Tax Policy Bulletin
from International Tax Services

European Commission reviewed work programme for 2020 - impact of COVID-19 and expectations for direct and indirect taxes

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In brief

The first annual work programme of the new European Commission was published in January. The COVID-19 crisis has led to a general reassessment of the program, but the Commission is not expected to delay its most important tax-related projects. Initiatives on ‘Fighting tax evasion’ and ‘Business taxation for the 21st century’ are strategic priorities.

The programme more generally has a significant focus on climate and digital transitions and the effects of both on the European economy. This of course also impacts tax revenues and tax systems. Commissioner Gentiloni stated on 5 March that social justice and fair taxation will underpin all Commission tax policy proposals.

In addition to policies on sustainability and technology, and having reviewed proposals made under previous mandates but not yet agreed by the European Parliament and Council, the Commission has identified initiatives that the legislative process should prioritize. The Commission also will continue to push for more harmonised tax policy that potentially includes a digital tax, a carbon border adjustment mechanism, an action plan to curb direct tax/VAT evasion, and the resurgence of a financial transactions tax. Also of interest from a tax perspective are proposals on corporate reporting (on non-financial information in particular).

While the work programme does not include specific references, the Commission will remain involved in many ongoing State aid cases. On the VAT side, the Commission’s work on simplification for business and tax authorities and the fight against VAT fraud will continue, including evaluating how modern technology can help achieve these objectives.

In detail

Background

The new Commission's 46-page 2020 Work Programme set out the actions the Commission wanted to take in the first year "to turn the **Political Guidelines** of President von der Leyen into tangible benefits for European citizens, businesses and society".

The President outlined six headline ambitions, relating to:

1. a European Green Deal
2. a Europe fit for the digital age
3. an economy that works for people
4. a stronger Europe in the world
5. promoting our European way of life, and
6. a new push for European democracy.

A full list of the 43 new policy objectives under the six headline ambitions are in **Annex 1** of the work programme.

The twin ecological and digital transition themes provided what the work programme described as "a unique opportunity to lead the transition to a fair, climate-neutral, digital Europe". While the COVID-19 pandemic has made a re-assessment inevitable, the strategic tax priorities will remain high on the agenda. Some of the other tax policy work likely will continue whether featured in the programme or otherwise is in progress. This Bulletin explores some of the new policy initiatives as well as work ongoing in existing files that are of significant interest from a direct and indirect tax perspective.

Business taxation for the 21st century

Details of the part of new Policy Objective *22 Effective taxation* that comprises *Business Taxation for the 21st century* (non-legislative, Q2 2020) are not known yet, but the Commission provides the following context:

> "*Technological change and globalisation have enabled new business models. This creates opportunities but also means that the international corporate tax framework has to keep pace."*

It is expected to include the EC strategy for implementing agreements on taxation of digitalisation at the OECD level, as well as setting out intentions to move unilaterally if no global agreement is reached or an 'agreement on paper' is not sufficiently ambitious. Under the German presidency in the second half of 2020 a draft directive (ATAD3?) is expected. A new Digital Services Act set out as Policy Objective 11 separately will reinforce the single market for digital services and help provide smaller businesses with the legal clarity and level playing field they need (for which the work programme states "Protecting citizens and their rights, not least the freedom of expression, will be at the core of our efforts"). In a 5 March 2020 meeting, Commissioner Gentiloni made it very clear that the Commission supports the OECD work, but also is prepared to 'go alone', both on the 'digital economy' and the minimum taxation. Gentiloni also revealed that a proposal to address the tax challenges around the digitisation of the economy may differ from the Commission's earlier directive proposals.

The finance ministers of France, Germany, Italy, and Spain have put their names to a statement calling for countries to agree on solving the digital economy's tax challenges by the end of 2020. The statement refers to the challenge to create a new international tax system that is ready for the 21st century. It also reiterates the view that there are two key problems that must be pursued (those being addressed in Pillars One and Two by the OECD/G20 Inclusive Framework), broadly that:

- profits of large technology companies – "be they American, European or Chinese" – are not adequately taxed, and
- companies are still using aggressive tax planning strategies to shift profits to low-tax jurisdictions, in turn distorting competition.

