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## Etiquettes

- Ask your questions via Q&A-button
- Polling questions



# International Fiscal Association

Virtual Event

16 – 25 November 2020

## Agenda

- EU Tax Policy Developments
- EU State aid and tax rulings
- EU and the digitalized economy



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## **EU Tax Policy Developments**



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## 1. Tax package for fair and simple taxation

**Three elements of Tax Package adopted on 15 July 2020:**



# Tax Action Plan for Fair and Simple Taxation Supporting the EU's recovery

25 new initiatives to make taxation fairer, simpler and better adapted to our digital world.



## Facilitating trade in goods and services in the EU

The Commission will propose amending the VAT Directive to move towards a single EU VAT registration system.

## Digital-friendly VAT rules

The Commission will modernise VAT rules to ensure they are fit for the online platform economy.

## Modern VAT rules for financial services

The Commission will update VAT rules on financial services, taking into account the rise of the digital economy.



## Clear tax residency rules

The Commission will clarify tax residency rules for cross-border EU workers.

## Tackling VAT fraud head-on

To fight VAT fraud and help compliant businesses, the Commission will support Eurofisc to improve the use of technology and information sharing between Member States.

**Fair taxation is the springboard that will help our economy bounce back.**

15 July 2020

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## 1. Tax package for fair and simple taxation

### i. Action plan for fair and simple taxation supporting the recovery strategy

- Set of 25 initiatives to be rolled out until 2024
- Taxpayers' journey → focus on taxpayers' needs.
- Balanced approach:
  - Simplify tax rules.
  - Step up fight against tax evasion/avoidance



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1. Tax package for fair and simple taxation

**ii. Revision of the directive on administrative cooperation (DAC 7)**

Strengthening the existing framework





## 1. Tax package for fair and simple taxation

### ii. Revision of the directive on administrative cooperation (DAC 7)

#### Reporting rules for Platform Operators

##### Relevant Activity

- Personal Services
- Sales of goods
- Rental of immovable property
- Rental of any mode of transport
- Crowdfunding

##### Reporting Platform Operator

- EU platforms and foreign platforms

##### Timing of procedures

- Due diligence – by end of the Reportable Period
- Reporting – 31 January after the end of the Reportable Period
- Exchanges – end of February after the end of the Reportable Period

##### Reportable Seller

- Active Seller + resident in a MS or has rented out an immovable property rented out in a MS

##### Exclusions

- Processing of payments
- Users to list or advertise a relevant activity
- Government entities







## 1. Tax package for fair and simple taxation

### iii. Communication on Tax Good Governance in the EU and beyond

A need to go beyond and modernise our tools:

***Reform of the Code  
of Conduct on  
Business Taxation:***

Scope, criteria,  
coherence with  
external dimension,  
transparency

***Review of EU List of  
Non-cooperative  
Jurisdictions:***

Geographical scope,  
listing criteria,  
interaction with other  
listing processes

***Measures to  
reinforce good  
governance:***

Use of EU funds,  
defensive measures,  
sanctions

***Additional support  
partner countries:***

Support and  
assistance via  
Domestic Revenue  
Mobilisation,  
cooperation within int'l  
organisations



## 2. Business taxation

- On 29 January 2020 the European Commission announced its intention to present an initiative on **Business Taxation**
- The initiative on Business Taxation may be put forward by the end of **the first half of 2021**.
- The content is planned to cover the way forward in relation to the OECD negotiations as well as wider issues related to business taxation.
- Two important aspects:

