

Opinion of the European Committee of the Regions on ‘Taxation of the digital economy’

(2019/C 86/03)

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Reference documents: Proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence

COM(2018) 147 final

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) 148 final

I. RECOMMENDATIONS FOR AMENDMENTS

Proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services

Amendment 1

Recital 9

Text proposed by the European Commission	CoR amendment
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.	DST should be applied to revenue resulting from the provision of digital services that are largely reliant on user value creation, revenue-generating transmission of users’ data and on their ability to conduct activities and provide services remotely with no 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.

Reason

The restriction of the scope of application of DST to the processing of user input only is legally questionable.

Amendment 2

Recital 10

Text proposed by the European Commission	CoR amendment
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 'inter-mediation' 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.	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 'inter-mediation' services); and (iii) the revenue-generating 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.

Reason

The restriction of the scope of application of DST to the processing of user input only is legally questionable.

Amendment 3

Article 3(1)

Text proposed by the European Commission	CoR amendment
Taxable revenues	Taxable revenues
1. The revenues resulting from the provision of each of the following services by an entity shall qualify as 'taxable revenues' for the purposes of this Directive:	1. The revenues resulting from the provision of each of the following services by an entity shall qualify as 'taxable revenues' for the purposes of this Directive:
(a) the placing on a digital interface of advertising targeted at users of that interface;	(a) the placing on a digital interface of advertising targeted at users of that interface;
(b) the making available to users of a multi-sided digital interface which allows 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;	(b) the making available to users of a multi-sided digital interface which allows 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;
(c) the transmission of data collected about users and generated from users' activities on digital interfaces.	(c) the revenue-generating transmission of data collected about users and generated from users' activities on digital interfaces.

Reason

Self-explanatory.

Amendment 4

Article 10(2)

Text proposed by the European Commission	CoR amendment
Article 10	Article 10
Identification	Identification
[...]	[...]
2. The notification shall be made electronically by no later than 10 working days following the end of the first tax period for which the taxable person is liable to DST under this Directive ('the first chargeable period').	2. The notification shall be made electronically by the end of the first month following the end of the first tax period for which the taxable person is liable to DST under this Directive ('the first chargeable period').

Reason

The deadline of 10 working days is too short.

Amendment 5

Article 11(1)

Text proposed by the European Commission	CoR amendment
Article 11	Article 11
Identification number	Identification number
1. The Member State of identification shall allocate to the taxable person an individual identification number for the purposes of DST and shall notify the taxable person of that number by electronic means within 10 working days from the day on which the notification under Article 10 was received.	1. The Member State of identification shall allocate to the taxable person an individual identification number for the purposes of DST and shall notify the taxable person of that number by electronic means within 10 calendar days from the day on which the notification under Article 10 was received.

Reason

Because of varying holidays in Member States and even regions it is preferable to refer to 'calendar days' instead of 'working days'. The same would apply to Articles 12(2), 14, 16(2), 20(1) and (3), 21(1), and 22(1).

Amendment 6

Article 12(2)

Text proposed by the European Commission	CoR amendment
Article 12	Article 12
Deletion from the identification register	Deletion from the identification register
[...]	[...]
2. The Member State of identification shall delete the taxable person from the identification register at the end of the period of 60 working days following the end of the tax period during which the information referred to in paragraph 1 was notified.	2. The Member State of identification shall invalidate the taxable person's entry in the identification register at the end of the period of 60 calendar days following the end of the tax period during which the information referred to in paragraph 1 was notified.

Reason

Tax accounts should not be deleted after 60 working days because of ongoing limitation periods and the need to preserve evidence. Regarding working days, see reason above.

Amendment 7

Add a new Article 26(2)

Text proposed by the European Commission	CoR amendment
	<i>This directive shall be repealed once the Council directive laying down rules relating to the corporate taxation of a significant digital presence is adopted and enters into force as of the transposition date of that directive.</i>

Reason

The digital services tax is intended as an interim measure and should not be permanent in nature. Otherwise companies risk being double taxed if the significant digital presence directive enters into force without the digital services tax being repealed.

Proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence

Amendment 8

Article 4(3)

Text proposed by the European Commission	CoR amendment
Article 4	Article 4
Significant digital presence	Significant digital presence
[...]	[...]
3. A 'significant digital presence' shall be considered to exist in a Member State in a tax period if the business carried on through it consists wholly or partly of the supply of digital services through a digital interface and one or more of the following conditions is met with respect to the supply of those services by the entity carrying on that business, taken together with the supply of any such services through a digital interface by each of that entity's associated enterprises in aggregate:	3. A 'significant digital presence' shall be considered to exist in a Member State in a tax period if the business carried on through it consists wholly or partly of the supply of digital services through a digital interface and at least two of the following conditions is met with respect to the supply of those services by the entity carrying on that business, taken together with the supply of any such services through a digital interface by each of that entity's associated enterprises in aggregate:
(a) the proportion of total revenues obtained in that tax period and resulting from the supply of those digital services to users located in that Member State in that tax period exceeds EUR 7 000 000;	(a) the proportion of total revenues obtained in that tax period and resulting from the supply of those digital services to users located in that Member State in that tax period exceeds EUR 10 000 000;
(b) the number of users of one or more of those digital services who are located in that Member State in that tax period exceeds 100 000;	(b) the number of users of one or more of those digital services who are located in that Member State in that tax period exceeds 100 000;
(c) the number of business contracts for the supply of any such digital service that are concluded in that tax period by users located in that Member State exceeds 3 000.	(c) the number of business contracts for the supply of any such digital service that are concluded in that tax period by users located in that Member State exceeds 3 000.
[...]	[...]

Reason

The threshold of EUR 7 million for creating a permanent establishment, from which the new regime would apply, should be increased as such a low threshold could risk hampering digitalisation. Furthermore, there is a risk that in certain sectors, such as maintenance contracts, the threshold of 3 000 commercial contracts would be quickly exceeded. It would thus to be better to consider that a significant digital presence exists when at least two of the stated conditions are fulfilled.

Amendment 9

Article 5(1)

Text proposed by the European Commission	CoR amendment
Article 5	Article 5
Profits attributable to or in respect of the significant digital presence	Profits attributable to or in respect of the significant digital presence
1. The profits that are attributable to or in respect of a significant digital presence in a Member State shall be taxable within the corporate tax framework of that Member State only .	1. The profits that are attributable to or in respect of a significant digital presence in a Member State shall be taxable within the corporate tax framework of that Member State.

Reason

The word 'only' needs to be deleted as otherwise it imposes the application of a credit system. Member States with a corporate tax imputation system would be forced to introduce a credit system.

Amendment 10

ANNEX II

Text proposed by the European Commission	CoR amendment
List of services referred to in Article 3(5)(f):	List of services referred to in Article 3(5)(f):
(a) website hosting and webpage hosting,	(a) website hosting and webpage hosting,
(b) automated, online and distance maintenance of programmes,	(b) automated, online and distance maintenance of programmes,
(c) remote systems administration,	(c) remote systems administration,
(d) online data warehousing where specific data is stored and retrieved electronically,	(d) online data warehousing where specific data is stored and retrieved electronically,
(e) online supply of on-demand disc space,	(e) online supply of on-demand disc space,
(f) accessing or downloading software (including procurement/accountancy programmes and anti-virus software) plus updates,	(f) accessing or downloading software (including procurement/accountancy programmes and anti-virus software) plus updates,
(g) software to block banner adverts showing, otherwise known as Bannerblockers,	(g) software to block banner adverts showing, otherwise known as Bannerblockers,
(h) download drivers, such as software that interfaces computers with peripheral equipment (such as printers),	(h) download drivers, such as software that interfaces computers with peripheral equipment (such as printers),

