

Thursday 13 December 2018

P8_TA(2018)0523

Common system of a digital services tax on revenues resulting from the provision of certain digital services ***European Parliament legislative resolution of 13 December 2018 on the proposal for a Council directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services (COM(2018)0148 — C8-0137/2018 — 2018/0073(CNS))****(Special legislative procedure — consultation)**

(2020/C 388/47)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2018)0148),
 - having regard to Article 113 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C8-0137/2018),
 - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Danish Parliament, the Irish Houses of the Oireachtas, the Maltese Parliament and the Netherlands House of Representatives, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to Rule 78c of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A8-0428/2018),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 293(2) of the Treaty on the Functioning of the European Union;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to substantially amend the Commission proposal;
 5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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Amendment 1
Proposal for a directive

Recital 1

Text proposed by the Commission

- (1) The global economy is rapidly becoming digital and, as a result, new ways of doing business have emerged. Digital companies are characterised by the fact that their operations are strongly linked to the internet. In particular, digital business models rely to a large extent on the ability to conduct activities remotely and with limited or no physical presence, on the contribution of end-users to value creation, and on the importance of intangible assets.

Amendment

- (1) The global economy is rapidly becoming digital and, as a result, new ways of doing business have emerged. Digital companies are characterised by the fact that their operations are strongly linked to the internet. In particular, digital business models rely to a large extent on the ability to conduct activities remotely and with limited or no physical **or taxable** presence **in a given country**, on the contribution of end-users to value creation, and on the importance of intangible assets.

Amendment 2
Proposal for a directive

Recital 2

Text proposed by the Commission

- (2) The current corporate taxation rules were mainly developed during the 20th century for traditional businesses. They are based on the idea that taxation should take place where value is created. However, the application of the current rules to the digital economy has led to a misalignment between the place where profits are taxed and the place where value is created, notably in the case of business models heavily reliant on user participation. It has therefore become evident that the current corporate tax rules for taxing the profits of the digital economy are **inadequate and** need to be reviewed.

Amendment

- (2) The current corporate taxation rules were mainly developed during the 20th century for traditional businesses. They are based on the idea that taxation should take place where value is created. However, the application of the current rules to the digital economy has led to a misalignment between the place where profits are taxed and the place where value is created, notably in the case of business models heavily reliant on user participation. **Digitalisation has changed the role of users, allowing them to become increasingly involved in the value creation process.** It has therefore become evident that the current corporate tax rules for taxing the profits of the digital economy are **not taking this new factor into account and urgently** need to be reviewed.

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Amendment 3
Proposal for a directive
Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) *The objective is to close the gap between taxation of digital revenues and traditional revenues. Currently, on average, digital businesses face an effective tax rate of only 9,5 %, compared to 23,2 % for traditional business models ^(1a). A taxation system must be fair and beneficial to society as a whole. There should be a level playing field for all companies operating in the Single Market.*

^(1a) *Source: Computations from the Impact Assessment of the European Commission, based on ZEW (2016, 2017) and ZEW et al.(2017).*

Amendment 4
Proposal for a directive
Recital 3

Text proposed by the Commission

Amendment

(3) That review constitutes an important element of the Digital Single Market ⁽³⁾, given that the Digital Single Market needs a modern and stable tax framework for the **digital** economy to stimulate innovation, tackle market fragmentation and allow all players to tap into the new market dynamics under fair and balanced conditions.

⁽³⁾ Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee and the Committee of the Regions 'A Digital Single Market Strategy for Europe' (COM(2015)0192 of 6.5.2015).

(3) That review constitutes an important element of the Digital Single Market ⁽³⁾, given that the Digital Single Market needs a **fair**, modern and stable tax framework for the **digitalised** economy to stimulate innovation **and inclusive growth**, tackle market fragmentation and allow all players to tap into the new market dynamics under fair and balanced conditions. **Digitalisation affects the whole economy, which goes beyond the creation of a digital services tax; thus tax rules should be reformed. The ad hoc measures contained in this Directive should not delay works on the taxation of a significant digital presence and on the inclusion of such taxation within a Common Consolidated Corporate Tax Base.**

⁽³⁾ Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee and the Committee of the Regions 'A Digital Single Market Strategy for Europe' (COM(2015)0192 of 6.5.2015).