Furthermore, calls on the Member States for progress on the Common Consolidated Corporate Tax Base (CCCTB) are likely to be included in the EC strategy.

Action Plan to fight tax evasion and to make taxation simple and easy

The other part of Policy Objective 22 is an *Action Plan to fight tax evasion and to make taxation simple and easy* (legislative and non-legislative, Q2 2020). A roadmap provides some additional detail on likely action, including switching from exchange of information to a model where tax data can be shared, and taxes even levied, in real time.

In that regard, the Commission originally scheduled a conference for 20 April 2020 entitled "Making Tax Work – Fighting tax evasion and ensuring compliance." As a result of COVID-19 this has been postponed, with a provisional new date of 20 September 2020. This conference should shed more light on the Commission's plans in this area, which are expected to cover both direct and indirect tax, including further elaboration on whether and how modern technology can be used efficiently to make the tax system simpler and less vulnerable to fraud.

An *External Strategy 2020* will focus particularly on tax good governance in non-EU countries.

We understand that the European Parliament has reached a political agreement regarding the mandate of an Economic and Monetary Affairs Committee (ECON) permanent sub-committee on tax evasion and financial crime, but details have yet to emerge.

The Commission has already published a roadmap and consultation on reviewing the Directive for Administration Cooperation in taxation (DAC) to further improve the exchange of information between competent authorities. The initiative - commentators are already calling it DAC7 - would aim partly to address revenue losses caused by some taxpayers not reporting profits earned via online platforms (i.e., part of the sharing or gig economy - see further below). The consultation also covered the advantages of joint tax audits and closed 6 April 2020.

The main part of the consultation concerned planned reporting obligations for platforms, which for the most part currently are focused on the direct tax side. Without any changes this proposal might lead to a dual reporting system (one for direct tax, and one for VAT based on Article 242a of the VAT Directive), which potentially would create an additional and duplicative administrative burden for platforms. Therefore, PwC decided to use the consultation as an opportunity to highlight the benefits of a uniform and consolidated reporting regime, extending what is already envisaged on the VAT side by a limited number of important additional aspects required on the direct tax side. Our main response to the consultation is set out in a letter which is available on our website.

It is unclear if there would be additional initiatives impacting intermediaries other than online platforms.

Public country-by-country reporting

Policy Objective 22 *Financing the sustainable transition* includes a *Review of the Non-Financial Reporting Directive* (legislative, Q4 2020). The Commission has published a consultation document addressing a broad variety of questions, including quality of information, standardisation, materiality, digitisation, location of the disclosures, companies in scope, administrative burden, and assurance. Inclusion of more tax information by jurisdiction, typically referred to as public country-by-country reporting (public CbCR), is not specifically mentioned.

The institutional file currently is still blocked in Council since the Finnish Presidency was unable to reach agreement on its compromise proposal, with controversy still unresolved concerning the legal basis - broadly, whether it is a tax or an accounting/non-financial reporting matter (and therefore, currently, whether it needs unanimity or a qualified majority to proceed). The Croatian Presidency for the first half of 2020 now will have to decide how to prioritise the file. In a 12 April letter, leading members of the European Parliament urged Member States, referring to COVID-19, "to act now and put every effort to ensure that pCBCR is brought back on the Competitiveness Council's agenda with a view of delivering a long awaited agreement".

