The Netherlands IFA branch tax thanks LAW360 for covering the Conference.
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Dutch Tax Minister Urges EU Adoption Of Anti-Shell Law

By **Todd Buell** · 2023-07-05 14:58:45 -0400 · Listen to article

Amsterdam - The Dutch minister for taxation urged European Union countries Wednesday to agree to a law designed to crack down on shell companies, stressing that this would be better than countries adopting their own approaches to the issue.

The Dutch minister for taxation, Marnix van Rij, on Wednesday urged EU countries to agree to a law designed to crack down on shell companies, stressing that this would be better than countries adopting their own approaches to the issue. (Getty)

Marnix van Rij, the Netherlands' state secretary for tax affairs, told a gathering of the International Fiscal Association it was important that EU states agree to the measure soon, adding that he hoped this could occur this year.

"I don't rule out unilateral measures as an alternative, if we cannot achieve consensus at the EU," van Rij said, but an agreement at the EU level would be the "best way forward." A ministry spokesperson did not have an immediate response to a request for further comment.

The European Commission **proposed the directive**, known as Unshell, in 2021 to ensure entities in the EU that lack economic activity don't benefit from tax advantages. Since then, however, the bill has been stuck in the EU council of member states, which must agree to it unanimously for it to become law.

Spain, which recently took over as chair of EU meetings for the next six months, hopes that countries can reach an agreement on the measure at a **meeting in November**.

Speaking via a weblink at the same event, Spanish finance ministry official Maria Jose Garde said that while Unshell was a difficult file, she felt that in recent days, there had become a better understanding of member states' positions.

"I have to admit it's going to be difficult," Garde said. But "we're maintaining our ambitions to make progress on this dossier," she said, adding that the desire for an agreement in November "shows the ambitions that Spain is showing on this file."

The panel also addressed Pillar One, a measure that would reallocate taxing rights for the world's largest companies. International negotiators are expected to present a multilateral convention on Pillar One **in the coming days**, which countries worldwide would then need to ratify to make law.

Asked if the EU would aim to implement Pillar One via a directive, Benjamin Angel, the European Commission's director for direct taxation, said it wasn't certain if this would happen. "We will take this decision later, if there is need," he said. For now, he said, "all efforts" are needed to make sure the multilateral convention is finalized and signed by the end of the year.

--Editing by Khalid Adad.

https://www.law360.com/tax-authority/articles/1697012/eu-must-keep-state-aid-as-tax-ruling-oversight-judge-says-

EU Must Keep State Aid As Tax Ruling Oversight, Judge Says

By **Todd Buell** · 2023-07-07 13:11:13 +0100 · Listen to article

London - European authorities need to be able to use state aid law as an oversight tool for tax rulings that European Union countries give corporations, a judge at the bloc's lower court has said.

Vesna Tomljenović, of the EU's General Court, said Thursday that a line needed to be drawn somewhere on what member countries were permitted to do, even though the European Commission and the lower court had recently been overruled by the higher European Court of Justice on a key state aid case.

"We have to find some borderline," she said at the International Fiscal Association conference. "I don't see tax rulings any differently than any other tax measure."

Tomljenović added that there were "decades" of case law using state aid rules for "fiscal measures. Why now when we come to a tax ruling, it's so impossible and so unreasonable and it must be so manifestly contrary to the objective" of EU treaty law? she asked.

The ECJ overruled the General Court in a ruling **last November** in a case involving carmaker Fiat. The ECJ said Luxembourg did not give an advantage to Fiat because it used the same transfer pricing methods when taxing other companies. The higher court's ruling annulled the commission's decision that Luxembourg had given Fiat illegal state aid.

The case involved a 2012 tax ruling from Luxembourg that allowed Fiat to determine taxable profit on a yearly basis for corporate income tax.

Advocate General Juliane Kokott recommended in May that the ECJ **set aside** the commission's finding that Luxembourg gave energy company Engie SA state aid as well as the General Court decision affirming the commission's decision.

Kokott argued the only tax rulings that constitute a selective advantage are those that benefit the taxpayer through a "manifest derogation" from the laws of a member state. And the rulings by Luxembourg tax authorities on the restructuring of Engie subsidiaries there, she said, were not "manifestly erroneous."

Tomljenović indicated that there would be a judgment in September on a different case, involving Belgian "excess profits" regime.

The case is back before the lower court, where a hearing **was held in February**, after the ECJ, **ruled in September 2021** that the Belgian scheme constituted illegal state aid to a category of companies, **overturning a 2019 ruling** by the General Court.

The ECJ did not immediately response to a request for comment.

--Editing by Joe Millis.

https://www.law360.com/tax-authority/articles/1689712/top-european-tax-policy-to-watch-in-the-second-half-of-2023

Top European Tax Policy To Watch In The Second Half Of 2023

By **Todd Buell** · 2023-07-12 13:34:51 -0400 · Listen to article

Observers of tax policy in the European Union during the second half of the year await several measures designed to curb tax evasion and avoidance or ease administration, including a possible agreement among member countries on a law aimed at shell companies.

In addition to the proposal known as Unshell, tax practitioners are watching for a proposal that would likely restrict activities of tax advisers to promote avoidance schemes to EU residents.

In addition, the European Commission, which proposes legislation in the 27-country bloc, is expected in September to unveil a new framework for corporate tax known as the Business in Europe: Framework for Income Taxation, or BEFIT. This is a repackaging of the common consolidated corporate tax base idea, which member states have rejected multiple times over more than a decade.

