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DRAFT REPORT

on Digital taxation: OECD negotiations, tax residency of digital companies and a possible European Digital Tax
(2021/0000(INI))

Committee on Economic and Monetary Affairs

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on digital taxation: OECD negotiations, tax residency of digital companies and a possible European Digital Tax (2021/0000(INI))

The European Parliament,

- having regard to Articles 113 and 115 of the Treaty on the Functioning of the European Union (TFEU),
- having regard to the European Council conclusions of 1-2 October 2020¹ and of 21 July 2020²,
- having regard to the Ecofin Council conclusions of 27 November 2020³,
- having regard to the Commission proposals pending for adoption, in particular on the Common Corporate Tax Base (CCTB) , the Common Consolidated Corporate Tax Base (CCCTB)⁴, and the digital taxation package⁵, as well as Parliament's positions on these proposals,
- having regard to the Commission Communication of 15 January 2019 entitled 'Towards a more efficient and democratic decision-making in EU tax policy' (COM(2019)0008),
- having regard to the Communication from the Commission to the European Parliament and the Council of 15 July 2020 on an Action Plan for Fair and Simple Taxation supporting the recovery strategy (COM(2020)0312),
- having regard to its resolution of 25 November 2015 on tax rulings and other measures similar in nature or effect, proposed by its Special Committee on Tax Rulings and Other Measures Similar in Nature or Effect (TAXE Committee)⁶,
- having regard to its resolution of 6 July 2016 on tax rulings and other measures similar in nature or effect⁷, proposed by its second Special Committee on Tax Rulings and

¹ <https://www.consilium.europa.eu/media/45910/021020-euco-final-conclusions.pdf>

² <https://www.consilium.europa.eu/media/45109/210720-euco-final-conclusions-en.pdf>

³ <https://data.consilium.europa.eu/doc/document/ST-13350-2020-INIT/en/pdf>

⁴ Proposal of 25 October 2016 for a Council Directive on a Common Corporate Tax Base (CCTB), COM(2016)0685 and of 25 October 2016 on a Common Consolidated Corporate Tax Base (CCCTB), COM(2016)0683.

⁵ The package consists of the Commission communication of 21 March 2018 entitled 'Time to establish a modern, fair and efficient taxation standard for the digital economy' (COM(2018)0146), the proposal of 21 March 2018 for a Council directive laying down rules relating to the corporate taxation of a significant digital presence (COM(2018)0147), the proposal of 21 March 2018 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) and the Commission recommendation of 21 March 2018 relating to the corporate taxation of a significant digital presence (C(2018)1650).

⁶ OJ C 366, 27.10.2017, p. 51.

⁷ OJ C 101, 16.3.2018, p. 79.

Other Measures Similar in Nature or Effect (TAXE2 Committee),

- having regard to its recommendation of 13 December 2017 to the Council and the Commission following the inquiry into money laundering, tax avoidance and tax evasion conducted by its Committee of Inquiry to investigate alleged contraventions and maladministration in the application of Union law in relation to money laundering, tax avoidance and tax evasion (PANA Committee)⁸,
- having regard to its resolution of 26 March 2019 on financial crimes, tax evasion and tax avoidance⁹, proposed by Special Committee on financial crimes, tax evasion and tax avoidance (TAX3),
- having regard to the Commission's follow-up to each of the above-mentioned Parliament resolutions¹⁰,
- having regard to its study entitled 'Impact of Digitalisation on International Tax Matters: Challenges and Remedies'¹¹,
- having regard to the G20/OECD Inclusive Framework (IF) on the Base Erosion and Profit Shifting (BEPS) Action Plan of October 2015, and in particular Action 1 thereof regarding the Tax Challenges Arising from Digitalisation,
- having regard to the G20/OECD IF interim report entitled 'Tax Challenges Arising from Digitalisation' adopted in 2018, and its Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy adopted in May 2019,
- having regard to the Cover Statement and the Reports on the Pillar One and Pillar Two Blueprints adopted by the G20/OECD IF in October 2020, as well as the results of an economic analysis and impact assessment carried out by the OECD Secretariat attached to it,
- having regard to the outcomes of the various G7, G8 and G20 summits held on international tax issues,
- having regard to the Commission Inception impact assessment on a Digital Levy of 14 January 2021 (Ares(2021)312667),
- having regard to its resolution of 18 December 2019 on 'Fair Taxation in a Digitalised and Globalised Economy: BEPS 2.0'¹²,

⁸ OJ C 369, p. 123.

⁹ Texts adopted: P8_TA(2019)0240.

¹⁰ The joint follow-up of 16 March 2016 on bringing transparency, coordination and convergence to corporate tax policies in the Union and TAXE resolutions, the follow-up of 16 November 2016 to the TAXE2 resolution, the follow-up to the PANA recommendation of April 2018, and the follow-up of 27 August 2019 to the TAX3 resolution.

¹¹ Hadzhieva, E., 'Impact of Digitalisation on International Tax Matters: Challenges and Remedies', European Parliament, Directorate-General for Internal Policies, Policy Department A - Economic, Scientific and Quality of Life Policies, February 2019.

