



Attn Mr Benjamin Angel
DG TAXUD
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1049 Bruxelles
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Uploaded via <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12836-Digital-Levy/public-consultation>

12 April 2021

Dear Mr Angel

European Commission: Public consultation on A fair & competitive digital economy – digital levy

PwC International Ltd (PwC) welcomes the opportunity to share its views on the consultation document on the Digital levy that the European Union (EU) is aiming to introduce.¹ In its conclusions of 21 July 2020 the European Council agreed on the Resilience and Recovery package of 750 billion euros as part of the Multiannual Financial Framework for 2021-2027. The Recovery package is partly financed with ‘own resources’ for the EU. The digital levy is one of these own resources.

PwC chose not to use the questionnaire that has been provided. The digital levy is still in the inception phase and we do not know the design yet and as far as we know no economic impact assessment of any of the suggested policy options has taken place until now. PwC is ready to further contribute once we know how the levy will be designed (e.g. on a gross or a net basis). At this point in time we will focus primarily on the place of a digital levy in the international tax architecture, the need for principled solutions grounded on common tax policy principles, why one should avoid ring-fencing the digital economy, the need for a minimal economic impact assessment, and the need for definitional clarity.

Place of the digital levy in the international tax architecture

According to the inception impact assessment “*the initiative should be designed in a way that is compatible with the international agreement to be reached in the OECD as well as broader international*

¹<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12836-A-fair-competitive-digital-economy-digital-levy>

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obligations.”

A few policy options have been identified, such as:

- a corporate income tax top-up to be applied to all companies conducting certain digital activities in the EU;
- a tax on revenues created by certain digital activities conducted in the EU
- a tax on digital transactions conducted business-to-business in the EU.

The Inclusive Framework aims to have unilateral measures to tax the digital economy repealed as part of a global solution (par.848 Blueprint Pillar One²). Unilateral measures have contributed and still contribute to increased trade tensions and retaliative measures. A digital levy could be seen as a unilateral measure, albeit a unilateral measure at the regional level. The European Commission³ expressed a high level of ambition with respect to the digital levy and also indicated that an EU digital levy is complementary to any OECD solution on pillar 1.

The need for a principled solution

The OECD has identified a list of overarching tax policy principles it believes should underpin the search for any redesign of the international tax system with regard to issues arising from the digitalizing economy – neutrality, efficiency, certainty and simplicity, effectiveness and fairness, and flexibility. We agree that any digital levy proposal that is developed be explicitly tied to economic principles, applicable from conceptual agreement and technical construction to implementation methods.

A principled approach should facilitate agreement and prove to be more sustainable over time.

Ring-fencing the digital economy is not a sustainable approach

Digitalisation (both through a host of new products/services, and through impact on more traditional functions) is further altering value chains within multinational companies and leads to questions about where value is generated. How these new value chains will run through different legal entities and countries will change the tax analysis.

In short, business models and value chains are continuously dynamic and changing fundamentally, and value creation is becoming increasingly independent of (physical) activities and physical presence in a market. It is worth reiterating that the October 2015 final BEPS Action 1 report concluded that the ‘perceived challenge’ to be addressed is the digitisation of businesses of all types and sectors rather than some idea of a digital economy that one can clearly identify and tax separately.

Policymakers can and should view digitalisation as an overall accelerator for growth, with taxation as a potential and significant restraint if it is not done appropriately - withholding taxes, turnover taxes and

² OECD (2020), Tax Challenges Arising from Digitalisation – Report on Pillar One Blueprint: Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris

³ Interview with Mr. Angel in <https://www.taxnotes.com/tax-notes-talk/podcast/european-commissions-year-ahead-tax/43pr> and Exchange of views between the European Parliament and Ms Vestgager; https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/FISC/OJ/2021/03-23/1226141EN.pdf



equalisation levies would inhibit growth with significant potential for double taxation. The digital economy is not a sector that can or should be identified clearly and taxed separately. Digitalisation is an accelerator for growth, and taxation should not inhibit that more than it does with traditional business.