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Amendment 5
Proposal for a directive

Recital 5

Text proposed by the Commission

- (5) Given the problem of taxing the digital economy is of a global nature, the ideal approach would be to find a multilateral, international solution to it. The Commission is actively engaged in the international debate for that reason. Work at the OECD is currently ongoing. However, progress at international level is challenging. Hence, action is being taken to adapt the corporate tax rules at Union level ⁽⁶⁾ and to encourage agreements to be reached with non-Union jurisdictions ⁽⁷⁾, so that the corporate tax framework can be made to fit the new digital business models.

⁽⁶⁾ Proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence (COM(2018)0147).

⁽⁷⁾ Commission Recommendation relating to the corporate taxation of a significant digital presence (C(2018)1650).

Amendment

- (5) Given the problem of taxing the digital economy is of a global nature, the ideal approach would be to find a multilateral, international solution to it. The Commission is actively engaged in the international debate for that reason. Work at the OECD, **the International Monetary Fund (IMF), the United Nations (UN) and the World Bank Group (WBG), which form the platform for Collaboration on Tax** is currently ongoing. However, progress at international level is challenging. Hence, action is being taken to adapt the corporate tax rules at Union level ⁽⁶⁾ and to encourage agreements to be reached with non-Union jurisdictions ⁽⁷⁾, so that the corporate tax framework can be made to fit the new digital business models. **Coherence with the Base Erosion and Profit Shifting (BEPS) Inclusive Framework should be ensured, to guarantee no deviation from international standards and to avoid multiplied complexity.**

⁽⁶⁾ Proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence (COM(2018)0147).

⁽⁷⁾ Commission Recommendation relating to the corporate taxation of a significant digital presence (C(2018)1650).

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Amendment 6
Proposal for a directive

Recital 6

Text proposed by the Commission

- (6) Pending such action, which may take time to adopt and implement, Member States face pressure to act on this issue, given the risk that their corporate tax bases are being significantly eroded over time. Uncoordinated measures taken by Member States individually can fragment the Single Market and distort competition, hampering the development of new digital solutions and the Union's competitiveness as a whole. This is why it is necessary to adopt a harmonised approach on an interim solution that will tackle this issue in a targeted way until a comprehensive solution is in place.

Amendment

- (6) Pending such action, which may take time to adopt and implement, Member States face pressure to act on this issue, given the risk that their corporate tax bases are being significantly eroded over time. Uncoordinated measures taken by Member States individually can fragment the Single Market and distort competition, hampering the development of new digital solutions and the Union's competitiveness as a whole. This is why it is necessary to adopt a harmonised approach on an interim solution that will tackle this issue in a targeted way until a comprehensive solution is in place. ***The interim solution should be temporarily restricted in order to avoid it inadvertently becoming permanent. Therefore, a sunset clause should be introduced that would result in this Directive automatically expiring upon the establishment of a comprehensive solution, preferably at an international level. By 31 December 2020, if no comprehensive solution has been agreed, the Commission should consider a proposal based on Article 116 of the Treaty on the Functioning of the European Union, whereby the European Parliament and the Council act in accordance with the ordinary legislative procedure. This is essential to come to an agreement without delay to avoid the multiplication of unilateral national digital taxes by Member States.***

Amendment 7

Proposal for a directive

Recital 7

Text proposed by the Commission

- (7) That interim solution should establish the common system of a digital services tax ('DST') on revenues resulting from the supply of certain digital services by certain entities. It should be an easy-to-implement measure targeting the revenues stemming from the supply of digital services where users contribute significantly to the process of value creation. Such factor (user value creation) also underpins the action with respect to corporate tax rules, as described in recital (5).

Amendment

- (7) That interim solution should establish the common system of a digital services tax ('DST') on revenues resulting from the supply of certain digital services, ***including online content***, by certain entities. It should be an easy-to-implement measure targeting the revenues stemming from the supply of digital services where users ***and intangible assets*** contribute significantly to the process of value creation. Such factor (user value creation ***and heavy reliance on intangible assets***) also underpins the action with respect to corporate tax rules, as described in recital (5).

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Amendment 8
Proposal for a directive

Recital 9

Text proposed by the Commission

- (9) DST should be applied to revenues resulting from the provision of **certain** digital services **only**. **The digital services should be ones** that are largely reliant on user value creation **where** the difference between the place where the profits are taxed and the place where the users are established is typically greatest. **It is the revenues obtained from the processing of user input that should be taxed, not the user participation in itself.**

Amendment

- (9) DST should be applied to revenues resulting from the provision of digital services that are largely reliant on user value creation **and on their ability to deliver services with no or a very limited physical presence**. **In these cases**, the difference between the place where the profits are taxed and the place where the users are established is typically greatest.

