GENERAL TAX POLICY

Taxation is a prerogative of the Member States, the EU having only limited competences. As EU tax policy is geared towards the smooth running of the single market, the harmonisation of indirect taxation was addressed before direct taxation. A fight against harmful tax evasion and tax avoidance has followed. EU tax legislation must be adopted unanimously by the Member States. The European Parliament has the right to be consulted on tax matters; for budgetary-related issues it is even co-legislator.

LEGAL BASIS

The tax provisions chapter (Articles 110-113) of the Treaty on the Functioning of the European Union (TFEU), which relates to the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation; the chapter on the approximation of laws (Articles 114-118 TFEU), which covers taxes that have an indirect effect on the establishment of the internal market, with fiscal provisions not subject to the ordinary legislative procedure; other provisions relevant to tax policy, referring to the free movement of persons, services and capital (Articles 45-66 TFEU), the environment (Articles 191-192 TFEU) and competition (Articles 107-109 TFEU).

Enhanced cooperation (Articles 326-334 TFEU) can be applied in respect of tax matters. The main feature of EU tax provisions with regard to the adoption of acts is the fact that the Council decides on a Commission proposal by unanimity, with Parliament being consulted. Provisions adopted in the tax field include directives approximating national provisions, and Council decisions. Firm in the conviction that retaining unanimity for all taxation decisions makes it difficult to achieve the level of tax coordination that Europe requires, the Commission submitted proposals for a move to qualified majority voting in certain tax areas. However, these were rejected by the Member States.

Direct taxation denotes taxes levied on income, wealth and capital, whether personal or corporate. Personal income tax is not covered as such by EU provisions (rather, EU activity in this field is based on the case-law of the Court of Justice). EU action on corporate income tax is more developed, although it focuses only on measures linked to the principles of the single market. Indirect taxation consists of taxes that are not levied on income or property. It includes value-added tax (VAT), excise duties, import levies, and energy and other environmental taxes. As the development of EU tax provisions is geared towards the smooth running of the single market, the harmonisation of indirect
taxation was addressed at an earlier stage and in greater depth than that of direct taxation.

**OBJECTIVES**

The EU’s strategy on tax policy is explained in the Commission communication ‘Tax policy in the European Union – Priorities for the years ahead’ and, slightly more recently, in the publication ‘Taxation – promoting the internal market and economic growth: towards simple, fair and efficient taxation in the European Union’. The power to introduce, remove or adjust taxes remains in the hands of the Member States. Provided it complies with EU rules, each Member State is free to choose the tax system it deems most appropriate. Within this framework, the main priorities for EU tax policy are the elimination of tax obstacles to cross-border economic activity, the fight against harmful tax competition and tax evasion, and the promotion of greater cooperation between tax administrations in ensuring control and combating fraud. Increased tax policy coordination would ensure that the Member States’ tax policies support wider EU policy objectives, as set out in the Single Market Act. Furthermore, taxation is one of the key policies monitored through the European Semester, the yearly cycle of economic policy coordination; a number of country-specific recommendations issued to the Member States regularly touch upon the fight against aggressive tax planning, tax evasion or tax avoidance.

**INITIATIVES AND PROGRESS**

The Commission’s annual report on taxation presents the state of play regarding taxation in the EU. The report aims to describe, in a clear and accessible manner, the most recent reforms that have been undertaken and the main indicators that are used by the Commission to assess progress on taxation policies in EU Member States and at EU level. It also presents EU initiatives such as ‘Business in Europe: Framework for Income Taxation (“BEFIT”)’ and the Directive on Faster and Safer Relief of Excess Withholding Taxes (FASTER).

Tackling tax avoidance, tax evasion and tax fraud at both EU and global level remains high on the agendas of the EU institutions. Elsewhere, work has continued on making corporate taxation in the EU fairer and better adapted to a modern digital economy in the internal market. Key initiatives have included the following:

— The Anti-Tax Avoidance Directive (adopted in 2016 and amended in 2017) lays down rules against tax avoidance practices that directly affect the functioning of the internal market and addresses hybrid mismatches with non-EU countries;

— The Directive on Administrative Cooperation (DAC), introduced in 2011 to enhance the exchange of tax information, has been amended several times in recent years, most recently on 22 March 2021 by DAC 7, which still needs to be implemented (see below). Prior to that, the most recent changes were made through DAC 6, adopted on 25 May 2018. This directive includes a requirement for intermediaries, such as consultants, lawyers or financial institutions, to report certain tax arrangements to local tax authorities, which should then automatically exchange the information collected across the EU;
On 15 July 2020, the Commission adopted a tax package for fair and simple taxation, consisting of three separate but complementary initiatives: (1) an action plan for fair and simple taxation supporting the recovery: a set of 25 initiatives due to be adopted and implemented by the Commission between now and 2024 in order to make taxation fairer, simpler and better adapted to modern technologies; (2) a revision of the Directive on Administrative Cooperation (DAC7), which was formally adopted by the Council on 22 March 2021, and is aimed at ensuring that Member States automatically exchange information on the revenues generated by sellers on digital platforms, whether the platform is located in the EU or not; a proposal for a further revision of the Directive on Administrative Cooperation (DAC8) to address the exchange of information on crypto-assets and e-money, which is still pending; and (3) a communication on tax good governance in the EU and beyond;

As of 1 January 2018, new rules entered into force obliging Member States to give tax authorities access to data collected under anti-money laundering legislation. The anti-money laundering directives – AMLD4 and AMLD5 – aim to prevent the use of the European financial system for money laundering and terrorist financing purposes. The purpose of this is to ensure that national tax authorities have direct access to information on the beneficial owners of companies, trusts and other entities, as well as companies’ customer due diligence records. The rules also seek to enable tax authorities to react quickly and efficiently to cases of tax evasion and avoidance.

