

CFE's Tax Top 5

KEY TAX NEWS OF THE WEEK

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EU Commission Consultation on Moving to Qualified Majority Voting in Taxation Matters

The European Commission has invited public feedback concerning a [roadmap](#) which proposes decision making on tax matters could take place by way of qualified majority voting, rather than by unanimous agreement. The Commission's roadmap states *"progress in EU tax policy is severely hampered by the unanimity requirement and important projects for the Single Market, EU growth and competitiveness as well as fiscal fairness have been blocked as a result. To keep pace with rapid economic, societal and technological developments, the European Union needs to be equipped with efficient decision-making tools that enable to act in a timely and effective manner"*.

The roadmap sets out that the communication will explore the possibility contained in Article 48(7) of the TEU, which allows the Council to change decision making from unanimity to qualified majority voting, whereby legislative proposals can become EU law if supported by a minimum number of EU countries, representing a minimum share of the EU population. The consultation will run until 17 January 2019.



EU Commission Announces State Aid Investigation into Netherlands' Tax Rulings to Nike

The European Commission has [opened](#) an in-depth investigation into tax rulings made by the Netherlands concerning two Nike companies established in the Netherlands, and whether through those rulings they gave the companies an unfair advantage over their competitors. The Commission will investigate whether the accepted transfer pricing method used to establish royalty payments made by two operating companies to the Dutch partnerships which owned the IP rights of the products sold by the entities were in keeping with the arm's length principle. The partnership entities were not taxed in the Netherlands.

Speaking in relation to the investigation, Commissioner Vestager stated *"Member States should not allow companies to set up complex structures that unduly reduce their taxable profits and give them an unfair advantage over competitors. The Commission will investigate carefully the tax treatment of Nike in the Netherlands, to assess whether it is in line with EU State aid rules. At the same time, I welcome the actions taken by the*

Netherlands to reform their corporate taxation rules and to help ensure that companies will operate on a level playing field in the EU."

The Commission's interpretation of the arm's length principle is currently being examined by the Court of Justice of the European Union in relation to other recent Commission State aid cases, including Starbucks, Apple and Amazon.



France and Austria to Introduce Unilateral Digital Tax Measures in 2019

The Council of the European Union sitting as ECOFIN (Economic and Financial Affairs Council) have to date failed to reach agreement on European Commission proposals for a digital services tax in the EU. At the December ECOFIN a Franco-German 'sunrise clause' proposal was put forward, wherein it was suggested that the Commission and Council should amend the proposed digital services tax such that it would be a 3% turnover tax to apply to digital advertisement services to enter into force on 1st January 2021, if no international solution has been agreed upon by that date, and expire by 2025. In the instance an international solution has been agreed and translated into EU law before the proposed implementation date, France and Germany proposed that the directive could then be withdrawn by majority vote.

However, since the December ECOFIN, both France and Austria have stated they will introduce unilateral national taxes on digital services. French Economic Minister Bruno Le Maire stated to France 2 that *"I am giving myself until March to reach a deal on a European tax on the digital giants. If the European states do not take their responsibilities on taxing the GAFA, we will do it at a national level in 2019."*

Additionally, Austrian Chancellor Sebastian Kurz released a statement in late December setting out that Austria, *"In addition to the European plan ... will take a national step. We will introduce a digital tax in Austria. The aim is clear: taxation of companies that make large profits online but barely pay taxes – such as Facebook and Amazon."* Details of the tax are expected to be announced at a Cabinet meeting this month.



Netherlands Compiles Low-Tax Jurisdiction List for Anti-Tax Avoidance Measures

The Netherlands has issued a [publication](#) containing a list of "low tax" jurisdictions, i.e. jurisdictions with a corporate tax rate which is lower than 9%, that will be subject to new national anti-tax avoidance measures. The jurisdictions on the list include the countries currently remaining on the EU List of Non-Compliant Jurisdictions for Tax Purposes, namely Guam, Samoa, Trinidad and Tobago and the US Virgin Islands. In addition, Anguilla, the Bahamas, Bahrain, Belize, Bermuda, the British Virgin Islands, Guernsey, the Isle of Man, Jersey, the Cayman Islands, Kuwait, Qatar, Saudi Arabia, the Turks and Caicos Islands, Vanuatu and the United Arab Emirates are included on the list.

Countries on the list will be subject to measures aimed at combatting tax avoidance. These include a measure concerning controlled foreign companies aiming to prevent companies

moving assets to low-tax jurisdictions and a measure to introduce a conditional withholding tax on interest and royalties from 1 January 2021, whereby companies registered in jurisdictions on the list will be subject to pay a 20.5% tax on interest and royalties received from the Netherlands. Additionally, any companies with headquarters in the jurisdictions on the list will no longer receive rulings from the Dutch Tax and Customs Administration.



CFE Biannual Publications Report 2017 - 2018

In its role as interlocutor in dialogue with EU institutions on tax technical and tax policy matters, CFE Tax Advisers Europe published various opinion statements throughout 2017 and 2018. The publications are also a key tool for informing internal and external stakeholders of relevant developments.

For your convenience, please find a [report](#) compiling the technical output of CFE for 2017 and 2018, with links to the publications contained in the report. We invite you to read the publications and remain at your disposal for any questions you may have.



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