That latest proposal states that the information should be limited to what is necessary to enable effective public scrutiny, in order to ensure that disclosure does not create disproportionate risks or disadvantages for undertakings. Where disclosure would be seriously prejudicial to the commercial position of an undertaking, it could defer disclosing certain information for a limited number of years, provided it clearly discloses the deferral and gives a reasoned explanation. The information to be reported would include all tax jurisdictions where the entities included in the organisation's audited consolidated financial statements, or in the financial information filed on public record, are resident for tax purposes. Apart from the entity names and primary activities, for each tax jurisdiction key disclosure would include:

- number of employees and the basis of calculation
- revenues from third-party sales
- revenues from intra-group transactions with other tax jurisdictions
- profit/loss before tax
- accumulated earnings
- corporate income tax paid on a cash basis
- corporate income tax accrued on profit/loss

The information in the compromise proposal is similar to disclosures recommended by other bodies, e.g., the Global Reporting Initiative (GRI) in its tax reporting standard (GRI-207). One difference is that, rather than a reconciliation between tax at the statutory rate on profit and tax actually accrued, the compromise notes the potential inclusion of a "narrative providing explanations on material discrepancies". For non-Member States the information could be aggregated but would have to be shown with a high level of detail as regards certain third country tax jurisdictions "which pose particular challenges."

Digital platforms and sharing/gig economy

Some of the issues related to the sharing/ gig economy are similar between VAT and income taxes, but the risks as well as policy and administrative responses are not necessarily the same. Given the VAT work already undertaken, query whether it's possible to draw lessons from the indirect tax experience to inform discussions on the direct tax side in order to minimize the administrative and compliance burden for business.

Regarding digital platforms, on the VAT front concrete measures were implemented in 2015 for digital products (introducing specific rules for telecoms, broadcasting and electronic services, including the Mini One Stop Shop simplification), whilst additional measures targeting the cross-border sale of low value goods are to come into effect at the beginning of 2021. Both sets of rules contain specific provisions to clarify the platform's role in facilitating online sales and bringing them directly in scope of the tax within the supply chain in certain circumstances. In addition, data sharing rules for payment service providers were adopted by the Council at the end of last year. These new rules will take effect from 1 January 2024 with the aim of further enabling tax authorities to detect non-compliance and VAT fraud with regard to online cross-border transactions. Some Member States also have introduced national data sharing obligations for digital platforms to ensure VAT compliance by the underlying suppliers.

The Commission started looking at VAT challenges in the sharing/gig economy area over a year ago. In addition, the OECD has undertaken extensive work on digital platforms and exploring the possible roles they can play in the VAT collection process, as set out in its report "The role of digital platforms in the collection of VAT/GST on online sales". Following that report's publication, the OECD is beginning to examine the VAT challenges of the sharing/gig economy.

On the income tax side, the Commission recently consulted on possible direct tax reporting obligations for online platforms, with a deadline of 6 April 2020 (as noted in relation to the specific tax evasion objective, above). In this context, the Commission's prior work on the VAT side could inform the analysis of direct tax issues.

For income taxes, there was also a consultation February 2020 document from the OECD´s WP 10 on draft Model Rules for Reporting for Platform Operators with respect to sellers in the Sharing and Gig Economy, that follows up on a March 2019 report (and Code of Conduct) by the OECD's Forum on Tax Administration, The Sharing and Gig Economy: Effective Taxation of Platform Sellers. That report included model rules and commentary that governments can adopt domestically to get data from platform operators in their jurisdictions, before focusing on the mechanics of exchange and due diligence.

VAT agenda – in more depth

In December 2019, the Commission organized a conference on 'VAT in the Digital Age,' an event that brought together various stakeholders (EU Commission, EU Member States, business, and academia) to reflect on the opportunities and challenges of new technologies in the VAT area. Discussions included looking at aspects such as artificial intelligence, blockchain, digitalization of public authorities, including a wide variety of digital reporting measures that some Member States already have implemented at a unilateral level over the last few years. The need for greater coordination at an EU level is clear, as well as the development of common technology standards, processes, and tools to safeguard VAT collection.

Whilst the conference marked the start of a process, rather than a stand-alone moment, the Commission will publish its *Action Plan to fight tax evasion and to make taxation simple and easy* (legislative and non-legislative, Q2 2020), and will organize another conference on the fight against VAT fraud and the promotion of compliance in a digitalised world. Whilst we were waiting for further details, the Commission planned a Fiscalis seminar (between the VAT Expert Group and the EU Members) in Estonia on transaction-based VAT reporting, but this was cancelled due to the coronavirus developments.

