European Tax Adviser Federation

ETAF NEWS

April 2020

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INTRODUCTION

Philippe Arraou, President of ETAF

Dear ETAF Members,
Dear friends,

The economic impact of the crisis caused by the Coronavirus outbreak will probably be the worst that our society has ever known. It is too early to fully comprehend all the consequences, at the public level as well as at the private level.

Tax professionals are required to adapt quickly to the new economic reality and to advise their clients as best as they can to navigate them through relief efforts taken by the States to face the crisis. We bear great responsibility in tackling complex and totally new topics.

How can small and medium sized businesses get access to loans and offer short-time work schemes to preserve employment? How can our clients file for extensions of their tax declarations? These are only some of the topics that keep us busy in these times. But, of course, on top of these new challenges, our normal day-to-day business goes on. This is time-consuming and costs a lot of effort but it is our duty. Without tax professionals, businesses would not be able to take the right decisions, and to meet their obligations. We have proven our flexibility and we will continue to stand by our clients' side while interacting with tax authorities to overcome this difficult period of time. Our commitment for the public interest is stronger than ever.

The European Commission has introduced some effective measures like the SURE instrument to support short-time work schemes and ensure liquidity for heavily affected SME's. These common European responses provide valuable support for direct and unbureaucratic support for the European economy.

In our view, more can be done: in such an extraordinary crisis situation, companies invest all their resources to solve the most pressing questions about their survival. Therefore, it would be a great help for the businesses to simplify any bureaucratic procedures and administrative effort as much as possible. We could learn from this crisis and look for better practices by dematerializing and automating certain processes. I have no doubt, that with the experience, these changes in the processes will remain, and the economy will be even more digital after the crisis.

On a higher level, European tax policy can play a crucial role to rebuild our economies and support businesses and individuals. I assure you that ETAF will actively contribute to shape new legislation so that our clients can recover. This challenging time can turn into a great opportunity for ground-breaking ideas.

With this in mind, stay healthy and safe!

Yours sincerely,
Philippe Arraou

PROFESSIONAL LAW

The European Commission's "one in, one out" principle does not lead to deregulation

The European Commission's activity is guided by five fundamental working principles: Whole of government approach, Geopolitical approach, One in, one out principle, Digital-oriented and Communicative. During the course of February several MEPs stressed out their concern that the principle of 'one in, one out' of the European Commission could lead to a weakening of the regulation within the Internal Market.

The "One in, one out" principle aims to ensure that regulation is targeted, easy to comply with and does not add unnecessary regulatory burden, in order to make people's lives easier and to allow businesses the time and space they need to grow. Every legislative proposal creating new burdens should relieve people and businesses of an equivalent existing burden at European level in the same policy area. This principle, which is still unclear for many MEPs, was created by German MEP Manfred Weber (EPP) during the 2019 European election campaign. It was subsequently taken up by Ursula von der Leyen, the President of the European Commission, and has since then been defended and introduced as a working principle for the European Commission.

In that framework and in order to shed some light over this subject, Internal Market Commissioner Thierry Breton gave an assurance during a discussion on the status of European SMEs, that there will be no more deregulation of the internal market or 'slashing' of environmental and social standards during his mandate. He explained that the principle of one in, one out "will not be used to deregulate and will certainly not be used to compromise on worker protection". Breton stated that the aim of the instrument is actually to modernize the European regulatory framework in the face of global developments, particularly those related to technology and the environment. He also took the chance to remind MEPs that the main regulatory and administrative burdens are still the regulations issued at national level, especially when Member States add regulations to the EU Directives they transpose.

The tax compliance role of tax advisers

The European Commission plans to publish an "Action Plan to fight tax evasion and make taxation simple and easy" in June 2020. This action plan will include initiatives to combat tax fraud, to facilitate compliance with the tax rules and to further exploit new technical developments and the increasing digitalisation in order to achieve these goals.

ETAF has 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 contrary to the general interest of the Union and therefore has to be combated with determination.

Tax advisers work very closely with their clients. They advise, explain and substantiate vis-à-vis the taxpayers why and which amount of taxes has to be paid. As a result, ETAF pointed out that the profession of tax advisers made an important contribution to tax acceptance and thus helped strengthening the tax compliance in our societies.

