

# CFE's Tax Top 5

## KEY TAX NEWS OF THE WEEK

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## OECD Programme on Digital Taxation

The OECD has published the [work programme](#) on the next steps on taxation of the digital economy. The document sets out the organisation of the OECD work for the next while as well as modified proposals for profit allocation and nexus rules that take into account tax challenges of the digital economy.

Crucially, the OECD acknowledges the political imperative on reaching an early consensus, considering that the rules will have an impact on revenues and the overall balance of taxing rights among jurisdictions. In recognition of the difficulties in reaching such a consensus, the OECD highlights that the pathway forward will require “an early political steer”. The document further sets out that in addition to the technical work, a political engagement and endorsement would be required as the interests at stake for members go beyond technical issues.

Regarding the profit allocation methods, the document no longer operates with the proposals set out in the early- 2019 report, i.e. marketing intangibles and users contribution approach, introducing three similar concepts instead:

- Residual profit splits (modified residual profit split method)
- Fractional apportionment method
- Distribution-based approaches.

On the new nexus rules, the programme indicates that the OECD is considering new Permanent Establishment rules to take into account digital presence, hence potential modifications to articles 5 & 7 of the OECD Model Tax Convention. The second pillar of residual BEPS issues aims to address further corporate base-eroding practices, with establishment of income inclusion rule and tax on base-eroding payments.

The document was approved by 99 member countries and jurisdictions and 10 observer organisations of the Inclusive Framework and was agreed at the plenary on 28-29 May. It will be presented by OECD Secretary-General Angel Gurría to the G20 ministers in Japan on 8-9 June. “For a solution to be delivered in 2020, the outlines of the architecture will need to be agreed by January 2020”, the document states.

Commenting, Mr Gurría said of the developments: *“Important progress has been made through the adoption of this new Programme of Work, but there is still a tremendous amount of work to do as we seek to reach, by the end of 2020, a unified long-term solution to the tax challenges posed by digitalisation of the economy. Today’s broad agreement on*

*the technical roadmap must be followed by a strong political support toward a solution that maintains, reinforces and improves the international tax system. The health of all our economies depends on it."*



## Code of Conduct Group Clears Poland's 9% CIT Rate

The EU Code of Conduct Group (Business Taxation) [cleared](#) Poland's 9% rate of corporate income tax introduced last year with effect from 1 January 2019, for taxpayers with revenues not exceeding EUR 1.2 million. The Code of Conduct published on 27 May the assessment that the measure does not need further scrutiny as the application of the reduced rate is not limited to any specific type of business or activities, but applies to the same income as the general rate.

Last year, the Code of Conduct Group cleared Poland's reduced corporate income tax rate of 15% for small companies and start-ups, introduced with the amended Corporate Income Tax Act. The regime was considered not to be a harmful tax practice, as it only concerned small and medium sized enterprises.



## EU Member States Appoint ECJ Judges

By common accord of the governments of the Member states of the European Union, following an approval from the judicial appointment panel, 14 judges of the General Court of the European Union were appointed on 29 May.

The General Court is the lower-court in the two-tier EU judicial system. Together with the Court of Justice proper, they jointly constitute the Court of Justice of the European Union (commonly referred to as ECJ).

The following judges were re-appointed to the General Court for the period from 1 September 2019 to 31 August 2025:

- Ms Vesna Tomljenović (Croatia)
- Mr Eugène Buttigieg (Malta)
- Mr Anthony Collins (Ireland)
- Ms Ramona Frendo (Malta)
- Mr Colm Mac Eochaidh (Ireland)
- Mr Jan Passer (Czech Republic)

Seven judges were newly appointed to the General Court for the same period:

- Mr Johannes Laitenberger (Germany)
- Mr José Martín y Pérez de Nanclares (Spain)
- Mr Rimvydas Norkus (Lithuania, replacing Mr Bieliūnas)
- Ms Tamara Perišin (Croatia)
- Mr Miguel Sampol Pucurull (Spain)
- Ms Petra Škvařilová-Pelzl (Czech Republic)
- Ms Gabriele Steinfatt (Germany)
- Mr Iko Nõmm (Estonia)

Johannes Laitenberger, the newly appointed judge for Germany, is at present the Director General of the European Commission Competition Directorate, dealing with the most high profile fiscal State aid cases, such as Apple, Starbucks, Fiat and Amazon.



## Albania Signs MLI BEPS Convention

On 28 May, Albania became the 88<sup>th</sup> jurisdiction to [sign](#) the BEPS MLI Convention. The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting now covers 1530 double tax treaties.



## CFE Forum - Limited Places Available

The CFE Tax Advisers Europe Forum will take place on 6 June 2019 in Brussels, this year entitled “Creating Tax Certainty in an Uncertain World: Double Taxation, Tax Rulings & Dispute Resolution Processes”. There are a few places available, for the remaining interested attendees. More details about the Forum programme and registration process can be found [here](#).

An excellent line-up of speakers will discuss and analyse current means of avoiding tax disputes and examine the dispute resolution mechanisms. Tax certainty issues related to the State Aid challenges of tax rulings and advance pricing agreements (APAs) will also be discussed.

Interested attendees from the EU institutions, other public institutions, Member states' representations to the European Union and journalists can attend free of charge. Please contact the CFE Brussels office for more details at [info@taxadviserseurope.org](mailto:info@taxadviserseurope.org).