



2018/0073(CNS)

21.9.2018

DRAFT REPORT

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))

Committee on Economic and Monetary Affairs

Rapporteur: Paul Tang

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**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)

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, 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 (A8-0000/2018),
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.

Amendment 1

Proposal for a directive

Recital 2

Text proposed by the Commission

(2) The current corporate taxation rules were mainly developed during the 20th

Amendment

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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.

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 **and intangible assets**. 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.

Or. en

Amendment 2

Proposal for a directive Recital 3

Text proposed by the Commission

(3) That review constitutes an important element of the Digital Single Market²⁴, 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.

²⁴ 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) 192 final of 6.5.2015).

Amendment

(3) That review constitutes an important element of the Digital Single Market²⁴, given that the Digital Single Market needs a **fair**, modern and stable tax framework for the digital 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.

²⁴ 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) 192 final of 6.5.2015).

Or. en

Amendment 3

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 level²⁷ and to encourage agreements to be reached with non-Union jurisdictions²⁸, so that the corporate tax framework can be made to fit the new digital business models.

²⁷ Proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence (COM(2018) 147 final).

²⁸ Commission Recommendation relating to the corporate taxation of a significant digital presence (C(2018) 1650 final).

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 **and in 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 level²⁷ and to encourage agreements to be reached with non-Union jurisdictions²⁸, so that the corporate tax framework can be made to fit the new digital business models **and ensure a fair contribution by all companies.**

²⁷ Proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence (COM(2018) 147 final).

²⁸ Commission Recommendation relating to the corporate taxation of a significant digital presence (C(2018) 1650 final).

Or. en

Amendment 4

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

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

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).

by certain entities. It should be an easy-to-implement measure targeting the revenues stemming from the supply of digital services, **online content, and the sale of goods or services which are contracted online via digital interfaces** where users **or intangible assets** contribute significantly to the process of value creation. Such **factors** (user value creation **and reliance on intangible assets**) also underpins the action with respect to corporate tax rules, as described in recital (5).

Or. en

Amendment 5

Proposal for a directive Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) DST is a temporary measure aiming both at finding an urgent solution to ensure that all types of businesses contribute their fair share of tax to European economies and at providing a level playing field with traditional businesses. It is therefore proposing a destination based tax system for digital services, in the same direction as the proposals for a permanent solution which have been brought forward by the Commission, notably a Council directive laying down rules relating to the corporate taxation of a significant digital presence or a Council directive on a common corporate tax base and a Council directive on a common consolidated corporate tax base including digital permanent establishment definition to assess a digital significant presence as proposed in the legislative resolutions of the European Parliament of 15 March 2018 on the proposal for a Council directive on a Common Consolidated Corporate Tax Base¹ and the proposal for

¹ [OJ.../Not yet published in the Official
Journal]

² [OJ.../Not yet published in the Official
Journal]

Or. en

Amendment 6

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 revenue resulting from the provision of digital services that are largely reliant on user value creation, ***sale or 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.

Or. en

Amendment 7

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

Amendment

(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.

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) the transmission of data collected about users and generated from such users' activities on digital interfaces; **(iv) the supply of digital content such as video, audio or text; and (v) the sale of goods or services which are contracted online via digital interfaces ('e-commerce' platforms)**. 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.

Or. en

Amendment 8

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**

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 **within** the scope of the tax. **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 **within** the scope of DST **given that it is possible to process user data through a digital interface and thereby create further value from the transaction, in addition to the**

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.

fact that revenue obtained online is susceptible to aggressive tax planning due to a lack of physical presence in the different Member States.

Or. en

Amendment 9

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, **given the ability of the digital interface to process user data and thereby create further value from the transaction, in addition to the fact that the revenue obtained online is susceptible to aggressive tax planning due to a lack of physical presence in the different Member States.**

Amendment 10**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 11**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

(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 ***also*** fall within the scope of DST, regardless of the nature of the underlying transaction.

Amendment 12**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) **An important part of the taxable revenue consists of** the transmission of data collected about users. **This** should cover data which has been generated from such users' activities in digital interfaces. The services within the scope of DST **use** digital interfaces as a way to create user input which they monetise. DST **is not** 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 **sale or transmission to a third party of this** data obtained from a very specific activity (users' activities on digital interfaces). **Excluding revenue from the sale of data will undermine the purpose of this Directive to tax revenue obtained from user value creation.**

Or. en

Amendment 13**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

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 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***³⁰. 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.

