

# CFE's Tax Top 5

## KEY TAX NEWS OF THE WEEK

BRUSSELS | 14 OCTOBER 2019



## OECD Seeks Comments on 'Unified Approach' Proposals

The OECD has published the latest [Secretariat proposals](#) for taxation of the digitalising economy on basis of the 'unified approach' under Pillar One, which are the basis for further negotiations among the Members of the Inclusive Framework. Members are expected to approve the new set of rules in January 2020. Under the proposed approach, new taxation rights for market jurisdictions are recognised as a matter of novelty. Conversely, under present international tax rules, zero profit could be allocated to any nexus not based on physical presence. The new rules are intended to apply to companies that derive value from consumer-interaction with users in market jurisdictions. Under the new profit allocation rules, a share of the deemed residual profits of the 'consumer-facing' multinational companies will be reallocated to market jurisdictions, through formulary apportionment and use of proxies such as sales.

Commenting, the OECD Secretary-General said of the new proposals: *"We're making real progress to address the tax challenges arising from digitalisation of the economy, and to continue advancing towards a consensus-based solution to overhaul the rules-based international tax system by 2020. This plan brings us closer to our ultimate goal: ensuring all MNEs pay their fair share. Failure to reach agreement by 2020 would greatly increase the risk that countries will act unilaterally, with negative consequences on an already fragile global economy. We must not allow that to happen,"* Mr Angel Gurría said.

Stakeholders are invited to send comments on the policy, technical and administrability issues raised by the proposal before 12 November 2019, 12:00 CEST, by email to [TFDE@oecd.org](mailto:TFDE@oecd.org) in Word format. A public consultation is scheduled for 21-22 November in Paris.



## Vestager: State Aid Enforcement Won't Give Us Fair Tax Systems

The European Parliament continued the confirmation hearings of the new Commissioners designated by the European Commission President-Elect Ursula von der Leyen. Margrethe Vestager, nominated as Executive Vice-President responsible for the Digital Age, and oversight of the competition and State aid policy and enforcement in the Single Market, passed the [confirmation hearing](#) of the relevant European Parliament committees last week. Speaking in Brussels on 8 October, Vestager confirmed EU Commission's intention

to overhaul the taxation rules to better serve the European interests. “*We need to reform the tax rules to achieve (the fair taxation) goal, the enforcement of the State aid rules alone will not give Europe fair tax systems*”, Ms Vestager stated. The Commissioner, however, intends to continue using Commission’s State aid powers to scrutinise individual tax rulings in the EU Member states.

Answering MEPs’ tax policy questions, Vestager pledged her commitment to introducing CCCTB and public CbCR for taxation matters, drawing a parallel with the success of such public reporting in the financial sector. On the digital tax front, Vestager reiterated the mission statement of President-Elect von der Leyen, who promised a digital tax in the EU by 2020 if the OECD negotiations fail. “*It is difficult to be optimistic about taxation, but surprising things can happen*”, Vestager said. In a message to US tech companies, Vestager said that the Commission will look at other measures to ensure a level playing field, beyond fines. As part of such mission, Vestager will seek to protect European consumers from market dominance and abuse, whilst helping European companies to compete globally in a digital age. As a Commissioner who oversaw the biggest fines and tax assessments of US tech companies for breach of EU competition rules, Vestager warned that “*in an era of surveillance capitalism, you are not searching Google, but Google is searching you*”. Finally, Vestager said that at present the Commission is not pursuing policy of break-up of the tech companies on antitrust grounds, saying that such policy would be too intrusive and very far reaching.



## Foreign Losses and Territoriality: CFE Statement on C-575/17 Sofina

CFE Tax Advisers Europe has published an [Opinion Statement](#) of the ECJ Task Force on the *Sofina*-case, in which the Fifth Chamber of the Court of Justice of the EU delivered its decision on 22 November 2018. In the decision, the Court held that the imposition of French dividend withholding tax violated the freedom of movement of capital movement in light of the non-resident’s overall loss situation. CFE Tax Advisers Europe note that the Court’s decision in *Sofina* may have extended the standard of comparability, requiring to take into consideration the (foreign) non-dividend income of the recipient when comparing the tax treatment of domestic and outbound dividends. This comparator, however, upsets the principle of territoriality, as accepted by the Court in *Futura* and *Centro Equestre*, by requiring the source State to take into account losses that the non-resident taxpayer has in the residence State.

Taken at face value, *Sofina*’s impact may extend well beyond withholding taxes (specifically) and dividend taxation (more generally) by attaching a “no-loss” condition to all source State taxing rights. It may arguably even bar the PE State from taxing profits attributable to that PE if the foreign head office is in a loss-making position. Moreover, applying *Sofina* to everyday international tax law might also not be an easy task and push administrative feasibility to its limits. The Court effectively seems to propose a non-discriminatory deferral of taxation that is combined with a domestic regime that leads to a subsequent recapture if (and only if) the non-resident taxpayer becomes profitable during a subsequent tax year, the [CFE statement](#) concludes.



## EU Considering Stricter Anti-Money Laundering Rules

EU's Financial Affairs Council (ECOFIN) [considered on 10 October](#) further harmonisation of the EU Anti-Money Laundering (AML) regime by upgrading the present AML directives to a regulation, an EU law instrument which is directly enforceable in all EU Members states without further implementing acts at state level. The ministers also discussed concentrating the AML supervisory activities in a single pan-European body.

On behalf of Finland's Presidency of the EU, Mika Lintilä, Minister for finance said: *"Effectively tackling corruption, trafficking, tax evasion or terrorism means effectively tackling the illegal money flows that finance these activities. As crime becomes increasingly cross-border, the EU needs to adapt its regulatory framework to ensure the security of its citizens and the integrity of its financial system."*

[Further questions](#) concerning the scope of EU's AML regime will be considered in due course, with conclusions expected to be adopted at the Council meeting on 5 December.



## CFE Conference on AML Rules: Paris – 29 November

The 12th European Conference on Tax Advisers' Professional Affairs, organised by CFE Tax Advisers Europe and the *Institut des Avocats Conseils Fiscaux* (IACF), will be held in Paris, France, on Friday 29 November 2019 from 9am to 4pm, this year entitled "Making Anti-Money Laundering Rules More Effective For Tax Advisers".

The conference will examine the perceived risks posed by the tax profession in facilitating money laundering based on the EU Commission's Supranational Risk Assessments, compliance with the new and existing EU Anti-Money Laundering Directives and efforts taken to address money laundering in the broader international context as well as the effect this has on tax evasion. Panellists will consider the effectiveness and the impact of existing EU rules and the new requirements of the 5th AML Directive, including making beneficial owners of legal entities registers public and providing increased access to information on the beneficial ownership.

[Register now](#) to secure your place at the conference.



---

The selection of the remitted material has been prepared by  
Piergiorgio Valente/ Aleksandar Ivanovski/ Brodie McIntosh/ Filipa Correia



[Twitter](#)

[LinkedIn](#)