¹² Texts adopted: P9_TA(2019)0102.

- having regard to Rule 54 of its Rules of Procedure,
 - having regard to the opinion of the Committee on Budgets,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A9-0000/2021),
- A. whereas current international corporate tax rules are based on principles which were developed in the early 20th century and are no longer suited to an increasingly globalised and digitalised economy;
 - B. whereas following the 2008-2009 financial crisis and a series of revelations of tax evasion practices, aggressive tax planning, tax avoidance and money laundering, the G20 countries agreed to address these issues globally at OECD level through the Base Erosion and Profit Shifting (BEPS) project, leading to the BEPS Action Plan;
 - C. whereas the BEPS Action Plan succeeded in establishing a global consensus on many issues in order to fight tax evasion, aggressive tax planning and tax avoidance; whereas, however, there was no agreement on addressing the tax challenges arising from the digitalisation of the economy, which led to the adoption of the separate BEPS Action 1 – 2015 Final Report;
 - D. whereas Parliament has repeatedly called for a reform of the international corporate tax system with a view to tackling tax evasion, tax avoidance and the challenges of taxing the digital economy;
 - E. whereas the Commission put forward two proposals on the taxation of the digital economy in 2018, including a short-term solution introducing a digital services tax (DST), and a long-term solution defining a significant digital presence (SDP) as a nexus for corporate taxation which should replace the DST; whereas Parliament supported these proposals, but they were not adopted in the Council because Member States could not reach the unanimous agreement needed in the realm of taxation at EU level;
 - F. whereas, in accordance with a mandate given by G20 Finance Ministers in March 2017 and following the adoption of a Programme of Work (PoW) in May 2019, the OECD/G20 Inclusive Framework on BEPS (IF), through its Task Force on the Digital Economy, has been working on a consensus-based global solution based on two pillars: Pillar One on the allocation of taxing rights through new profit allocation and nexus rules and Pillar Two on addressing the remaining BEPS issues and introducing measures to ensure a minimum level of tax;
 - G. whereas on 12 October 2020, the G20/OECD IF published a package consisting of a statement and reports on the Pillar One and Pillar Two Blueprints, which reflects convergent views on a number of policy features, principles and parameters in both Pillars, while identifying remaining political and technical issues to be addressed;
 - H. whereas the lockdowns in response to the COVID-19 pandemic have accelerated the transition to an economy based on digital services, putting physical businesses at a further disadvantage ; whereas there is an urgent need to act swiftly, taking into account the aim of the G20/OECD IF to conclude its negotiations in July 2021;

- I. whereas adequate international tax laws are a key for a fair and efficient taxation system addressing inequality and ensuring certainty and stability, which are prerequisites for competitiveness, as well as for a level playing field between companies, especially for small and medium-sized enterprises;

Addressing challenges arising from the digitalisation of the economy

1. Notes that the current rules date back to the early 20th century, and are mainly based on physical presence; points out that digitalised companies can engage in significant business activities in a jurisdiction without physical presence there, and therefore taxes paid in one jurisdiction no longer reflect the value and profits created there; regrets that the traditional concept of permanent establishment fails to cover the new aspects of digital businesses, and underlines the need to define virtual permanent establishment; stresses that users of online platforms and consumers of digital services cannot be shifted outside a jurisdiction in the same way as capital and labour, and should therefore be the basis for the definition of a new tax nexus in order to provide an effective remedy against aggressive planning;
2. Regrets the shortcomings of the international tax system, which is unfit for properly addressing the challenges of globalisation and digitalisation; calls for an international agreement aiming for a fair and effective tax system;
3. Highlights the need to address the under-taxation of the digital economy, while ensuring a fair distribution of taxing rights among all countries where the value creation of multinational digital companies takes place;
4. Notes that on average digital business models face significantly lower effective tax rates than traditional business models which rely on physical presence; regrets that tax avoidance linked to aggressive tax planning is not only detrimental to the collection of public revenues but also puts businesses, especially SMEs, at a disadvantage, while creating barriers for new local entrants;

A global multilateral agreement: the preferred but not the only way forward

5. Welcomes the efforts in the G20/OECD IF to reach a global consensus on a multilateral reform of the international tax system to address the challenges of the digitalised economy; acknowledges the progress of discussions on the proposals at technical level, despite the delays caused by the COVID-19 pandemic, and calls for a swift agreement by mid-2021; highlights the value of the G20/OECD IF for guaranteeing multilateral solutions and finding support at the global and EU level;
6. Welcomes the fact that the two pillar approach suggested in the G20/OECD IF does not ring fence the digital economy but seeks a comprehensive solution to the new challenges of the digital economy; acknowledges that both pillars are complementary, and supports a holistic solution in which one pillar is not adopted without the other;
7. Welcomes the proposal under Pillar One of a new tax nexus and new taxing rights which would create the possibility of taxing multinational enterprises (MNEs) in market jurisdictions, even where they have no physical presence based on their economic activity; underlines that the interaction with users and consumers significantly

contributes to value creation in digital business models, and should therefore be taken into account when allocating taxing rights; stresses that the scope of these new taxing rights should cover all large MNEs which could engage in BEPS practices, while not creating further and unnecessary burdens on SMEs;

