An interview with Stephen Quest – Director-General, TAXUD, European Commission

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The Directorate General works to provide solutions in the tax and customs fields to Member States and economic operators, thus enabling them to respond to current economic, social and environmental challenges, both at European and international level.¹

Stephen Quest, a British national, has been the Director-General of TAXUD since January 2016.

Ute Benzel, the EY Tax Leader for Europe, the Middle East, India and Africa, and Chris Sanger, EY’s Global Tax Policy Leader, met Stephen at his office in Brussels on 17 September.

Going into our interview with Stephen, it was all but impossible to ignore just how much of the European Commission’s current focus is on digital taxation (writes Chris Sanger). After pressing the OECD to accelerate its work on this topic in 2017, the Commission itself is now experiencing just how challenging it is to drive consensus on such a complex issue. Our opening question, we hoped, would give Stephen an opportunity to set the stage: what was his general perspective on where things stood, and where did he see the debate heading?

“The digital package is an important package for the Commission, and there is significant political momentum behind it,” Stephen told us. “As you know, we have made two proposals, one for the so-called ‘interim or short-term measure,’ the Digital Services Tax (DST), and one that would be longer term and more comprehensive, the Significant Digital Presence (SDP).

At the moment, under the Austrian presidency, there’s a significant focus on the DST. That discussion is progressing both on a technical track where we’re trying to ensure that the technical details are sorted out, and on the political track, trying to ensure political consensus and support for the proposal. So we continue to hope that we can deliver a result on this, hopefully by the end of the year. I think it’s something that speaks to citizens, with the European Parliament elections coming up next May, and it’s important politically, to be able to demonstrate that Europe is able to act on some of these important questions.”

Ute noted that, at the most recent Economic and Financial Affairs Council (ECOFIN) meeting, there were discussions regarding changing certain elements of the DST - including possibly reducing the financial threshold at which the tax would take effect, and then potentially reducing the scope of the proposal, removing the part of the scope that looked at the sale of user data. Those two elements seem to be in conflict with one another, Ute commented to Stephen, with one bringing more taxpayers into the tax, while the other takes some people out. Ute asked, “Do you have a sense of direction in terms of where this might go?”

“It’s difficult to comment on the exact direction of the negotiations at the moment because they’re happening in real time, and, as you say, if you go in one direction on one thing and another direction on another thing, one has to then step back and look at what the overall impact is,” said Stephen. “What you’re always trying to do in these negotiations, and of course we have to find unanimity under EU rules, is to find a balance. We think that the DST proposal we made was balanced, it was sufficiently ring-fenced to be clear and simple, and sufficiently broad to have a revenue impact that made sense. If one starts playing around with different elements of it, we would need to look at those characteristics. But I think the important thing from our perspective is to get an agreement on a proposal that makes sense and is implementable in a straightforward and clear way.”

“One of the concerns expressed to us by our clients is about double taxation occurring where you have companies outside of the EU investing or selling into the EU, but also even when you have that activity in a single country,” said Chris. “Is there a perspective on how that could be addressed, or is that seen, effectively, as collateral damage in order to address this type of taxation?”

“It is true that the DST cannot be credited against corporate income tax, and that’s because the DST that we have proposed is actually an indirect tax, and so it would risk creating discrimination between resident and non-resident companies to allow a credit,” responded Stephen. “But we have proposed that Member States would allow businesses to make it a deductible expense. So we have tried to find a way through that as best we can.”

Of course, one of the concerns being tabled by many involved in the debate is whether Europe will end up with one single system of taxation for all Member States, a regime for a subset of states, or, at the other end of the spectrum, a series of unilateral measures. “If you do not get to unanimity, do you expect that this would go through enhanced co-operation or do you expect to see unilateral measures happening from interested Member States?” Chris asked.
“The objective is to get unanimity, as it is with all of our proposals,” confirmed Stephen. “We’ve had quite a lot of success on that over the last three years, so I think there’s no reason why we shouldn’t continue to aim for that on this proposal. Some Member States are, in any case, moving in this space or are waiting to move pending the European proposals. I think we have a good chance of making progress. I think it’s a bit early if you’re talking about enhanced cooperation; technically and theoretically that remains a possibility, but the objective is still to reach unanimous agreement on this proposal.”

The longer-term view on digital

Going into the ECOFIN meeting mentioned by Ute, many in the tax world questioned whether the strong focus on the DST by the Commission was signalling that they had effectively handed back the reins on the development of a longer-term digital proposal to the OECD. “Was that a fair reflection?” Chris asked.