Text proposed by the European Commission	CoR amendment
(i) online automated installation of filters on websites,	(i) online automated installation of filters on websites,
(j) online automated installation of firewalls,	(j) online automated installation of firewalls,
(k) accessing or downloading desktop themes,	(k) accessing or downloading desktop themes,
(l) accessing or downloading photographic or pictorial images or screensavers,	(l) accessing or downloading photographic or pictorial images or screensavers,
(m) the digitised content of books and other electronic publications,	(m) weblogs and website statistics,
(n) subscription to online newspapers and journals,	(n) online information generated automatically by software from specific data input by the customer, such as legal and financial data, (in particular such data as continually updated stock market data, in real time),
(o) weblogs and website statistics,	(o) the provision of advertising space including banner ads on a website/web page,
(p) online news, traffic information and weather reports,	(p) use of search engines and internet directories,
(q) online information generated automatically by software from specific data input by the customer, such as legal and financial data, (in particular such data as continually updated stock market data, in real time),	(q) accessing or downloading of music on to computers and mobile phones,
(r) the provision of advertising space including banner ads on a website/web page,	(r) accessing or downloading of jingles, excerpts, ringtones, or other sounds,
(s) use of search engines and internet directories,	(s) accessing or downloading of films,
(t) accessing or downloading of music on to computers and mobile phones,	(t) downloading of games on to computers and mobile phones,
(u) accessing or downloading of jingles, excerpts, ringtones, or other sounds,	(u) accessing automated online games which are dependent on the internet, or other similar electronic networks, where players are geographically remote from one another,

Text proposed by the European Commission	CoR amendment
(v) accessing or downloading of films,	(v) automated distance teaching dependent on the internet or similar electronic network to function and the supply of which requires limited or no human intervention, including virtual classrooms, except where the internet or similar electronic network is used as a tool simply for communication between the teacher and student,
(w) downloading of games on to computers and mobile phones,	(w) workbooks completed by pupils online and marked automatically, without human intervention.
(x) accessing automated online games which are dependent on the internet, or other similar electronic networks, where players are geographically remote from one another,	
(y) automated distance teaching dependent on the internet or similar electronic network to function and the supply of which requires limited or no human intervention, including virtual classrooms, except where the internet or similar electronic network is used as a tool simply for communication between the teacher and student,	
(z) workbooks completed by pupils online and marked automatically, without human intervention.	

Reason

Digitised content of books and other electronic publications are not fundamentally different from the provision of paper content.

II. POLICY RECOMMENDATIONS

THE EUROPEAN COMMITTEE OF THE REGIONS

General comments

1. stresses that in order to deliver its potential the digital single market needs a modern and stable tax framework that stimulates innovation, tackles market fragmentation and allows all players to tap into the market dynamics under fair and balanced conditions;

2. regrets that some companies, especially those that mainly operate in the digital economy, ultimately pay too little tax. It is important to have a level playing field in the area of corporate taxation, with all players contributing proportionately and fairly;

3. underlines that traditional companies, which are mostly SMEs, suffer from unfair tax competition. Because of this harmful tax competition, many of these businesses are struggling to survive;

