Taxation of the Digital Economy – State of Play

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With discussions on digital taxation ramping up ahead of a potential OECD deal, and given the plethora of national approaches to Digital Services Taxes (DST), Inline Policy has prepared a quarterly overview of the latest developments and discussions on the taxation of digital companies across Europe and, more broadly, the OECD countries. The brief covers the OECD; the European Union; EU Member States (where applicable); and the United States.

Latest Developments

1. OECD Secretary-General Angel Gurría has stated that any agreement on a digital tax deal will probably be reached only after the US presidential election in November 2020.

2. G20 finance ministers met in Saudi Arabia on 18-19 July 2020 to discuss proposals to de-link Pillar 1 and Pillar 2 of the OECD's proposal. A number of European countries (as well as the EU) oppose this initiative.

3. The BEPS Inclusive Framework will present and discuss two blueprints – one for each Pillar of the OECD proposal – during a meeting on 8-9 October 2020. After receiving input and comments from Members, the blueprints will be made public on 12 October 2020 (date TBD). G20 ministers will discuss the proposals on 14 October 2020. A public consultation on each blueprint will be launched after the meeting (potentially mid-October to mid-December 2020).

4. The European Union and European Member States broadly remain committed to the OECD negotiations, although the EU has reiterated that it will proceed on its own if multilateral discussions fail to reach an agreement before early 2021.

5. The German Presidency of the Council of the European Union has listed EU digital taxation as one of its priorities during its 6-month mandate. Proposals for the next EU Multiannual Financial Framework (and Recovery Plan) include plans to introduce a Digital Services Tax as a new EU own-resource by 1 January 2023.

Contents

Snapshot 3
Organisation for Economic Cooperation and Development (OECD) 3
European Union 4
EU Member States and United Kingdom 5
Other countries 7

Snapshot

- The European Union, the United States and several European Union Member States (among others) have expressed an interest in implementing – or have already implemented - new taxation regulations on digital services. Discussions are being held at the international level within the framework of the OECD Inclusive Framework on BEPS (Base Erosion Profit Shifting) for digital taxation, in an attempt to harmonise decisions by some national governments to introduce taxes on revenue from digital services operating within their national borders.
- The OECD is managing the international negotiation process undertaken at the behest of the G20.
- Parties to the Framework have agreed to reach a common solution by the end of 2020.

Organisation for Economic Cooperation and Development (OECD)

- The OECD Inclusive Framework on BEPS, which includes 137 participating countries and jurisdictions, is currently negotiating a common agreement on a proposal for taxation on digital services. 'Tax challenges of the digitalisation of the economy' is one of the main focus areas ('Action 1') in the OECD's BEPS action plan.
- In March 2017, **G20 Ministers asked the OECD/G20 Inclusive Framework on BEPS** to work on the issue of digital taxation and deliver an Interim Report. The Interim Report was subsequently published in March 2018).
- In January 2019, the **Inclusive Framework's proposals for a consensus-based solution were grouped into two pillars** - Pillar 1 and Pillar 2. Pillar 1 addresses 'nexus and profit allocation' (taxation issues for companies with no physical presence in a country), and Pillar 2 seeks to establish a minimum level of taxation (the so-called 'GloBE proposal'). Pillar 1 remains the most controversial. The OECD Secretariat has developed an 'Unified Approach' to Pillar 1 to facilitate progress towards consensus, which builds on the commonalities between Members' proposals. **Under the Unified Approach, both automated digital services and consumer-facing businesses would be covered by the scope of the nexus**.
- The OECD also launched a public consultation on the issue in October-November 2019. The consultation closed on 12 November 2019.
- The OECD deadline for the approval of the Framework was set for June 2020, with the Organisation planning to present its proposals to governments in July 2020. However, due to the outbreak of Covid-19 and subsequent delays in the work programme, talks on a potential global digital tax have been delayed. A new **Inclusive Framework meeting will be held on 15-16 October 2020 before a meeting of G20 finance ministers. At this meeting, Members hope to reach a consensus and agree on a final package proposal –** which would include finalising blueprint for both pillars.
- The October package is likely to be a partial agreement in what will become a "staged process" as negotiations proceed at different paces. Some portions of the Inclusive Framework's decisions will likely shift to 2021.
- **G20 leaders will then meet in November 2020**.
- Following the US' decision to suspend its involvement in the negotiations (17 June 2020), Pascal Saint-Amans, Head of the Tax Policy Centre at the OECD, stated that the current economic crisis increases the risk of a trade or tax conflict, as countries take action to protect their economies and see a drop in tax revenue. As such, a coordinated approach to digital taxation is more needed than ever.

