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INTRODUCTION

Philippe Arraou, President of ETAF

Dear ETAF Members,

Dear friends,



The plan of the European Commission to regulate the provision of tax advice for creating abusive structures is taking shape. This will be one of our main priorities for the months to come.

This topic is of utmost importance for our profession so that in June we decided to organise a conference with the title “*Professional regulation: a cornerstone for curbing down abusive tax avoidance*”. We invited tax professionals from all over Europe, representatives of the EU institutions and tax journalists to discuss with us how a professional regulation can help fight tax abuse.

The European Tax Adviser Federation (ETAF) will keep advocating for a harmonised European approach on the role and status of tax advisers. In our view, tax advice should be recognized as a reserved activity everywhere in the EU and every Member State should introduce a national binding professional law framework.

One thing is certain: when designing this new law for tax advisers, legal certainty will be key. It is highly important not to pass on the responsibility for loopholes in the legislation to those who are subject to the law. ETAF is looking forward to contributing further to this discussion through the public consultation of the European Commission.

On another crucial topic: we hope that the EU will soon find a solution for implementing the OECD agreement on the minimum taxation of multinationals (the so-called Pillar II). The minimum 15% effective tax rate must start applying in 2023. This now has become a matter of sincere cooperation and of credibility for the European Union as a whole.

The latest developments logically raise again the question of moving from unanimity to qualified majority voting on certain tax matters. This is also a growing demand from EU citizens, as the results of the Conference of Europe have recently shown. Unanimity over tax issues cannot keep leading to blackmail between Member States and delaying crucial and much needed tax reforms in the EU.

I hope you will enjoy reading our Newsletter!

Sincerely yours,

Philippe Arraou

PROFESSIONAL LAW

Tackling the role of “enablers” in aggressive tax planning within the EU

The European Commission launched on 6 July 2022 its [public consultation](#) on a proposal for a Directive to tackle the role of enablers that facilitate tax evasion and aggressive tax planning in the European Union. The Commission already has a nick name for it: “SAFE” for Securing the Activity Framework of Enablers. It will focus on establishing procedures and compliance measures for intermediaries providing tax advisory services.

The Commission wants to know more about the stakeholders’ perception of the role that enablers play in facilitating tax evasion and aggressive tax planning and the need to coordinate at EU level either with soft law or hard law (i.e. in a new Directive).

The Commission seems to be testing 4 options vis-a-vis the public:

- A Code of conduct that would prohibit the enablers who design, market, organise or assist in the creation of tax evasion and aggressive tax planning schemes without any complementary mandatory measures,
- An EU register of enablers and the obligation to register,
- Due diligence procedures to perform a self-assessment test to demonstrate that the tax schemes do not lead to tax evasion or aggressive tax planning,
- A new reporting requirement for EU taxpayers of participation above 25% of shares, voting rights, ownership interest, bearer shareholdings or control via other means in a non-listed company outside the EU.

It also asks if monetary penalties (either in proportion of their fees, in proportion of the amounts evaded on behalf of their clients or as an absolute fixed number) would be an adequate means to appropriately sanction enablers from facilitating tax evasion and aggressive tax planning.

The Commission now plans to present this proposal in the first quarter of 2023 and not in 2022, as previously announced. Stakeholders have until 12 October 2022 to send their comments to the European Commission.

The Anti-Money Laundering package: overview of the progress made

The July 2021 [AML-package](#), which will set up a coherent EU-wide detection and enforcement framework to combat money laundering and terrorist financing, recently received another crucial legislative boost, when the Member States partially agreed on the Regulation establishing the new Anti-Money Laundering Authority (AMLA-Regulation) in the Council. Apart from the AMLA-Regulation, the package consists of a new AML-Regulation with directly applicable AML/CFT rules, a complementary 6th AML-Directive and a recast of the Transfer of Funds Regulation.

Already in March 2022 the rapporteurs of the designated ECON and LIBE committees of the European parliament presented their [draft report](#) on the AML-Regulation. In May 2022, the draft reports on the [6th AML-Directive](#) and on the [AMLA-Regulation](#) followed. The parliamentary rapporteurs generally made clear that they consider the proper supervision of both credit and financial institutions and other obliged entities in the non-financial sector as the cornerstones of an effective AML/CFT framework. Therefore, they expect the AMLA to be provided with correspondingly far-reaching powers and competences. Furthermore, the draft report of the 6th AML-Directive in particular seems to be influenced by the sanctions imposed on Russia. There, the rapporteurs advocate for several intensifications regarding the identification and verification of (beneficial) owners of high valuable assets.