Amendment 9

Proposal for a directive

Recital 10

Text proposed by the Commission

- (10) In particular, taxable revenues should be those resulting from the provision of the following **services**: (i) the placing on a digital interface of advertising targeted at users of that interface; (ii) the making available of multi-sided digital interfaces which allow users to find other users and to interact with them, and which may also facilitate the provision of underlying supplies of goods or services directly between users (sometimes referred to as 'intermediation' services); **and** (iii) **the** transmission of data collected about users and generated from such users' activities on digital interfaces. If no revenues are obtained from the supply of such services, there should be no DST liability. Other revenues obtained by the entity providing such services but not directly stemming from such supplies should also fall outside the scope of the tax.

Amendment

- (10) In particular, taxable revenues should be those resulting from the provision of the following: (i) the placing on a digital interface of advertising targeted at users of that interface; (ii) the making available of multi-sided digital interfaces which allow users to find other users and to interact with them, and which may also facilitate the provision of underlying supplies of goods or services directly between users (sometimes referred to as 'intermediation' services); (iii) **processing**, transmission **and sale** of data collected about users and generated from such users' activities on digital interfaces; **and** (iv) **the supply of digital content such as video, audio, games or texts**. If no revenues are obtained from the supply of such **content, goods and** services, there should be no DST liability. Other revenues obtained by the entity providing such services but not directly stemming from such supplies should also fall outside the scope of the tax.

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Amendment 10
Proposal for a directive

Recital 13

Text proposed by the Commission

- (13) For cases involving multi-sided digital interfaces that facilitate an underlying supply of goods or services directly between users of the interface, the underlying transactions and the revenues obtained by users from those transactions should remain outside the scope of the tax. The **revenues** resulting from retail activities consisting in the sale of goods or services which are contracted online via the website of the supplier of such goods or services, and where the supplier does not act as an intermediary, should also be outside the scope of DST **because the value creation for the retailer lies with the goods or services provided and the digital interface is only used as a means of communication. Whether a supplier is selling goods or services online on his own account or providing intermediation services would be determined by taking into account the legal and economic substance of a transaction, as reflected in the arrangements between the relevant parties. For instance, a supplier of a digital interface where third-party goods are made available could be said to provide an intermediation service (in other words, the making available of a multi-sided digital interface) where no significant inventory risks are assumed, or where it is the third party effectively setting the price of such goods.**

Amendment

- (13) For cases involving multi-sided digital interfaces that facilitate an underlying supply of goods or services directly between users of the interface, the underlying transactions and the revenues obtained by users from those transactions should remain outside the scope of the tax. The **revenue** resulting from retail activities consisting in the sale of goods or services which are contracted online via the website of the supplier of such goods or services, and where the supplier does not act as an intermediary, should also be outside the scope of DST. **However, given that it is possible to process user data through a digital interface and thereby create further value from the transaction, and because the absence of physical presence may create opportunity for aggressive tax planning, the enlargement of the scope of those services should be considered during the review of this Directive.**

Amendment 11
Proposal for a directive

Recital 14

Text proposed by the Commission

- (14) Services consisting in the supply of digital content by an entity through a digital interface should be **excluded from** the scope of the tax, regardless of whether the digital content is owned by that entity or that entity has acquired the rights to distribute it. **Even if some sort of interaction between the recipients of such digital content may be allowed and therefore the supplier of such services could be seen as making available a multi-sided digital interface, it is less clear that the user plays a central role in the creation of value for the company supplying the digital content. Instead, the focus from the perspective of value creation is on the digital content itself which is supplied by the entity. Therefore the revenues obtained from such supplies should fall outside the scope of the tax.**

Amendment

- (14) Services consisting in the supply of digital content by an entity through a digital interface should be **included in** the scope of the tax, regardless of whether the digital content is owned by that entity or that entity has acquired the rights to distribute it. The revenues obtained from such supplies should **be evaluated by the Commission within...[two years of the date of entry into force of this Directive]**.