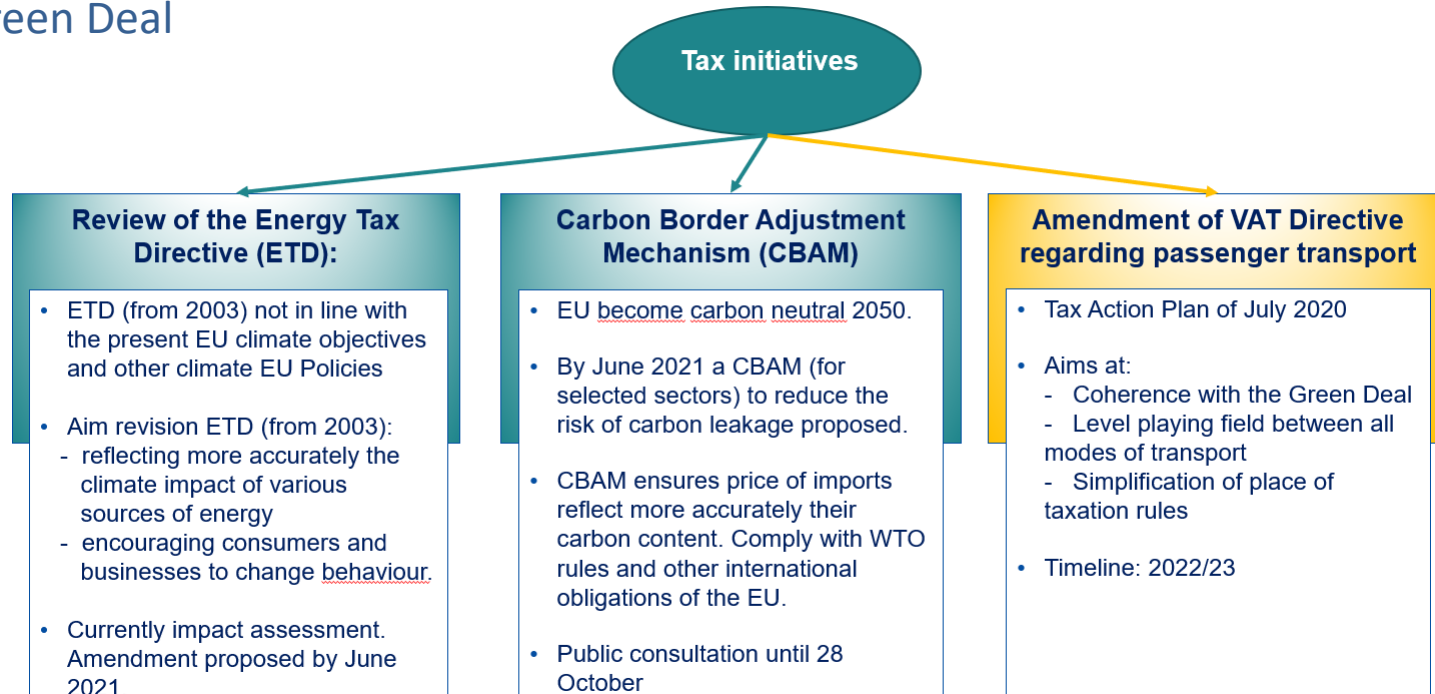
Supporting Investment  
and Growth



Improving Tax Fairness and  
Transparency



### 3. EU Green Deal





#### 4. Own resources

- May 2020 MFF Communication = proposes new own resources to support repayment Next Generation EU
- July 2020 European Council = mandated EC table proposals for:
  - **Carbon border adjustment mechanism (CBAM)**  
→ align with European Green Deal and ensure level playing field
  - **Digital levy by first half 2021**  
→ possibly, align with fair taxation of the digital economy and international corporate tax reform objectives
  - **Other possibilities also considered**  
→ design will determine exact scope
- Own resources should align EU overarching priorities



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## **EU state aid and tax rulings**



## State aid criteria

- State resources (and attributable to the state)
  - Selective advantage
    - Material selectivity (de jure versus de facto selectivity)
    - Discretionary powers
  - Influence on intra-Union trade
  - Affect competition
- Competence EC to assess whether (TP) rulings can confer state aid?



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Selectivity: Three-step-approach in relation to aid schemes:

STEP 1: Determination of reference system

STEP 2: Deviation from reference system > leading to the grant of a selective advantage

STEP 3: Justification of deviation from reference system: only “internal” to the reference system

For individual aid: presumed selectivity in case of a benefit



## Interpretation of state aid on rulings (Commission's notice on state aid 2016):

- Arm's length principle prohibits unequal treatment
- Methodology not resulting in a reliable approximation of a market-based outcome
- Arm's length principle: New EU standard or part of state aid definition
- Importance of OECD Transfer Pricing Guidelines