- Furthermore, OECD Secretary-General Angel Gurría has published a statement in response to recent US-led developments, warning against trade wars and asking Members of the Inclusive Framework to remain committed to finding a common solution. He also stated that the timeline of the OECD's work to find a multilateral solution remains unchanged.
- During an interview conducted on 1 July 2020, OECD Secretary-General Angel Gurría reportedly stated that "a global digital tax deal will probably need to wait until after the U.S. election", when there will be "less uncertainty". Similarly, during a discussion with the European Parliament's Economic and Monetary Affairs (ECON) Committee on 13 July 2020, Pascal Saint-Amans stated that "all elements of the proposal will be agreed upon after the US elections – either at the end of 2020 or beginning of 2021 (part of it)."
- On 18 July 2020, G20 finance ministers held a meeting to discuss the state of play of discussions on digital taxation at the OECD level. The group published a Communiqué outlining their Action Plan Progress Report, which states that a report with blueprints for each pillar of the proposal is meant to be submitted by the time of the next G20 meeting in October 2020.
- During a webinar discussion organised by the Institute of International & European Affairs on 22 September 2020, Pascal Saint-Amans provided a detailed timeline of upcoming milestones and meetings for the rest of 2020. The BEPS Inclusive Framework is scheduled to present and discuss two blueprints – one for each Pillar of the OECD proposal – during a meeting on 8-9 October 2020. After receiving input and comments from Members, the blueprints will be made public on 12 October 2020 (date TBD). G20 ministers will discuss the proposals on 14 October 2020. A public consultation on each blueprint will be launched after the meeting (potentially mid-October to mid-December 2020).

European Union

- In 2018, the European Commission tabled two initiatives/proposals: one to reform corporate tax rules so that profits are registered and taxed where businesses have significant interaction with users through digital channels (thus even without having a physical presence); and one on an interim tax which would cover the main digital activities that currently escape tax altogether in the EU.
    - The first initiative would/could eventually fall within the scope of the Common Consolidated Corporate Tax Base (CCCTB) – the Commission's proposed initiative for re-allocating profits of large multinational groups.
- Following stagnating discussions, the **EU has now (temporarily) paused its proposals to instead focus on the OECD framework.**
- The EU has also said that if the OECD Framework fails to reach a consensus by the end of 2020, it would proceed on its own and draft an international framework for digital taxation. The EU reiterated this position on 18 June 2020, after the USA decided to walk out of the multilateral negotiations.
- The European Parliament adopted a non-binding resolution on 'Fair taxation in a globalised and digitalised economy: BEPS 2.0' on 19 December 2019, calling on the European Commission and Member States to achieve a deal on digital taxation at the international level and supporting the idea of tabling an EU solution at the end of 2020 in case international discussions fail.
- Separately, the European Commission plans to publish a communication on 'Business Taxation for the 21st century' in Q4 2020. This is likely to include plans for digital taxation.
- The German Presidency of the Council of the EU's priorities and work programme (July-December 2020) include **implementing the results of OECD-level negotiations on changing international taxation frameworks in the EU.** The work

programme also states its support for an EU-level financial transaction tax. The Presidency expects to adopt conclusions on digital taxation in the Economic and Financial Affairs Council in December 2020.

- The European Council's proposal for the next EU long-term budget (Multiannual Financial Framework) and post Covid-19 Recovery Plan (unveiled on 21 July 2020) includes references to a new digital own resource ('digital levy') to be potentially tabled by Q1 2021 – with a view to implement it by 1 January 2023.
- During a discussion with the European Parliament's Economic and Monetary Affairs (ECON) Committee on 13 July 2020, Benjamin Angel, Director of the Directorate-General for Taxation and Customs Union (DG TAXUD, EU Commission) stated that the EU has indeed started to work on a 'Plan B' for digital taxation in case OECD negotiations fail. He however reiterated that the **EU cannot and will not move ahead with "Plan B" as long as it remains committed to OECD negotiations.**
- Some EU Member States are reportedly considering adopting a "staged approach", meaning that implementation of the tax would first start with digital services and then move on to consumer-facing businesses.