In other VAT-related matters, on the Council's table are two highly political dossiers inherited from the previous Commission – the definitive VAT regime and the VAT rate proposals. These two topics also are included in the new Commission's 2020 Work Program in Annex III (Review of initiatives proposed under previous mandates not yet agreed by the European Parliament and Council) under No. 53 and 54 priority pending proposals. Given the sensitive nature of these dossiers and the fact that both Member States and businesses have raised significant concerns as to whether the measures proposed would simplify and strengthen the current VAT system, or merely create new and different problems, it remains unclear whether or in what form these initiatives will continue. Whilst the current EU VAT system is complex and potentially vulnerable to fraud, most stakeholders appear to agree that doing nothing clearly is not a sustainable policy option.? Thus, PwC hopes the Commission, with renewed momentum, and encouraged by stakeholder input, will seek another path to combine technology with a sound, straightforward, robust and consistently applied EU legal VAT framework, to ensure the safeguarding of VAT revenues whilst simplifying the system for all users.

The Commission currently is undertaking other VAT-related work, such as reviewing the VAT treatment of Financial Services and evaluating the Tour Operator Margin Scheme (TOMS) in advance of a consultation period. Finally, the Commission currently is working on Explanatory Notes for implementation of the 2021 e-commerce VAT package rules to ensure greater understanding of the rules and more uniform implementation by the Member States.

Financial transactions tax

Ten EU Member States have been negotiating the terms for an EU financial transactions tax (FTT) since proposals put forward in 2011 could not gain unanimous support. The ten include Austria, Belgium, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia, and Spain. They are participating in the initiative under the EU's enhanced cooperation mechanism, which allows a minimum of nine States to take draft legislation forward for implementation in those Member States alone.

Germany circulated a new compromise proposal in January 2020, including a new compromise on market makers and pension funds. Austria objected that these proposals disproportionately would affect small retail investors and pension funds, and said it was prepared to leave the group if the group could not agree to changes in these areas.

The German proposal, presented to ECOFIN as a way of breaking a deadlock among the ten Member States, proposes a tax of 0.2% on the purchase of shares in domestically listed companies that have a market capitalisation exceeding EUR1bn. The tax also would apply to depositary receipts issued domestically and abroad, and which are backed by shares in these companies. Initial share offerings would be excluded from the FTT.

The Commission's input likely will be driven by the need to produce workable rules at a detailed level on what, if anything, can gain political agreement amongst the group.

European Green Deal

The European Green Deal was presented on 11 December 2019 and discussed in the ECOFIN meeting in January 2020. This package of proposed measures seeks to enable European businesses and citizens to benefit from the EU's transition towards climate neutrality. The measures will, it is claimed, "transform the EU's economy, impacting areas ranging from the energy and transport sectors, to industry and agriculture." At the same time, the deal aims to ensure that "the transition is just and socially fair, without leaving anyone behind."

A constituent element - the Sustainable Europe Investment Plan - was published on 14 January. The plan aims to mobilise at least EUR 1tn of investments over the next decade. The Commission proposes to achieve this by drawing on the EU's budget, as well as by bringing in private funding by leveraging guarantees under the InvestEU programme. The plan also foresees a greater role for the European Investment Bank (EIB) in financing sustainable projects.

The Commission also has proposed to mobilise new EU own resources, for example by creating a tax on non-recycled plastic-packaging waste, or by allocating part of the revenues from the EU emissions trading system's auctioning to the EU budget.

The EU also will seek to modernise its energy taxation framework and will consider the possibility of enacting a carbon border tax, as Commission proposals are expected on both issues in 2021. The work programme, accordingly, does not specifically include initiatives on carbon tax. However, the roadmap for the review of the Energy Tax Directive states that it aims to:

- align taxation of energy products and electricity with EU energy and climate policies, to contribute to the EU 2030 energy targets and climate neutrality by 2050, and
- preserve the EU single market by updating the scope and the structure of tax rates and rationalising the use of optional tax exemptions and reductions.