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Regime is state aid



Huhtamaki

Ruling as precondition  
for benefit



Incorrect TP method



Incorrect TP



amazon



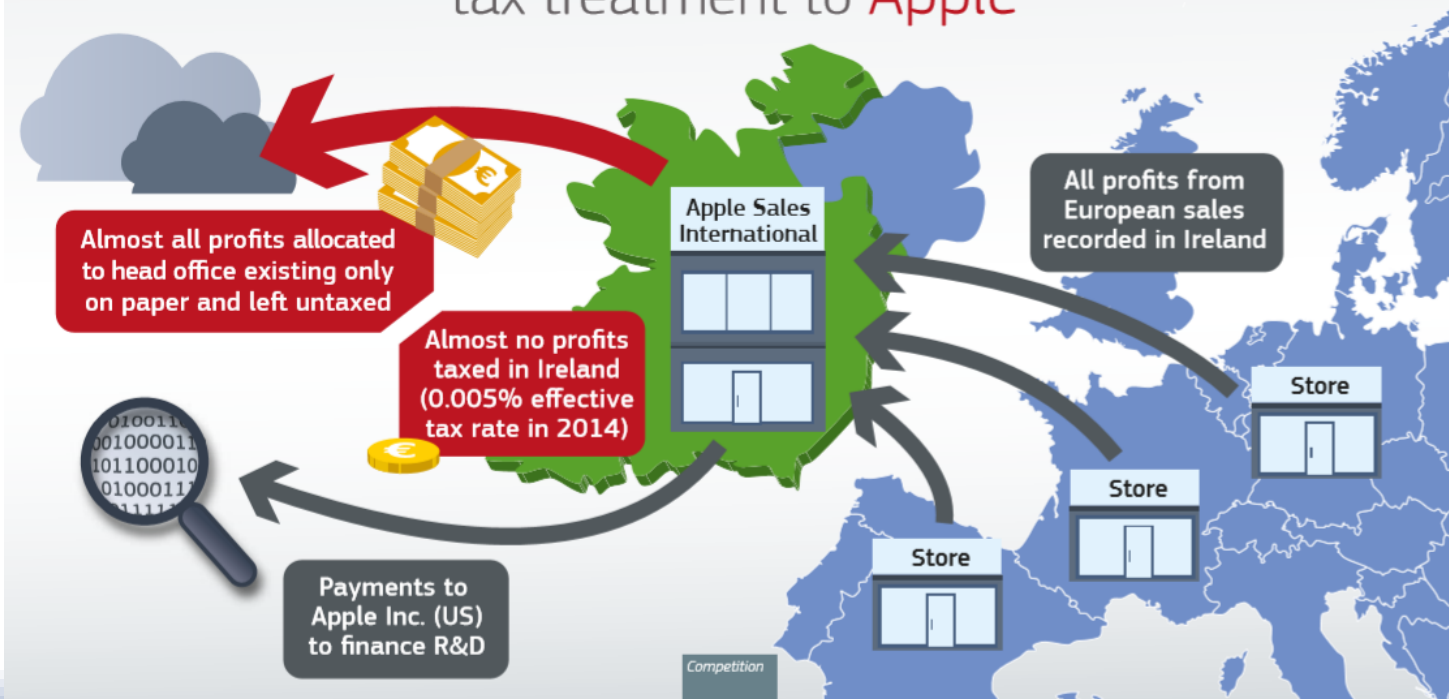
Qualification mismatch



Huhtamaki

Individual  
aid

## State aid: Ireland gave illegal preferential tax treatment to Apple





## GC on State Aid and Transfer Pricing rulings

- Where national tax law does not make a distinction between integrated undertakings and stand-alone undertakings for the purposes of their liability to corporate income tax, that law is intended to tax the profit arising from the economic activity of such an integrated undertaking as though it had arisen from transactions carried out at market prices
  - Reference system is CIT system
  - Branch of non-resident company can be compared to stand-alone resident company



## Discussions on Arm's length principle: national versus OECD approach (1/2)

- Arm's length principle is the tool to approximate profits of permanent establishment to the profits of stand-alone companies
- In order for the EC to use the Arm's length principle as a benchmark to determine whether individual rulings qualify as State aid, the Arm's length principle must be incorporated in the domestic tax laws of the MS in question
- What if no Arm's length principle is incorporated in domestic tax law?
  - EC cannot develop an Arm's length principle from Article 107 TFEU and impose that standard to the MS (i.e. division of competence MS v. EC)



## Discussions on Arm's length principle: national versus OECD approach (2/2)

- Non-binding OECD Transfer Pricing Guidelines become benchmark in EU state aid review, if “some overlap” with domestic arm's length principle
- What if Member State has not endorsed Authorized OECD Approach on profit allocation to PE (because Member State's domestic law does not “overlap” with AOA or DTC is pre 2010 OECD Model amendment)?