EU Member States and United Kingdom

- On 17 June 2020, the UK, France, Spain and Germany sent a letter to US Treasury Secretary Steven Mnuchin expressing their surprise at the US' decision to temporarily suspend its participation in discussions at the OECD level. They recalled that all of the US' requests and concerns raised had been taken into consideration during OECD negotiations, and called for a 'phased approach' to global digital tax negotiations. The four governments have also confirmed that they "want fair taxation of the digital giants as soon as possible", as announced by French finance minister Bruno le Maire, as 'postponing our work and not addressing these challenges would constitute a collective failure'.

*The section below only includes European Member States that have either **approved** or tabled initiatives to introduce a Digital Services Tax.*

Country	Tax level	Key points
Austria	5% (online advertising services)	• The Digital Services Tax has been effective from 1 January 2020. • It applies to groups whose worldwide turnover is at least €750 million, and the turnover from digital advertising services in Austria is €25 million.
Belgium	3% (online advertising, software and applications, big data)	• On 15 June 2020, the Belgian Parliament considered an (adjusted) proposal for a 3% tax on digital services initially tabled in 2019. • The tax would apply to digital companies with a consolidated worldwide (taxable) turnover of €750 million and an income from taxable digital activities generated in Belgium of €5 million. • **The DST would remain in place only until an international solution agreed at EU or OECD level enters into effect** (so-called 'sunset clause'). • According to internal documents dated 30 September 2020, the government intends to implement a digital services tax in 2023 if an international deal at the OECD or EU level cannot be reached.

Czech Republic	5%	• The Czech Government has come up with a proposal for an indirect digital services tax at the end of 2019. The tax rate was initially set at 7% and would target companies with a global annual revenue higher than €750 million, over 100 million crowns ($4.28 million) turnover in the Czech market and more than 200,000 user accounts. • The tax would **remain in place until an OECD agreement is reached.** • On 10 June 2020, the two Czech ruling coalition parties agreed to introduce a 5% digital tax on the local revenues of global internet – thus reducing the initial percentage rate. The new proposal is still pending Parliamentary approval. The ruling parties have also agreed to delay to postpone the effective date of the proposed digital tax until 1 January 2021 to wait for agreement at the OECD level.
France	3%	• France has introduced a 3% levy - the so-called *'taxe GAFA'* - on revenues from digital services earned by firms with revenues of more than €25 million in France, and more than €750 million worldwide. However, **any agreement reached at the OECD level would supersede this tax**. • The French parliament approved all the stages of a digital tax law in 2019, but has agreed to postpone collection in exchange for the US holding off on retaliatory tariffs. • Since the US walked out of the OECD-level negotiations (17 June 2020), France Finance Minister Bruno Le Maire has reiterated his government's willingness to tax the 'giants', as he believes the US position was a "provocation".
Hungary	7.5% (online and offline advertising revenues) (suspended)	• The tax applies to companies with a global turnover exceeding HUF 100 million. • As a temporary measure, the advertisement tax rate has been reduced to 0%, effective from 1 July 2019 through to 31 December 2022.
Italy	3%	• The Italian Budget Law for 2020 (Law No. 160 of 27 December 2019) introduced a 3% digital service tax (Italian Digital Services Tax) on revenues deriving from certain digital services provided to users located in Italy, which applies to entities that meet certain revenue thresholds. • The law entered into force on 1 January 2020, without the need for any ministerial implementing decree. It **will be repealed once measures agreed at international level enter into effect** ('sunset clause'). • The Digital Services Tax applies to resident and non-resident entities with a total amount of worldwide revenues not lower than €750 million, and/or a total amount of revenues deriving from qualifying digital services provided to users located in Italy not lower than €5.5 million.
Poland	1.5% (audio-visual media services/communication outlets)	• The tax is effective from July 2020. • In late June 2020, Finance Minister Tadeusz Kościński said that Poland intends to push ahead with a broader digital tax of its own if the OECD negotiations fail.
Slovakia		• Slovakia's Ministry of Finance has opened a consultation on a proposal to introduce a Digital Services Tax on revenue of non-residents for services such as advertising, online platforms, and sale of user data. No further steps have been taken thus far.

