ETAF
European Tax Adviser Federation

ETAF NEWS

October 2019

INTRODUCTION

Philippe Arraou, President of ETAF

Dear ETAF Members,
Dear friends,

For the new mandate, the designated President of the European Commission, Ursula von der Leyen has outlined her tax policy priorities. We can clearly state a focus on fair taxation and a reform of the European corporate tax systems. She promises to simplify our tax systems – especially when it comes to cross border activities – and considers different tax rules and a race to the bottom in corporate taxation as harmful for the economy. We all agree with this statement. Von der Leyen also wants to make sure that digital businesses are taxed where they make their profits and thus contribute to a fairer tax system in the European Union. With Paolo Gentiloni taking over the tax and economy portfolio from Pierre Moscovici, we can expect a new action plan against tax evasion and tax fraud as well as a revival of the CCCTB.

In the field of VAT, I am pleased to announce that ETAF has been appointed as Member of the VAT Expert Group of DG TAXUD, with Benoît Vanderstichelen, the former President of our Belgian member IEC-IAB, and Stefanie Becker, member of the VAT board of BStBK. This is an excellent opportunity for ETAF to contribute to the EU VAT policies with our expertise during the next three years!

The five years' mandate of the Commission promises to be challenging for our profession, with new actions that are likely to change the way we work. ETAF will again commit itself to make sure that factors like quality, independence and consumer protection will be taken into consideration by policy makers.

On 5 December 2019, tax professionals, officials from the European Institutions, Member States and other stakeholders will discuss the future dynamics of EU tax policy at our next ETAF Conference in Brussels. A cordial invitation to everybody! The interaction between the EU and the OECD, especially regarding the taxation of the digital economy will be a hot topic to explore.

Either way, ETAF will ensure that our voice is heard throughout the European Union and with the help of our Members' expertise we will keep shaping tax policies in the EU.

Yours sincerely,
Philippe Arraou

PROFESSIONAL LAW

Commission consults ETAF on Internal Market Policy

On 9 September 2019, ETAF and the European Commission's Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW) held an intensive exchange of views on the future direction of internal market policies, especially for the Services Market. The meeting was an initiative of the European Commission.

In preparation of the new Commission, it is becoming increasingly apparent that the Directorate General has chosen a different way of finding policy solutions. It started to launch a new bottom-up approach, engaging in an in-depth and inclusive debate with the Member States and various stakeholders.

ETAF welcomes this new approach as a step into the right direction. During the meeting, ETAF highlighted that the services market in the EU is in principle open. Anyone can enter the profession of a tax adviser, an expert-comptable or a dottore commercialista in the respective Member State as long as the necessary conditions are fulfilled. Concerning the arguments of the Commission on the generation of growth, ETAF asked the Commission for consideration that the Member States with a relatively high degree of regulation do not necessarily belong to the "low performers" in the EU. Rather the opposite is the case if we look at France, Germany, Belgium, Austria and Italy, for example. This fact should be taken into account when developing future internal market policies. Moreover, ETAF pointed out that the existing regulatory requirements of the Services Directive and the Professional Qualifications Directive have been fully implemented in the ETAF Member States.

Complementarily, ETAF explained the role of the profession, the advantages it brings to our societies, namely by securing tax revenues, and how professional regulations can make a worthy contribution in the fight against tax evasion.

Asked about a "key-message" to the new Commissioner, ETAF wished to respect the principle of subsidiarity and, especially when it comes to Services, to follow the strategy of a "Unity in Diversity" – as the European Union generally is.

Finnish Presidency wants to revive trilogue negotiations on the Notification Procedure

The Finnish Minister for Employment, Timo Harakka, said in the European Parliament in early September 2019 that the proposal for a directive establishing a notification procedure was "essential to ensure the efficiency of the internal market of services". According to the Finnish Presidency, national rules across a range of professions would run the risk of violating the objectives of the Services Directive and the existing notification procedure of the Services Directive would not work.

The Commission proposal of January 2017 for an own notification Directive foresaw not only to oblige the Member States to notify all new draft legislation or amendments to the Commission in advance, but to implement further steps like a binding decision and a reversal of the burden of proof. The Council had rejected this proposal because of various legal and administrative reasons. A later proposal of the Commission to introduce a formalised notification procedure on the legal basis of the already existing Article 15(7) of the Services Directive also met with little enthusiasm in 20 of the 27 Member States.

In the framework of first hearings on the Commissioner appointment, the Directorate General stated that it would not intend to "re-open past wounds" regarding the Services Directive, but rather strengthen the implementation of the existing provisions. The Notification Directive was not mentioned at all. The topic was not on the agenda of the Competitiveness Council on 26 and 27 September 2019.