The roadmap on the carbon border adjustment mechanism elaborates on a range of policy options, including linking excise rates to greenhouse gas emissions and revising fossil fuel subsidies.

Anti-money laundering

Policy Objective 21. Completing the Banking Union includes an Action Plan on Anti-Money Laundering (non-legislative, Q1 2020).

The EC announced that with the publication of the Action Plan on anti-money laundering (AML) expected on 25 March 2020, it will launch a broad public consultation. As a first step, the EC published a money laundering & terrorism financing roadmap, outlining the context and the objectives of the upcoming Action Plan. Legislative proposals are scheduled for early 2021.

The EC also has opened infringement proceedings in relation to AML Directives 4 and 5 (AMLD4 and AMLD5) against Cyprus, Hungary, the Netherlands, Portugal, Romania, Slovakia, Slovenia and Spain for not implementing the AMLD5, while infringement is already pending on 17 Member States for lack or wrongful implementation of the AMLD4.

Other direct tax measures

Some of the new Commission's wider perspectives include:

- striving for **strategic autonomy** in a changing world with challenges from the United States, China, and Russia, as well as Brexit
- **dealing with new technologies** (an EU data strategy for the sharing and use of non-personal data, the revision of the General Data Protection Regulation, an EU artificial intelligence regulatory framework, the Digital Services Act, and legislation on crypto assets)
- the upcoming EU-UK negotiations on the future relationship (more generally, a key priority for the EU in 2020 will be bilateral and multilateral trade relationships), and
- proposals for fair minimum wages for workers in the European Union, a European Gender Equality Strategy and binding pay transparency measures, an updated Skills Agenda for Europe, a Platform Work Summit, and a green paper on Ageing.

The Commission's plan to move to Qualified Majority Voting in taxation

The new Commission intends, as various previous Commissions have, to press for a move toward Qualified Majority Voting (QMV) on various tax matters. Under the special procedure a small number of Member States, or even a single

Member State, can prevent or delay legislative proposals from moving forward because a unanimous approach is needed under the 'special legislative procedure' in Council for adopting tax law (Articles 113 and 115 of the Treaty on the Functioning of the European Union).

The previous Commission presented a communication on how to move gradually from unanimity voting to the 'ordinary legislative procedure' requiring only a qualified majority:

- **55% of Member States** vote in favour, and
- the proposal is supported by Member States representing at least **65% of the EU population.**

The new Commission likely will explore ways in which to achieve this. It would require all Member States to agree, and pressures from non-tax subject areas may be a necessary lever.

In the first instance the Commission may seek to invoke QMV on certain tax issues related to situations "distorting the conditions of competition in the internal market" where "the resultant distortion needs to be eliminated". If the Commission finds that this is due to a difference between the provisions laid down by law, regulation or administrative action in some Member States, it should consult those Member States and, if they do not agree to eliminate the distortion, the European Parliament and the Council will issue the necessary directives to do so, acting in accordance with the ordinary legislative procedure (Article 116 of the above Treaty). That Article also provides that any other appropriate measures that the treaties provide may be adopted. The extent of this Article's scope may have to be tested in the EU Court of Justice. In a next stage the Commission may seek to invoke QMV on tax legislation that is supporting broader EU policy goals, e.g., the Green Deal.

The takeaway

The Commission's work programme for 2020 looked to address a long list of issues that included many with potential tax implications. The COVID-19 pandemic has resulted in revised expectations, but the Commission still aims to be ambitious in its attempt to include a number that are regarded as strategic priorities as well as some additional measures. The ongoing level of direct and indirect tax work over which the Commission has oversight and input will make this particularly challenging.

Let’s talk

For a deeper discussion of how these issues might affect your business, please call your usual PwC contact. If you don’t have one or would otherwise prefer to speak to one of our global specialists, please contact one of the people whose details are set out below:

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