For a Member State, tax advisers can – and should – assume an important "bridging function" between the taxpayers and the tax authorities and hence make a significant contribution to securing the tax revenues of the Member State. The high quality of tax adviser's services and their best possible education and training do also play a very important role. In our opinion, it does not serve the tax compliance if tax advice is done by service providers who do not have the required qualifications for it. Only accurate and error-free tax declarations which fully comply with the tax rules can reduce the level of tax losses for Member States.

We call for the introduction of a tax advisor compliance obligation across Europe. In the Member States in which the profession is regulated, tax advisors are legally obliged to exercise their profession conscientiously, carefully and in full compliance with all applicable laws. However, this is not the case in all Member States. In its statement, ETAF stresses the special role of tax advisers as a link between taxpayers and tax authorities. Without tax advisers and their duty to comply, it would lead it significant tax losses due to incorrect tax returns. To strengthen the role of tax advisers across Europe is one of the strong starting points for a European solution.

European Commission's Action Plan on remaining barriers of the Internal Market

On 10 March 2020, Internal Market Commissioner Thierry Breton presented two relevant notices to the profession, namely a communication on existing obstacles within the internal market on the one hand and a long-term action plan for better implementation and enforcement of internal market regulations on the other.

Among the 13 barriers mentioned in the communication, the Commission addresses difficulties in obtaining information about other Member States, complex and stressful admission procedures for certain professional services, language barriers and a lack of acceptance of services originating from another country.

In the area of regulated professions, existing restrictions on access to and exercise of work are criticized as obstacles to the internal market. Here the Commission specifically mentions important features of the tax advisers' profession such as reserved activities, mandatory membership in professional chambers, shareholding requirements and the joint practice of several professions at the same time.

It is interesting that the Commission also takes up the different tax systems and the lack of harmonization in the tax area as one of the main barriers but does not mention that this actually requires highly qualified tax advisers who understand the complexity of the different systems in order to give a high-quality advice to their clients.

The long-term action plan focuses on how to remove the abovementioned obstacles and suggests several measures. Council and Parliament are asked to quickly adopt a legislative proposal for the notification procedure which was rejected by both legislators in 2018 due to legal inconsistencies and subsidiarity considerations. While the adoption of this proposal is pending, the Commission intends to take transitional measures to ensure that Member States comply with the existing notification requirement.

A task force consisting of representatives of the Member States and the Commission for the enforcement of internal market regulations is to be set up. Among other things the main aim of this task force will be to identify the "most pressing" obstacles, discuss horizontal enforcement issues and monitor the implementation of the action plan.

Member States should receive guidance for the national authorities, e.g. by updating the manual for implementing the Services Directive or publishing updated reform recommendations for professional services.

The action plan confirms that the Commission wants to focus on enforcing existing internal market rules and further develop existing instruments. New legislative projects are currently not in sight. However, the Commission is putting pressure on the pending notification procedure to be completed.

ECJ dismisses Belgian provisions of the accountant profession

Following an action brought forward by the European Commission, the European Court of Justice decided on 27 February 2020 that the Kingdom of Belgium had failed to fulfil its obligations under EU law. In its judgement, the ECJ declared that certain articles of the Belgian regulation were incompatible with article 25 of the Services Directive and violated the freedom of establishment of article 49 TFEU.

The contested provisions within the code of ethics of the Belgian Professional Institute of Approved Accountants and Tax Consultants (IPCF) prohibited the exercise of accounting services in conjunction with the activities of an insurance broker or agent, or of a real estate agent and any banking and financial services activities requiring registration within the Financial Markets and Services Authority. Furthermore, the code of ethics stated the incompatibility of the exercise of accounting activities together with any artisanal, commercial or agricultural activity. In the latter, the IPCF was entitled to derogate from this rule at the request of an IPCF accountant, provided that the independence and impartiality of the accountant were not jeopardized.

