

Fair taxation of the digital economy

In order to make tax rules fit for the digital economy, the European Commission proposed two Council directives in March 2018: a short-term solution, to be delivered by an interim digital services tax on revenues from certain digital services, and a permanent reform of the corporate tax rules, based on the concept of 'significant digital presence'. The European Parliament is expected to vote on the proposals during its December plenary session.

Background

The digital economy appears to be relatively under-taxed when compared to traditional 'bricks and mortar' businesses. The Commission estimates that digital businesses pay an effective tax rate of only 9.5 %, compared to 23.2 % for traditional business models. In particular, this concerns large companies operating in multiple tax jurisdictions. Furthermore, current tax rules often fail to capture value created using new digital business models, which do not require physical presence in a country and are based on intangible assets, and user-generated data and knowledge. In the meantime, [international efforts](#) to find consensus on taxing the digital economy are stalling. In view of this, the Commission proposed a package on [fair taxation of the digital economy](#) on 21 March 2018.

European Commission proposals

Digital services tax on revenues from certain digital services

The first [proposal](#) for a Council directive aims at taxing revenues created by certain digital activities that are currently untaxed. The scope of the tax would cover revenues created from selling online advertising space, from digital intermediary activities between users to facilitate the sale of goods and services, and from the sale of data generated from user-provided information. It would apply only to enterprises above two thresholds: total annual worldwide revenues above €750 million, and total annual EU revenues exceeding €50 million. The proposed single rate is 3 %, levied on gross revenues resulting from the provision of those digital services where user value creation is essential. It would apply to both non-resident and domestic companies and to domestic and cross-border transactions. Member States are to collect the tax revenues allocated to each country proportionate to the number of users of the service taxed. This tax is intended to be an interim measure until the implementation of comprehensive reform envisaged in the second proposal.

Corporate taxation of a significant digital presence

The second [proposal](#) for a Council directive provides an updated answer to the question of 'where' and 'what' to tax in the digital economy. It defines a 'significant digital presence', which can be established even when there is no physical presence in a given EU Member State. Liability for tax would concern companies if they meet at least one of the following criteria in a taxable year: annual revenue exceeding €7 million; over 100 000 users in a Member State; more than 3 000 business-to-business contracts for digital services concluded by the company. A proportionate share of a company's profits would then become taxable in the country in which it had taxable digital presence, at rates equivalent to 'bricks and mortar' companies. The tax would concern corporate taxpayers incorporated or established in the EU, as well as enterprises incorporated or established in a non-Union jurisdiction with which there is no double taxation treaty with the Member State in which a significant digital presence of the taxpayer is identified.

European Parliament position

On 3 December 2018, European Parliament's Committee on Economic and Monetary Affairs (ECON) adopted its reports on the two proposals (the [interim digital services tax](#) and the [significant digital presence](#)) under the consultation procedure. On the **digital services tax**, the committee proposes to lower the threshold above which companies would need to pay the tax from €50 million to €40 million. It proposes to broaden the tax base, by including in the taxable revenue the supply of digital content such as

video, audio, games or text, and processing and sale of data collected from users and generated from their activities on digital interfaces. It should cover revenues stemming from the supply of digital services where users or intangible assets contribute significantly to the process of value creation. Services consisting of the supply of digital content by an entity through a digital interface would 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. Related revenues should be evaluated by the Commission within two years of the entry into force of the directive. Taxing rights would be allocated to those Member States where the goods or services are delivered to the buyer. In case a taxable person is liable to be taxed in more than one Member State, the Commission would audit, every three years, the tax return filed with the Member State of identification. Furthermore, the report asks the Commission to assess the establishment of a dispute-resolution mechanism concerning the allocation of taxable revenues among the Member States. Total digital service tax paid by a taxable person, per Member State, should be part of the system of country-by-country reporting. The report also introduces a sunset clause under which the tax would lapse after a comprehensive, preferably international solution is put in place. It would expire with the adoption of the proposal for a tax on significant digital presence, or the common corporate tax base (CCTB) and common consolidated corporate tax base (CCCTB), if they include the concept of [digital permanent establishment](#) as proposed by the European Parliament, or with implementation of an international solution reached in a forum such as the OECD or the United Nations. The committee asks the Commission to consider a proposal based on Article 116 TFEU, which provides for the ordinary legislative procedure to be used, if no comprehensive solution has been agreed by 31 December 2020.

On the **significant digital presence**, the committee wishes to see this concept, and proposed solutions, become an integral part of the proposed Council directives on CCTB and CCCTB. It requests that the definition of digital services also includes the sale of goods or services which are contracted online via digital interfaces, and that economically significant activities also include exploitation and transmission of user-level data. It adds an additional criterion to determine a significant digital presence: the volume of data in the form of digital content collected by the taxpayer in a taxable year exceeding 10 % of the group's overall stored digital content. To assist the tax authorities the Commission would issue guidelines on how a significant digital presence and digital services are to be identified, measured and taxed. Furthermore, the Commission would need to establish another set of guidelines with a clear methodology for companies to self-assess whether and which of their activities would constitute the significant digital presence. Both EU and non-EU companies could appeal a decision that the services they provide are digital, in accordance with national law. The committee asks to ensure that small and medium-sized enterprises do not unintentionally fall within the tax's scope. Finally, the report requests the inclusion of an observer from the European Parliament in the 'DigiTax Committee', which should act as an advisory body to evaluate the application of the directive. This committee would assess the correct implementation of the directive by companies, and be able to gather data from national tax authorities as well as facilitate cooperation between these authorities to minimise the possibility of double-taxation and double non-taxation.

Parliament is due to vote on the proposals during the December plenary session. According to Article 115 TFEU, Parliament has a consultative role in matters related to the approximation of taxation laws. The Council decides by unanimity on the final content of the rules. Parliament urges an approval of the new rules before the end of this parliamentary term.

Consultation procedure; Committee responsible: ECON;

Common system of a digital services tax on revenues resulting from the provision of certain digital services [2018/0073\(CNS\)](#); Rapporteur: Paul Tang (S&D, the Netherlands);

Corporate taxation of a significant digital presence, [2018/0072\(CNS\)](#); Rapporteur: Dariusz Rosati (EPP, Poland).

For further information see our 'EU Legislation in progress' briefings ([Digital services tax](#), [Corporate taxation of a significant digital presence](#)).

