EU tax proposals beyond the OECD. With regard to the implementation of the possible OECD agreement, the Commission remarked that, once agreed and translated into a multilateral convention, the application of Pillar 1 will be mandatory for participating countries. The Commission will propose a Directive for a consistent implementation of Pillar 1 among all EU Member States. To

ensure a coherent application of Pillar 2, the Commission will propose an EU Directive that will reflect the OECD Model Rules. The implementation will have implications for existing Controlled Foreign Company (CFC) rules and it should pave the way for the proposal for recasting the Interest and Royalties Directive. The Commission will also propose introducing Pillar 2 for assessing third countries in the EU listing process.

Beyond the OECD agreement, the Commission is planning to launch legislative proposals ensuring fair and effective taxation, including measures for the publication of effective tax rates paid by large companies (by 2022) and to neutralize the misuse of shell entities for tax purposes (by the end of 2021). The Communication also includes a recommendation to Member States to allow loss carry-back for businesses to at least the previous fiscal year and a plan for a legislative proposal in the first quarter of 2021 to create a Debt Equity Bias Reduction Allowance (DEBRA).

The Commission is also committed to act for a longer-term business taxation framework by withdrawing its CCCTB proposal and setting up a new one, by 2023. The new proposal would move towards a common tax rulebook and provide for fairer allocation of taxing rights between Member States based on a formulary apportionment and a common tax base (Business in Europe: Framework for Income Taxation - BEFIT). This tool would build on previous work at EU level, as well as recent developments in the global discussions on international taxation.

European Commission tackles fraud connected to crypto-currencies (DAC 8)

The recent rise in the trading with Bitcoin and other cryptocurrencies and crypto-assets accompanied by the rapid growth of crypto-assets providers, has caught the attention of the European Commission. Due to the heterogeneity in the rules that the Member States are applying and the features of many crypto-assets such as pseudo-anonymity, valuation difficulties, and global reach, there might be the risk of under-reporting or no reporting of taxable income. This can lead to revenue losses. Worried about this concern, as well as the possible distortion of competition with traditional financial instruments and the possible use of crypto-assets as a vehicle for the shadow economy, the Commission decided to act.

In the framework of its action plan for fair and simple taxation from July 2020 the Commission launched a new legislative process in March 2021. It is related to a new revision of the Directive on Administrative Cooperation in the field of Taxation (DAC 8), which would extend the exchange of information among EU tax authorities to crypto-assets and electronic money. Furthermore, DAC 8 aims to tackle the lack of penalties and sanctions of the DAC, which results in a certain ineffectiveness of the current Directive. The main reason for a new update of the DAC is to ensure that revenues stemming from investments in or payments with crypto-assets and e-money will be subject to the applicable tax provisions. In line with the EU's Better Regulation principles, the Commission launched a public consultation to collect important information concerning different aspects of the crypto-assets world. A legislative text is planned for the third quarter of 2021.

The FISC Committee in its fight for a fairer tax system

The Subcommittee on Fiscal Affairs of the European Parliament (FISC-Committee) has been very active and committed since it was officially set up. Over the course of the last months, several own initiative reports have been drafted and discussed.

In March 2021, it published its own-initiative draft report prepared by MEP Claude Gruffat (Greens/EFA, France) on a sustainable European tax system in the post-Covid-19 economy. The report calls for a new tax system that focuses on three main objectives: the ecological transition, reducing social inequalities, and restoring competitiveness of European SMEs. The report calls for Member States to consider expanding the tax base for environmental taxes and to shift taxation from labor to capital and wealth.

In June 2021, Members of the FISC Committee rejected this draft report. MEP Gruffat commented the rejection by remarking that in his view, a majority of members expressed conservatism during the voting session, while citizens have been facing and will keep on facing major environmental and social challenges over the upcoming months and years.

In April 2021, the FISC Committee held a meeting with the Chair of the EU Council's Code of Conduct for Business Taxation Group, Lyudmila Petkova. Ms Petkova explained that the Code of Conduct Group has reviewed 95 jurisdictions and that over 130 preferential tax regimes have been modified or removed. Ms Petkova highlighted that the Code of Conduct Group is currently working on a three-step approach to assess national corporate tax systems which would analyze whether the characteristics of the tax systems lead to double non-taxation, if such double non-taxation affects EU economic activities and whether there is a causal link between these two criteria.

In May 2021, MEP Aurore Lalucq published her own initiative draft report on *"reforming the EU policy on harmful tax practices (including the reform of the Code of Conduct Group)"*. The report highlights that the nature of harmful tax practices has evolved over the last decades and that the Code of Conduct should be provided with the necessary tools to assess the harmful nature of tax systems. It also remarks that the proliferation of continuous tax scandals (e.g. Lux Leaks, Panama Papers, Paradise Papers, etc.) involving multinational groups and individuals has revealed the extent of these phenomena and the urgency of finding definite solutions to overcome them. The document welcomes the proposed Pillar II reform under discussion at OECD level and the recent US proposal on a 21% minimum global tax rate. The report calls the Commission to consider to set up a plan for a swift and proper implementation of both Pillars, including the use of the outcome on Pillar II to redefine what harmful practices are and to monitor them with a reformed Code of Conduct.

