

CFE's Tax Top 5

KEY TAX NEWS OF THE WEEK

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GAFAs Representatives Give Evidence at US Inquiry into French Digital Tax

Representatives from companies including Amazon, Google and Facebook will give testimony concerning the recently introduced French digital tax at a hearing taking place on 19 August 2019. The hearing forms part of the [investigation](#) launched by the Office of the United States Trade Representative under Section 301 of the Trade Act of 1974 into whether the French digital services tax unfairly targets US businesses.

In a [joint statement](#), companies Airbnb, Amazon, Facebook, Google, Microsoft and Twitter said the tax *“is unjustifiable in that it infringes international agreements, and unreasonable in that it is discriminatory, retroactive and inconsistent with international tax policy principles.”* The Information Technology Industry Council, which represents Amazon, Facebook, Apple and Google, also stated in written testimony that the costs of any tax will be passed on down the supply chain. Testimony for Facebook also stated that the tax would hinder development of the digital economy and pose problems for digital business models.

Following the French digital tax being signed into law in late July, US President Donald Trump [tweeted](#) that there would be “substantial reciprocal action” taken by the US concerning the tax, implying that French wine may be the subject of additional tariffs. Following the conclusion of its investigation, the Office of the United States Trade Representative could impose retaliatory tariffs or seek resolution through the WTO.



Apple's Appeal Against EU Commission Decision Set for Hearing Next Month

Apple's €14 billion Euro appeal against the EU Commission's 2016 decision that Ireland's tax authorities granted Apple a “selective advantage” in contravention of EU State aid law will [proceed to hearing before the EU's General Court from 17 to 18 September 2019](#).

The Commission issued its preliminary decision in August 2016 after a three-year long investigation into Apple's tax arrangements in Ireland. The Commission found Ireland granted a selective advantage to Apple as it did not employ appropriate profit allocation methods to calculate the Irish source income of the Irish Apple branches. Apple in its appeal documents claims that there is no legal requirement that profit allocation is compliant with the arm's length principle and that it is furthermore not an applicable standard of assessment under European law. Apple and Ireland also argue that the Commission

fundamentally erred in failing to recognise that profit creating activities, including development of IP, are attributable to the United States, rather than Ireland.

The outcome of the appeal will be significant in testing the Commission's analysis of the arm's length principle as applied in other ongoing cases, including *Starbucks* and *Amazon*.



OECD Publishes Stage 2 MAP Peer Reviews

The OECD has now [published](#) the first set of Stage 2 Mutual Agreement Procedure Monitoring Peer Reviews for the jurisdictions of Belgium, Canada, the Netherlands, Switzerland, the United Kingdom and the United States. The stage 2 peer reviews examine the progress of jurisdictions in implementing recommendations set out in their stage 1 peer review reports.

The reports demonstrate that positive steps had been taken by all six jurisdictions, with most jurisdictions updating MAP guidance and allocating more resources to the competent authorities to increase efficiency in handling MAP cases. Additionally, each jurisdiction had either maintained or decreased the timeframe within which MAP cases were resolved, and the majority of jurisdictions were also using the MLI to ensure treaties were in line with the standard.

The peer reviews are being completed as part of the peer review process under Action 14 of the BEPS Action Plan concerning taxation dispute resolution and the Mutual Agreement Procedure (MAP), aimed at making dispute resolution mechanisms more effective.



9th US Circuit Court of Appeals Upholds Amazon Decision

The 9th U.S. Circuit Court of Appeals has [upheld a decision](#) of the U.S. Tax Court in a \$1.5 billion US dollar dispute concerning payments made to Amazon.com by an Amazon subsidiary in Luxembourg, Amazon Europe Holding Technologies SCS, for the transfer of intangible property required to operate its business in Europe.

The Court ruled that under the definitions of intangible property at the subject time, the payments should not include amounts for workforce, goodwill and innovation, as argued by the IRS. The Court rejected the broader definition of intangible property sought to be applied by the IRS in its appeal, stating that the definition at the subject time was limited to independently transferable assets.

It was noted in the decision that under the current definition of intangibles, the position taken by the IRS in the appeal would be correct.



Reminder: GTAP Conference – 3 October 2019: Programme & Registration

The Global Tax Advisers Platform [inaugural conference](#) will take place on 3 October 2019 in Torino on the topic of “*Tax & The Future*”. GTAP was formed in 2014 by CFE, AOTCA and

WAUTI as a global response of tax advisers to international tax initiatives, with the aim of forging closer links among tax advisers throughout the world. The platform provides the proper framework for a more dynamic, more inclusive cooperation among tax advisers, on the basis of enhanced dialogue, more effective collaboration and openness.

The GTAP conference will examine issues that are of interest to all tax advisers in a borderless, increasingly globalising and automated society, driven by new technologies. To that end, four panels of expert speakers will consider the evolution and future of the topics of global tax policy, corporate income tax and VAT, the global tax profession and business models and tax sustainability. More details of the event and programme are available [here](#).

[Register now](#) to secure your spot at the conference!



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