



International Fiscal Association

**IFA 2020 Virtual Programme
16-25 November 2020**

OUTLINE

IFA/EU

IFA/EU | Monday, 23 November 2020 | 15.00 – 17.00

Chair

Luc De Broe (Belgium)

Panel members

Benjamin Angel (EU)

Johanna Hey (Germany)

Bob Stack (USA)

Rita Szudoczky (Austria)

Secretary

Jasper Korving (Netherlands)



The webinar aims to offer a comprehensive overview of the most important (mainly direct) tax and tax policy developments concerning the European Union since the 2019 IFA Congress. A focus is being made on selected issues of current interest and an outlook is given on forthcoming developments.

The webinar will begin with a presentation of the recent and ongoing tax policy projects undertaken by the European Commission (DG Taxation and Customs). The new Commission, which took office on 1 December 2019, has set a comprehensive and ambitious tax agenda for the coming years. In July of this year it launched its [Tax Package](#) containing a series of measures aiming at modernizing and simplifying the tax systems of Member States and at making them fairer with a view to support a swift economic recovery from the Covid19-pandemic and sufficient public revenue for long-term growth in the EU.¹ The European Commission is also working on a new roadmap to business taxation for the 21st century and to address the challenges raised by the digitalisation of the economy. An action plan will be issued this autumn to that effect. In the context of the EU Green Deal, the Commission will make proposals, such as the review of the Energy Taxation Directive and of the VAT Directive regarding international air and maritime passenger transport, so that taxation supports the EU's objective of reaching climate neutrality by 2050. Finally, taxation plays a central role in the recently approved EU budget 2021 – 2027 and the new system to create the EU's own resources in the framework of the Recovery Plan, which may include the establishment of a Carbon Border Adjustment Mechanism, the enforcement of a levy on the digitalized economy by 1 January 2023 and of a financial transaction tax.²

Thereafter, the panel will discuss the recent judgments of the General Court on state aid and transfer pricing rules, in particular the cases of [Fiat](#)³, [Starbucks](#)⁴ and [Apple](#)⁵. In the case of Fiat, the European Commission (DG COMP) has been successful in proving that the ruling obtained by Fiat in Luxembourg conferred a selective advantage to Fiat and hence that it infringed the prohibition of state aid set out in Art. 107 TFEU. In Starbucks and Apple, on the other hand, the European Commission failed to prove that the rulings issued by respectively the Netherlands and Ireland granted a selective advantage to the companies. It has now become clear that rulings can be tested against the state aid-prohibition and that the arm's length standard is the benchmark to assess whether a tax ruling entails state aid. Many issues remain open, however, and those will be addressed by the panel, such as whether the arm's length standard is to be derived from EU law, national law or the OECD Transfer Pricing Guidelines; what is the relevant reference framework under the national law of the Member State and whether it includes case law and tax administration practices; what is the role of the OECD Transfer Pricing Guidelines, in particular when those are not

¹ The Tax Package was launched on 15 July 2020 and includes three separate but complementary initiatives: (i) the Action Plan for fair and simple taxation supporting the recovery strategy includes a series of 25 measures in particular in the area of VAT to be implemented by 2024 (European Commission, Com(2020) 312 final); (ii) the revision of the Directive on administrative cooperation (DAC7) to extend tax transparency rules to digital platforms (Proposal for a Council Directive amending Directive 2011/16/EU, Com(2020) 314 final), and (iii) the Communication on Tax Good Governance in the EU and Beyond (European Commission, Com(2020) 313 final) which includes a reform of the Code of Conduct and the revision of the EU-list of non-cooperative jurisdictions.

² European Council, 21 July 2020, EUCO 10/20, Special Meeting of the European Council (17 – 21 July 2020) – Conclusions.

³ The judgment is appealed by Fiat and the Grand Duchy of Luxembourg.

⁴ The judgment is not appealed by the European Commission.

⁵ Today, it is not known whether the European Commission will appeal the judgment.



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embedded in the national tax law of the Member States; how far does the burden of proof of the Commission extend, etc. The panel will also deal with the question of whether the prohibition of state aid is an appropriate tool to strike down aggressive tax planning.

In the last part of the presentation, the panel will discuss the policy options available to the European Commission to address the income tax challenges posed by the digitalisation of the economy and by the need for a minimum effective taxation of multinationals. It cannot be avoided to discuss this development solely from an EU perspective. Therefore, the webinar will build on the IFA/OECD webinar on Pillar 1 and 2 as the conclusions reached at OECD level may have an impact on the choices to be made in relation to the harmonized implementation by the EU. If no agreement would be reached at OECD level, the EU may come forward with proposals of its own in relation to minimum taxation and/or the taxation of the digitalized economy. This raises questions, like whether a digital service tax actually is the appropriate tool to achieve fair taxation of the tech giants and, if so, whether the European Commission should revive its 2018 proposed Directive(s) in that field? Should the levy of a digital services tax be a matter of the Member State or should the EU itself levy such a tax? What role is there for the EU's project on the Common Corporate Consolidated Tax Base to achieve fair taxation of multinational companies? A related question in that area is whether the requirement of unanimity in EU tax matters should be abandoned and, if so, how the unanimity-rule could be replaced?