Euro Tax Flash from KPMG's EU Tax Centre

ECOFIN fails to reach agreement on digital advertising tax compromise text

ECOFIN – Digital Advertising Tax – Fair Taxation – Digital Services Tax

The Economic and Financial Affairs Council of the EU (ECOFIN) did not reach agreement on the digital advertising tax (DAT) during the March 12, 2019 meeting. Member States' representatives held an exchange of views on a watered-down version of the Commission's digital services tax (DST) proposal, but failed to reach consensus on a compromise text tabled by the Romanian Presidency of the EU.

Background

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 throughout 2018 was on the implementation of an EU-wide DST, with an initial goal of achieving consensus before the end of 2018 (see ETF 388, ETF 385, ETF 380 and ETF 360).

During an ECOFIN meeting on December 4, 2018, the Member States discussed the Presidency compromise text on a DST that 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). Ministers also discussed a last-minute proposal from France and Germany to (i) focus the scope of the DST on revenues from the supply of advertising space only and (ii) to submit – in a second step, proposals on taxing the digital economy and on minimum taxation, in line with the work of the OECD.

The Member States failed to unanimously agree on the EU DST during the December 4, 2018 discussion. However, the Ministers agreed to examine the French and German joint declaration and set a new goal of adopting a final text by March 2019.

March 12 ECOFIN meeting

During the ECOFIN meeting on March 12, 2019 the Council reflected on the progress achieved through negotiations on the digital services tax since the December 4, 2018 meeting. During this period, the Council Presidency conducted extensive work at a technical level and submitted for the ministers' consideration a text that enjoys broad support from a large number of delegations.

The text proposes a Directive on Digital Advertising Tax (DAT) where:

- The tax base would be limited to advertising and exclude intermediation and data transfer services;

- The directive would be adopted before March 2019 and enter into force from 2022 if no international OECD solution is agreed upon;

- A so-called "sunset clause" whereby the Directive would expire should an internationally-agreed upon standard enter into force, or by December 31, 2025 at the latest.

Most Member States that participated in the debates were open, with various degrees of support, to discussing this initiative. Some Member States expressed concern with the limited scope of a DAT, with some Member States noting the disproportionate cost of introducing such a tax compared to the potential revenue raised. Others supported the DAT as a minimum and temporary solution that would send a clear message to the international community on the EU's position. Some Member States observed that the introduction of individual domestic measures would lead to the fragmentation of the EU single market and therefore expressed their preference for a joint EU-wide position. Almost all Member States emphasized their preference to find a solution at the OECD level.

In the end, Member States failed to reach unanimous consensus on a DAT during the March 12, 2019 ECOFIN meeting. Pierre Moscovici, the European Commissioner for Economic and Financial Affairs, Taxation and Customs, commented that the EU should strive to reach consensus on a common approach before the Osaka G20 summit scheduled for June 2019, where the OECD's progress on taxation of the digital economy will be discussed. The Romanian Presidency noted that Member States and the Council will continue work in this area based on a two-track approach: (i) towards consensus at the level of the OECD; (ii) if global consensus is not reached by the end of 2020, to revisit the EU DAT/ DST proposals.

EU Tax Centre Comment

It remains to be seen whether all Member States will be able to agree on a common EU position before the G20 summit. The Austrian Minister of Finance noted that based on previous conversions with his US counterpart, but also with industry representatives, a clear EU-wide position would represent a symbolic signal to the international community on the EU's commitment to reform in this area. However, several EU Member States continue to have fundamental objections to an EU-only, short-term measure.

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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