

# SNAPSHOT

The latest updates from the team at FTI Consulting Brussels

*Giving you insight to what is on the EU agenda*

## Paying your fair share: How reputation is driving Europe's tax debate

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Gone are the days when tax was seen as a rather dry and technical process. It's now driving news headlines and not good ones. Leaks and scandals are increasingly tarnishing and threatening the reputation of many global brands, multinational businesses and even countries. Austerity has emboldened policy makers to take action. It's a vote winner. As Europe heads towards elections, the team at **FTI Consulting Brussels** looks at how a new Commission is likely to take the issue of '*fair taxation*' forward.

Despite the Commission's many challenges, tax remains a hot topic for an institution fighting to show its value and relevance to an increasingly Eurosceptic public audience. The trickle of international scandals that have emerged over the past few years has done real damage to many corporate reputations. Tax havens are no longer the preserve of a faded rock star, fat cat executive or some criminal mastermind with money squirreled away in some off destination. The rise of globalisation has created a multinational approach to how companies organise their tax structures. Totally legal and above board, and in line with the expectations of investors and shareholders. It's even been endorsed by some Member States of the European Union who have until recently scrambled to provide the most attractive corporate environment to attract foreign businesses.

*"Europe is closing loopholes so all companies, big or small, pay their fair share of taxes in the future." Margarethe Vestager, European Commissioner, DG Competition*

Ten years of austerity has perhaps focussed minds. The people are angry and increasingly irritated by a plethora of media revelations exposing bad citizenship from businesses who, in planning their tax liabilities efficiently, are increasingly exposed to the accusations that they are just not paying their '*fair share*' of tax. Panama Papers and Paradise Papers, to name two recent examples, have undermined the reputation of a number of global brands, multinational businesses and high-net-worth individuals.

The issue has been at the forefront of the political agenda. The pressure on regulators to close loopholes and address broader public concerns has only increased. Europe's tax policy agenda has been driven by two key Commissioners. Pierre Moscovici responsible for Tax and Customs, who targeted international tax avoidance, and Margarethe Vestager for Competition. Both have espoused the virtues of fairer taxation, with the first seeking to tighten rules and regulation, and the latter seeking to investigate potential tax evasion. What has become apparent is that even if a business hasn't done anything illegal, there is an increasing mood for companies and countries to be seen to be doing what is morally acceptable.

In one recent, very high-profile case, reviewing one company's taxation agreements with Luxembourg's government, which were subsequently deemed not to be illegal by the EU, prompted Vestager to comment: "*Europe is closing loopholes so all companies, big or small, pay their fair share of taxes in the future.*"

### The role of investigative journalism

Outside the political world, one area that has driven public appetite for a more transparency is the number of highly damaging and embarrassing media leaks that have happened over the last few years. With the creation of Wikileaks and other helpful public platforms, whistle-blowers now have access to platforms to leak confidential information. Traditional newspapers have not been slow on the uptake, grouping together to share the costs of long-term

investigations that reap considerable rewards with their breaking news announcements.

## Competition policy, making it happen

If tax is the issue, European competition law is another means by which an investigation can be conducted. DG Competition, the European regulator, that has jurisdiction on all such matters, has real teeth that are only getting sharper. Margrethe Vestager, the Commissioner, has been very popular both inside and outside the Institutions and has very much utilised her position over the past five years to challenge big business, enabling her to engage with voters in a way that cannot be said for most of her other colleagues. She hasn't been afraid to take on some of the world's biggest names and even a few Member States. A natural communicator she has successfully illustrated what value Brussels can give when the European project has had a particularly challenging time. Whether her successor in the new role has quite the same zeal once the new Commission has been appointed in November, will be one of the key conversations this summer. Either way she has proved to be a role model that others will seek to emulate.

## A changing political landscape

The EU parliamentary elections in May could result in a significant majority of MEPs being replaced. The indication is that many of them will be less likely to take a pragmatic view on a host of issues and are much more likely to be idealistic in their views. Also, with Brexit, Parliament is expected to have a less vocal liberal and pro-business voice, to have a stronger sustainability agenda and to scrutinise industry in general. We think.

The elections remain an open race. Current polls suggest we are heading towards a hybrid Parliament that we haven't really seen before. What this could mean is that Europe becomes governed by single issue topics that galvanise political parties into collaboration and action. Tax falls neatly into this criterion.

MEPs will also be keen to highlight their value and be seen to deliver the change that the electorate appear keen to vote for. Some Member States' alleged harmful tax practices and the lack of action to address loopholes in their respective tax systems is a potential vote-winner that could be leveraged. Tax evasion, or even tax efficiency, is therefore expected to be a central issue. Individual companies, especially foreign ones, could be singled out as particularly guilty and isolated for public scrutiny.

Brussels will also see the installation of a new Commission in November. This may include Commissioner Vestager, who may or may not remain in charge of DG Competition. Could she be the first female Commission President, replacing Juncker who is stepping down? However current

expectations suggest that Moscovici will not be returning. In any case tax has given the Commission a voice that resonates with European citizens and is likely to want to continue the drive into the new mandate where it is already looking at issues around digital taxation and green taxes.

## The tax agenda

TAX3, the European Parliamentary special committee responsible for formulating the EU's tax strategy around tax evasion, avoidance and financial crimes, is the one to watch this year and beyond. One of its key goals is to end *'artificial shifting around of companies' profits from one country to another*'. In February 2019 it published its final report and recommendations which will be a highly influential reference for the new Commission as it looks to develop its tax priorities later this autumn.

The EU's list of non-cooperative tax jurisdictions came into force last month. Commonly known as the Black List, it highlights those countries whose tax transparency and accountability is not sufficient. It has gone from an extended list to a rather small one, commensurate with a Grey List that has correspondingly grown, which includes countries where the EU is awaiting further points of clarification. Operating in a country that remains black listed increases the likelihood of an investigation into your corporate affairs and heightened scrutiny from NGOs.

## A global family

NGOs have not been slow to leverage the opportunity. It wouldn't be the first time that they have published a report on a target company or issue and used it to leverage an important point to get attention with key policy makers in national and EU government. There has been a significant increase in the number of reports they have produced looking at tax and the structures different companies have in place. And they have become far more globally connected. Understanding how they talk to one another and influence the public narrative is a new reality.

## What should you do?

It's a moveable feast and you should be ready for whatever meal is subsequently served. The EU is tuned into the issue and will not be slow to respond. Being seen to pay your fair share, isn't going to go away.

It's not about whether a company has done something illegal or not, it's the emotive issue of being a good corporate citizen and being consistent in what you say and actually do.

Whether it's a leak, breaking news, a formal investigation or bad publicity from a resourceful NGO, tax efficiency can deliver some rather uncomfortable media headlines and you should be prepared

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