“I don’t think that’s exactly the way I would put it,” responded Stephen. “When we presented the package, we were very clear that there were three aspects to it. First, that we were going to continue working for a global solution, including with the OECD and G20 levels, and we remain committed to that solution. Second, that we thought we needed a long-term, comprehensive solution at the EU level, partly to contribute to that global debate, and partly to ensure that we had a European solution in any case. And third, the shorter-term, interim proposal that we’ve just been discussing. So I think the long-term solution remains very much on the table, but it is true that the current focus is more on the short-term solution. There is, of course, an interface in the discussion between the European and OECD levels. The discussions in the OECD have now accelerated. There’s going to be another progress report in 2019, under the Japanese presidency [of the G20], and we will need to see whether that leads to more clarity about the ultimate orientation of the OECD solution, and how then we can shape the EU solution as a contribution to that in due course.

But I think that we will continue to push both for European level and global solutions to this challenging issue.”

Other EU initiatives: ATAD

When we met with Stephen toward the end of September, there were roughly 100 days until the first Anti-Tax Avoidance Directive (ATAD) deadline required Member States to transpose the requirements into their national laws. We are already seeing differences in implementation in different countries, Chris noted to Stephen, and we had a similar experience in country-by-country (CbC) reporting, and may well see the similar challenges during the implementation of the Mandatory Disclosure Regime (MDR) directive. “Could you imagine a mechanism through which there can be a more coherent implementation of these rules?” Chris asked.

“We are very alert to this and we do work closely with the Member States on it,” explained Stephen. “Of course, Member States have the responsibility to implement the legislation that they’ve adopted, and our responsibility is then to verify that they’ve done it properly. But for ATAD, we organized a two-day seminar with legislators from all the Member States, to actually get them together to discuss what they are doing to implement it, what the challenges they’re facing are and how we can help them to align this to ensure a coherent implementation. I think that was a successful event, and one that we might consider repeating for other aspects in the future.

“Of course ATAD sets minimum standards and provides optionality, because that’s what the Member States decided when they designed it. Because ATAD is a directive and not a regulation, you are always going to have the risk of some disparity between the different ways in which things are done. But within that we are trying very hard to ensure both coherent implementation and also that it is implemented. We are now investing quite a lot of energy in checking the effective implementation of the raft of directives that we’ve seen flowing through in the last couple of years, “ Stephen said.
“It’s hard to predict the future, but I don’t think ATAD will automatically lead to that outcome [i.e., disparity],” responded Stephen. “I hope that increased transparency and better flows of information will actually have the opposite result, leading to a lower level of disputes because things are clearer and the rules, at the European level, have been clarified and we have removed some of the possibilities of playing one Member State’s tax rules against another’s, creating some sort of gray zone.”

“So we’ll have to see,” he concluded. “If it does lead to a significant uptick in disputes, and that can be traced back to a lack of clarity in the legislation, that can always be corrected.”

Resolving disputes

Of course, the Commission has already been active in the dispute resolution area, putting in place a dispute resolution Directive that must be transposed into Member States’ national laws by 30 June 2019. “What overall impacts do you expect the directive will have for taxpayers, and are you confident that the Member States’ tax authorities will be able to deliver them effectively?” asked Ute.

“I think we are pretty confident on this one, and I think it should lead to a quicker and simpler resolution of some disputes,” responded Stephen with a sense of excitement. “One of the big complaints we heard from business in the past was that things were getting lost or simply not actioned. I think this mechanism provides an effective and, hopefully, more rapid path to resolution. We’ll need to see in practice whether it’s ticking those boxes, and if it’s not, we’ll need to analyze why not and then go back and fix it. But the good news is we’ve got the agreement and we have the mechanism in place. Once it’s transposed, we’ll just need to check that it’s being enforced effectively.”
Reactions to US tax reform

No discussion with Europe’s coordinating body on taxation would be complete without discussing the recent US tax reform package. Chris noted that the Tax Cuts and Jobs Act (TCJA) A sets a minimum tax notion, and both the MDR and EU Code of Conduct group in relation to non-cooperative jurisdictions include tests of zero or almost zero taxation. “Do you see this as a new trend toward actually establishing a minimum taxation level as a way of protecting tax base?” Chris asked.

“This is not a new debate,” Stephen explained. “It has been a live debate in the EU for quite a long time, but developments in the US give it a new focus. In the listing process in the Code of Conduct we have a particular eye on zero and no tax jurisdictions. For me, that’s slightly different, you’ve got the zero tax and you’ve got the concept of minimum effective taxation, which is a broader concept that you might look at in a different way. But I think both questions are live and will remain live in the upcoming debate.”

“Is the Commission opposed to this in relation to the introduction of the Common Consolidated Corporate Tax Base (CCCTB)?” Chris asked.

