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## INTRODUCTION

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### Philippe Arraou, President of ETAF

Dear ETAF Members,  
dear friends,



first of all, I am very pleased to inform you that the General Assembly of ETAF, in its annual meeting on 23rd May, gladly welcomed three new professional organisations as ordinary ETAF Members from 1st July 2018 on. These are the institute of Belgian Chartered Accountants (Institut des Experts-comptables et des Conseils fiscaux / Instituut van de Accountants en de Belastingconsulenten - IEC-IAB), the Romanian Chamber of Certified and Chartered Accountants (Corpul Expertilor Contabili si Contabililor Autorizati din Romania - CECCAR) and the Association of Hungarian Chartered Tax Experts (Magyar Okleveles Adószakértők Egyesülete - MOKLASZ). The growth of ETAF by three Member States reinforces the success of our work over the past 2 years. At the same time, it gives us great encouragement to continue this course together with our new Members. I am absolutely convinced that the new Member Organisations will make a major contribution to ETAF with their expertise and I am very much looking forward to closely cooperating with our new colleagues.

Coming to the “Services Package” of the European Commission which was capable of strongly affecting our professional standards and was therefore under our highest vigilance, it was already good news that the “Services e-card” project of the European Commission has failed in March 2018. Now, a further positive development can be recorded in the proportionality test. Even though it was not possible to prevent this Directive as such, three positive elements could successfully be inserted into the Directive in the final round of the trilogue negotiations: Firstly, as a general clause, the question if and how a Member State regulates a profession will remain under the competence and the discretion of the Member States. Secondly, two very useful justification clauses for compulsory chamber membership and shareholding requirements have been inserted into the considerations of the Directive.

With regard to tax law, the Commission’s proposals on the taxation of the digital economy have triggered interesting, but also quite controversial debates on a high international level. ETAF moved itself to the very centre of this debate by organising a very successful conference on this subject with lively discussions, gathering representatives of the European Commission and of the Council, several MEPs as well as professionals from various Member States.

Value added tax has been another hot topic in the course of the last months. On the one hand, the European Commission has recently proposed to amend the EU rules on the VAT-system to make it more fraud-resilient. On the other hand, the Council is struggling to reach an agreement on a set of proposals launched to introduce short-term quick fixes to adjust specific issues pending the introduction of a new definitive VAT system.

I hope you will enjoy reading our Newsletter!

Yours sincerely,  
Philippe Arraou

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## PROFESSIONAL LAW

### **Positive interim balance on the Services Package**

One year and a half have now passed since the publication of the Services Package of the European Commission in January 2017. A lot has happened in the legislative procedures since then, so that it’s time to draw an interim balance and to have an outlook.

#### **Services e-card definitely failed for this legislative term**

Concerning the project of a “European Services e-card”, there is further confirmation that this project can - at least for the remaining parliamentary term until 2019 - definitely be regarded as failed. After rejection through the European Parliament (see our Newsletter April 2018), some attempts to take up this topic again could be observed, but they did not prove successful.

From the very beginning, ETAF has pleaded for a withdrawal of the proposals because our professional standards would have been undermined by the introduction of a country-of-origin principle through the backdoor, and because such a services e-card would have caused a disproportionate, huge amount of bureaucracy.

#### **Proportionality test: positive elements introduced**

Although the Directive on the proportionality test could not be halted as such, it was possible to introduce some positive elements into the Directive. First of all, it is expressly stated in Art. 1 of the Directive that in the absence of harmonisation of a profession, it lies in the Member States’ competence and margin of discretion to decide “whether and how to regulate” a profession.

Furthermore, special proportionality criteria for the obligatory chamber membership and the shareholding requirements could be introduced into the considerations of the Directive. These are as follows:

For obligatory membership (cons. 28):

“Compulsory membership of a professional organisation may be considered appropriate where professional organisations are entrusted by the State with safeguarding the relevant public interest objectives, for example in supervising the legitimate practice of the profession, or organising or supervising continuous professional training.”

For shareholding requirements (cons. 28):

“Where the independence of a profession cannot be adequately guaranteed by other means, Member States could consider the application of safeguards, such as limiting the shareholding of persons outside the profession or providing that the majority of the voting rights are to be held by persons practising the profession, as long as such safeguards do not go beyond what is necessary in order to protect the public interest objective.”

The final trilogue text has been adopted by the EP plenary on 14 June 2018.

### **Notification procedure: trilogue negotiations are ongoing**

On the other hand, the trilogue negotiations on the Directive on a notification procedure are more controversial and a rather lengthy process. From the point of view of the profession, one of the main problems is the discussed possibility of the European Commission to issue binding decisions against a Member State in the course of the procedure. This would lead to an uncontrollable reversal of the burden of proof to the detriment of the Member States. ETAF and its Members call on the negotiators to avoid unclear legal consequences for the Member States.

