ETAF
European Tax Adviser Federation

ETAF NEWS

October 2022

INTRODUCTION

Philippe Arraou, President of ETAF

Dear ETAF members,

Dear friends,

Russia's war against Ukraine has created an unprecedented energy crisis in Europe with huge repercussions on households and companies. Once again, tax policies have proven to be critical as countries seek to mitigate the impact of rapid increases in energy prices.

In this spirit, the European Commission unveiled mid-September a package of mitigating measures. Member States managed to put their disagreements aside and agreed in two weeks' time on new measures, including on a temporary solidarity contribution for the fossil fuel sector and a temporary cap on low-cost electricity producers' revenues.

On another crucial topic: we have been working full speed on the European Commission's public consultation on its planned proposal for a Directive to tackle the role of enablers that facilitate tax evasion and aggressive tax planning. This is an important topic for our profession and we stand ready to represent the voice of European regulated tax advisers in this complex and challenging matter.

ETAF firmly rejects the Commission's reductive portrayal of an entire profession as "enablers" of tax evasion and aggressive tax planning. Regulated tax professionals are not "enablers"; they are rather "preventers". Such a qualification is simply inadmissible. It would create a great and undue reputational damage to all the law-abiding tax professionals.

Because our professional laws already require us to provide tax advice in line with tax compliance, we are advocating for regulated tax advisers to be excluded from the scope of the future proposal.

We remain convinced that professional regulation would be a much more effective tool to achieve the Commission's goal of effectively curbing tax evasion and aggressive tax planning.

I hope you will enjoy reading our Newsletter!

Sincerely yours,

Philippe Arraou

PROFESSIONAL LAW

SAFE: regulated tax advisers should not be the target

On 12 October 2022, the European Tax Adviser Federation (ETAF) published its answer to the European Commission's public consultation on a proposal for a Directive to tackle the role of enablers that facilitate tax evasion and aggressive tax planning (*Securing the Activity Framework for Enablers* – SAFE), expected in the first half of 2023.

First and foremost, ETAF rejects the Commission's reductive portrayal of an entire profession as "enablers" and urges it to correct this generalisation, which would do a great and undue damage to law-abiding tax professionals.

Because their professional laws already require them to provide tax advice in line with tax compliance, ETAF also advocates that regulated tax professionals should be excluded from the scope of the future Directive.

"When it first unveiled its plan, the European Commission promised to target only the rotten apples and not to overburden a whole profession. I regret that this public consultation is taking the opposite path. The Commission is missing the right target here.", ETAF president Philippe Arraou commented in a press release published on the same day.

To tackle the core of the problem and avoid disproportionate bureaucracy, ETAF argues that it is necessary to target non-regulated tax professionals, operating outside any binding professional law framework, and to strictly limit the material scope to complex structures in non-EU countries.

Furthermore, we outline that a clear definition of aggressive tax planning is of utmost importance for the daily work of tax professionals. In particular, referring to the *"spirit of the law"* as proposed by the Commission cannot be a suitable criterion as it is the task of the legislator to exclude potential loopholes which might later turn out to be undesirable.

ETAF also appeals to the EU legislators to strictly separate tax evasion, which is a criminal offence punishable by law in all Member States, from aggressive tax planning, which is legally legitimate, although ethically doubtful.

In an accompanying position paper, ETAF developed further its view on how ensuring a minimum level of professional regulation by making tax advice a reserved activity everywhere in the EU would be a much more effective tool to achieve the Commission's goal of effectively curbing down tax evasion and aggressive tax planning.

ETAF criticises representativity of EP study on the regulation of tax intermediaries

In August 2022, the FISC subcommittee of the European Parliament published a study on the *"Regulation of Intermediaries, including tax advisers, in the EU/Member States and best practices from inside and outside the EU"*. The study is supposed to provide an overview of the regulatory environment of tax intermediaries based on four EU countries (Ireland, Netherlands, Germany, and Italy) and the United Kingdom. ETAF has reacted to this study and sent a critical statement to MEPs of the FISC committee.

Firstly, ETAF criticises the scope and choice of case studies. Out of the four EU countries only Germany has a genuine regulation enacted by law while all the others only have voluntary codes of conduct issued by professional bodies. This conveys the impression that the study puts all kinds of regulations on an equal footing. The study shows clear deficits in terms of quality and representativity while claiming to show *"an overview of the regulatory framework for tax intermediaries within the EU"*.

Secondly, ETAF points out that the lack of concrete conclusions and recommendations in the study puts questions to the whole project and its added value. The authors themselves acknowledge that further research must be done and once the scope is widened new areas of concern may arise.

