The EU’s Tax ‘Decluttering’ Is a Big Ask. Here’s What it Means.

By Saim Saeed

(Bloomberg Law) -- The start of a new European Commission term customarily includes a rush of legislation, but the commission’s tax department has a different mission this time: Peel back and simplify the EU’s tax code.

It’s a process known as decluttering, identifying tax provisions and clauses that are duplicative, irrelevant, or inapplicable, or that place an unjustified burden on business.

The European Union’s executive branch says decluttering will boost competitiveness, and businesses are all for it. But advocacy groups fret that it could undermine the bloc’s efforts to tackle corporate tax abuse.

The commission, due to embark on a new five-year term Dec.1, thinks it can do both.

On decluttering, the commission faces “a lot of pressure to do it quickly, but I think we need a bit more time, and not only to get the feedback of the business community, to have a proper consultation to do it right,” Gerassimos Thomas, the director-general of the commission’s tax department, acknowledged at an event in Athens last week.

Commission President Ursula von der Leyen, who was confirmed this summer, promised to reduce corporate reporting obligations by 25% across the board, and 35% for small businesses. She also nominated a commissioner for simplification, Valdis Dombrovskis.

Some observers wonder if the emphasis is too much on simplification and too little on enforcement.

“The commission’s debate about ‘decluttering’ seems to be focused on dismantling some of the few mechanisms that the commission has managed to put in place to reduce corporate tax abuse,” said Tove Maria Ryding of the European Network on Debt and Development.

Instead, the commission needs to focus on how to get multinationals and billionaires to pay their fair share, she said.

The commission’s 2024 annual report on taxation said tax avoidance is still a big problem in the EU. Over 900 billion euros in corporate profits were shifted to low-tax jurisdictions in 2022, including the Netherlands, Luxembourg, and Ireland.

The commissioner-designate for tax, Wopke Hoekstra, promised to support Europe’s competitiveness and prosperity “while continuing the fight against tax fraud, tax evasion and tax avoidance.”

Simplification Attempts

The commission in May passed a bill that makes withholding tax procedures more efficient for investors, and last month it published a proposal making it easier for multinationals to file paperwork related to the 15% global corporate minimum tax deal that the EU has signed on to, which is expected to pass without much fuss.

The proposal, known as DAC9, would decrease reporting obligations from 180,000 reports to 4,000, according to Thomas. DAC9 highlights the EU's commitment to "alleviating a lot of the significant administrative burden" that comes with the minimum tax rules, he said.
Still, the commission's other proposals to make it easier for small businesses to work across borders and another to develop a common corporate tax base across the bloc have fallen flat.

Competitiveness Agenda

Businesses are making their pitch in the context of Europe falling behind the US and China in productivity and developing advanced technology, like batteries and semiconductors. The focus for the commission's next five-year term, in EU speak, is "competitiveness."
Advocates of decluttering also point to the changes in global tax rules. An OECD-sponsored deal signed by 140 countries, including those in the EU, would tax the world's biggest companies at a minimum rate of 15%, meaning that a host of existing rules meant to stop companies from shifting their profits to low-tax jurisdictions, on paper, wouldn't be necessary, they say.
"Following the introduction of the Minimum Tax Directive, a review of the EU's tax framework is needed to remove anti-abuse measures that have become redundant," according to Tara Muinafshar, interim tax adviser for BusinessEurope, a lobby group.
After public consultations in the summer, the commission is evaluating two of its signature corporate tax laws: the Anti-Tax Avoidance Directive and another that facilitates tax-related information sharing between EU countries, known as the DAC. In their feedback, businesses said both need revision.
"The answers to the consultation on ATAD clearly show that there is an overlap of some of the anti-avoidance rules," said Roberta Poza Cid, EU tax policy leader at Deloitte.

Stalled Program

In some cases, there appears to be a contradiction between the EU's anti-tax avoidance agenda and its support for business.
For example, a bill aiming to curb shell companies, known as Unshell, targets a broad range of special purpose vehicles used by private equity and venture capitalists. "How can this be aligned with making the EU more attractive for funding scale-ups?" asked Edwin Visser, the deputy global tax policy leader at PricewaterhouseCoopers.
The commission's tax proposals are also closely scrutinized by national capitals. As a rule, countries are hesitant to transfer tax policy to Brussels, making it more difficult for the commission to pass proposals that they deem would empower the commission further. And with ballooning deficits, EU countries like France and Italy are more focused on raising domestic revenue than boosting business.
A number of the commission's tax initiatives—including those tackling tax avoidance, like Unshell—are currently stuck, and it's unclear how much effort the commission will put in to getting them approved first.

Hoekstra said he will continue to push for adoption of Unshell and the commission's other tax proposals, including one that would harmonize EU efforts to regulate transactions between subsidiaries of the same company, known as transfer pricing.

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