

IFA/EU

In the IFA/EU seminar held on the 8th of September, the panelists addressed the latest EU tax developments: the Pillar 2 Directive, the Unshell Directive, DEBRA, BEFIT, DAC7 and the interpretation by EU member States of the doctrine from the Danish cases, among other topics. Most of these EU developments are in line with the OECD's proposal and guidance, but with some deviations to ensure the compliance with the EU fundamental freedoms.

The seminar started with the intervention of Mr. Benjamin Angel (Director - TAXUD) who addressed the main elements of the key EU initiatives. He also included statements anticipating future EU initiatives such as: (i) a common EU withholding tax refund procedure; and (ii) the extension of the scope of the Unshell Directive to cover non-EU shell entities through the Securing Activity Framework of Enablers.

Pillar 2 Directive Proposal

One of the EU developments critically addressed during the seminar was the Pillar 2 Directive Proposal. Despite the difficulties to have the Directive Proposal approved, Mr. Benjamin Angel stated that Pillar 2 is a priority for the EU and expects its final approval and implementation at EU level in the short future. Nevertheless, there is no clarity on whether the EU member States disagreeing with the Directive Proposal, will change their position. This situation has caused some EU member States (i.e. Germany, France, Italy, the Netherlands and Spain) to issue a joint statement announcing their willingness to implement the Pillar 2 rules through any possible legal means, including unilateral measures, should unanimity not be reached. This initiative may be followed by other non-dissenting EU member States.

However, the implementation of Pillar 2 at EU level is not free from controversy. In fact, panelists addressed some of their concerns, including the need for (i) a proper level of legal certainty to minimize tax controversy and negative financial and economic impacts to Groups; (ii) a detailed review of the rules to simplify them; (iii) a proper mechanism to address disputes; and (iv) detailed guidance on specific matters like tax incentives, negative effective tax rates, etc.

Joint Audits

Another important EU initiative discussed, was the joint audits. Joint audits are generally welcome, but there are still some points of attention and room for improvement, for instance: (i) the question why some of the taxpayer's rights were eliminated from the wording of the Directive, like the right to be present and the right to appeal before the final report/assessment; and (ii) the uncertainty on whether joint audits are single procedures and how they match with domestic appeal procedures. Further development in the coming years should be expected.

Energy and green taxation

The goal of the EU is to use taxes to achieve the green transition, the timing of said transition is however unclear due to the existence of other short-term priorities. The green transition should not be addressed considering only green and carbon taxes, but also other EU tax initiatives, which may have an indirect impact on said transition. As Mrs. Susi Baerentzen stated, the debt limitations within DEBRA may have an adverse impact on, for instance, the way funding of green energy projects is structured.

Public funding of the EU

The panel concluded with a brief look into the public funding of the EU. The Covid 19 pandemic and the energy transition has brought the willingness of the EU to develop proposals to procure itself with direct funding mechanisms. This willingness will open constitutional debates in the coming years on whether EU member States really want to provide the EU with its own public funding resources.