



**BRUSSELS | 19 JULY 2021**

## **EU: Landmark Climate Policy Package**

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On 14 July, the European Commission [proposed](#) an ambitious climate policy package, encompassing multiple policy instruments to deliver on the European Green Deal Commitment to make Europe a carbon neutral continent by 2050, and to cut carbon emissions 55% by 2030. The package includes a number of instruments, which will require consent of Member states to achieve full implementation across the continent. Proposed instruments include: extension and reinforcement of the ETS to new sectors; increased use of renewables and energy efficiency; a faster roll-out of low emission transport modes and the infrastructure and fuels to support them; an alignment of taxation policies with the European Green Deal objectives, and measures to prevent carbon leakage.

Tax-related policy instruments include revisions of the Energy Taxation Directive, with a key policy goal to help Member States transition to green taxes, as less detrimental to growth and more sustainable compared to the present over-reliance on taxes on work/ labour. The Carbon Adjustment Mechanism aims to level the playing field with imported goods from countries which do not apply the same standards as Europe, thus preventing carbon leakage. To do so, the Directive aims to put a price on carbon-intensive imports, thus encouraging trade partners to implement similar green policies at home. As a result, global reduction of carbon emissions could be achieved simultaneously. A Social Climate Fund is planned to help Member states facilitate the green transition and avoid situations where certain Member states or regions are left behind.

Commenting, Commissioner Paolo Gentiloni said this is the 'now or never' moment for the world: *“Our efforts to tackle climate change need to be politically ambitious, globally coordinated and socially fair. We are updating our two-decades old energy taxation rules to encourage the use of greener fuels and reduce harmful energy tax competition. And we are proposing a carbon border adjustment mechanism that will align the carbon price on imports with that applicable within the EU. In full respect of our WTO commitments, this will ensure that our climate ambition is not undermined by foreign firms subject to more lax environmental requirements. It will also encourage greener standards outside our borders. With every passing year the terrible reality of climate change becomes more apparent: today we confirm our determination to act before it is really too late.”* Similarly, Commission President Ursula von der Leyen said: *“The fossil fuel economy has reached its limits. We want to leave the next generation a healthy planet as well as good jobs and growth that does not hurt our nature.”*

## Nike Loses Procedural Challenge to Commission's State Aid Case

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Nike has lost a challenge to Commission's State aid case on formal grounds, the General Court of the EU ruled on 14 July in [Case C-648/19](#) (*Nike European Operations Netherlands BV & Converse Netherlands BV v European Commission*). Nike alleged incorrect assessment of the character of the State aid; incorrect assessment of the nature of an APA in Netherlands law; and, breach of the principles of good administration and equal treatment. The second plea alleged breach of the obligation to state reasons and incorrect assessment of selectivity. The third plea alleged breach of the applicants' procedural rights; and, premature initiation of the formal investigation procedure.

The Court dismissed Nike's arguments on incorrect assessment of selectivity, citing established case-law, such as *Commission v MOL*: in the case of individual aid, the identification of the economic advantage is, in principle, sufficient to support the presumption that it is selective. The presumption of selectivity operates independently of the question whether there are operators on the relevant market in a comparable factual and legal situation. Only when examining an aid scheme it is necessary to identify whether the measure in question, notwithstanding the finding that it confers an advantage of general application, does so to the exclusive benefit of certain undertakings or sectors (Judgment of 4 June 2015, *Commission v MOL*, C-15/14 P, paragraph 60).

On the procedural arguments, the Court established that the Commission was entitled to initiate the formal examination procedure and did not breach the principles of equal treatment and good administration. As a result of this

judgment the Commission will continue its investigation into the APAs issues by the Dutch tax administration from 2006 to 2015, establishing levels of royalty paid by the Nike/ Converse subsidiaries for use of the IP belonging to the group company for products sold in the EMEA regions.

## EU Tax Policy Report - Semester 1

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CFE Tax Advisers Europe has now published its [EU Tax Policy Report](#) covering the first semester of 2021. The EU Tax Policy Report is a bi-annual publication which provides a detailed analysis of significant primary law and tax policy developments at both EU and international level that have occurred in the previous six months which would be of interest to European tax advisers. It also includes an overview of selected CJEU case-law and relevant European Commission decisions.

We invite you to read the [EU Tax Policy Report](#), and remain available for any questions or comments that you may have.

## OECD Paper on Sustainable Home Working

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With the shift to remote working induced by the Covid-pandemic, the OECD has published a [note](#) facilitating the design of remote working policies, and sustainable, location-independent organisational culture. The paper in particular highlights policies that tax administrations may wish to consider in designing processes and guidance to help ensure that longer-term remote working is sustainable for all parties, including individual employees.

## OECD Podcast on the Global Tax Deal

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OECD has prepared a podcast analysing the recent global tax agreement reached among the Members of the Inclusive Framework. Pascal Saint-Amans, Director of the OECD Centre for Tax Policy and Administration is a guest speaker, and the podcast is hosted by Lawrence Speer. It is available on [Soundcloud](#).

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