ETAF already in March 2022 submitted concrete amendments to the three main legislative proposals and strongly pleaded for the limitation of the powers of the AMLA to its intended coordinating, advisory and supporting role for the non-financial sector. In addition, ETAF saw the need to request the MEPs to safeguard professional secrecy and to reduce the bureaucratic burden of due diligence obligations in the AML-Regulation and the Directive.

In its final throes, the French Presidency of the Council succeeded in reaching a [partial agreement on the AMLA-Regulation](#) on 29 June 2022. The Member States agreed on a compromise text that covers the entire framework for the establishment of AMLA, leaving out only the section about its seat. The compromise text significantly weakens the powers of the AMLA and removes, among other things, the severe rights of intervention ETAF was worried about. The extensive powers of the AMLA over the non-financial sector envisaged in the Commission's initial proposal threaten the federal structures and competences of the Member States as well as the independence of the profession. The Council's agreement, which seems to take the concerns of the profession seriously, could therefore be an important interim success.

With this position, the Council will enter the trilogue negotiations together with the Parliament, which also must agree on a common position beforehand, and the Commission. EP's committee votes on the draft reports are expected to take place after the summer break.

War in Ukraine: EU prohibits provision of tax advice to Russian entities

On the 3rd of June 2022, the Council of the EU adopted a [Regulation](#) prohibiting the provision of tax advice as well as accounting and auditing services, including statutory audit and bookkeeping services to the Government of Russia or legal persons, entities or bodies established in Russia.

A few exemptions are however foreseen, stating notably that this prohibition shall not apply for a company established in Russia which is owned by a (parent) company within the EU.

According to the Regulation, the prohibition of accounting, auditing, bookkeeping and tax consultancy services covers:

- the recording of commercial transactions for businesses and others; examination services of accounting records and financial statements;
- business tax planning and consulting;
- and the preparation of tax documents.

This measure was part of the sixth package of sanctions against Russia that the Commission proposed in May in retaliation for the war in Ukraine. The sanctions are already in force.

TAX LAW

The Czech Republic takes over the presidency of the Council of the EU

On the 1st of July 2022, the Czech Republic took over the rotating Presidency of the Council of the EU, succeeding France, for the next six months.

The Czech Republic held its very first presidency in the first half of 2009. For this second presidency, the country chose as motto its former president Václav Havel's slogan "*Europe as a Task*" and will focus on five [priority areas](#):

- managing the refugee crisis and Ukraine's post-war recovery;
- energy security;
- strengthening Europe's defence capabilities and cyberspace security;
- the strategic resilience of the European economy; and
- the resilience of democratic institutions.

The presidency defines the agenda and priorities of the Council of the EU, especially the speed and intensity of negotiating individual legislative proposals. For this reason, it is often considered as one of the most significant ways to promote interests of individual Member States.

Compared to the French Presidency, which set ambitious priorities and managed to strike a series of last-minute deals on several important files, the Czech Presidency is expected to be a more modest and pragmatic presidency due to the complex coalition in the Czech government but also to the lack of staff.

On tax matters, the Czech Presidency has indeed modest ambitions according to a [draft agenda](#). By December, it aims at progressing on the UNSHELL Directive to fight the misuse of shell companies, on the recast of the Energy taxation Directive as well as on the recent debt-equity bias reduction allowance (DEBRA) but without promising to get a deal on those files.

It however hopes to strike a deal with the European Parliament on the Carbon Border Adjustment Mechanism (CBAM) as well as to reach a general approach among Member States on the new AML regulation and directive.

Finally, the Czech Presidency will also have the difficult task to resume negotiations with Hungary who vetoed the adoption of the Directive implementing the minimum taxation of multinationals in the EU (Pillar II). The Pillar I of the agreement, which concerns the reallocation of taxing rights, will be discussed in December if an agreement is reached at OECD level.

National vetoes on Pillar II in the EU

EU Member States once again failed to find a unanimous agreement on the Implementing Directive for the minimum 15% effective tax rate for large multinational enterprises (Pillar II) at an Ecofin [meeting](#) on 17 June 2022.

Thanks to the approval of its recovery plan and new concessions, including a statement that, by June 2023, the Commission will submit a report to Member States assessing the situation regarding the implementation of Pillar I of the OECD agreement (reallocation of taxing rights) and, if appropriate, submit a legislative proposal, Poland finally lifted its veto.

But it is Hungary who opposed the deal this time, citing the worsening economic situation in Europe due to the war in Ukraine. *“Under such circumstances, introducing the global minimum tax at such an early stage would cause serious damages to European economies”*, Hungarian Finance Minister Mihály Varga explained.

France, who held the Presidency of the Council of the EU at the time, criticized this argument recalling that Hungary gave its support to Pillar II while the war in Ukraine had already started and that Pillar II would be beneficial to European economies.