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Amendment 12
Proposal for a directive

Recital 15

Text proposed by the Commission

- (15) Digital content should be defined to mean data supplied in digital form, such as computer programmes, applications, games, music, videos or texts, irrespective of whether they are accessed through downloading or streaming, and other than the data represented by a digital interface itself. ***This is to capture the different forms which digital content can take when acquired by a user, which does not alter the fact that the sole or main purpose from the user's perspective is the acquisition of the digital content.***

Amendment

- (15) Digital content should be defined to mean data supplied in digital form, such as computer programmes, applications, games, music, videos or texts, irrespective of whether they are accessed through downloading or streaming, and other than the data represented by a digital interface itself.

Amendment 13
Proposal for a directive

Recital 15 a (new)

Text proposed by the Commission

- (15a) *Deleted.*

Amendment

- (15a) ***Digital companies tend to invest less in buildings and machinery than regular companies do.***

Amendment 14
Proposal for a directive

Recital 16

Text proposed by the Commission

- (16) ***The service described in recital (14) should be distinguished from a service consisting in the making available of a multi-sided digital interface through which users can upload and share digital content with other users, or the making available of an interface that facilitates an underlying supply of digital content directly between users. These latter services constitute a service of intermediation and should therefore fall within the scope of DST, regardless of the nature of the underlying transaction.***

Amendment

- deleted***

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Amendment 15
Proposal for a directive

Recital 17

Text proposed by the Commission

- (17) Taxable services consisting in the transmission of data collected about users should cover **only** data which has been generated from such users' activities in digital interfaces, **but not data which has been generated from sensors or other means and collected digitally. This is because the** services **within the scope of DST** should be those using digital interfaces as a way to create user input which they monetise, **rather than services using interfaces only as a way to transmit data generated otherwise.** DST **should therefore not be** a tax on the collection of data, **or the use of data collected by a business for the internal purposes of that business, or the sharing of data collected by a business with other parties for no consideration.** What DST should target is the generation of revenues from the transmission **of** data obtained from a very specific activity (users' activities on digital interfaces).

Amendment

- (17) Taxable services consisting in **processing**, the transmission **or sale** of data collected about users should cover data which has been generated from such users' activities in digital interfaces. **These taxable** services should be those using digital interfaces as a way to create user input which they monetise. DST **is not** a tax on the collection of data **as such.** What DST should target is the generation of revenues from **processing, sale or transmission to a third party of this** data obtained from a very specific activity (users' activities on digital interfaces).

Amendment 16
Proposal for a directive

Recital 22

Text proposed by the Commission

- (22) Only certain entities should qualify as taxable persons for the purposes of DST, regardless of whether they are established in a Member State or in a non-Union jurisdiction. In particular, an entity should qualify as a taxable person only if it meets both of the following conditions: (i) the total amount of worldwide revenues reported by the entity for the latest complete financial year for which a financial statement is available exceeds EUR 750 000 000; and (ii) the total amount of taxable revenues obtained by the entity within the Union during that financial year exceeds EUR **50 000 000.**

Amendment

- (22) Only certain entities should qualify as taxable persons for the purposes of DST, regardless of whether they are established in a Member State or in a non-Union jurisdiction. In particular, an entity should qualify as a taxable person only if it meets both of the following conditions: (i) the total amount of worldwide revenues reported by the entity for the latest complete financial year for which a financial statement is available exceeds EUR 750 000 000; and (ii) the total amount of taxable revenues obtained by the entity within the Union during that financial year exceeds EUR **40 000 000.**

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Amendment 17
Proposal for a directive

Recital 23

Text proposed by the Commission

- (23) The first threshold (total annual worldwide revenues) should limit the application of DST to the companies of a certain scale, which are the ones mainly able to provide those digital services for which user contribution plays a fundamental role, and which heavily rely on extensive user networks, large user traffic, and the exploitation of a strong market position. Such business models, which depend on user value creation for obtaining revenues and are only viable if carried out by companies with a certain size, are the ones responsible for the higher difference between where their profits are taxed and where value is created. Moreover, the opportunity of engaging in aggressive tax planning lies with larger companies. **That is why the same threshold has been proposed in other Union initiatives⁽⁹⁾. Such a** threshold is also intended to bring legal certainty, given that it would make it easier and less costly for companies and tax authorities to determine whether an entity is liable to DST. It also excludes small enterprises and start-ups for which the compliance burdens of the new tax would be likely to have a disproportionate effect.

⁽⁹⁾ See Article 2 of the Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) (COM(2016)0683).