According to the ECJ, a full ban, as envisaged in this case by the Belgian regulation, is by its very nature beyond what is necessary to ensure compliance with the codes of ethics of the accountant profession. Regarding the proportionality of the ban in question, the ECJ claimed that alternative measures, such as a subsequent check by the professional chambers of a potential conflict of interest between the two activities is a less restrictive measure which could perfectly achieve the same goal and was thus disproportionate.

Tax measures to fight COVID-19

In mid-March, European Member States have started to adopt tax measures aimed at easing the impact of the economic crisis on SMEs. The Italian Government has been the first one suspending or deferring tax declarations and tax payments due by most affected taxpayers. Furthermore, the government led by Mr. Conte has also decided to suspend the time limits for clearance, control, verification, recovery and litigation activities carried out by the Revenue Agency. Other EU Member States (France, Belgium and the Netherlands) were among the first taking similar tax measures.

At EU level, the European Commission has carried out various tax-related measures to support the Member States during this first phase of the crisis. On 19 March, the Commission has adopted a Temporary Framework valid until the end of 2020 to allow Member States to use the full flexibility under State Aid rules to fight the economic consequences of the COVID-19. The temporary aids that the Commission will consider compatible with State Aid rules include selective tax advantages. These tax advantages will not fall under State Aid if they are granted to undertakings that find themselves facing a sudden shortage or even unavailability of liquidity. They should not exceed EUR 800.000 per undertaking and should be granted to companies that were not in difficulty on 31 December 2019. On 3 April, the Commission has published a decision to temporarily suspend customs duties and VAT on protective equipment, testing kits or medical devices such as ventilators to help Member States affected by the coronavirus pandemic. The measure applies for six months, with a possibility for a further extension and includes an indicative list of goods falling under the decision.

For its part, the OECD has published a list of tax measures that governments could take to alleviate the impact of COVID-19 on taxpayers. The suggestions range from waiving or deferring employer and self-employed social security contributions, payroll and taxes to providing tax concessions for workers in health and other emergency-related sectors. Furthermore, the OECD issued recommendation on VAT and on business tax. On 31 March, the OECD has published a global reference document listing the measures taken by the different tax authorities. The aim was to help tax administrations in considering domestic measures and in comparing them with measures taken by other administrations. The tax measures included in the document were grouped into 4 categories: (i) additional time for dealing with tax affairs (extension of deadlines, deferral of payments, etc); (ii) quick refunds to taxpayers; (iii) temporary changes in audit policies and ways to provide quicker tax certainty; (iv) enhanced taxpayers services and communication initiatives. The document is updated over time as more information becomes available.

The EU plan to relaunch the economy

Since the beginning of the lockdown undertaken by several Member States to fight the COVID-19 outbreak, the European institutions have started to design measures to support European SMEs. On 26 March, the European Parliament has approved a Regulation proposed by the European Commission regarding specific measures to mobilise investments in the health care systems of the Member States and in other sectors of their economies. These measures are meant to channel €37 billion from available EU funds to citizens, regions and countries hit the hardest.

In the meantime, the European Investment Bank (EIB) has decided to mobilise €40 billion to the impacted SMEs through various products available to financial intermediaries (commercial banks, national promotional banks, guarantee institutions). These measures complement those already taken by the Commission regarding the temporary framework for State Aid rules which enables Member States to use the full flexibility foreseen under State aid rules to support the economy.

On 9 April, the Finance Ministers of the 27 EU Member States agreed on a package of measures valued €500 billion to deal with the COVID-19 pandemic and the subsequent socio-economic crisis. The package includes the access to a credit line of the European Stability Mechanism for Member States that intend to use this credit line "to support domestic financing of direct and indirect healthcare, cure and prevention related costs due to the COVID 19 crisis". The credit line will not be subject to regular monitoring and would grant up to 2 % of the respective Member's 2019 GDP.

The Eurogroup has also endorsed the Commission's proposal establishing the SURE (Support to mitigate Unemployment Risks in an Emergency) instrument to help finance national short-time working schemes. The Eurogroup supported the initiative of the European Investment Bank to create a pan-European guarantee fund that could support up to €200 billion of financing for companies with a focus on SMEs. This package of measures has been enriched and validated by the European Council meeting on 23 April. Indeed, the 27 Heads of State or Government have agreed to work towards establishing a recovery fund linked to the MFF. The Commission is now tasked to elaborate a proposal that will raise the own resources ceiling of the EU budget to 2 % of GNI (instead of the current 1,2 %) and allocate the resources raised through "innovative financing instruments" to business sectors and territories most affected by the pandemic.

