

*October 2018*

**Position Paper**

**of the European Tax Adviser Federation**

**ETAF**

**on the**

**Commission proposal 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) 148**

## **I. Introduction on the Proposal of the Commission and the proposed amendments**

On 21 March 2018, the European Commission proposed new rules to ensure that digital business activities are taxed in a fair way within the EU. The Commission has made two legislative proposals: a first initiative to reform corporate tax rules so that profits are registered and taxed where businesses have significant interaction with users through digital channels (so-called comprehensive or long-term solution); a second initiative proposing an interim tax covering the main digital activities that are not effectively taxed in the EU, according to the Commission's judgement.

This position paper will solely set out the views of the European Tax Adviser Federation (ETAF) on the European Commission "Proposal 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) 148" (hereinafter "the proposal" or "the interim tax proposal").

The proposal consists of a tax on the revenues created from digital activities where the user plays a major role in the value creation. In particular, the activities identified by the proposal are as follows:

- The sale of online advertising spaces;
- The activities of digital intermediaries allowing users to interact with each other and thus facilitating the sale of goods and services between them;
- The sale of data generated from user-provided information.

The proposal sets out a tax rate of 3% on such revenues and the tax would be applicable to companies with global annual worldwide revenues exceeding €750 million and EU revenues exceeding €50 million. The tax would be collected by the Member State where the users are located.

On 21 September 2018, the European Parliament published the draft report by MEP Paul Tang on the above-mentioned proposal. The report supports the Commission's proposal, suggesting to broaden the scope of application to two further categories of revenues: the sale of goods or services via e-commerce platforms and the making available to users of video, audio or text contents through digital interface. It also includes the suggestion of increasing the tax rate from 3% to 5%. Finally, the report is in favour of the introduction of a sunset clause stating the temporary nature of the measure, pending a permanent solution.

## **II. Preliminary remarks on the digital economy and international tax rules**

As highlighted by the European Commission on several occasions, the digitalisation of the economy is happening at a very fast pace involving both the digitalisation of so-called “brick-and-mortar” business models and the activities of highly digitalized ICT companies. Thus, nowadays businesses of all types are using digital technologies in order to easily meet customers and to become more competitive on the market.

The tax framework, on the other hand, was not capable of keeping up with such a quick transformation. As a result, ETAF agrees with the European Commission that the current international tax rules need to be adapted in order to tackle these challenges, taking into account the new characteristics of these businesses.

The first aspect to consider is that a tax policy should be neutral towards taxpayers. The notion of tax neutrality implies that all businesses, despite being local or international, small or large, innovative or not, should bear a similar tax burden. However, taking a look at the digital economy and at digital businesses, their lower tax liabilities are clearly linked to the fact that the international tax rules are outdated.

## **III. Comments on the proposed directive**

ETAF welcomes the efforts of the European Commission to find a balanced and equitable solution in the taxation of the digital economy. ETAF shares the Commission’s position that the current international tax rules do not permit a fair competition between traditional companies and digital companies. In our view, the European Union should absolutely play a leadership role in this process. However, the global dimension of the phenomenon may under no circumstances be disregarded.

We acknowledge that the interim tax seeks to prevent the flourishing of unilateral measures by Member States of the European Union, that can cause a fragmentation of the Single Market. There are already some examples of Member States unilaterally acting: the recently published budget plan of Spain for 2019 includes a draft measure to tax the digital economy that is almost identical to the interim tax.

Nevertheless, ETAF highlights the risk that a tax on turnover, as the one designed within the proposed directive, could result in taxing loss-making companies which would probably lead to an outburst of tax controversies. It is also worth noting that a tax on revenues could trigger double taxation for the taxpayers. Considering that this new tax would not be covered for double tax treaty purposes, there is a risk of inability for the taxpayer to claim double taxation relief.

Furthermore, the application of a tax on turnover leads to a deep change in paradigms of the international fiscal law system. Currently, companies pay their taxes where they carry out the relevant functions linked to the production of goods/services. Changing this paradigm only for digital services risks to trigger discussions on the inequality of such a measure. It can also lead important trading partners (e.g. China) to act the same, applying taxes that can potentially damage EU companies.

Finally, as already stated within the position paper drafted in relation to the public consultation held by the Commission in January 2018, ETAF believes that the introduction of a tax on revenues can lead to an increasing bureaucracy for tax administrations and compliance costs for companies, without tackling the issue of the nexus between the company and the value created within the taxing jurisdiction.

#### **IV. Comments on the proposed amendments**

ETAF welcomes the draft report of rapporteur Paul Tang published by the European Parliament on 21 September 2018.

In particular, we strongly support the proposed amendment to include the new Article 23a to clarify the temporary nature of the proposed directive. In the position paper sent to the European Commission in January 2018 in the framework of the public consultation on the fair taxation of the digital economy, ETAF had already raised its concern about the lack of clarity of temporary solutions and the risk that they could evolve into permanent solutions.

With regard to the amendments proposing to broaden the scope of the proposal and raising the tax rate, ETAF considers that the discussion between the Member States to reach an agreement within the Council is already proven difficult on the basis of the original proposal of the Commission. The inclusion of an extension of the scope risks to make the agreement even harder to reach.

## **V. Concluding remarks**

ETAF highly welcomes the efforts of the European Commission to find a balanced and equitable solution in the taxation of the digital economy. ETAF shares the Commission's position that the current international tax rules do not permit a fair competition between traditional companies and digital companies. The European Union should absolutely play a leadership role in this process.

ETAF is overall in favour of the interim tax proposal of the European Commission, as a measure to avoid the flourishing of unilateral measure by the various Member States that can lead to a fragmentation of the Single Market. However, ETAF believes that a tax on revenues should be carefully designed in order to avoid an increase in bureaucracy for tax administrations and compliance costs for companies (e.g. taking into account loss-making companies and double taxation risks) which would lead to an outburst of tax controversies.