Amendment

- (23) The first threshold (total annual worldwide revenues) should limit the application of DST to the companies of a certain scale, which are the ones mainly able to provide those digital services **heavily relying on mobile intangible and/or digital assets**, for which user contribution plays a fundamental role, and which heavily rely on extensive user networks, large user traffic, and the exploitation of a strong market position. Such business models, which depend on user value creation for obtaining revenues and are only viable if carried out by companies with a certain size, are the ones responsible for the higher difference between where their profits are taxed and where value is created. Moreover, the opportunity of engaging in aggressive tax planning lies with larger companies. **The** threshold is also intended to bring legal certainty, given that it would make it easier and less costly for companies and tax authorities to determine whether an entity is liable to DST. It also excludes small enterprises, and start-ups for which the compliance burdens of the new tax would be likely to have a disproportionate effect.

Amendment 18

Proposal for a directive

Recital 27

Text proposed by the Commission

- (27) In order to alleviate possible cases of double taxation where the same revenues are subject to the corporate income tax and DST, **it is expected that Member States will allow** businesses to deduct the DST paid as a cost from the corporate income tax base in their territory, irrespective of whether both taxes are paid in the same Member State or in different ones.

Amendment

- (27) In order to alleviate possible cases of double taxation where the same revenues are subject to the corporate income tax and DST, **a future Union wide common solution will have to be found on allowing** businesses to deduct the DST paid as a cost from the corporate income tax base in their territory, irrespective of whether both taxes are paid in the same Member State or in different ones.

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Amendment 19
Proposal for a directive

Recital 29

Text proposed by the Commission

- (29) Where the users with respect of a given taxable service are located in different Member States or non-Union jurisdictions, the relevant taxable revenues obtained from that service should be allocated to each Member State in a proportional way on the basis of certain specific allocation keys. Such keys should be set out depending on the nature of each taxable service and the distinctive elements triggering the receipt of revenues for the provider of such a service.

Amendment

- (29) Where the users with respect of a given taxable service are located in different Member States or non-Union jurisdictions, the relevant taxable revenues obtained from that service should be allocated to each Member State in a proportional way on the basis of certain specific allocation keys. Such keys should be set out depending on the nature of each taxable service and the distinctive elements triggering the receipt of revenues for the provider of such a service. ***Where the allocation key results in an imbalanced apportionment that fails to reflect the real economic activity, a dispute resolution mechanism could remedy such a situation. In light of the foregoing, the Commission should assess the possible establishment of a dispute resolution mechanism in order to ensure the proper resolution of disputes when different Member States are involved.***

Amendment 20
Proposal for a directive

Recital 30

Text proposed by the Commission

- (30) In the case of a taxable service consisting in the placing of advertising on a digital interface, the number of times an advertisement has appeared on users' devices in a tax period in a Member State should be taken into account for the purposes of determining the proportion of taxable revenues to be allocated in that tax period to that Member State.

Amendment

- (30) In the case of a taxable service consisting in the placing of advertising ***or supplying content*** on a digital interface, ***or*** the number of times an advertisement ***or digital content*** has appeared on users' devices in a tax period in a Member State should be taken into account for the purposes of determining the proportion of taxable revenues to be allocated in that tax period to that Member State.

Amendment 22
Proposal for a directive

Recital 32

Text proposed by the Commission

- (32) As regards the transmission of data collected about users, the allocation of taxable revenues in a tax period to a Member State should take into account the number of users from whom data transmitted in that tax period has been generated as a result of such users having used a device in that Member State.

Amendment

- (32) As regards the ***processing, sale or*** transmission of data collected about users, the allocation of taxable revenues in a tax period to a Member State should take into account the number of users from whom data ***exploited, sold or*** transmitted in that tax period has been generated as a result of such users having used a device in that Member State.

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Amendment 23
Proposal for a directive

Recital 34

Text proposed by the Commission

- (34) Any processing of personal data carried out in the context of DST should be conducted in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council⁽¹⁰⁾, including that which may be necessary in relation to Internet Protocol (IP) addresses or other means of geolocation. In particular, regard should be given to the need to provide appropriate technical and organisational measures to comply with the rules relating to the lawfulness and security of processing activities, the provision of information and the rights of data subjects. Whenever possible, personal data should be rendered anonymous.