All in all, the study recognizes and outlines the positive role of tax advisers for the economy and society. It also recognizes that regulation needs to be targeted to be able to identify the small pool of "bad apples" among tax advisers along with imposing relevant sanctions. The authors also suggest establishing an EU-Wide Code of conduct, a mandatory professional indemnity insurance or measures targeting tax avoidance enablers. However, before pursuing any course of action, they strongly advise the EU and national governments to carry out an impact evaluation of the current measures that are already in place.

Being the only organisation representing regulated tax professions at EU level, in its letter to MEPs, ETAF offered its expertise and input for any future scientific and parliamentary work on this topic.

Current and upcoming tax priorities of the European Commission

On 26 September 2022, MEPs from the committee on economic and monetary affairs (ECON) from the European Parliament quizzed EU Commissioner for Taxation Paolo Gentiloni on current and upcoming priorities of the Commission in the area of taxation.

They discussed in particular the EU implementation of the OECD's Pillar I and Pillar II tax reform. On Pillar II, Mr Gentiloni assured that the Commission remains fully committed to pressing ahead and that it will not give up until the blockade of Hungary can be overcome. On Pillar I, the Commission stands ready to present a proposal as soon as the work at international level is sufficiently mature, he explained.

Paolo Gentiloni also mentioned several other initiatives to come in the coming months: - a new modern and simpler framework for business taxation in the EU (BEFIT) expected in 2023; - an initiative to address the role of enablers facilitating tax evasion and aggressive tax planning through the use of complex structures in third countries (SAFE) by mid-2023; - the VAT in the digital age package planned for 16 November 2022; - the revision of the tobacco taxation directive foreseen for 7 December 2022 and ; - the revision of the directive on the exchange of tax information (DAC8) planned for 16 November 2022.

Finally, he regretted the freezing of the discussions until March next year on the Energy Taxation Directive and hoped that this freezing can be overcome.

Record time agreement on an EU windfall tax on energy giants

On 30 September 2022, Member States agreed in record time on new measures to tackle the energy crisis, including on a temporary solidarity contribution for the fossil fuel industry. The package was a key announcement from European Commission's president Ursula von der Leyen State of the Union speech mid-September.

The ultimate objective of these new measures is to redistribute the exceptional fiscal gains generated by the energy crisis to support households and companies and to mitigate the effects of high energy prices, as well as finance measures for the reduction of energy consumption. The Commission estimates that these two measures would raise more than 140 billion € for Member States.

Italy, Spain, Greece, Romania and Hungary have already adopted similar measures while Belgium, The Netherlands and Germany recently announced their wish to do so. But according to the Commission, measures adopted solely at the national level risk to create *"uneven conditions for companies operating on the EU energy market"*.

In particular, the temporary solidarity contribution from the fossil fuel industry will act as a windfall tax. Concretely, the fossil fuel and refinery companies not already subject to a similar national tax will be required to pay a minimum 33% tax on profits which are above a 20% increase of the average yearly taxable profits of the last four years (2018 – 2021).

Unusual fact: the agreement has been reached in the context of an emergency procedure (article 122 (1) TFEU), through qualified majority voting and not unanimity as normally required for tax files. This triggered some concerns among Member States about setting a precedent for a change in the tax decision-making process.

Member States have until 31 December 2022 to implement these measures if they do not already have an equivalent measure in place. The measures are set to expire in December 2023 but can be extended. The final text has been officially adopted on 6 October.

ETAF positions itself on DEBRA

In May 2022, the European Commission published its proposal for a debt-equity bias reduction allowance (DEBRA), combining an allowance for new equity and a limitation to the deductibility of debt costs. The objective is to ensure that equity receives similar tax treatment as debt, so that companies can consider both options equally and choose the source of financing that is best for their business-model.

Stakeholders had time to hand in feedback until end of July. ETAF took the opportunity to voice some concerns about the proposal.

In principle, ETAF recognizes that high levels of debt make companies in the EU more vulnerable to insolvency and that they should be encouraged to use less debt financing and more equity financing. From an economic point of view, neutrality in financing should be favoured. Specifically, for long-term investments with a high degree of risk it can be difficult to find lenders. We believe that improving the conditions for equity financing can help promote much needed investments in the fields of digitalisation, sustainability and climate protection.

However, we believe that certain provisions of the proposal are either exceeding the principles of proportionality and subsidiarity or adding to already existing rules of the ATAD with no further justification. Article 6 of the proposal for example, which regulates the limitation of interest deduction, does not provide possibilities of exceptions for non-group companies or for a de minimis limit (€3 million) below which a full deduction of interest expenses remains possible, like it is provided for in the ATAD.