“I’m not sure I’d say opposed; the CCCTB has a different objective, which is to provide the common base and then move to consolidating the base to make life easier for businesses operating in the single market,” Stephen responded. “So it’s a business-friendly simplification and facilitation proposal. Member States are looking at this, and the Franco-German initiative, if it provides more political momentum, is going to be very welcome. Of course, there are 28 Member States, not just France and Germany, so we need to ensure that the momentum gathers amongst everyone and that we all move forward together.”

“I do think that it’s very important that we continue to focus on this proposal, which is one of the cornerstones of our activity,” Stephen continued. “We’ve made good progress in some of the more sectoral and more specific proposals, but the Common Corporate Tax Base (CCTB) has been under discussion, in various forms, for quite some time now. I really think it’s time now —we’ve had a single market for 25 years — to find a way of really making progress of taxation in the single market, in the way we made progress in other areas as well,” he observed. “If you look at the last 25 years, we’ve seen the single currency, capital market union, banking union, and in tax we’ve made progress on tax avoidance and the exchange of information. But in this core area, we’re still waiting for a breakthrough.”

“Staying with US tax reform, one of the questions that sits with the Code of Conduct group is whether certain elements of US tax reform are going to be reviewed and what the outcomes of that scrutiny might be? I think Commissioner Moscovici made some comments to the European Parliament about the BEAT, FDII and GILTI. What do you see as the current state of this and future likely progress?” asked Ute.

“It’s something we have been looking at, of course, as you would expect.” confirmed Stephen. “And in the EU, Member States have taken on commitments to align themselves with the modified Nexus approach, for example, under BEPS [Action] 5, that’s overseen by the Code of Conduct group. Also, patent boxes are being reviewed to ensure that they comply with those principles. Now, when we look outside of the EU, the Code of Conduct group then follows the work of the [OECD] Forum on Harmful Tax Practices and relies on that work in the listing process. So, in a sense, we’re currently waiting for the OECD assessment, because we’ve been very careful in the listing process where we have worked very closely with the OECD to avoid having duplicate, parallel assessments of the same issues.”

“Aren’t the reviews slightly different in terms of what is reviewed?” asked Chris. “They are,” confirmed Stephen. “So we’re currently awaiting the OECD review.”

Tax and financial transparency

“Moving on to tax transparency,” continued Ute, “many of our clients are concerned that meeting the Mandatory Disclosure Regime (MDR) requirements will require them to make a significant investment in new processes and technology solutions to enable tracking and reporting. In the same vein as for Country by Country (CbC) reporting, do you feel that Member States’ tax authorities will make effective use of the incoming data?

“Yes, I think they will, and I think, inevitably, initially, some will make more use of it than others,” confirmed Stephen. “I think what I hear in the question is exactly that — ‘is it all worth it?” The onus is on the Member States’ tax authorities to show it is worth it and to make effective use of the data. I would say that, individually and collectively in the EU, the tax administration community is probably still underinvested in data analytics capabilities. That’s a theme that I’m pushing quite hard with my peers and here in the Directorate-General for the EU, and, indeed, after talking to you, I’m going off to Vienna this afternoon to talk at a meeting with the heads of tax administration from the 28 Member States, and this is one of the things on our agenda.

If you look at the last 25 years, we’ve seen the single currency, capital market union, banking union, and in tax we’ve made progress on tax avoidance and the exchange of information. But in this core area [the CCCTB], we’re still waiting for a breakthrough.

3. Pierre Moscovici, European Commissioner for Economic and Financial Affairs, Taxation and Customs
4. The Base Erosion and Anti-Abuse Tax, Foreign-Derived Intangible Income and Global Intangible Low Tax Income respectively, all measures within the TCJA.
5. The listing of Non-cooperative Jurisdictions for Tax Purposes.
“So I think step one is getting the data. Step two is ensuring we make full use of it and we need to invest more in doing so. But I think I can give some assurance that it will be of use and of value,” said Stephen.

“Moving back to issue of the listing of non-co-operative jurisdictions, we’ve seen many countries come off the ‘black’ list and onto the secondary, so-called ‘gray’ list by making the commitment to meet a range of requirements by the end of this calendar year.” “Is there a concern that the gray list effectively becomes a new black list?” asked Chris.

“I don’t think so,” responded Stephen. “I think the gray list is a success because it shows that in the interactions with third-country jurisdictions, we have successfully obtained firm political commitments to make changes that will prevent some of these behaviors from being possible in the future. Now, we do need to check that these commitments are complied with, and that’s what we’ll be doing for the rest of this year, and then the assessments will happen early next year.”

“I hope and expect that the vast majority of the commitments that have been made will be respected, because they were made in good faith, and also at a high political level. We will then be able to say that this has been a successful process that raised the bar at the global level.”