⁽¹⁰⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

Amendment

- (34) Any processing of personal data carried out in the context of DST should be conducted in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council⁽¹⁰⁾, including that which may be necessary in relation to Internet Protocol (IP) addresses or other means of geolocation, **without allowing for identification of users. The Member State's tax authority shall be informed of the method used to determine the location of users.** In particular, regard should be given to the need to provide appropriate technical and organisational measures to comply with the rules relating to the lawfulness and security of processing activities, **especially with the principles of necessity and proportionality**, the provision of information and the rights of data subjects. Whenever possible, personal data should be rendered anonymous.

⁽¹⁰⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

Amendment 24
Proposal for a directive

Recital 35

Text proposed by the Commission

- (35) The taxable revenues should be equal to the total gross revenues obtained by a taxable person, net of value added tax and other similar taxes. Taxable revenues should be recognised as obtained by a taxable person at the time when they become due, regardless of whether they have actually been paid by then. DST should be chargeable in a Member State on the proportion of taxable revenues obtained by a taxable person in a tax period that is treated as obtained in that Member State, and should be calculated by applying the DST rate to that proportion. There should be a single DST rate at Union level in order to avoid distortions in the Single Market. The DST rate **should be** set at 3 %, **which achieves** an appropriate balance between revenues generated by the tax and accounting for the differential DST impact for businesses with different profit margins.

Amendment

- (35) The taxable revenues should be equal to the total gross revenues obtained by a taxable person, net of value added tax and other similar taxes. Taxable revenues should be recognised as obtained by a taxable person at the time when they become due, regardless of whether they have actually been paid by then. DST should be chargeable in a Member State on the proportion of taxable revenues obtained by a taxable person in a tax period that is treated as obtained in that Member State, and should be calculated by applying the DST rate to that proportion. There should be a single DST rate at Union level in order to avoid distortions in the Single Market. The DST rate set at 3 % **is to achieve** an appropriate balance between revenues generated by the tax and accounting for the differential DST impact for businesses with different profit margins

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Amendment 26
Proposal for a directive

Recital 37

Text proposed by the Commission

(37) Member States should be able to lay down accounting, record-keeping or other obligations aimed at ensuring that the DST due is effectively paid, as well as other measures to prevent tax evasion, avoidance and abuse.

Amendment

(37) Member States should be able to lay down accounting, record-keeping or other obligations aimed at ensuring that the DST due is effectively paid, as well as other measures, **including penalties and sanctions**, to prevent tax evasion, avoidance and abuse.

Amendment 27
Proposal for a directive

Recital 37 a (new)

Text proposed by the Commission

(37a) **Total DST paid by a taxable person per Member State should be a part of the system of country-by-country reporting.**

Amendment

Amendment 28
Proposal for a directive

Recital 38 a (new)

Text proposed by the Commission

(38a) **In case a taxable person is liable to DST in more than one Member State, the Commission should audit, every three years, the DST return filed with the Member State of identification.**

Amendment

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Amendment 29
Proposal for a directive
Recital 40 a (new)

Text proposed by the Commission

Amendment

- (40a) *DST is a temporary measure awaiting a permanent solution, which should by no means delay the entrance into force of a permanent solution. This Directive should expire with the adoption of the earlier of the Council Directive laying down rules relating to the corporate taxation of a significant digital presence, or the Council Directives on a Common Consolidated Corporate Tax Base and Common Corporate Tax Base, including the digital permanent establishment as proposed in the legislative resolutions of the European Parliament of 15 March 2018 on the proposal for a Council directive on a Common Corporate Tax Base and on the proposal for a Council directive on a Common Consolidated Corporate Tax Base respectively, or a Directive implementing a political agreement reached in an international forum such as the OECD or the UN.*

Amendment 30
Proposal for a directive
Recital 40 b (new)

Text proposed by the Commission

Amendment

- (40b) *Member States should regularly report to the Commission on the payment of the DST by entities, the functioning of the One-Stop-Shop and the cooperation with other Member States for tax collection and payment.*

Amendment 31
Proposal for a directive
Recital 40 c (new)

Text proposed by the Commission

Amendment

- (40c) *Two years after...[the date of entry into force of this Directive], the Commission should make an assessment of the application of this Directive and present a report to the European Parliament and the Council, accompanied, where appropriate, by proposals for its review in accordance with the principles of fair taxation of the digital sector.*

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Amendment 32
Proposal for a directive

Recital 41

Text proposed by the Commission

- (41) The objectives of this Directive aim at protecting the integrity of the Single Market, ensuring its proper functioning and avoiding distortion of competition. Since those objectives, by their very nature, cannot be sufficiently achieved by Member States but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

Amendment

- (41) The objectives of this Directive aim at protecting the integrity of the Single Market, ensuring its **fair and** proper functioning and avoiding distortion of competition. Since those objectives, by their very nature, cannot be sufficiently achieved by Member States but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

Amendment 33

Proposal for a directive

Article 2 — paragraph 1 — point 7 a (new)

Text proposed by the Commission

Amendment

- (7a) ***‘processing of data’ means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.***

Amendment 34

Proposal for a directive

Article 3 — paragraph 1 — point c

Text proposed by the Commission

Amendment

- (c) the transmission of data collected about users and generated from users’ activities on digital interfaces.