## Discussions on Other issues

- Burden of proof is on EC
- Methodological defects in rulings are not in itself proving that a benefit is conferred
- Absence of TP documentation does not demonstrate that tax authorities used impermissible discretion
- Unilateral approach: Tax treatment in the other state is irrelevant (irrespective whether the result is double taxation or double non-taxation) → state aid review's Achilles heel
  - Neelie Kroes: *"State aid is not suited to deal with [disparities]. It is a tool to address instances where a member state has made an exception to its own rules and given a specific company an advantage. To know whether that is the case one has to understand how corporate taxation works."*



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## Whitepaper on foreign subsidies (17 June 2020)

- Sanctioning EU companies where non-EU group entities benefited from subsidies or tax advantages
- Effective extension of the state aid regime to aid granted by non-EU governments?



## **POLL QUESTION 1**

**Do you think that the Apple-case will be reversed on appeal?**

- a. Yes, because in its Decision the EC has proven that too little profit had been allocated to the Irish branches
- b. Yes, because the rulings are discretionary as the Irish tax authorities decided without proper TP-documentation
- c. No





## **POLL QUESTION 2**

**What would be the best instrument to achieve an internal market without disparities?**

- a. State aid
- b. Harmonisation by legislation
- c. Coordination without adopting EU hard law
- d. The EU should not act



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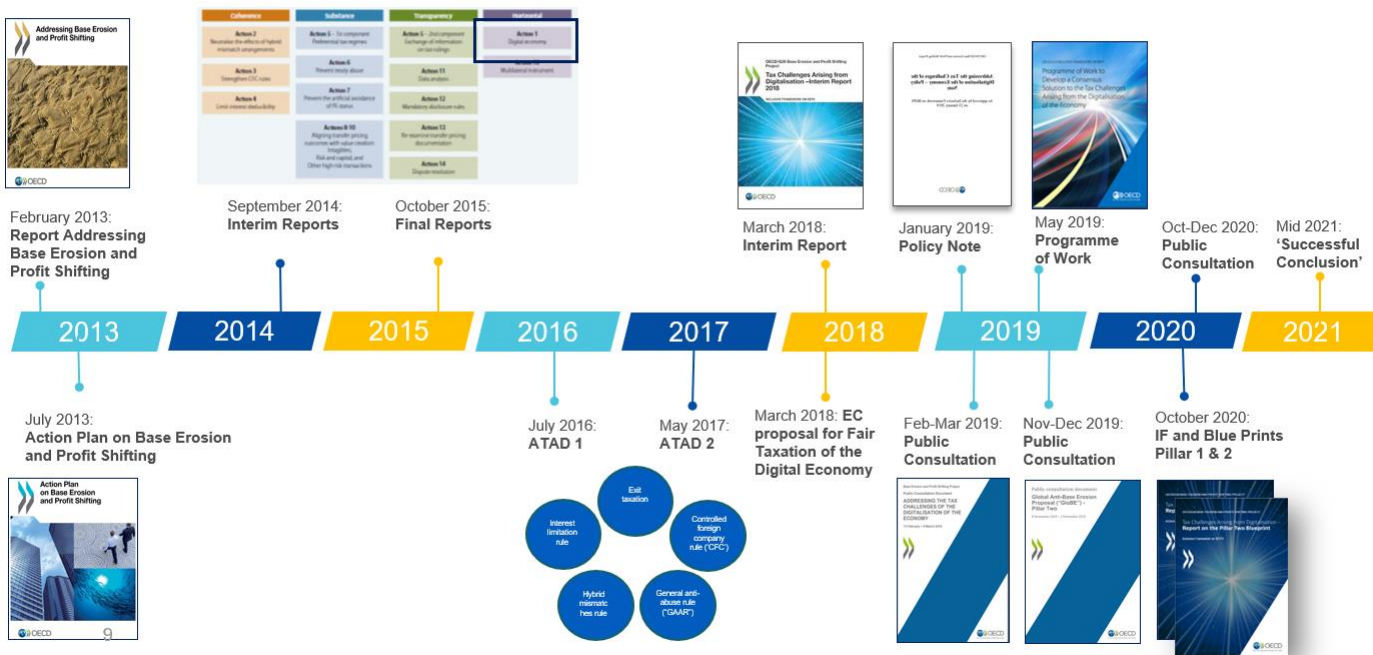
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## **EU and the digitalized economy**