The tax priorities of the European Commission

During a speech held on 5 March, the Tax Commissioner Paolo Gentiloni clarified the European Commission's priorities for EU tax policy. Mr Gentiloni stressed the importance of the tax tools to be used to support the European Green Deal, by remarking the need for a modernized Energy Tax Directive (ETD). He suggested removing the implicit subsidies for fossil fuels, along with the tax exemptions for aviation and maritime industries. This measure should be complemented by a Carbon Border Adjustment Mechanism to address the risk of carbon leakage, putting a carbon price on imports to deter polluting processes from shifting elsewhere. To get these proposals through, the Commissioner is ready to use the provisions in the EU treaties that allow tax legislation to be adopted by qualified majority rather than by unanimity.

With regard to the digital taxation, Mr Gentiloni repeated that the target is to reach a global solution at OECD/G20 level. However, the Commissioner remarked that if global consensus could not be reached by the end of 2020, the Commission will be ready to propose an EU vision for business taxation rapidly, including a relaunch of the proposals to create a Common Consolidated Corporate Tax Base (CCCTB).

Mr Gentiloni also mentioned that EU transparency rules must cover the rapidly growing platform economy. He confirmed that the Commission will be making a proposal to that effect this summer, which is linked to the current public consultation on strengthening the exchange of information framework in the field of taxation.

Coming to the topic of tax competition, the Commissioner spoke in favour of a minimum effective taxation and confirmed that the Commission is planning to update the Code of Conduct on Business Taxation.

Finally, he mentioned that the Commission is working on a set of proposals to be launched next year to reduce double taxation, prevent and resolve administrative disputes, enhance cooperation between authorities and taxpayers across Europe, and simplify EU VAT compliance.

The new Commission's first tax moves

During the first quarter of 2020, the European Commission has published several tax policy initiatives which follow the direction traced by Commissioner Gentiloni. The most relevant of these initiatives is the Roadmap on the "Action Plan to fight tax evasion and make taxation simple and easy". The Roadmap will be developed into a Communication from the Commission with the aim of implementing fair taxation at EU level by tackling tax evasion and making compliance easier, which should be published in June. It suggests some concrete steps to be carried out against tax evasion: strengthening existing cooperation tools amongst tax administrations (e.g. Eurofisc) and introducing digital tools to improve analysis capacities of tax authorities. The Action Plan supports simplification and modernization of tax rules in the Single Market, which includes an enhanced dialogue between tax authorities and taxpayers with the aim of encouraging cooperative compliance.

In an effort to support the Green New Deal, the European Commission has launched two impact assessments which will likely become Commission legislative proposals in 2021. The revision of the "Energy Tax Directive" (ETD) aims at aligning taxation of energy products with the EU energy and climate policies in the context of the European Green Deal. It also targets an update of the scope and the structure of rates as well as a rationalization of the use of optional tax exemptions and reductions by Member States.

The second and more ambitious one explores the introduction of a "Carbon border adjustment mechanism". This mechanism would target a reduction of the risk of carbon leakage. The risk is connected with the transfer of production to third countries with low ambition for emission reduction and with the replacement of EU products by more carbon-intensive imports. The mechanism would ensure that the price of imports reflects their carbon content more accurately. According to some rumors, the Carbon tax revenues might be introduced as a new Own Resource for the EU budget, as already required by the European Parliament in its resolution on the 2021-2027 multiannual financial framework. However, it is also worth mentioning that some researchers have already criticized the proposal of the Commission to focus only on carbon-intensive and trade-exposed sectors.