Commission aims at improving taxpayer's rights

In the spirit of simplicity and fairness in the area of taxation the Commission intends to improve taxpayer's rights. The complexity of tax rules and procedures in the different Member States often leads too many taxpayers, private individuals, self-employed and micro-enterprises, to not making full use of the possibilities offered by their national legal framework to protect their interests. The lacking knowledge and non-optimal use of existing taxpayers' rights can have a negative effect on economic and business behaviour. Increasing awareness of taxpayers' rights will help smoothen the relationship between taxpayers and tax administrations which is particularly important in the recovery context. It can also improve, as a natural consequence, tax compliance.

To that end the Commission is planning to launch a recommendation after it has gathered opinions on how to improve taxpayers' rights and simplify their obligations. The recommendation is supposed to be published in autumn 2021.

Court cases: from Amazon to whistleblower's sanctions in Luxembourg

In the last few months, the Court of Justice of the EU (CJEU) has issued many tax-related decisions, the most interesting ones relate to tax cases in Poland, Hungary and Luxembourg. Furthermore, the European Court of Human rights has recently issued an interesting judgment on a whistleblower case in Luxembourg.

On 16 March, the CJEU has confirmed that the Polish and Hungarian taxes on turnover do not infringe EU law on State aid. The judgement is related to appeals C 562/19 P Commission v Poland and C 596/19 P Commission v Hungary and it upheld the General Court's judgments that the Polish tax on the retail sector and the Hungarian tax on advertisement revenue are set in accordance with EU standards. Therefore, these judgments annul the Commission's decisions (against Poland and

Hungary) according to which the two taxes were granting an unlawful advantage to smaller undertakings which were taxed at too low level. In its judgement, the Court of Justice reaffirms that *"given the current state of harmonisation of EU tax law, the Member States are free to establish the system of taxation which they deem most appropriate, so that the application of progressive taxation falls within the discretion of each Member State".*

On 12 May, the General Court of the European Union (GCEU) annulled the decision taken by the European Commission in October 2017 which stated that the advance tax ruling granted by Luxembourg to Amazon constituted an illegal State aid under EU law. According to the General Court, the Commission's findings at the basis of the decision were insufficient to demonstrate the existence of a State aid incompatible with the internal market rules. The tax ruling under scrutiny endorsed the method of calculating the annual royalty to be paid by LuxOpCo (the principle operator of the Amazon group's business in Europe) to its parent company LuxSCS (holding the intangibles). The Court concluded that the elements identified by the Commission are based on an analysis which is *"incorrect in several respects"*. The GCEU concluded that the Commission's analysis of LuxSCS was insufficient to demonstrate that such company had artificially reduced its tax burden as a result of an overpricing of the royalty. Furthermore, the General Court concluded that the Commission failed to demonstrate that LuxOpCo's functions should necessarily have led to a higher remuneration for LuxOpCo.

On the same day, the General Court found that Luxembourg granted a tax advantage to companies of the Engie group. The disputed tax ruling is linked to an intra-group financing structure relating to the transfer of activities between companies of the Engie group resident in Luxembourg. The GCEU approved the approach of the Commission to look at the economic and fiscal reality rather than an approach that isolates each of the transactions under the financing structure. The General Court has also endorsed the Commission's conclusion that a selective advantage was conferred as a result of the non-application of national provisions relating to abuse of law.

On 11 May, the European Court of Human Rights has published its judgement on the case Halet vs Luxembourg (21884/18) by confirming that the court in Luxembourg did not breach Article 10 of the European Convention on Human Rights (on freedom of expression) when it fined a whistleblower who disclosed tax documents concerning some of the clients of his employer. Mr Halet had harmed his employer by disclosing documents which were subject to professional secrecy, in the context of the Luxleaks case. The European Court of Human Rights assessed that the Luxembourg court has imposed a fine of an amount (i.e. EUR 1.000) which is proportionate as not to have a real deterrent effect on the exercise of Mr Halet or other employees' freedom of expression.

Extension of VAT exemption on vital goods in times of crisis

In April 2021, the European Commission proposed an exemption from VAT for goods and services made available by EU bodies and agencies to Member States and citizens during times of crisis. The measures would allow the EC and other EU agencies to import and purchase goods and services VAT-free when those purchases are being distributed during emergency responses in the EU. The proposal does not only cover medical goods and services relevant to the COVID-19 crisis but also goods which would be used in different types of emergencies, for example search and rescue equipment, tents, camp beds, clothing, food and similar supplies. The Commission has proposed to retroactively apply the new VAT exemption to transactions carried out from 1 January 2021. Furthermore, it decided to extend the temporary waiver of customs duties and VAT on imports of medical devices and protective equipment used in the fight against COVID-19 from non-EU countries. The decision prolonged the VAT relief until 31 December 2021.

