



**BRUSSELS | 20 SEPTEMBER 2021**

## **State of the Union: EU Prioritises Global Tax Deal & Fair Taxation**

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In the 2021 State of the Union Address, EU Commission President von der Leyen highlighted the most important current key tax priorities for the European Union. In particular, Von der Leyen noted that fair taxation was key in achieving priorities that the Commission had set for social fairness. She noted that *"In our social market economy, it is good for companies to make profits. And they make profits thanks to the quality of our infrastructure, social security and education systems. So the very least we can expect is that they pay their fair share. This is why we will continue to crack down on tax avoidance and evasion. We will put forward a new initiative to address those hiding profits behind shell entities"*. CFE recently published a [statement](#) responding to the recent consultation on the forthcoming initiative on shell entities.

On the issue of global tax reform, and the ongoing OECD negotiations on the historic two-pillar agreement on international corporate taxation, the EU President stated that *"Asking big companies to pay the right amount of tax is not only a question of public finances, but above all a question of basic fairness. And we will do everything in our power to seal the historic global deal on minimum taxation."* A [press release](#) issued following last week's ECOFIN in Slovenia confirmed the Council was working to get all EU Member States on board with the deal. Presently, Ireland, Hungary and Estonia are the holdout jurisdictions from the EU on the deal, and recent [reports](#) indicate increasing pressure is being put Ireland

on by US multinationals to agree. French President Macron and EU Commissioner for the Economy, Paolo Gentiloni, will [this week](#) visit Ireland to discuss the issue with Irish Minister for Finance, Paschal Donohoe.

## Tax Administrations Accelerate Digital Transformation

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The OECD's Forum on Tax Administration has issued the [Tax Administration 2021](#) report, which compares data on particular aspects of tax administration and tax systems across 59 economies, compiled in the 2020 International Survey on Revenue Administration. The report examines the data to highlight key trends, innovations and best practice, in order to facilitate information sharing and dialogue between tax revenues on improving tax systems.

The report highlights that in response to the coronavirus crisis, tax administrations had significantly improved their digital transformation processes, and invested resources in digital solutions for tax compliance. The report shows that 9 out of 10 business and over 80% of individuals now filed electronic returns, and that around 75% of administrations have invested in AI and machine learning in tax administration processes.

The Chair of the Forum on Tax Administration, Bob Hamilton said of the report, *“Tax administrations’s efforts to move more of their processes online has not only enhanced service delivery, reduced burdens and improved compliance, but it has also made us more resilient. Leading a tax administration myself, it became immediately clear that digital service delivery would be of significant help in our response to the COVID-19 pandemic. Our digital readiness allowed us to quickly take on new roles to assist in the provision of wider government support and ensured that we could continue to deliver effective services to taxpayers during times of social distancing and remote working.”*

## ECJ Sets Aside General Court Ruling in Belgian Excess Profits Case

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The European Court of Justice has issued its decision in the Belgian Excess Profit State aid case, C-337/19 *Commission v Belgium and Magnetrol International*, setting aside the decision of the General Court. The key issue in the appeal was whether the General Court rightfully held that the Commission had not demonstrated to the requisite legal standard the existence of a 'consistent tax administration practice in the contested decision'. In its judgment the General Court repealed the Commission decision on grounds of failure to state reasons as to the choice of advance rulings used, in particular why 6 examples chosen by the Commission were sufficiently representative of all 66 advance rulings under scrutiny. The Commission argued that the General Court incorrectly misclassified the "excess profit" tax ruling practice as a scheme under Article 1(d) of Regulation 2015/1589, and misinterpreted the first, second and third condition of Article 1(d) in its decision.

The Court of Justice in its decision held that the General Court misapplied the term 'act' in Article 1 by limiting its analysis of the conditions of Article 1(d) of Regulation 2015/1589 to only the acts referred to in recital 99 of the decision at issue, and that the General Court's conclusion that the Commission had not demonstrated the existence of a 'systematic approach' was incorrect in law, ordering that the General Court judgment be set aside. The Court of Justice referred back to the General Court the questions to assess the pleas in law, i.e. whether the advance tax rulings concerning the downward adjustment of profits constitute State aid, and subsequently, whether the recovery of the alleged aid infringes the principles of legality and of the protection of legitimate expectations.

Significantly, in paragraphs 157 to 167 of the judgment, in respect of arguments that the Commission exceeded its powers by using EU law on State aid in order unilaterally to determine matters falling within the exclusive tax jurisdiction of a Member State, the Court of Justice held that action by Member States in areas that are not subject to harmonisation by EU law is not excluded from the scope of the provisions of the FEU Treaty on the monitoring of State aid. The Court stated that "*Member States must exercise their competence in the field of direct taxation*

*in compliance with EU law and, in particular, the rules established by the FEU Treaty on State aid. They must therefore refrain, in the exercise of that competence, from adopting measures which may constitute State aid incompatible with the internal market within the meaning of Article 107 TFEU".*

Accordingly, the Court of Justice held that the Commission "*could not be accused of having exceeded its powers when it examined the measures constituting the scheme at issue and when it ascertained whether those measures constituted State aid and, if so, whether those measures were compatible with the internal market within the meaning of Article 107(1) TFEU*" and that this could not be called into question on the basis of a lack of tax jurisdiction for the taxation of excess profits or national competence to adopt measures to avoid double taxation, as "*in exercising that competence, the Member States must refrain from adopting measures which may constitute State aid, the monitoring of which falls within the Commission's competence. The same is true of the adoption by the Member States, in the exercise of their powers in the field of taxation, of measures necessary to prevent double taxation situations*".

## OECD Blockchain Policy Forum

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In a series of events taking place virtually over the coming weeks, the OECD is hosting the 4th edition of its [Global Blockchain Policy Forum](#). A number of virtual sessions will take place concerning relevant developments and emerging issues in the Blockchain sphere, such as global regulatory rules and cooperation between countries, virtual assets and financial crime, sustainable business conduct in public blockchains, AI in finance and the latest trends in asset tokenisation in policy making.

Registration for the sessions is possible via this [link](#). The sessions will be streamed online, and will be available for replay for those who register for the events.

## GTAP 2021 Declaration Roundtable Discussion - 24 September

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The Global Tax Advisers Platform (GTAP) Declaration 2021 identifies five key priorities in international taxation in the eyes of the organisation, and was approved earlier this year by representatives of its founding organisations, the West African Union of Tax Institutes (WAUTI), CFE Tax Advisers Europe (CFE) and the Asia Oceania Tax Consultants' Association (AOTCA).

On Friday 24 September from 11:00 to 12:00 CEST representatives of the CFE, AOTCA and WAUTI will present and discuss the main findings and the key priorities contained in the 2021 Declaration during a virtual roundtable discussion event. To attend and participate in the discussion, please register for the free-of-charge event via this [link](#).

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