8. Calls on the Commission and the Council to intensify the dialogue with the new US administration on digital tax policy with the aim of finding a common approach in the framework of the G20/OECD IF negotiations before June 2021; calls on the Council to oppose the 'safe harbour' clause, proposed by the US administration, which risks undermining the reform efforts;
9. Welcomes the proposal of a dispute prevention and resolution mechanism but underlines that tax certainty is best achieved by establishing simple, clear and harmonised rules that prevent disputes in the first place;

A call for immediate EU action

10. Regrets that the failure of the G20/OECD IF to find a solution in October 2020 will prolong the under-taxation of the digital economy; stresses that the COVID 19 pandemic has largely benefited digital businesses and accelerated the transition to a digital economy, thereby re-emphasising the need to reform the current tax system in order to ensure a fair contribution from the digital economy;
11. Insists therefore that, regardless of the progress of the negotiations at the G20/OECD IF, the EU should stand ready to roll out its own solutions for taxing the digital economy by the end of 2021; calls on the Commission to present proposals by June 2021, while anticipating their compatibility with the reform by the G20/OECD IF to be agreed on; stresses the need to create a level playing field for providers of traditional services and digital services in the EU by ensuring that the latter are taxed at an adequate rate; invites the Commission to consider in particular introducing a European Digital Services Tax as a necessary first step;
12. Understands that some Member States consider the taxation of digital economy an urgent issue and have therefore introduced digital services taxes at national level; recalls that these national measures should be phased out once a multilateral solution is found; calls on Member States to refrain from introducing national solutions unilaterally, as they create a risk of fragmentation of the single market; recalls that although taxation is primarily a Member State competence, they must exercise it in coherence with the common principles of EU law in order to ensure coherence between national frameworks, thereby allowing for fair competition and avoiding a negative impact on the overall coherence of EU taxation principles;
13. Regrets that the Council did not agree on any of the Commission's related proposals, i.e. the digital services tax, the significant digital presence or the CCTB and CCCTB; calls on the Member States to reconsider their position on these proposals, and to consider all options provided for by the Treaties if no unanimous agreement can be reached;
14. Notes the Commission inception impact assessment on a Digital Levy of 14 January 2021; calls on the Commission to carefully assess how the scope, definition and

segmentation of digital activities, transactions, services or companies will be in line with international efforts to find a global solution;

15. Calls for a stronger role for Parliament in legislative procedures in the area of taxation; takes note of the Commission's proposed roadmap to qualified majority voting in its communication entitled 'Toward a more efficient and democratic decision-making in EU tax policy';

A digital levy as a new EU own resource

16. Welcomes the conclusions of the European Council of 21 July 2021, which task the Commission with putting forward proposals for additional own resources including a digital levy;

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17. Instructs its President to forward this resolution to the Council and the Commission.

EXPLANATORY STATEMENT

We are facing an important evolution in our economies due to digitalisation and globalisation. It has been carrying out positive effects on our society and our economies, like cheaper, more powerful, and widely standardised technologies. At the same time, this process creates new challenges to the existing international tax system, which can lead to no or low taxation, market distortions, and tax uncertainty.

In this regards, the established international tax system needs an overhaul in order to be up to the new digital challenges. The objective in the end is to arrive at a fair and effective international tax system covering also the specific features of a globalised digital economy.

The current COVID-19 pandemic and its impact on domestic tax bases revealed the urgency to finalize quickly on-going negotiations at the G20/OECD within the Inclusive Framework. Within the EU, past initiatives of Commission and Parliament have not succeeded within the Council. Following the establishment of the current multi-annual financial framework the Commission has been tasked to work on a proposal taxing digital businesses.

The co-rapporteurs are of the opinion that:

- Digital businesses and services have to pay their fair share of taxes in consumer markets as much as traditional ones. We need to overcome the known limits of the definition of a permanent establishment which need to cover virtual aspects as well.
- Negotiations within the IF need to be finalized as quickly as possible till mid-2021 in order to create a consensus among the 137 participating states for having a fair share of taxing the digital economy (pillar 1) and to agree on a global minimum tax that would address the remaining issues of base erosion and profit shifting (BEPS) (pillar 2).
- It is necessary to embrace a broader definition of the scope but at the same time not harming “bricks and mortar” types of businesses including SMEs: It is necessary to cover not only highly digital business models but also, more broadly, large consumer-facing businesses. The aim is to create a new ‘tax nexus’ model, which is predominantly based on sales instead of physical presence.
- The Commission and Council shall prioritize tax matters towards the new US administration in order to reach multilateral solutions at the G20/OECD level.
- As a matter of urgency the European Council and the Council shall proceed on the Commission’s initiatives addressing the loss of tax revenue deriving from not taxing digital business models.