- (c) the **processing and** transmission of data collected about users and generated from users’ activities on digital interfaces;

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Amendment 35

Proposal for a directive

Article 3 — paragraph 1 — point c a (new)

Text proposed by the Commission

Amendment

-
- (ca) *the making available to users of content on a digital interface such as video, audio, games or texts using a digital interface.*

Amendment 36

Proposal for a directive

Article 3 — paragraph 4 — point a

Text proposed by the Commission

Amendment

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- (a) the making available of a digital interface where the sole or main purpose of making the interface available is for the entity making it available to supply **digital content to users or to supply** communication services to users or to supply payment services to users;

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- (a) the making available of a digital interface where the sole or main purpose of making the interface available is for the entity making it available to supply communication services to users or to supply payment services to users, **as long as no further revenues are generated thanks to the processing, transmission or sale of users' data;**

Amendment 37

Proposal for a directive

Article 4 — paragraph 1 — point b

Text proposed by the Commission

Amendment

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- (b) the total amount of taxable revenues obtained by the entity within the Union during the relevant financial year exceeds EUR **50 000 000**.

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- (b) the total amount of taxable revenues obtained by the entity within the Union during the relevant financial year exceeds EUR **40 000 000**.

Amendment 38

Proposal for a directive

Article 5 — paragraph 2 — point c a (new)

Text proposed by the Commission

Amendment

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- (ca) *in the case of a service falling within point (ca) of Article 3(1), the digital content in question appears on the user's device at a time when the device is being used in that Member State in that tax period to access a digital interface.*

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Amendment 39**Proposal for a directive****Article 5 — paragraph 6***Text proposed by the Commission*

6. The data that may be collected from users for the purposes of applying this Directive shall be limited to data indicating the Member State where the users are located, without allowing for the identification of those users.

Amendment

6. The data that may be collected from users for the purposes of applying this Directive shall be limited to data indicating the Member State where the users are located, without allowing for the identification of those users. **Any processing of personal data carried out in the context of DST shall be conducted in accordance with Regulation (EU) 2016/679, including processing which may be necessary in relation to Internet Protocol (IP) addresses or other means of geolocation.**

Amendment 40**Proposal for a directive****Article 5 — paragraph 6 a (new)***Text proposed by the Commission**Amendment*

6a. The Commission shall analyse whether the establishment of a dispute resolution mechanism would further increase the effectiveness and efficiency of the settlement of disagreements between Member States. The Commission shall submit a report thereon to the European Parliament and the Council, including, if appropriate, a legislative proposal.

Amendment 41**Proposal for a directive****Article 8 — paragraph 1***Text proposed by the Commission**Amendment*

The DST rate shall be 3 %.

The DST rate shall be **set at** 3 %.

Amendment 42**Proposal for a directive****Article 10 — paragraph 3 — subparagraph 1 a (new)***Text proposed by the Commission**Amendment*

Where point (b) of this paragraph applies, the Commission shall every three years carry out an audit of the DST return filed with the Member State of identification.

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Amendment 43

Proposal for a directive

Article 13 — paragraph 2

Text proposed by the Commission

2. However, if the taxable person ceases to be liable to DST in that Member State of identification chosen under Article 10(3) (b), the taxable person shall change its Member State of identification in accordance with the requirements of Article 10.

Amendment

2. However, if the taxable person ceases to be liable to DST in that Member State of identification chosen under Article 10(3) (b), the taxable person shall change its Member State of identification in accordance with the requirements of Article 10, **without prejudice to paragraph 2a.**

Amendment 44

Proposal for a directive

Article 13 — paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. If the taxable person ceases to be liable to DST in the Member State of identification chosen under point (b) of Article 10(3), the taxable person may decide to keep the Member State of identification initially chosen, given that the taxable person may be liable to DST in that Member State again in the next tax period. If the taxable person is not liable to DST in that Member State for more than two consecutive tax periods, it shall change its Member State of identification in accordance with the requirements of Article 10.