### OECD Pillar 1 & 2





## **POLL QUESTION 3**

**Will the OECD's Inclusive Framework find a solution for the currently debated Pillars 1 and 2 in the course of 2021?**

- a. Yes, for both Pillar 1 and Pillar 2
- b. Yes, only for Pillar 1
- c. Yes, only for Pillar 2
- d. No



March 2018: Commission proposals

2 Proposals

Interim solution:

Comprehensive Solution:

Tax base

- **3% DST** on revenue from
  - Online placement of advertising
  - Sale of collected user data
  - Digital platforms that facilitate interactions between users

Taxable person

- Provided by **businesses** with
  - Total combined worldwide revenue above EUR 750m
  - Total annual revenue from digital activities in EU above EUR 50m

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Taxable person

- Tax Profits of companies with **significant digital presence**
  - Digital revenues exceed EUR 7m
  - Number of users exceed 100,000
  - Number online business contracts exceed 3,000

Tax base

- Profits will take into account the **market value** of:
  - Profits from user data
  - Services connecting users
  - Other digital services



## EU and Pillar 1

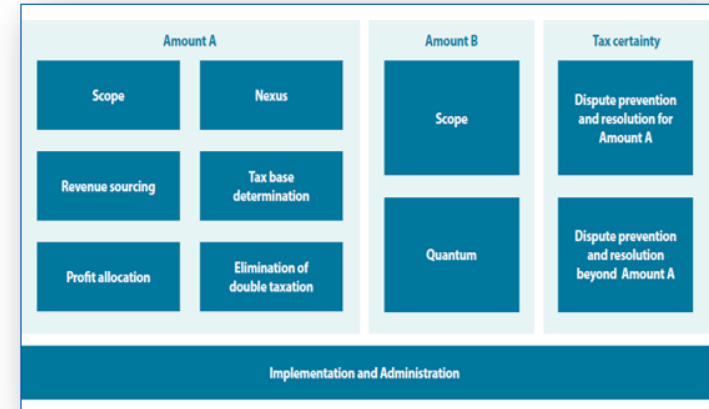
### OECD Current State of Play:

- Pillar 1 focuses on new nexus and profit allocation rules
- Chapeau Note: *'bringing the process to a successful conclusion by mid-2021'*

### But what if no agreement would be reached at OECD level...

- Plan B?

### Building Blocks Pillar 1:



Source: OECD, *Tax Challenges Arising from Digitalisation – Report on Pillar One Blueprint* (OECD Publishing, 2020)



## EU and Pillar 2

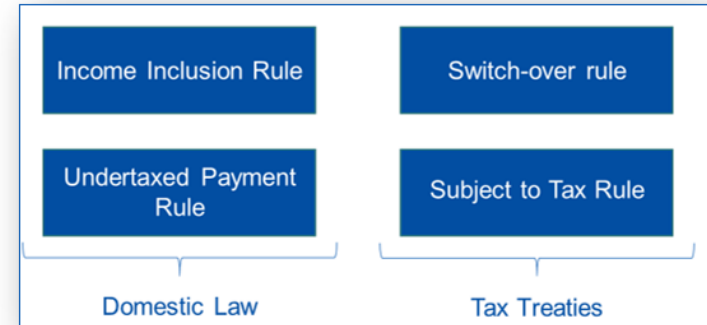
### OECD Current State of Play:

- Pillar 2 focuses on a global minimum tax intended to address remaining BEPS issues
- Chapeau Note: *'bringing the process to a successful conclusion by mid-2021'*

### But what if no agreement would be reached at OECD level...

- Plan B?

### Measures Pillar 2:





## EU digital levy?

- What if no consensus is reached at an OECD-level before mid-2021?
  - Expectation: OECD proposals not earlier implemented than 2025
  - Revamping of EU 2018 proposal(s)?
  - Introduction of a network of unilateral DSTs?
  - Effects on CCCTB?
- EU's own resources
- Do we need an EU digital levy?
- Unanimity versus Qualified majority voting





## **POLL QUESTION 4**

**4. On the assumption that no consensus will be reached at OECD-level on a solution for the digitalized economy in 2021, what is the way forward for the EU?**

- a. Revamp both or one of its 2018 proposals for the digitalized economy (harmonized taxation in Member States)
- b. EU will not obtain unanimity on either of the above and a patchwork of unilateral DSTs will come into being
- c. The EU should not act at all