European Parliament adopts its opinion on DAC 7

On 10 March 2021, the European Parliament adopted by a broad majority (568 votes in favour, 63 votes against, and 64 abstentions) its legislative resolution on a Council Directive on administrative cooperation in the field of taxation (DAC 7). The Parliament's report includes recommendations to the Commission's proposal aiming at effectively tracing and taxing the sales that people make by selling goods and providing services through online platforms. The rapporteur Sven Giegold (Greens/EFA, Germany) commented on the adoption by saying that this Directive would close one loophole but others remain open since not all types of income and assets are included under DAC. He also complained that the Council has already decided its position without waiting for the European Parliament's proposals and that it has postponed the implementation to January 2023.

The new rules will introduce a reporting obligation for digital platforms located both inside and outside the EU and an automatic exchange of information between Member States' tax administrations on revenues generated by sellers on these platforms as of 1 January 2023. Besides this, a legal framework for the conduct of joint audits between two or more Member States will be introduced as of 1 January 2024 as well.

Coreper approves the Fiscalis programme 2021-2027

On 5 May 2020, the EU Member States' ambassadors (Coreper I) approved the adoption of the 'Fiscalis' programme for 2021-2027. The programme's objective is to strengthen cooperation among tax authorities of EU Member States. The programme should apply retroactively from 1 January 2021 and it should be applied via implementing acts by the European Commission. The Council has equally recognized the need for an annual exchange of views with the Parliament and the Commission on the outcomes of the Fiscalis programme.

In 2018, the European Commission presented a proposal for a Regulation establishing the 'Fiscalis' programme for cooperation in the field of taxation as part of the Multiannual Financial Framework (MFF) for the years 2021-2027. The proposal aimed to replace the Fiscalis 2020 programme.

The 'Fiscalis' programme provides mechanisms, means as well as the necessary funding to support tax policy and to improve cooperation between tax authorities. Its general objectives are to build administrative capacity, including human competency, to foster the Union competitiveness and to enhance the functioning of the single market and competitiveness as well as to protect the financial and economic interests of the European Union and its Member States.

A big part of the adopted budget will mainly be spent on IT infrastructure, as tax cooperation needs a communication network that allows national administrations to exchange information securely.

February infringement package: letters of formal notice to France and Sweden

On 18 February, the European Commission published its February 2021 infringements package. In the area of taxation, the EC has sent letters of formal notice to France and Sweden, both with regard to a possible infringement of the free movement of capital. The EC asked France to change its withholding tax rules on dividends paid to "Unit Linked Insurance" (ULI), companies established in other European Economic Area (EEA) Member States. ULI is a life insurance scheme where the premiums paid by the policy-holder are used to purchase units in investment funds selected by that person, and where the dividends paid out by the funds are passed on by the insurer to the policy-holder. ULI companies established in EEA Member States are required to pay a final withholding tax on French dividends. However, ULI companies established in France either pay no withholding tax on these dividends, or can credit the withholding tax paid against French corporation tax, which amounts to zero. The Commission deems that these rules infringe the free movement of capital. The letter sent to Sweden asks Stockholm to amend its rules on taxation of dividends to non-resident public pension institutions. Swedish public pension funds are entirely exempt from tax liability, while dividends paid to equivalent non-resident public pension institutions are subject to a withholding tax, commonly at a reduced rate of 15%. The different treatment may infringe the free movement of capital.

Updated EU tax haven lists

Early this year the EU Council adopted a revision of the EU-list of non-cooperative jurisdictions for tax purposes. Dominica was added to the list while Barbados got removed. After committing to change its harmful tax regime, Jamaica was added to the "grey" list, a list with jurisdictions committed to comply with the EU's criteria. Morocco, Saint Lucia and Namibia were removed from that grey list, thanks to their actions taken to fulfill the necessary criteria.

Turkey has been granted an extension to meet the criteria so that the country could be removed from the grey list. The EU has demanded that Turkey shares tax information with the EU in order to prevent harmful tax practices. An automatic exchange of information on bank accounts with six EU countries should be activated, according to EU officials. A final decision whether Turkey will be removed from the list is expected for September 2021. Many Members of the European Parliament were not satisfied with the extension of four more months. Markus Ferber (EPP, Germany) and Sven Giegold (Greens/EFA, Germany) voiced their concern about the extension since it could lead to a weakening of the EU tax haven lists.

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ETAF www.etaf.tax is a European umbrella organisation for 300,000 tax professionals from France, Germany, Italy, 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.

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