“If, in one of the jurisdictions, the commitments have not been met, then the Council will have to decide how to deal with that, and it may be that some of these countries will be more formally listed, as there are still some countries listed because they haven’t made any commitments. But the objective is not to have a long black list; the objective is to remove some of the issues in these third country jurisdictions,” concluded Stephen.
I think this [the question of public Country by Country reporting] is something that is important in terms of enabling citizens to have greater transparency on what’s happening in this area, and that we’ve made a proposal [for public CbC] that is balanced and that is feasible. Now, whether the politics will enable us to make progress on this is another question.”

“It seems that many countries will have many commitments at the end of this calendar year, which some governments may find difficult to deliver,” said Chris. “So we may well see a delay in some countries even though the commitments and intent are there. What is likely to be the Commission’s reaction could be to that?

“In this phase, our task in the Commission is to contribute toward the technical assessment of the conformity of the measures that have been taken against the commitments that were made,” replied Stephen.

“What the judgement is about is whether or not those commitments, or what’s being done, is sufficient or adequate. The adequacy of those measures is, ultimately, for the Member States and the politicians to decide on. It would be a bit premature, I think, to get into that. We’ll have to see how it looks in the early part of next year,” said Stephen.

There was one further important issue that we wanted to put to Stephen on tax transparency – that of the continued desire of the European Parliament (EP) to see CbC data made public. That debate is currently subject to triangular discussions between the Commission, the European Council and EP. “Do you foresee any movement on this in the coming months?” Chris asked.

“The proposal is indeed being discussed in that sort of trilogue setting you mention,” confirmed Stephen. “I wouldn’t hazard a prediction on if and when a breakthrough will be made. One of the issues that’s currently being discussed is the legal basis, although it’s not a secret, that there are different views about the pertinence of the legal base that’s being used, and until or unless that is resolved one way or another then the file will continue to sit in that triangular discussion. But I hope we can make progress on it soon.

Again, I come back to my ‘citizen-friendly’ point; I think this is something that is important in terms of enabling citizens to have greater transparency on what’s happening in this area, and that we’ve made a proposal that is balanced and that is feasible. Now, whether the politics will enable us to make progress on this is another question.”

Coming toward the close of our session, Ute reminded Stephen that in early 2019, we will see the election of more than 700 parliamentarians to the EP. “How do you see that changing the overall agenda of the Commission?” Ute asked.

“That’s the million dollar question!” replied Stephen. “What is clear is that tax matters have been high on the agenda of this Commission from the very beginning, and, as we see with digital taxation, it remains high on the political agenda as we move into the final year.

I would expect tax issues to be an issue of significant importance for any future parliament. What will be their precise angles of interest and attack will depend a little bit on the makeup of the parliament, and that would be foolish to try and predict. But I don’t see tax policy going into a quieter backwater from 2019 onward. I think we’ll still be in a phase where we’re going to see a relatively high level of activity.”

Messages for multinationals

Was there any message you would like to give to multinational companies about the Commission’s tax agenda more widely?” Chris asked as a concluding question.

“Yes,” reacted Stephen without hesitation. “Obviously, some of what we do, in a narrow sense, may be seen to be unpopular or adding burdens or targeting one particular sector or type of activity, and that can lead to negative perceptions. But fundamentally, what we are doing in the tax policy area is trying to enhance the functioning of the single market, and the single market is of huge benefit to business because of all the simplification that it brings and the ability to do business across borders without hindrance.”

“A proactive, modern, simple tax policy has a huge enabling role to play as Europe looks forward to the next decade. The US has taken a step forward with its tax reform, and so we shouldn’t be afraid of looking inside as well and asking ourselves how we can make things work better,” said Stephen.

“For that to occur we need to work with business, and business has been important in helping us to shape some of our major proposals, not just on corporate taxation, but also on VAT. We work very closely with business at a technical level. I think the fundamental message is that yes, the technical stuff is important, but we also need to ensure that the positive politics of tax is injected into this debate, and that the voice of business is pushing for a positive, reforming tax agenda that will be good for Europe and good for global business. I think that’s all possible.”

“One final thought on this is that we spend a lot of time at the moment talking about taxing digital activity, but another way of looking at it is how can we have a debate, for example, about the power of digital to modernize and transform the way we do tax?” he asked in a final thought. “Instead of just having a debate about whether enough tax is paid here or there and by which or which type of business, we should also have the debate about how we can mobilize the power of digital to make tax administration more effective, to boost fair and efficient revenue collection, and make Europe a better, fairer place to do business for everybody. I think there’s huge potential there, but we need more business engagement, not just on what they don’t like, but also on what they would like, and what they can help us develop, together,” said Stephen.
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