



***European Commission's tax
proposals on the digital economy
adopted on 21 March 2018
(Digitax package)***

PLATFORM FOR TAX GOOD GOVERNANCE

***European Commission
DG TAXUD Unit D1 - Company Tax Initiatives
23 March 2018***



Aide Memoire

- BEPS Action Plan – Action point n° 1
- BEPS TFDE report from September 2015
<http://www.oecd.org/tax/addressing-the-tax-challenges-of-the-digital-economy-action-1-2015-final-report-9789264241046-en.htm>
- Commission Expert Group for the taxation of the digital economy from May 2014
https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/gen_info/good_governance_matters/digital/report_digital_economy.pdf
- New OECD mandate for the TFDE, G20 and G7 conclusions; public consultation in 2017
<http://www.oecd.org/tax/tax-policy/tax-challenges-digital-economy-request-for-input.pdf>
- Statement of the 4 (later 10) Finance Ministers from August/September 2017 on the taxation of the digital economy



Aide Memoire (cont'd)

- European Commission Communication from 21 September 2017 (COM(2017)547 Final)
- European Council Conclusions from 19 October 2018
<http://www.consilium.europa.eu/media/21620/19-euco-final-conclusions-en.pdf>
- ECOFIN Council Conclusions from 5 December 2017
<http://data.consilium.europa.eu/doc/document/ST-15445-2017-INIT/en/pdf>
- Commission Work Programme 2018 – Digital economy
https://ec.europa.eu/info/sites/info/files/cwp_2018_annex_i_en.pdf

Fair taxation in the digital economy: Proposal establishing rules at EU level allowing taxation of profits generated by multinationals through the digital economy (legislative, incl. impact assessment, Art. 113, 115 TFEU, Q1 2018)



Aide Memoire (cont'd)

- CDU/CSU SPD Sondierungsergebnisse 12.1.2018
Wir bekämpfen Steuerdumping, -betrug und -vermeidung und Geldwäsche gleichermaßen international und in der EU. Wir unterstützen eine gerechte Besteuerung großer Konzerne, gerade auch der Internetkonzerne Google, Apple, Facebook und Amazon.
- OECD Interim Report published on 16.3.2018
- US reaction to OECD Interim Report from 16.3.2018

U.S. Treasury Secretary Steven T. Mnuchin issued the following statement regarding the Organisation for Economic Co-Operation and Development's (OECD) report on taxation of the digital economy.

"The U.S. firmly opposes proposals by any country to single out digital companies. Some of these companies are among the greatest contributors to U.S. job creation and economic growth. Imposing new and redundant tax burdens would inhibit growth and ultimately harm workers and consumers. I fully support international cooperation to address broader tax challenges arising from the modern economy and to put the international tax system on a more sustainable footing."



COMMUNIQUE DE PRESSE CONJOINT DU G5 SUR LA TAXATION DU NUMERIQUE PAR LA FRANCE, L'ALLEMAGNE, L'ITALIE, L'ESPAGNE ET LE ROYAUME-UNI

Taxer de manière appropriée les entreprises opérant dans l'économie numérique est un défi mondial majeur. En l'absence de consensus global au niveau du G20 et de l'OCDE, nous devons avancer au niveau de l'Union Européenne. En trouvant un accord sur une approche coordonnée à l'échelle de l'UE, nous garantirons l'intégrité du marché unique du numérique.

C'est pourquoi nous saluons les propositions que la Commission européenne a publiées aujourd'hui. Nous continuons à soutenir les travaux de l'UE en cours et espérons qu'ils permettront de lancer une forte dynamique de discussions au niveau du G20 et de l'OCDE, tout en fournissant en même temps le socle pour une action européenne coordonnée dans le but de mettre en adéquation l'imposition des bénéfices des entreprises hautement numérisées avec l'endroit où est créée la valeur.

Notre prochaine étape sera d'analyser en profondeur les détails de ces propositions. Nous attendons avec intérêt et appelons à des discussions constructives au sein du Conseil afin de parvenir à un accord aussi vite que possible.



Problem description

There is a problem!

- The international tax system is no longer fit for purpose when it comes to new business models. The **physical presence** as the cornerstone for attributing taxing rights is not covering purely digital business activities in a tax territory.
- The **principles of international taxation** are the starting point for any long term solution, even when these principles are more and more challenged today. The adequate approach is to modernise and amend, not to abolish or change completely.
- The **digitalisation of the economy** requires a general approach, not a sector specific approach for the digital economy alone.



Problem description (cont'd)

Reasons to act

- Competitive distortions (even with a reduced impact level from US tax reform)
- Inadequate allocation of taxing rights – value creation is not reflected in the taxable revenues of the MS of activity
- Stop the spreading of unilateral measures (IT, SK, HU) in the EU and influence international developments (i.e. Israel, Indonesia, India and more in the pipeline?)
- Taxation of the digital economy is not a tax avoidance issue. BEPS measures can reduce the negative effects but not solve the problem



European
Commission

Commission communication

*Time to establish a modern, fair and efficient
taxation standard for the digital economy*

Council Directive

*laying down rules
relating to the
corporate taxation
of a significant
digital presence*

Commission Recommendation

*relating to the
corporate taxation
of a significant
digital presence*

Council Directive

*on the common
system of a digital
services tax on
revenues resulting
from the provision
of certain digital
services*



Proposed solutions in the digitax project

Comprehensive measure

- Ideally a worldwide approach, but the OECD Interim report from 16 March 2018 not very promising!
- EU proposal to find a solution in the current framework of international taxation systems (i.e. DTA)
- To add a significant digital presence to the permanent establishment rules
 - Revenue threshold,
 - N° of users or
 - N° of contracts



Proposed solutions in the digitax project

Comprehensive measure (cont'd)

- To measure and attribute value creation in line with the current principles (Art. 7 of the OECD model convention and the ALP) to capture profits from digital activities.
- Starting point:
ALP and functional analysis,
Adjusted for the significance of a digital presence and
Preference for the profit split method.



Proposed solutions in the digitax project

Targeted measure

- To fill a gap until the long term solution is in place!
- Types of companies – very broad: incorporated companies as well as transparent entities
- Sector specific or general?
General threshold to enter the scope of the Directive: 750 Mio EUR worldwide sales (as in CCTB and DAC4) and Specific digital services triggering taxable revenues (digital service revenue threshold of 50 Mio EUR in the EU).



Proposed solutions in the digitax project

Targeted measure

- Revenues as a proxy for value creation:
Digital online advertisement revenues
Digital platform activities and
Sale of user data generated via digital platforms
- Tax rate: 3% of gross revenues (net of VAT)
- Protecting SMEs and start-ups?
Full protection from 750 Mio general threshold!



Important aspects

- Digital presence and digital services closely linked to websites, interfaces, platforms and apps = internet framework.
- Digital presence amends the current PE concept.
- Not explicitly in the legal provisions but in the underlying approach – basis for the taxation of profits from a significant digital presence are the **production profits**.
- The sale of goods are not in the scope of any of the two Directives!
- There is no targeting of any third country companies or sectors!
- There are no rules which should make the Single Market less attractive for digital economy companies compared to the same activities performed from a Third Country!