The negotiations will continue under the Austrian Council Presidency which starts on 1st of July 2018.

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## TAX LAW

### **Taxation of the digital economy: political status**

On 21 March 2018, the European Commission has published two new [legislative proposals](#) regarding the taxation of the digital economy. The Commission’s proposal on a short-term solution envisages the introduction of a tax on certain revenues from digital activities. The long-term solution of the Commission aims at reforming the corporate tax rules to include the concept of a digital presence in order to tax the profits generated in a territory where a company does not have any physical presence.

In the last three months, the positions of the various Member States are taking shape and it is now possible to divide two groups of countries. The ones in favour of the proposals are France, Italy, Spain, Portugal and Poland. On the other hand, [Denmark](#), [Finland](#), [Sweden](#), Ireland and [Luxembourg](#) are rather pushing for a solution at OECD level and do not favour the proposed short-term solution.

While ETAF shares the Commission’s position that the current international tax rules do not allow for a fair competition between traditional and digital companies, the two-step approach with a short-term and a long-term solution is raising doubts within ETAF Members. ETAF believes that focussing on one long-term solution and working closely within the OECD framework would contribute to the principle of better regulation and, at the same time, supports the EU taking on a leadership role in taxing the digital economy.

### **TAX3 workshops on cryptocurrencies, taxation of the digital economy and aggressive tax planning**

On 7 June 2018, the TAX3 committee held a workshop on “taxation and fight against money laundering: cryptocurrencies, digitalisation and the European semester”. The first panel was attended by Prof. Robby Houben (Antwerp University) who examined the implications of virtual currencies for financial crimes. “The key problem is the total anonymity provided by

the transactions undertaken in virtual currencies” he said, proposing as a possible solution the set-up of a compulsory license to carry out transactions in cryptocurrencies. The second panel focused on the “impact of digitalisation on international tax matters”. Ms Eli Hadzhieva (Dialogue for Europe) and Prof. John Vella (Oxford University) presented the state of play, key issues and challenges of the taxation of the digital economy. Ms. Hadzhieva underlined the different positions of the Member States over the proposals that the European Commission has delivered on 21 March 2018, whilst Prof. Vella suggested tackling the issue by moving towards a system which seeks to tax companies where their consumers are located (i.e. introducing a destination-basis principle). In the course of the third panel, Mr. Valère Moutarlier (Director at DG TAXUD) reported on the Country-specific recommendations against aggressive tax planning within the Member States published by the European Commission on 23 May 2018.

On 21 June, another public hearing was held by the TAX3 committee about the “Lessons learnt from the Paradise Papers”. In the first panel Mr Achim Pross (OECD), Ms Juliette Garside (The Guardian) and Ms Lucía Rossel Flores (COFFERS) discussed with MEPs about the efforts of the EU and the OECD to develop regulation to combat and prevent fiscal frauds and on the possible enforcement of a new EU regulation to protect whistle-blowers. The second panel involved Ms Irene Yates (McDonald’s) and Ms Patricia Johnson (Nike) explaining the international tax structures of the two multinationals. In particular, MEP Kofod questioned Ms Yates about the decision of McDonald’s to change its holding structure in Europe and to move the headquarter from Luxembourg to the UK in 2016, mentioning the report “Unhappier meal” published in May 2018 by trade unions. Ms Yates stated that there are some inaccuracies within the mentioned report and explained that in 2015 the new CEO decided to reorganise the business of McDonald’s grouping together countries around the world based on common market characteristics rather than on the basis of geographical proximity.

## VAT package proposals

On 25 May 2018, [the Commission has proposed](#) detailed technical amendments to the EU rules on Value Added Tax (VAT) to make the system more fraud-resilient. The revision proposed by the two directives defines a new VAT system by amending 200 of the 408 articles of the VAT Directive. The two directives respectively concern:

- the detailed technical measures for the operation of the definitive VAT system for the taxation of trade between Member States; and
- the period of application of the optional reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud and of the Quick Reaction Mechanism against VAT fraud.

The simplification introduced by the directives regards the new principle of “single taxable supply” (i.e. destination principle) which will ensure that goods are taxed in the Member State where the transport of the goods ends. This rule shall put an end to the actual split of the trades into two transactions: a VAT-exempt sale in the Member State of origin and a taxed acquisition in the Member State of destination. Furthermore, the amendments introduce an online portal (or “One Stop Shop”) for all business-to-business EU traders to sort out their VAT. These changes will also reduce the administrative burden for companies that sell goods to other companies in a different Member State.