OECD progresses on Digital Tax

The work of the OECD on the international tax reform has not been deeply affected by the COVID-19 outbreak in Europe. On the contrary, an OECD report published on 15 April highlights that after the economic crisis, *"addressing the tax challenges of the digitalisation of the economy and ensuring that MNEs pay a minimum level of tax (Pillar 2) will become more prominent"*. The OECD also reassured that the efforts of the Inclusive Framework to address such challenges is ongoing and well progressing. However, according to rumors, the G20/OECD July meeting to be held in Berlin could be postponed due to the pandemic, which might affect the original plan of reaching an agreement on the main political features of the reform by the end of 2020.

At the end of January, the OECD's Inclusive Framework on BEPS agreed to continue negotiations on the basis of a unified approach to digital taxation (Pillar I). The 122 jurisdictions issued a joint Statement on the Approach to Address the Tax Challenges Arising from the Digitalization of the Economy. The document includes some details on the scope, by introducing the concept of automated and standardized digital services whilst clarifying that the extractive industries and most financial services should be out of scope. The statement also mentioned that some key political points need to be further discussed, like the proposal for a safe harbor (coming from the United States), the binding nature of the dispute prevention and resolution mechanisms and the suggestions to take into account "digital differentiation" (to account for different degrees of digitalization between in-scope business activities) and "regional segmentation" (to account for regional factors in computing and allocating Amount A). The G20 Finance Ministers approved this document in their meeting in Riyadh and endorsed *"the Outline of the Architecture of a Unified Approach on Pillar One as the basis for negotiations and welcome the Progress Note on Pillar Two"*.

In February, the OECD has released an economic analysis highlighting that the reform of international taxation would generate up to 4 % additional global corporate income tax revenues, or $100 billion per year. The economic analysis considers the combined effect of Pillar 1 (allocating new taxing rights to market jurisdictions, regardless of physical presence) and Pillar 2 (setting a minimum level of tax for international businesses). It covers data from over 200 jurisdictions and 27.000 multinational groups. The analysis shows that the Pillar 1 reform would bring small tax revenue gains to most jurisdictions. The gains would be relatively more relevant for low and middle-income economies than for advanced economies.

TAX subcommittee still to be approved

The current pandemic has slowed down the European Parliament process to establish a permanent TAX subcommittee, which was expected to start working in spring 2020. The latest news confirms that the political group coordinators for the ECON Committee have already approved the creation of this subcommittee that should be chaired by MEP Paul Tang (S&D, the Netherlands). However, mandate and composition of the subcommittee are still unclear.

Nevertheless, MEPs have continued to work on EU tax policy. In the course of the January Strasbourg plenary, the European Parliament has approved its resolution on the European Green Deal. MEPs have welcomed the European Commission's proposal to review the Energy Taxation Directive and called on the Commission to design coordinated measures to close tax exemptions for aviation and maritime fuels in the Member States. The resolution also highlights that the fight against tax fraud, tax evasion, aggressive tax planning and money laundering has an important role to play in reaching the objectives of the European Green Deal and shaping a fair society and a strong economy.

Furthermore, on 22 January, 135 MEPs have signed a letter addressed to the members of the US Congress asking them to push the US government to have a productive attitude towards the OECD negotiations to re-shape the international tax system. The MEPs have pointed out the need for the EU and the US to work together for modernizing the international tax system in the framework of the negotiations at OECD level.

In April, eight MEPs have addressed another letter, this time to the EU Ministers sitting in the Competitive Council to require a relaunch of the Commission's proposal on a public Country-by-Country reporting (CbCR). The MEPs who signed the letter represent six of the seven political groups of the European Parliament (EPP, S&D, Greens/EFA, Renew Europe, ECR and GUE/NGL). They have highlighted that the proposal on a public CbCR dates back to 2016 and called for the European decision makers to act in a coordinated manner.

ETAF Conference cancelled

KSW joins ETAF

The Austrian Chamber of Tax Advisers and Auditors (KSW) joined ETAF as an observer member as from 1 January 2020. KSW is the umbrella organization for tax advisers and auditors in Austria and its members are specialists in tax advice, auditing, accounting and balance sheets. The ETAF Board and all members are delighted about this decision and looking forward to a constructive and fruitful collaboration with ETAF's newest observer member.

The KSW represents the interests of 7,865 accountants (5,900 tax consultants and 1,965 accountants) and is also in charge of around 3,600 trainees.

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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.