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EU Finance Ministers discuss proposal on a Digital Services Tax

ECOFIN – Digital Economy – Turnover Tax – Digital Services Tax – Sunset Clause

During an informal meeting of the Economic and Financial Affairs Council (ECOFIN) of the European Union held in Vienna on September 7 and 8, 2018, EU Finance Ministers discussed the recent European Commission's proposal on a Digital Services Tax (DST). The Finance Ministers broadly agreed on the need to implement a DST, under the condition that it would be a temporary levy, i.e. the tax would only remain in force until agreement has been reached at the international level. The Austrian Presidency aims at reaching agreement on the technical details of the DST by the end of 2018.

Background

Taxation of enterprises that use digital technology has been high on the political agenda of international fora in the past months and should be seen in the broader context of the fight against base erosion and profit shifting (BEPS) and the perceived mismatch between taxation and value creation for digital activities.

While the OECD Interim Report on the "Tax Challenges Arising from Digitalisation", published on March 16, 2018, followed-up on the work delivered in 2015 under Action 1 of the BEPS Project, discussions on the taxation of the digital economy have intensified at the EU level since September 2017 (see ETF 335, ETF 338, and ETF 345). On March 21, 2018, the European Commission issued several proposals on a Fair and Effective Tax System in the EU for the Digital Single Market, including a Directive proposal on a DST, a Directive proposal on the introduction of a digital permanent establishment concept, and Recommendations to Member States to implement this concept in their double tax treaties.

According to the European Commission's proposal (see ETF 360), the new DST would apply as of January 1, 2020, and would be levied on gross revenues at the single rate of 3%. The DST would only apply to businesses that cumulatively meet certain thresholds (i.e. entities with a total annual worldwide revenue above EUR 750 million and a total annual revenue stemming from digital services in the EU above EUR 50 million), and to certain digital services, including the supply of advertising space, the making available of marketplaces, and the transmission of collected user data.

Conclusions of the ECOFIN Meeting

During the press conference, Austrian Finance Minister Löger reiterated the intention of the Austrian Presidency of the Council to make the fair taxation of the digital economy a priority during its six-month mandate. Although technical details about, for example, the scope or rate of a future DST were not discussed during the meeting, all Member States agreed on the need to implement a short-term solution based on the initial European Commission’s proposal on a DST. In order to reach such broad consensus, it was further agreed, as suggested by France and Germany, that the future tax on turnover would be combined with a “sunset clause”, under which the DST would cease to have effect as soon as a permanent long-term solution is found at the international level. The addition of the clause was also supported by the European Commission.

In answering several questions on the technical features of a future DST, Austrian Finance Minister Löger further stressed the need for a clear and unambiguous definition of digital services, although this may lead to a more limited scope for the DST than was initially envisaged by the European Commission. Additional discussions are scheduled to take place at the technical level during September 2018, and a first round of deliberations at the political level is expected to be held during the next ECOFIN meeting on October 2, 2018.

Austrian Finance Minister Löger expressed his satisfaction with the progress of the talks and his confidence that “it is realistic for an agreement to be reached by the end of this year”. During a separate press briefing, German Finance Minister Scholz also confirmed that he expects rapid progress to be made on this file. All Member States are expected to work towards a common EU position on the fair taxation of the digital economy, with the objective to present a united front at the level of the OECD.

EU Tax Centre comment

It remains to be seen whether all Member States will be able to agree on the common features of a DST, whose implementation requires unanimity. Some Member States have already expressed reservations after the publication of the European Commission’s proposals (see for example Denmark, Finland, and Sweden’s joint statement in June 2018) and the three Nordic countries, together with Ireland and Malta, were reported to be the countries that expressed the most serious concerns during the informal meeting. However, the swift adoption of the two Anti-Tax Avoidance Directives and of the most recent changes to the Directive on Administrative Cooperation in tax matters (mandatory disclosure rules on cross-border arrangements) are examples of dossiers where Member States have moved promptly and have acted in unison. Nevertheless, proponents of a DST will have to consider additional potential problems associated with such a tax, including the compatibility of the new tax with the existing international tax framework, such as the World Trade Organization, or double tax treaties.

Should you have any queries, please do not hesitate to contact KPMG's EU Tax Centre, or, as appropriate, your local KPMG tax advisor.

Robert van der Jagt
Chairman, KPMG's EU Tax Centre and Partner,
Meijburg & Co

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KPMG's EU Tax Centre, Laan van Langerhuize 9, 1186 DS Amstelveen, Netherlands