4. considers that the existing tax systems are no longer suited to the current economic context of globalisation, mobility, digital technologies, new business models and complex business structures. The old principles which were fit for the 20th century are no longer suitable. Twenty-first century society needs new models. Leaving everything as it is not an option;
5. welcomes the Commission's submission of the digital tax initiatives, giving further momentum to international discussions by providing a clear example of how the current tax principles could be transformed. Individual initiatives taken by the Member States and regions threaten to seriously disrupt the single market;
6. acknowledges that taxes are rarely popular and new taxes even less so, but they are essential for sound public finances. Broadening the tax base by properly taxing digital services which are currently subject to little or no tax, would enable the respective authorities to apply reasonable nominal tax rates on labour and on economic activity, or even to reduce the tax bill, particularly for start-ups and small businesses;
7. believes that the solution must ultimately be a global one in order to better harness the benefits of globalisation, with proper global governance and global rules. The close cooperation between the Commission, the Member States and the OECD to support the development of an international solution should be welcomed;
8. welcomes the work achieved at OECD level, which has seen the publication on 16 March 2018 of an interim report on 'Tax challenges arising from digitalisation' involving 110 countries;
9. believes that pending a comprehensive solution at OECD level, which in all likelihood will unfortunately not be adopted and implemented in the short term, an interim solution at Commission level must be found. The thresholds proposed should not negatively impact micro-businesses or SMEs;
10. considers that there can be no question that every service that is paid for, be it digital or not, should be properly taxed. It will be important to determine an appropriate revenue ceiling above which tax can be imposed so that micro-businesses and SMEs are not negatively impacted. Another key factor will be to determine where companies that are operating in the digital economy are generating their revenue, bearing in mind the following key points: how to tax this revenue while avoiding double taxation, how to prevent this tax being avoided, and how should these internationally collected tax revenues be distributed fairly to benefit all Member States;

Digital services tax

11. asks for the scope of a digital services tax to be carefully defined. In order to be effective, the definitions should not open to interpretation. Simple, transparent and unambiguous tax systems are the most effective ones;
12. takes note that the Commission is proposing a digital services tax, which is not to be imposed on corporate profits but instead on turnover, and this could mean that even unprofitable companies would also be taxed. The CoR points out that this approach differs from the global corporate tax system, which is based on the taxation of profits. The fact is that many digital company business models are based on making losses in the start-up phase;
13. is concerned that such a shift in taxation could, however, benefit larger countries with many consumers, where the companies concerned can deduct their losses from their corporate income tax base, at the expense of smaller exporting economies. The CoR underlines that any solution to the taxation of digital business models has to lead to a fair and equal economic result for all economies in the EU;
14. regrets that there is no sunset clause or other mechanism ensuring that the interim tax measure is withdrawn when a longer-term solution is found;

Significant digital presence

15. points out that for digital companies that do not have a physical presence, the country of sales does not receive corporate profit taxes under current rules. It thus welcomes the approach of introducing a 'significant digital presence' as the starting point for calculating the tax base;
16. stresses that at present, corporate tax systems across the world are based on assessing the corporate profit attributable to each relevant jurisdiction. Taxation is based on where value is created. The CoR acknowledges that given the difficulties of telling where in the value chain profit emerges, there is a need to find universal principles for assessing where value is created;

17. highlights that other developments in the corporate tax area are in line with the results already achieved in BEPS (base erosion and profit shifting). One of the principles of BEPS is to allocate profits to countries in accordance with where value is created;

18. considers that the threshold of EUR 7 million for creating a permanent establishment, from which the new regime would apply, should be increased as such a low threshold could risk hampering digitisation;

Local and regional aspects

19. considers that despite the fact that it is not geared explicitly towards local and regional taxes, a digital services tax or a corporate income tax based on a significant digital presence could have an impact on the tax revenues of local and regional authorities. In some Member States, local or regional taxes are levied on the basis of the national tax base and/or local and regional authorities receive a share of the revenue from national corporate taxes;

20. urges Member States to share the digital services tax proportionally with the local and regional authorities in proportion to their share of corporate taxation in a country;

Impact of a digital services tax and other recent measures

21. regrets that the impact assessment is not sufficiently comprehensive. The Commission has not analysed what impact the interim measure will have on investments, start-ups, jobs and growth. Nor does the impact assessment show how the proposals will affect SMEs or local and regional authorities, and particularly their budgets;

22. therefore calls on the Commission to complete the impact assessment with an analysis of the possible impact of this interim measure in that regard. The revenue impact for smaller and larger Member States also needs to be analysed, as well as the effect stemming from the measures operating alongside BEPS implementation in various countries and the US tax reform.

Brussels, 6 December 2018.

*The President
of the European Committee of the Regions*

Karl-Heinz LAMBERTZ