Here, Law360 looks at several of the key policies that tax observers will be watching in the second half of 2023.

Paolo Gentiloni, the EU's tax commissioner, has said the Unshell measure, under which companies failing economic substance tests could lose tax advantages, "is apparently not moving sufficiently fast." (AP Photo/Geert Vanden Wijngaert)

Unshell

In December 2021, the commission proposed both the 15% international minimum corporate tax law **and the Unshell measure**, under which companies failing economic substance tests could lose tax advantages.

While the council of member states ultimately **agreed to back** the minimum tax, Unshell has remained **stuck in negotiations** because countries have debated the economic substance definition and other issues while also trying to ensure that whatever is agreed upon isn't too burdensome on taxpayers or tax administrations.

The slow pace of reaching an agreement on the measure clearly frustrated the EU's tax commissioner in recent testimony. The proposal "is apparently not moving sufficiently fast," Paolo Gentiloni said during remarks at a meeting of the European

Parliament's economic affairs committee June 28. The current state of play on Unshell "is honestly difficult to explain and to defend publicly," he said, adding that it is difficult to argue against the spirit of the proposal.

Spain, which leads ministers' meetings of EU member states for the second half of the year, is clearly trying to push countries toward an agreement.

In remarks in June **outlining the country's policy goals** for its EU leadership, Prime Minister Pedro Sanchez said Spain's time at the helm would aim "to set some minimum standards for corporate tax in all member states, particularly in digital businesses and to combat tax evasion and use of shell companies."

In a document **published June 30**, Spain hoped member countries would agree to Unshell during a November meeting of finance ministers.

Practitioners have criticized the proposal's administrative requirements.

"All of this will be [a] huge compliance and administrative burden, not only for taxpayers but tax administrations as well," said Raluca Enache, the head of KPMG's EU tax center in Europe.

"Many tax administrations in Europe don't have the capacity to deal with information they already receive," she said this month at the International Fiscal Association conference in Amsterdam.

SAFE

Gentiloni said the failure to reach an agreement on Unshell has prevented the commission from putting forward a measure that it said will prevent so-called enablers outside the bloc from promoting tax avoidance schemes to EU residents.

The proposal, known as securing the activity framework of enablers, or SAFE, **was**

dropped from the EU's legislative calendar in May. Gentiloni said June 28 that the EU was ready to make the proposal, but he first wanted "to have clarity on Unshell," suggesting a lack of agreement on that proposal would make progress on SAFE — also an anti-avoidance measure — difficult.

SAFE is essentially a response to tax avoidance scandals such as the Pandora Papers, a journalistic investigation into how rich individuals place their assets offshore to avoid taxes. The measure aims to punish tax advisers that promote schemes outside the EU that erode the tax base of bloc members.

The EU may have an easier time achieving agreement on the Unshell and SAFE legislation, which are more targeted proposals, than on broader, more structural legislation such as BEFIT.

"The probability is lower to get unanimity on a proposal that is about reallocation of taxing rights within the union, and that's exactly what BEFIT is," said Giorgia Maffini of PwC.

BEFIT

BEFIT is scheduled to be released Sept. 12, though dates on European Commission calendars change frequently. The effort will be more than two years in the making. The commission, after twice proposing variations of its common consolidated corporate tax base and failing to obtain the necessary unanimous support from member states, announced **in May 2021** that it would replace the CCCTB with BEFIT.

Commission officials believe the international tax landscape has changed enough to make member countries more open to BEFIT. In December, EU countries formally agreed to implement the 15% global minimum tax known as Pillar Two after endorsing it as part of a broader tax deal **in October 2021**. The tax, which will be turned into law across the bloc starting next year, applies to companies with global earnings above €750 million ($825 million).

Pillar One

Pillar One, the reallocation of some taxing rights of the world's largest companies, is due to be mentioned at a meeting of finance ministers Friday, though it is likely too early for anything to be decided. Delegates to the Organization for Economic Cooperation and Development, which steered the negotiations of the two-pillar plan, are still hammering out the remaining issues for Pillar One.

While the minimum tax will soon cover 90% of in-scope multinationals, according to the OECD, progress on Pillar One has stalled as negotiators struggle to put together a multilateral treaty that signatories would ultimately have to ratify. The OECD has said it hopes to deliver the text for a multicountry treaty later this month.

If Pillar One fails to materialize specialists worry that digital service taxes could again become an issue in the EU.

"It could be that this will mean a revival of digital taxes or an EU tax on digital services," said Nathalie Aymé of Deloitte in France.

VAT in the Digital Age

Spain also intends to reach agreement among EU ministers on draft measures known as VAT in the digital age. According to a draft agenda of council meetings published June 30, Spain aims to get a deal on this package at a meeting Dec. 8.

Introduced in December, the proposals aim to modernize reporting obligations for the value-added tax, broaden the role of platform companies doing short-term accommodation rentals and passenger transport services in the collection of VAT and simplify VAT registration. The proposal calls for the measures to gradually be applied from 2024 through 2028.

Some EU ministers **have expressed concern** that the implementation timeline is too aggressive. While countries may ultimately get more time to put the changes in place, this package of measures is likely to ultimately become law, according to Andy van Esdonk of Bird & Bird in the Netherlands.

"I think eventually [VAT in the digital age] in one way or another will be adopted," he said.

--Editing by Neil Cohen and Roy LeBlanc.