Despite its best efforts, the French Presidency did not manage to get an agreement on Pillar II and a lot of voices have risen among Member States in favour of moving from unanimity to qualified majority voting on fundamental tax matters.

To break the deadlock, Member States would [reportedly](#) now be considering the so-called “enhanced cooperation” mechanism, which would allow a minimum of 9 EU Member States or more to progress and implement this legislation without having to reach the unanimity normally required on tax matters.

On 6 July 2022, MEPs adopted a [resolution](#) which calls on Hungary to *“immediately end its blockage”* and asks the European Commission and Member States to *“refrain from approving Hungary’s national recovery and resilience plan unless all the criteria are fully complied with”*. If Hungary persists with its veto, MEPs say alternative options should be explored, including enhanced cooperation.

However, despite these calls, the European Commission does not seem ready to give up yet its efforts to try to bring all EU Member States on board.

OECD Pillar I implementation delayed until 2024

The implementation of the Pillar I of the OECD tax deal on the reallocation of taxing rights will only come into force in 2024. The deal, brokered in October 2021, was originally set for implementation in 2023.

Speaking at the World Economic Forum in Davos on 24 May 2022, Mathias Cormann, the OECD Secretary General, [reportedly](#) said that the drafting of the Multilateral Convention to implement Pillar I of the OECD tax deal is taking more time than expected.

This new timeline was confirmed in a [progress report](#) that the OECD published on 11 July 2022. It fixes mid-2023 as the ultimate deadline for signing the Multilateral Convention and 2024 for its entry into force. According to the OECD, this more realistic timeline will optimise the chance for the Multilateral Convention to be ratified by a sufficient critical mass of countries, including the largest economies where most in-scope companies are headquartered.

In turn, this means that the European Commission won't be able to present its proposal implementing Pillar I in the EU in July 2022, as initially foreseen.

In the meantime, the OECD has made some progress on the technical aspects of Pillar I and multiplied the public consultations. On 6 May, it [consulted](#) on the regulated financial services exclusion under Amount A and on 27 May it opened a public consultation on its proposal for [a tax certainty framework for Amount A](#), which is designed to guarantee certainty for in-scope groups over all aspects of the new rules, including the elimination of double taxation.

The progress report is summarising the outcomes of all the public consultations led throughout the year and presents a comprehensive draft of the technical model rules to implement the new taxing right (Amount A). It is subject to public consultation until 19 August 2022.

European Commission unveils DEBRA: the debt-equity bias reduction allowance

The European Commission presented on 11 May 2022 its [proposal](#) for a debt-equity bias reduction allowance (DEBRA). Its objective, with this Directive, is to ensure that equity receives similar tax treatment as debt, so that companies can consider both options on an equal footing and choose the source of financing that is best for their business-model.

To that end, the Commission is proposing an allowance that would apply to all taxpayers that are subject to corporate tax in one or more Member State, with the exception of financial undertakings.

Concretely, increases in a taxpayer's equity from one tax year to the next will be deductible from its taxable base, similarly to what happens to debt. The allowance would be computed based on the difference between net equity at the end of the current tax year and net equity at the end of the previous tax year, multiplied by a notional interest rate (which would be more favourable for SMEs).

This allowance for notional interest on equity is accompanied by a limitation to the tax deductibility of debt-related interest payments. In particular, a proportional restriction will limit the deductibility of interest to 85% of exceeding borrowing costs (i.e. interest paid minus interest received). According to the Commission, such an approach would allow to also address the debt side in the debt-equity bias while preserving the sustainability of Member States' public finances.

A series of anti-abuse provisions have also been proposed against schemes that might be put in place to circumvent the conditions on which an equity increase qualifies for an allowance under this Directive.

Once adopted unanimously by the Council of the EU, the Directive should be transposed into Member States' national law by 31 December 2023 and come into effect as of 1 January 2024. A transition period is foreseen for the six Member States which already have rules in place (Belgium, Cyprus, Italy, Malta, Poland and Portugal).

Towards an EU framework for withholding taxes

The European Commission is working on a proposal to facilitate cross-border investment by removing certain tax barriers. The aim is to introduce a common EU-wide system for withholding tax on dividend or interest payments. It shall include a system for tax authorities to exchange information and cooperate with each other. The problems the Commission aims to tackle are the particularly burdensome withholding tax refund procedures for cross-border investors in the EU and, at the same time, the risks they present in terms of tax abuse, as recently demonstrated by the 'Cum-Ex' scandal.

In a [public consultation](#) launched in April 2022, the Commission presented options for how to take this initiative forward:

- maintain the current system with different national procedures in place;
- create a harmonized system of relief at source;
- create a harmonized system of improved refund procedures;
- or a combination of the above systems (relief at source and refund system).