This might especially become problematic for SMEs, who often do not have the choice between equity and debt financing.

Negotiations on Pillar II gridlocked

The negotiations on the introduction of a global minimum taxation of 15% for large multinational companies (Pillar II) in the Council of the EU have reached a deadlock. The Czech Finance Minister, who holds the presidency of the Council of the EU until the end of December, was unable to overcome Hungary's veto for the ECOFIN Council meeting on 4 October 2022. A negotiation on the implementing directive for Pillar II of the OECD agreement had not even made it onto the agenda.

At the beginning of September, France, Germany, Italy, the Netherlands and Spain had presented a joint statement in which they called for the rapid implementation of the effective minimum taxation and announced their support for the so-called "enhanced cooperation" mechanism, which requires the agreement of at least nine Member States. Nevertheless, the Czech Council Presidency wants to stick to unanimity and the path of negotiation.

During the meeting of the Parliament's Committee on Economic and Monetary Affairs (ECON) on 26 September, where some of the MEPs criticised the Council of the EU for wasting political momentum on Pillar II, EU Commissioner for Taxation Paolo Gentiloni reiterated once again that Hungary's veto would be overcome. He said that Hungary's refusal to agree to the compromise proposal must be defeated *"with all political and legal means we have at our disposal"*.

Anguilla, the Bahamas and Turks and Caicos Islands added to EU blacklist of tax havens

The Council of the EU decided on 4 October 2022 to add the Bahamas, Anguilla and the Turks and Caicos Islands to the EU blacklist of non-cooperative jurisdictions for tax purposes. These jurisdictions are being criticized for their lack of transparency, the existence of tax regimes that facilitate the creation of offshore structures and/or a failure to prevent tax base erosion and profit shifting.

Turks and Caicos Islands are listed for the first time while the Bahamas were already once listed in 2018 and Anguilla once in 2020. With these additions, the EU blacklist now consists of 12 jurisdictions.

In its decision, the Council of the EU regrets that "*these jurisdictions are non-cooperative on tax matters and invites them to engage with the EU's Code of Conduct Group in order to resolve the identified issues*".

The EU's grey list of jurisdictions with tax risks but which have committed themselves to take corrective measures has also been expanded with the addition of Eswatini and Armenia while Tunisia has been removed.

ETAF NEWS

ETAF reappointed as member of the Commission's VAT Expert Group

On Monday 12 September 2022, Dr. Stefanie Becker and Benoît Vanderstichelen were appointed as members of the Council's VAT Expert Group on behalf of ETAF. In the following three years, they will advise the European Commission on the preparation of legislative acts and other policy initiatives in the field of VAT. ETAF has been a member of the VAT Expert Group since 2019 and is delighted to have the possibility to continue the work within the group.

As a self-employed tax adviser in Germany, Dr. Stefanie Becker is member of Bundessteuerberaterkammer (BStBK) and their special VAT committee since 2016. She lectures on VAT law at the University of Augsburg, at the KNOLL Tax Law Institute in Munich (education of tax advisers) and also for several private educational institutions. Benoît Vanderstichelen is member of the Belgian Institute for Tax Advisors and Accountants (ITAA) with more than thirty years of experience in national and international VAT consulting. Since 1993, he is a scientific assistant at the Law Faculty of the Université Libre de Bruxelles (ULB), teacher at the I.C.H.E.C. (Enseignement Supérieur des Sciences Fiscales) and at the Solvay Brussels School – Economics and Management, and a regular lecturer at seminars.

ETAF is convinced that they can excellently share their practitioner's perspective within the expert group and contribute constructively to the finding of cross-border VAT solutions.

Save-the-date: ETAF conference on 7 December

ETAF
European Tax Adviser Federation

SAVE THE DATE

7 December 2022

ETAF Conference

VAT goes digital
– the tax practitioners' perspective

14:00 - 15:30 CET

@ NH EU Berlaymont Hotel,
Bd Charlemagne 11/19, 1000 Brussels

The European Commission will present on 16 November 2022 a package of proposals to modernise VAT reporting obligations and facilitate e-invoicing, update the VAT rules for the platform economy and introduce a single VAT registration in the EU. It is the so-called "VAT in the digital age" package.

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.

This conference will be the occasion to discuss with tax professionals the advantages and disadvantages of electronic reporting as well as the need for harmonisation at EU level. In this context, ETAF would also like to hear from the Commission how these new measures will affect tax professionals and what are their expected benefits.

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 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