TAX LAW

The new mandate: the Tax priorities of the Commission and the Tax committee of the Parliament

The von der Leyen Commission is taking shape with Paolo Gentiloni (former Italian Prime Minister from 2016 to 2018) who shall inherit the portfolio of the current French Commissioner Pierre Moscovici, which included Tax and Customs. In her letter to the Tax Commissioner-designate, President von der Leyen described the tax priorities of the next European Commission, pointing out the necessary review of the Energy Taxation Directive, the proposal of a Carbon Border Tax and the need for progress on the fight against tax fraud, tax evasion and tax avoidance. Based on these proposals, during his hearing before the ECON Committee, Gentiloni stated his personal political commitment on a possible new tax Action Plan tackling "environment, corporate, digital and tax fraud". Furthermore, he declared to be in favor of using Article 116 of the Treaty on the Functioning of the European Union (TFEU), that deals with the distortions of the internal market, to shift towards the ordinary procedure in certain tax files.

In the meantime, the Members of the Economic and Monetary Affairs (ECON) Committee of the European Parliament have elected Irene Tinagli (S&D, Italy) as Chair of the Committee. Ms. Tinagli, an academic with a PhD in public policy and administration from the Carnegie Mellon University in Pittsburgh and specialization in economic development and innovation, will replace in this role Mr. Roberto Gualtieri, who has joined the newly created Italian government as Finance Minister. Furthermore, in mid-September the Members of the ECON Committee also reached an agreement in principle on the creation of a permanent sub-committee on taxation. There is still uncertainty on the size and the mandate of the sub-committee: the Greens/EFA Group prefers to keep the focus on fighting against tax evasion, financial crime and money laundering, while other political groups are considering the possibility for the subcommittee to issue opinions on legislative tax texts.

Taxing the climate change: the options on the table

The topic of climate change is more and more at the core of the discussion at global level. The European Commission is ready to propose various alternatives to tackle the issue from different angles. A first action should be a proposal to review the Energy Taxation Directive (ETD) from 2011 and was meant to avoid energy tax competition stemming from the relocation of consumers of energy (i.e. businesses) to Member States with more beneficial tax regimes. The ETD sets minimum levels of taxation, while allowing Member States to apply a national rate above these minimum rates, to introduce additional taxes and to grant exemptions and reductions. However, an evaluation report published in September by the Commission highlighted the lack of relevance and effectiveness of the measure, since the ETD is no longer in line with the current use of energy products. The minimum tax rate included only accounts for an insignificant share of the final prices whilst the optional tax exemptions further fragment the internal market. During the informal ECOFIN of 13-14 September, EU Finance Ministers have already agreed that energy taxation might be a tool for achieving EU climate and energy objectives, though they did not take any decisions on the revision of the ETD. Other possible initiatives include the one already announced in France, where in July the French Transport Minister Elisabeth Borne announced an "eco-tax" on flight tickets (between €1,5 and €18) that would be progressive based on the flight class and on the distance covered.

The actions of the OECD and the EU to tax the digital economy

Taxation of the digital economy remains high on the agenda of the European Commission for the next mandate. Commissioner-designate Gentiloni confirmed during his hearing before the ECON Committee that he was ready to take action at the end of 2020 if no agreement was reached at OECD/G20 level. The Director General for Taxation and Customs Union is ready to work on a new proposal in the third quarter of next year. In the meantime, on 9 October the OECD has published the Secretariat Proposal for a "Unified Approach" under Pillar One. According to Pascal Saint-Amans (OECD Director of the Centre for Tax Policy and Administration), the OECD is trying to build a political agreement at G20 level on the unified "pillar one" proposal "where you don't have big losers or big winners" among countries. The "Unified Approach" proposes a new set of rules on how to allocate the profit of highly digitalized multinational groups between countries by considering the place of residence of the customers. The OECD is trying to avoid the proliferation of unilateral measures similar to the ones recently enforced by France. In the course of the summer, the US was indeed ready to impose tax measures against French wines as retaliation against the digital taxation introduced by Macron. However, the two countries reached an agreement setting up a refund mechanism for US companies over the French tax and even announced the creation of a technical working group to design a common proposal on digital taxation by the end of 2019.

Commission unsatisfied by the Member States' tax administrative cooperation

On 16 September, the European Commission has released an Evaluation of the Council Directive 2011/16/EU on administrative cooperation in the field of taxation. Even though the document highlighted the rules on the automatic exchange of information have proved to be useful, it remarked that not all the Member States were exploiting the tools in the same way. Therefore, the Commission has encouraged the Member States to keep working together and to use the information they exchanged in a more efficient way. Finally, the Commission has urged the Members to collect better quantitative evidence of the costs and benefits of the intervention, in order to concur to deeper future evaluation of the implementation of the Directive.