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 proposed*** 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, ***scale-ups*** and start-ups for which the compliance burdens of the new tax would be likely to have a disproportionate effect.

³⁰ See Article 2 of the Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) (COM(2016) 683 final).

Or. en

Amendment 14

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

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

purposes of determining the proportion of taxable revenues to be allocated in that tax period to that 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.

Or. en

Amendment 15

Proposal for a directive Recital 31 a (new)

Text proposed by the Commission

Amendment

(31a) As regards the sales of goods or services which are contracted on e-commerce platforms, the allocation of taxable revenues in a tax period to a Member State should be carried out on the basis of the revenue in that tax period. Taxing rights over the revenues of the business contracting sales of goods and services online should be allocated to Member States where the goods or services are delivered to the buyer.

Or. en

Amendment 16

Proposal for a directive Recital 35

Text proposed by the Commission

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

(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.

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 5%, which achieves an appropriate balance between revenues generated by the tax and accounting for the differential DST impact for businesses with different profit margins.

Or. en

Amendment 17

Proposal for a directive Recital 38 a (new)

Text proposed by the Commission

Amendment

(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.

Or. en

Amendment 18

Proposal for a directive Recital 40 a (new)

Text proposed by the Commission

Amendment

(40a) DST is a temporary measure awaiting a permanent solution and 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 Directive on a Common Corporate Tax Base and the Council

Directive on a Common Consolidated 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 Consolidated Corporate Tax Base¹ and the proposal for a Council directive on a Common Corporate Tax Base².

¹ [OJ.../Not yet published in the Official Journal]

² [OJ.../Not yet published in the Official Journal]

Or. en

Amendment 19

Proposal for a directive Recital 40 b (new)

Text proposed by the Commission

Amendment

(40b) Three 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. In its report the Commission should assess, notably, the entities which were covered by the scope of the DST, the amount of tax paid in each Member State, the thresholds of the DST with regards to the size of the entities and its digital services revenue, the type of digital activities within the scope of this Directive and the kinds of taxable revenue, in addition to the rate applied and the potential tax planning practices that were applied by entities to avoid

paying the DST.

Or. en

Amendment 20

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 or text using a digital interface;

Or. en

Amendment 21

Proposal for a directive

Article 3 – paragraph 1 – point c b (new)

Text proposed by the Commission

Amendment

(cb) the sale of goods or services which are contracted online via digital interfaces ('e-commerce' platforms).

Or. en

Amendment 22

Proposal for a directive

Article 3 – paragraph 4 – point a

Text proposed by the Commission

Amendment

(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**

(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

communication services to users or to supply payment services to users;

supply payment services to users;

Or. en

Amendment 23

Proposal for a directive

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

Text proposed by the Commission

Amendment

(ca) in the case of a service falling within Article 3(1)(ca), the content 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;

Or. en

Amendment 24

Proposal for a directive

Article 5 – paragraph 2 – point c b (new)

Text proposed by the Commission

Amendment

(cb) in the case of goods or services falling within Article 3(1)(cb), the goods or services are delivered in that Member State in that tax period to the buyer;

Or. en

Amendment 25

Proposal for a directive

Article 5 – paragraph 6

Text proposed by the Commission

Amendment

6. The data that may be collected from

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.

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.***

Or. en

Amendment 26

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 5%.

Or. en

Justification

The objective of the DST is to close the gap between corporate taxation on digital firms and traditional firms and create a level playing field between them. When setting the rate for this revenue based tax, we therefore should assess the implied profit tax rate. Therefore we need to do two things; set the target rate and a realistic estimate of the profit margins. In its staff working document the European Commission claims that large multinational groups with a digital business model, using tax aggressive tax planning, are not paying any corporate income taxes. The average corporate income tax rate in the EU is 21.3% in 2018, which should therefore be the target for the implied rate of profits of the EU-wide DST. When it comes to the profit margin it is clear from the data available for public traded companies that large multinational groups with a digital business model tend to have a high profit margin. For example Google and Facebook, have a profit margin of up to 40%. When setting the rate of the DST, the assumed profit margin of 15% taken by the European Commission is too conservative. An assumed profit margin of 25% for large digital firms is more in line with reality. When applying these two metrics to the DST, we arrive to a rate of 5% on digital turnover in order to tax the implied profits with a 20% tax rate. ($5/25 = 20\%$)

Amendment 27

Proposal for a directive

Article 10 – paragraph 3 – subparagraph 1 (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.