The need for a minimal economic assessment

Without more details on the features of the proposal it is difficult to draw conclusions on the economic and behavioural implications of any new system. Here, we will outline only broad possible trends and we suggest the European Commission to consider the economic and behavioural implications of the proposals once the design of the measure becomes clearer, possibly through another consultation with stakeholders and detailed economic analysis.

The minimal economic assessment of tax policy measures should consider at least three main issues:

1. *The effect of the proposals on the size and location of investment.* The tax system affects business investment decisions mainly through the cost of capital. Without more details on the design features of the proposal, including rate and features of the tax base, it is difficult to estimate the effect on investment. Nonetheless, for the moment, it is useful to refer to the last 40 years of peer-reviewed, economic research showing that a higher tax burden will increase the cost of capital and therefore reduce investment (see among others, Auerbach and Hassett, 1992; Bond and Xing, 2015; Chirinko et al, 1999; Cummins et al., 1996; Desai and Goolsbee, 2004; Devereux and Griffith, 2003; Hall and Jorgenson, 1967). Uncertainty has also been shown to increase the required return to capital and, therefore, reduce the incentive to invest (Bloom et al, 2007; OECD/IMF, 2017).⁴ Should the proposals discussed in the consultation document increase the cost of capital through an increased tax burden, investment will be reduced. In this light, policy makers should consider how the proposed measures and their effect on investment interact with the broader macroeconomic environment.
2. *The effect on compliance and administrative costs.* Compliance and administrative costs are thought of as being a pure loss for the economic system as they reduce the resources available for investment and, at the same time, they do not translate to more revenues for the government. A digital levy risks being characterised by high compliance and administrative costs: it will have to tackle a lot of boundary issues (e.g., scope, definition of users versus customers, definition of marketing towards other intangibles) and may need business to come up with metrics which are subjective and/or not yet robustly produced and understood (e.g., value of users contribution, active versus passive users). Compliance costs will increase further if businesses have to segment metrics by product lines and by country together with the relative costs and revenues. Not only will businesses clearly in the scope have to face compliance and administrative costs but many

⁴ Bloom, N., S. Bond, and J. van Reenen (2007), "Uncertainty and investment dynamics," Review of Economic Studies. OECD/IMF Report on Tax Certainty - 2017 Update. Link: <https://www.oecd.org/tax/tax-policy/tax-certainty-report-oecd-imf-report-g20-finance-ministers-march-2017.pdf>



businesses at the margin will have to invest resources in assessing and possibly proving that they are outside the scope of the new measure.

We encourage the European Commission to carry out an analysis of whether the contemplated changes in the system will increase welfare for the overall economy by at least taking investment, compliance costs and revenues into account.

The need for definitional clarity

The recent experience of some countries in drafting legislation for Digital Services Taxes (DSTs) has highlighted that one of the major challenges is to find a definition for in-scope revenues or activities that does not become too wide. This has been more challenging in relation to proposals that seek to identify in-scope activities rather than revenues. In consultations over such measures, it is clear that a lot of businesses are at the margin (or in so-called “grey areas”) with some activities, and many companies have found it challenging to assure themselves that such ring-fenced measures as DSTs do not apply to them in any case. In its assessment of a user contribution approach, we encourage the EU to examine the experience of the countries implementing DSTs and the challenges tax authorities and businesses have encountered with respect to the scope of such taxes.

In particular, the following areas have posed concern to businesses commenting on such measures:

- definition of “users”
- identification of users’ locations and other issues regarding information available
- identification of revenues in scope (particularly in relation to “bundled” goods and services), and
- identification of activities that are linked to activities or revenues (a symptom of the challenge of defining those revenues or activities with specificity), and in particular the difference between distribution and marketplaces.



Next steps

We would be pleased to discuss with you any aspects of our comments, either as a direct follow-up to this consultation or in relation to further specific consultations on more detailed proposals. We look forward to trying to assist you in considering the options available.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Stef van Weeghel', written over a light blue horizontal line.

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