Amendment 45

Proposal for a directive

Article 17 — paragraph 2

Text proposed by the Commission

2. The amendments referred to in paragraph 1 shall be submitted electronically to the Member State of identification within **three** years of the date on which the initial return was required to be submitted. Amendments after such period shall be governed by the rules and procedures applicable in each Member State respectively where DST is due.

Amendment

2. The amendments referred to in paragraph 1 shall be submitted electronically to the Member State of identification within **two** years of the date on which the initial return was required to be submitted. Amendments after such period shall be governed by the rules and procedures applicable in each Member State respectively where DST is due.

Thursday 13 December 2018

Amendment 46
Proposal for a directive
Article 18 — paragraph 3

Text proposed by the Commission

3. Member States may adopt measures to prevent tax evasion, avoidance and abuse with respect to DST.

Amendment

3. Member States **shall** adopt measures, **including penalties and sanctions**, to prevent tax evasion, avoidance and abuse with respect to DST.

Amendment 47
Proposal for a directive
Article 18 — paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. After adoption of this Directive, the Commission shall make a legislative proposal to include in Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches, providing for the total amount of DST paid by a taxable person to the different Member States to be added to the list of obligatory country-by-country reporting standards.

Amendment 48
Proposal for a directive
Chapter 4 — title

Text proposed by the Commission

ADMINISTRATIVE COOPERATION

Amendment

ADMINISTRATIVE COOPERATION AND MANDATORY EXCHANGE OF INFORMATION

Amendment 49
Proposal for a directive
Article - 20 (new)

Text proposed by the Commission

Amendment

Article - 20

Automatic and mandatory exchange of information

In order for tax authorities to assess tax due properly and to ensure the proper and uniform implementation of this Directive, the exchange of information on tax matters shall be automatic and mandatory, as laid down by Council directive 2011/16/EU. Member States shall allocate adequate staff, expertise and budget resources to their national tax administrations as well as resources for the training of tax administration staff focusing on cross-border tax cooperation and on the automatic exchange of information in order to ensure full implementation of this Directive.

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Amendment 50
Proposal for a directive
Article 24 a (new)

Text proposed by the Commission

Amendment

Article 24a

Report and review

Two years after...[the date of entry into force of this Directive], the Commission shall make an assessment of the application of this Directive and present a report to the European Parliament and the Council, accompanied, where appropriate, by proposals for its review in accordance with the principles of fair taxation of the digital sector.

In particular, the Commission shall assess:

- (a) the increase in the DST rate from 3 % to 5 % together with a corresponding tax allowance in order to limit the difference in effective tax rates between traditional and digital companies;
- (b) the scope of the DST, including an increase in such scope to include the sale of goods or services which are contracted online via digital interfaces;
- (c) the amount of tax paid in each Member State;
- (d) the type of digital activities within the scope of this Directive;
- (e) the potential tax planning practices that were applied by entities to avoid paying the DST;
- (f) the functioning of the One-Stop-Shop, the cooperation between Member States; and
- (g) the overall impact on the internal market taking into account potential distortion of competition.

Amendment 51
Proposal for a directive
Article 24 b (new)

Text proposed by the Commission

Amendment

Article 24b

Reporting obligations

Member States shall report every year to the Commission relevant figures and information on the payment of the DST by entities, the functioning of the OSS and the cooperation with other Member States for tax collection and payment.

Thursday 13 December 2018

Amendment 52
Proposal for a directive
Article 25 a (new)

Text proposed by the Commission

Amendment

Article 25a

Sunset clause conditional on permanent measures

The DST is a temporary measure awaiting a permanent solution; therefore, this Directive shall expire with the adoption of the earlier of:

- (a) the Council Directive laying down rules relating to the corporate taxation of a significant digital presence;***
 - (b) the Council Directives on a Common Consolidated Corporate Tax Base and Common Corporate Tax Base including the digital permanent establishment as proposed in the legislative resolutions of the European Parliament of 15 March 2018 on the proposal for a Council directive on a Common Corporate Tax Base and on the proposal for a Council directive on a Common Consolidated Corporate Tax Base respectively; or***
 - (c) a Directive that implements political agreement reached in international fora such as the OECD or the UN.***
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