Euro Tax Flash from KPMG's EU Tax Centre

Discussions on the Digital Services Tax

EU Tax Centre Comment

Code of Conduct Group and EU Blacklist

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ECOFIN discusses new French-German proposal for an EU Digital Services Tax and adopts further items on the work of the Code of Conduct

ECOFIN – Digital Services Tax – Fair Taxation – Code of Conduct Group – Harmful Tax Regimes - EU Blacklist

On December 4, 2018, the Economic and Financial Affairs Council of the EU (ECOFIN) held an exchange of views on the digital services tax, but failed to reach an agreement on a compromise text tabled by the Austrian Presidency of the EU. Member States also had the opportunity to comment on a last minute proposal presented by France and Germany that would reduce the scope of the tax to revenues for advertisement only.

Additionally, the ECOFIN approved, without discussions, amendments to the EU "grey list" of uncooperative jurisdictions for tax purposes and welcomed the progress achieved by the Code of Conduct Group during the Austrian Presidency.

Discussions on the Digital Services Tax

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" which included proposals for Directives on a digital services tax (DST) and on the introduction of a digital permanent establishment concept. Additionally, the European Commission recommended that Member States implement this concept in their double tax treaties. However, the primary focus of the discussions over the last few months has been on the implementation of an EU-wide DST, with a goal of achieving consensus before the end of 2018 (see ETF 385, ETF 380 and ETF 360).

According to the latest Presidency compromise text presented on November 29, 2018, the DST would apply as of January 1, 2022:

- 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),
- at the single rate of 3%,
- on gross income from certain digital services, including the supply of advertising space, making available of marketplaces, and the sale of user data.

Member States reached general agreement on most of the definitions and on the fact that, in principle, the collection of the DST should take place without the one-stop-shop mechanism. Further, the compromise text included the following amendments to the European Commission's initial proposal:

- The exclusion of regulated financial services entities from the scope of the DST, and
- The addition of a "sunset clause" and a "review clause" whereby the directive will expire as soon as a solution to the challenges arising from digitalization is reached at the OECD level.

Although the majority of Member States had already indicated they could support this compromise, some delegations continued to raise their objections. In this context, Member States were given the opportunity, during the ECOFIN meeting, to comment on a last minute proposal presented by France and Germany. According to a joint declaration, France and Germany agreed to focus the scope of the DST on revenues from the supply of advertising space only, and to submit – in a second step, proposals on taxing the digital economy and on minimum taxation, in line with the work of the OECD.

Most Member States that participated in the debates were open, with various degrees of support, to discussing this new initiative. Nevertheless, some countries expressed clear opposition to the Franco-German initiative as it stands. This group included Estonia and Sweden, with Ireland underlining "strong principled concerns" on the proposal. Member States therefore failed to unanimously agree on the EU DST.

It is now expected that the technical working groups of the Council will draft a juridical text that reflects the Franco-German initiative, with a view to adopt a final text by March 2019. The formalized text should take the form of a compromise text on the current EU Commission's proposal. At this stage, it is not foreseen that the Commission will present a new proposal.

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It remains to be seen whether all Member States will be able to agree on the new proposal put forward by France and Germany, and particularly whether Romania, which will hold the upcoming Presidency of the EU will maintain political momentum on this topic. However, failure to reach an agreement on this issue is likely to trigger a multiplication of unilateral initiatives. Italy, Spain and the UK having already announced their intention to introduce a tax on digital services, if a compromise is not reached at the EU level. It is also worth noting that Germany seems to favor a debate on minimum taxation at the OECD level, as an alternative to the implementation of an EU-wide DST.

Code of Conduct and EU Blacklist

During their meeting, the EU Finance ministers also approved, without discussions, amendments to the EU “grey list” of uncooperative jurisdictions for tax purposes and welcomed the progress achieved by the Code of Conduct Group during the Austrian Presidency.

The EU blacklist of non-cooperative jurisdictions for tax purposes, first adopted on December 5, 2017, is part of the EU’s effort to clamp down on tax avoidance and harmful tax practices. As part of the listing process, jurisdictions identified as cooperative subject to successful delivery on their commitments to comply with the EU screening criteria, were placed on Annex II of the Council conclusions of December 5, 2017, the so-called “grey-list”. In this respect, commitments taken by grey-listed jurisdictions are closely monitored. Following the recommendations of the Code of Conduct Group, the ECOFIN further concluded on December 4, 2018 that:

- Macao SAR should be removed from section 1.1 (Transparency),
- Oman should be removed from section 1.2 (Transparency),
- Andorra and San Marino should be removed from section 2.1 (Harmful Preferential Tax Regimes),
- Antigua and Barbuda, Dominica, Grenada and Saint Vincent and the Grenadines should be removed from section 3.1 (Implementation of the BEPS minimum standards).

Finally, the ECOFIN adopted conclusions welcoming the work performed by the Code of Conduct Group during the Austrian Presidency on the basis of the report presented on November 20, 2018 (see ETF 387). The Council particularly welcomed the completion of the assessment of the Member States’ notional interest deduction regimes and invited the Group to develop guidance for other Member States that wish to implement a similar regime.

Regarding the EU blacklist, the Council further underlined its determination to update the list at the beginning of 2019 based on a review of the commitments taken by various jurisdictions to comply with the EU screening criteria by the end of 2018. It also endorsed draft guidance on the implementation of criterion 3.2 (country-by-country reporting), as well as the extension of the geographical scope of the EU screening and listing exercise as from 2020.

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The ECOFIN adopted without discussions several recommendations put forward by the Code of Conduct Group, in particular as regards the EU blacklisting exercise. In light of the expiration of the deadline for the grey-listed jurisdictions to implement commitments taken, it will be interesting to follow the evolution of the EU blacklist in 2019,

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

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