Spain	3%	• On 18 February 2020, the Spanish Council of Ministers approved a bill to introduce a 3% tax (see here) - also known as "*tasa Google*" - on digital companies with incomes greater than €3 million in Spain and €750 million globally. The tax is due to enter into force on 20 December 2020. • **The bill is currently going through Parliamentary stages at the Spanish Congress of Deputies.** In early June 2020, the Congress of Deputies approved the bill containing what is known as the 'Google tax'. • The **government also remains committed to achieving international consensus on taxation of the digital economy through efforts led by the OECD.**
United Kingdom	2% (social media service, search engine, online marketplace)	• The United Kingdom has introduced legislation to establish a new Digital Services Tax. The law (which is subject to review in 2025) came into effect on 1 April 2020 and was approved by MPs in the House of Commons as part of the 2019-2020 finance bill on 2 July 2020. The House of Lords cleared the bill on 17 July 2020. • The tax is an **interim measure that is intended to be repealed once a global solution has been agreed upon**. • Businesses will be liable to pay the Digital Services Tax when the group's worldwide revenues from these digital activities are more than £500 million, and more than £25 million of these revenues are derived from UK users. If the group's revenues exceed these thresholds, its revenues derived from UK users will be taxed at a rate of 2%. • Draft HMRC guidance ('Digital Services Tax Manual') was expanded on 20 March 2020, providing detailed examples to assist businesses in identifying in-scope activities, UK users, and attributable UK revenues. • The tax may complicate negotiations of a future US-UK Trade Deal.

Other countries

UNITED STATES

- The United States has called for a 'Safe Harbour' approach to Pillar 1 of the OECD negotiations. This would allow countries to decide themselves whether to impose a digital tax or not. Such an approach is not, however, considered acceptable to a number of other countries.

- In January 2020, the United States threatened France (alongside other EU countries, such as the Czech Republic) with a 100% tariff on French exports in retaliation for its decision to impose a digital services tax – which would affect American tech companies the most. French President Emmanuel Macron and US President Donald Trump eventually agreed a temporary 'truce' and decided to postpone any final decision on the issue until after the US elections in November 2020. The truce includes a suspension of the collection of digital tax in France pending a broader arrangement at the OECD level.
    - A 25% tariff on $1.3 billion worth of French goods was eventually introduced by the Trump administration in **July 2020**, but its collection has been suspended for at least six months.

- The US has repeatedly warned that it will "retaliate" if European countries proceed to unilaterally introduce new taxes on (American) digital companies.

- In early June 2020 the United States Trade Representative (USTR) announced that it would **investigate Austria, Brazil, the Czech Republic, the European Union, India, Indonesia, Italy, Spain, Turkey and the UK** for implementing, or proposing, new taxes on large digital companies.
    - By way of background, the US had investigated on the French digital tax in 2019 and came to the conclusion that it was "discriminatory". It then agreed with France to pause retaliatory actions pending the OECD talks.

- On 12 June 2020, US Treasury Secretary Steven Mnuchin sent a letter to four European finance ministers (UK, France, Italy and Spain) informing them that the **United States will be suspending talks on digital taxation at the OECD level as "discussions have reached an impasse"**. Suspending talks would "allow governments around the world to focus on responding to the Covid-19 pandemic".
    - Steven Mnuchin has added that the US is unable to agree, even on interim basis, to changes to global taxation law that would affect US digital companies, especially in light of European countries' "rejection" of the US' 'safe-harbour' approach to Pillar 1 of the Framework. He has asked however that **talks be resumed later in the year**, as "discussions on Pillar 2 [of the Framework – a minimum tax level] remain very much on track". He thus suggests delinking the two pillars of the talk. Some European Member States (i.e. Ireland) have already rejected the proposal.
    - In the letter, Steven Mnuchin further states that the **US cannot accept a 'phased implementation'** of Pillar 1 as that would change "fundamental rules to tax more heavily only a limited group of predominantly US-based companies".

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