For ETAF members there is no doubt of a need for EU action in order to make withholding tax refund/relief procedures more efficient. In their [answer to the public consultation](#) on 23 June 2022, they acknowledge that withholding taxes as such can reduce the risk of tax evasion and avoidance. However, currently, refund procedures are often complex, lengthy and costly and can discourage investors even more from making investments in certain countries or having to accept double taxation, which cannot be the intention of the Single Market. For this reason, ETAF is in favour of harmonised systems of tax relief at source.

ETAF also believes that a potential EU relief at source system should apply to all payments, not only to those with a low risk. Should this be restricted to prevent possible abuses, ETAF members suggested that payments up to at least 10.000 € could be classified as low-risk payments.

The European Commission is planning on publishing the legislative text in the first half of 2023.

VAT in the digital age: ETAF takes position

The European Commission opened in January 2022 [a public consultation](#) on its plan to modernise VAT reporting obligations and facilitate e-invoicing, update the VAT rules for the platform economy and introducing a single VAT registration in the EU. The objective of the Commission is to simplify the VAT system in the EU and, at the same time, make it more resilient to fraud, with a particular focus on missing trader intra-community (MTIC) fraud.

For ETAF members this file is of particular importance. In our [answer](#) to the public consultation published on 4 May 2022, our members outlined that a fragmented approach on digital reporting / e-invoicing requirements contributes to tax fraud and increases the compliance costs for SMEs. For this reason, ETAF welcomed the intention of the European Commission to introduce EU digital reporting requirements for data transmission within the EU.

Nevertheless, ETAF pointed out the necessity to consider the fact that Member States have different levels of implementation or planning for the introduction of digital reporting obligations and e-invoicing. For this reason and also considering the differences in tax administrations and tax law procedures, Member States should keep some discretion over the design and functioning of their e-invoicing system. ETAF would be in favour of a staged approach, with first the introduction of EU digital reporting requirements for cross-border transactions only and, in a second stage and after a careful evaluation of the functioning of the new rules, an extension to domestic transactions.

ETAF also advocated for changes in the VAT Directive and Implementing Regulation to ensure the proper VAT treatment of the platform economy. Here, it is of utmost importance that a level-playing field between traditional and platform economy is ensured by treating them in the same way.

A proposal by the Commission is tentatively scheduled for 16 November 2022.

ETAF NEWS

ETAF Conference “Professional regulation: a cornerstone for curbing down abusive tax avoidance”

On 14 June 2022, EU officials and tax advisers from all over Europe discussed how the regulation of the tax adviser profession can help curb down abusive tax avoidance during a conference organised by the European Tax Adviser Federation (ETAF) in Brussels. The ETAF conference was a good opportunity for speakers to discuss the upcoming Directive on the regulation of the provision of tax advice in the EU.

The Director for direct taxation, tax coordination, economic analysis and evaluation at the European Commission, Benjamin Angel, reiterated that the Commission does not intend to regulate the tax profession as such but that it will put forward a set of rules that fit for all the people providing tax advice for creating structures in third countries.

ETAF President, Philippe Arraou, argued that tax advice should be recognized as a reserved activity everywhere in the EU and that every Member State should introduce a national binding professional law framework. *“When designing this new law for tax advisers, legal certainty will be key. It is highly important not to pass on the responsibility for loopholes in the legislation to those who are subject to the law”*, he also warned.

For MEP Markus Ferber, Vice-Chair of the subcommittee on tax matters (FISC) of the European Parliament, the European Union should first try to put its house in order before looking outside of its borders. Sarah Godar, Researcher at the EU Tax Observatory, agreed that the lawmakers should make sure that there are as little loopholes as possible but also hoped that tax advisers contribute to making the laws better.



ETAF Conference on 14 June 2022

Representing the tax profession in the debate, Philippe Vanclooster, former partner at PwC and Board member of the Belgian Institute for Tax Advisors and Accountants, outlined how the role of the tax adviser in Europe has evolved.

The debate was led by Todd Buell, Tax journalist at Law360. A recording of the conference can be watched on the [ETAF website](#).

ETAF General Assembly 2022

On 14 June 2022, ETAF held its annual General Meeting, in the Stanhope Hotel in Brussels. On this occasion, ETAF President Philippe Arraou reported about the activities of ETAF and pointed out that even with the COVID-19 pandemic still going on, ETAF managed to stay active and vigilant and maintained good relations with the European institutions. Among other things, ETAF members discussed their tax and professional law priorities for the upcoming year, a new public relations strategy as well as the recast of the ETAF website, expected in Autumn.



ETAF General Assembly on 14 June 2022

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ETAF is a European umbrella organisation for 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