In September 2023, the Commission adopted a proposal entitled ‘Business in Europe: Framework for Income Taxation (or BEFIT)’, which will provide a single corporate tax rulebook for the EU, based on apportionment and a common tax base. It will reduce compliance costs for businesses that operate in more than one Member State and make it easier for national tax authorities to determine which taxes are rightly due. After being adopted by the Council, the proposal should come into force on 1 July 2028. Also in September 2023, the Commission published two other proposals for Council Directives: one on transfer pricing and one for a head office tax system for small and medium-sized enterprises. After being adopted by the Council, these two proposals should entry into force in January 2026.

The legislative proposal on anti-money laundering presented by the Commission in July 2021 encompasses:

— A new proposal on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing;
— A proposal on establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism;
— A proposal on information accompanying transfers of funds and certain crypto-assets. The proposal was adopted by Parliament and the Council on 31 May 2023.
ROLE OF THE EUROPEAN PARLIAMENT

The European Parliament has generally endorsed the broad lines of the Commission’s programmes on taxation, with the fight against tax fraud and evasion and money laundering being a policy priority of the current and past legislative terms. Parliament’s recommendations in this area have benefited from the work of several ad hoc committees.

The first of these, the Committee on Tax Rulings and Other Measures Similar in Nature or Effect (TAXE), drew attention to a conspicuous paradox: that free competition in tax matters and a lack of cooperation between Member States has led to disconnects between the places where value is created and profits are taxed, resulting in corporate tax base erosion and revenue losses in different countries, some of which have also been subjected to austerity measures.

Against the backdrop of the Panama Papers and LuxLeaks revelations, which had laid bare the need for greater cooperation and transparency worldwide, the TAXE 2 Committee built on the work of TAXE. Its final report was adopted by Parliament as a resolution on 6 July 2016, which called for sanctions against non-cooperative tax jurisdictions included on a blacklist of tax havens to also be applied to companies, banks, and accountancy and law firms, with the possibility of revoking their business licences. It emphasised the negative consequences of patent boxes, which in most cases are used by multinational companies for tax avoidance purposes.

The Committee on Money Laundering, Tax Avoidance and Tax Evasion (PANA) built on the work of TAXE and TAXE 2 and on Parliament’s resolution from December 2015 on bringing transparency, coordination and convergence to corporate tax policies, which identified regulatory and monitoring challenges when addressing tax issues.

The aim of TAX3 – the Committee on Financial Crimes, Tax Evasion and Tax Avoidance – was to continue the work of TAXE, TAXE 2 and PANA, and to investigate issues relating to digital taxation, national citizenship programmes and VAT fraud.

Its final report was adopted by Parliament in plenary on 26 March 2019. It emphasised the urgent and continuous need for reform of the rules, so that international, EU and national tax systems are fit for the new economic, social and technological challenges of the 21st century. It reached the assessment that current tax systems and accounting methods are not equipped to keep up with these developments or to ensure that all market participants pay their fair share of taxes. Members welcomed the fact that over the last term the Commission had put forward 26 legislative proposals aimed at closing some of the loopholes, improving the fight against financial crimes and aggressive tax planning, and enhancing the efficiency of tax collection and tax fairness. They deeply regretted, however, the lack of progress in the Council on major initiatives in relation to corporate tax reform that had still not been finalised owing to a lack of genuine political will. They called for the EU initiatives that had not yet been finalised to be swiftly adopted and for implementation to be monitored closely in order to ensure efficiency and proper enforcement and keep pace with the versatility of tax fraud, tax evasion and aggressive tax planning.
The Subcommittee on Tax Matters (FISC) of the Committee on Economic and Monetary Affairs was set up in September 2020 to continue the fight against tax avoidance that Parliament had pursued during its previous mandate. Its objectives are to strive to ensure that Parliament promotes fair taxation at a national, EU and global level. Moreover, in view of the challenge of promoting a sustainable economic recovery in line with the European Green Deal, the committee is tasked with helping to devise a simpler, more efficient and more sustainable EU tax policy. Parliament has adopted a number of resolutions on the basis of FISC reports. These include:

— a resolution of 15 February 2022 on the impact of national tax reforms on the EU economy. Among other conclusions, it welcomed the historic agreement reached by the Organisation for Economic Co-operation and Development (OECD) and G20 on reforming the international tax system to ensure a fairer distribution of profits and taxing rights among countries with respect to the largest multinational companies, including the partial reallocation of taxing rights to the countries where value is created, and establishing a global minimum effective tax rate of 15%;

— a resolution of 21 October 2021 on the Pandora Papers: implications for the efforts to combat money laundering, tax evasion and tax avoidance. With this resolution, Parliament called for the EU to close the loopholes that are allowing tax avoidance, money laundering and tax evasion to be carried out on a massive scale. It also called for the Commission to take legal action against Member States that fail to implement existing laws properly.

For more information on this topic, please see the website of the FISC Subcommittee.

Jost Angerer
10/2023