## ECOFIN still to decide on three VAT proposals

During the ECOFIN of May and June, the finance ministers of the Member States reached an agreement on the proposal for strengthening administrative cooperation in the field of VAT and on a directive to make the minimum normal VAT rate of 15% currently in force permanent. However, the Finance ministers failed to reach an agreement on three VAT-related dossiers. The Council was expected to agree on the introduction of four short-term “quick fixes” of the current transitional VAT arrangements, to reduce the VAT rates of e-publications and to approve an optional reversal

of liability to prevent fraud. The content of the proposals is summarised as follows:

- The [proposal on the four short-term quick fixes](#) is set to adjust specific issues pending the introduction of a new definitive VAT system. These four fixes relate to call-off stock, the VAT identification number, chain transactions and proof of intra-EU supply. The introduction of a fifth quick fix (a VAT exemption for group of taxable persons that pool services and share costs) is still under discussion between the Member States.
- The [proposal that would allow Member States to apply non-standard VAT rates to electronic publications](#) is aimed at aligning VAT rules for electronic and physical publications, thereby contributing to the EU's 'digital single market' plan. Under the current VAT rules (directive 2006/112/EC), electronically supplied services are taxed at the standard VAT rate (minimum 15%), whereas publications on a physical support may benefit from non-standard rates. For physical publications – books, newspapers – Member States currently have the option of applying a 'reduced' VAT rate (minimum 5%). Some have been authorised to apply 'super-reduced' VAT rates (below 5%) or 'zero' rates. The directive would open the possibility to Member States that so wish to apply reduced VAT rates to electronic publications. Super-reduced and zero rates would only be allowed for Member States that currently apply them to 'physical' publications.
- The [proposal allowing Member States to temporarily apply a generalised reversal of VAT liability](#) aims at implementing the so-called 'reverse charge' mechanism to better prevent VAT fraud. It involves shifting liability for VAT payments from the supplier to the customer, thereby derogating from the general principles of the EU's VAT system. The generalised reverse charge mechanism would apply to all domestic supplies of goods and services above an invoice threshold of €10.000.

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## MISCELLANEOUS

### **ETAF grows by three new members**

On 23 May 2018 the General Assembly of ETAF welcomed three new members from Belgium, Hungary and Romania into the European Tax Adviser Federation. After a period of being an observer member to the organization and building a very fruitful and trusting relationship with ETAF, the Belgian IEC-IAB will finally become a full member from 1 July 2018. MOKLASZ, a smaller but highly specialized tax adviser organization from Hungary as well as the Romanian CECCAR, the largest professional organization in south-east Europe with over 40.000 members will join ETAF from July, too.

In addition, the General Assembly approved the accounts of the fiscal year 2017 and the budget for 2018/2019 and discharged the Board and Treasurer.



## ETAF Conference on how to tax the digital economy: searching for common solutions

On 23 May 2018, over 100 participants from the EU institutions and multiple Member States joined the conference on “fair taxation in a digitalized world” hosted by ETAF in Brussels.

Main subject of the conference was the Commission’s proposal on taxing the digital economy of 21 March 2018. The ETAF conference was an ideal setting for Director General at DG TAXUD, Stephen Quest, to explain the background and the purpose of the Commission’s proposals in a keynote speech.

In his welcome address, the ETAF President Philippe Arraou highlighted that the taxation of the digital economy is one of the favorite topics of ETAF since its very first day, “when we provided Commissioner Moscovici with a position paper on the taxation of the digital economy at our launching conference”. Furthermore, President Arraou welcomed the Commission’s proposals as a basis for discussion and further developments. Following the welcome address, Mr Quest referred to the digitalisation of the economy as a fundamental aspect of the growth of the EU. However, Quest highlighted that one of the pillars of the work of the European institutions was to ensure fairness within the EU. “These positive developments of the digital economy have exposed the outdated nature of the international tax framework”, Quest stated. Finally, he clarified that the comprehensive solution aims at tackling two fundamental problems connected with digital activities: “where to tax” and “what to tax”. With regard to the interim tax, Quest spelled out that a tax on the revenues from certain digitalised services represents a common solution to avoid the fragmentation of the EU market.

During the first panel, stakeholders and European decision-makers further discussed the proposals of the Commission, offering their different angles. The second panel was focused on the TAX3 committee; here MEPs from different groups discussed with the professionals not only about the taxation of the digital economy, but on the role of tax advisers in tackling the issue of the complexity in international taxation.

Overall, the ETAF event offered an excellent outlook on the various positions of governments, MEPs and professionals on the Commission’s proposals on taxing the digital economy. It allowed ETAF to clarify its positions and emphasize the importance of deontology and ethics that are the common ground of the members of ETAF.



**Disclaimer:**

European Tax Adviser Federation AISBL – ETAF  
Rue des Deux Eglises 35 | 1000 Brussels  
Phone: +32 2 2350-105 | Email [info@etaf.tax](mailto:info@etaf.tax) | [www.etaf.tax](http://www.etaf.tax)

Head of Office: Michael Schick

ETAF [www.etaf.tax](http://www.etaf.tax) is a European umbrella organisation for 250,000 tax professionals from France, Germany, Italy 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.

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