Or. en

Amendment 28

Proposal for a directive

Article 23 a (new)

Text proposed by the Commission

Amendment

Article 23a

Sunset clause conditional on permanent measures

The DST is a temporary measure awaiting a permanent solution, therefore this Directive shall expire and will lapse with the adoption of either:

(a) the Council Directive laying down rules relating to the corporate taxation of a significant digital presence ;

(b) the Council Directive on a Common Corporate Tax Base; or

(c) the Council Directive on a Common Consolidated 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 Consolidated Corporate Tax Base¹ and the proposal for a Council directive on a Common Corporate Tax

Base² whichever occurs first.

¹ *[OJ.../Not yet published in the Official Journal]*

² *[OJ.../Not yet published in the Official Journal]*

Or. en

Amendment 29

Proposal for a directive Article 24 a (new)

Text proposed by the Commission

Amendment

Article 24a

Report and review

Three 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 its report the Commission shall assess, notably, the entities which were covered by the scope of the DST, the amount of tax paid in each Member State, the thresholds of the DST with regards to the size of the entities and its digital services revenue, the type of digital activities within the scope of this Directive and the kinds of taxable revenue, in addition to the rate applied and the potential tax planning practices that were applied by entities to avoid paying the DST.

Or. en

EXPLANATORY STATEMENT

The current corporate tax systems designed for 'brick-and-mortar' businesses, with a clearly identifiable physical presence, do not fit to the reality of the 21st century economy. The rapid development of new digital business models based on user participation and intangible assets has created an unlevel playing field vis-a-vis traditional businesses. These digital businesses use the lack of physical presence in Member States to shift profits and tend to pay only a fraction of the corporate taxes paid by their competitors. This is unfair and goes against the European principles of fair competition.

In the absence of an international agreement on taxing the digital economy, it is paramount to introduce new rules regarding taxation of the digital business models operating in the Union Single Market, to ensure a fair tax contribution to European economies by all companies and to avoid unilateral measures by Member States. Even though the rapporteur believes that taxation of the digital activities should be based on defining a virtual permanent establishment as called for by the European Parliament in its reports on the Common Corporate Tax Base and the Common Consolidated Corporate Tax Base of March 2018, he agrees that a temporary measure is necessary.

The rapporteur essentially supports the Commission proposal, in particular the view that this tax should be limited to companies above EUR 750 million of total worldwide revenues in order to limit a negative impact on the development of small companies, start-ups and scale-ups in the digital sector.

The rapporteur proposes a number of targeted amendments in order to improve the Commission proposal, in particular:

- Creating a level playing field by increasing the DST tax rate from 3% to 5%. As the Commission made clear in its Staff Working Document, traditional domestic companies pay an effective average tax rate of 20.9% and digital multinational groups engaged in tax planning a negative average tax rate of -2.3%. The Commission based its proposed rate on the digital revenue on the idea of an implied tax of profits. When aiming at creating a level playing field, the rate should bridge this gap in taxation between traditional and digital firms. The level of implied corporate taxes should therefore be set at the 20% average taxes paid by traditional firms, instead of the 13% taken in the proposal. In addition, a low profitability of the digital business models of 15% is assumed, while using a profit margin of 25% is more realistic. Large digital multinational companies like Facebook and Google tend to have profit margins of up to 40%. Taking these new metrics to set the DST rate at 5% would create a level playing field between traditional and digital companies, and allows for a larger tax contribution from a sector which has been, so far, undertaxed.
- Broadening the tax base by including in the scope of taxable revenue the supply of digital content such as video, audio or text using a digital interface and the sale of goods or services which are contracted online via e-commerce' platforms. Because of the ability of their to process user data and thereby create further value from the transaction, in addition to the fact that, their revenue attained online is susceptible to aggressive tax planning due to a lack of physical presence in the different Member States. Including these forms of digital revenue in the scope of the destination based

DST goes in the same direction of the tax reforms proposed by the Commission in the CCCTB.

- Clarification that DST should also apply to the sale and transmission of data attained through active participation of users on digital interfaces.
- Introducing a sunset clause conditional on the proposed EU permanent measures, whereby the DST is due to lapse with the adoption of proposals for a digital significant presence or the CCCTB including the European Parliament position on digital permanent establishment.
- Asking the Commission to review this Directive after 3 years in particular with regard to entities covered by the DST, the amount of tax paid in each Member State, the thresholds of the DST with regards to the size of the entities and its digital services revenue, the type of digital activities and the kinds of taxable revenues.
- Introduction of an audit mechanism where the DST return filed with the Member State of identification is audited every three years audited.