On 1 July, the Council Directive (EU) 2017/1852 on Tax Disputes Resolution Mechanisms entered into force. It is designed to facilitate the resolution of tax disputes by forcing Member States to take conclusive decisions. These rules were welcomed by ETAF since they should provide more certainty to taxpayers (businesses and citizens) in resolving disputes related to the interpretation of tax treaties, covering issues related to double taxation.

Seemingly similar state aid cases interpreted differently by the General Court of the EU

The General Court of the EU has recently issued two opposite decisions on two important tax-related state aid cases. In the case of Starbucks, the General Court annulled the Commission's decision that the Advance Price Agreement (APA) between Starbucks Manufacturing EMEA BV and the Dutch Tax Authority constituted aid that was incompatible with the internal market. On the other hand, the judgement in the FIAT case confirmed the validity of the Commission's decision that the tax ruling issued by the Luxembourg Tax Authority in favor of Fiat Chrysler Finance Europe constituted state aid under Article 107 of the Treaty of Functioning of the European Union, and therefore was incompatible with the internal market. Furthermore, in September the Commission has opened in-depth investigations to determine whether the tax rulings on excess profit granted by the Belgian tax authority to 39 multinational companies between 2005 and 2014 have given them an unfair advantage. The investigations follow the General Court's February 2019 annulment of the Commission's decision concluding that the same tax rulings formed a part of a Belgian aid scheme that was illegal under EU state aid rules.

The fight against tax evasion and avoidance: the case of VAT

The "Study and Reports on the VAT Gap in the EU-28 Member States" released by the Commission in September has underlined that, though decreasing compared to the year before, the VAT Gap in the EU still amounts to €137 billion Tax revenues in 2017. The VAT Gap is defined as "the difference between the expected and actual VAT revenues" and includes fraud, evasion, insolvencies, bankruptcies, administrative errors, and tax optimization. One of the measures that the European Commission has put in place since 2015 to try to resolve the issue is the EU VAT Mini One Stop Shop (MOSS), a system to collect and transmit VAT for telecommunications, broadcasting and electronic services across 28 Member States of the EU. The latest analyses of the Commission showed that the VAT collected via the MOSS has constantly increased between 2015 (€3 billion) and 2018 (€4,6 billion).

The need to work on VAT-related tax evasion has been further pointed out by the European Court of Auditors' July report highlighting the vulnerability of e-commerce transactions to VAT and customs duties evasion. In particular, the report remarks that the controls for collection of VAT carried out by the national tax authorities are weak, recommending the Commission to monitor the extent to which non-Member States respond to requests from Member States in accordance with mutual administrative assistance agreements between them.

ETAF appointed as member of the European Commission VAT Expert Group

On Wednesday 2 October, the Director-General for Taxation and Customs Union of the European Commission appointed Benoît Vanderstichelen and Stefanie Becker as members of the VAT Expert Group on behalf of the European Tax Adviser Federation (ETAF). The mandate of the VAT Expert Group will run from 1 October 2019 until 30 September 2022.

Benoît Vanderstichelen is a member of the Belgian Institut des Experts-Comptables et Conseils fiscaux (IEC-IAB) with thirty years of experience in national and international VAT consulting. Mr. Vanderstichelen has authored numerous books in the field of VAT such as the “Nouveau Guide Pratique de la TVA”. He has been member of the editing committee of the “Revue Générale de Fiscalité” since 2001 and has published several articles in the field of VAT in specialised periodicals. Mr. Vanderstichelen is a scientific assistant at the Law Faculty of the Université Libre de Bruxelles (ULB), teacher at the ICHEC-ESSF (Enseignement Supérieur des Sciences Fiscales) and the Solvay Brussels School – Economics and Management, and a regular lecturer at seminars.

Dr. Stefanie Becker is a member of Bundessteuerberaterkammer (BStBK) with more than ten years of experience as a VAT specialist in national and international tax consulting. Dr. Becker is also a member of the of the VAT board of BStBK, former member of the EU VAT Expert Group (2016-2019) and Assistant Professor in VAT at the law faculty of Augsburg University (Germany). She has authored various articles and books on VAT.

The VAT Expert Group is responsible to advise the European Commission on the preparation of legislative acts and other policy initiatives in the field of VAT and to provide insight concerning the practical implementation of legislative acts and other EU policy initiatives in the field of VAT.

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SAVE THE DATE

ETAF Tax Conference on 5 December 2019

Future dynamics of EU tax policy

5 December 2019

14:00 h – 18:00 h
Brussels

PANEL I

Dimension and challenges of taxation in Europe

PANEL II

Exploring the potential between the EU and the OECD in tax policy

Simultaneous interpretation EN-FR-DE
The conference will take place in Brussels
You can register under **info@etaf.tax**

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ETAF www.etaf.tax is a European umbrella organisation for 280,000 tax professionals from France, Germany, Italy, Hungary, Romania and Belgium. 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.