AmCham EU
SPEAKING FOR AMERICAN BUSINESS IN EUROPE

Consultation response

AmCham EU's response to the Consultation on the digital levy inception impact assessment

AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3 trillion in 2019, directly supports more than 4.9 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

American Chamber of Commerce to the European Union
Speaking for American business in Europe

Avenue des Arts/Kunstlaan 53, 1000 Brussels, Belgium • **T** +32 2 513 68 92
info@amchameu.eu • amchameu.eu • European Transparency Register: 5265780509-97

Introduction

AmCham EU welcomes the opportunity to provide feedback to the European Commission's Consultation on the digital levy inception impact assessment.

The Organisation for Economic Co-operation and Development (OECD) is currently seeking consensus from 139 countries to reform the global corporate tax framework to address countries' concerns regarding broad tax challenges arising from the digitalisation of the entire global economy, in a coherent and growth-focused manner.

Conversely, in the past several years, both the European Commission and a number of individual countries in and outside of the European Union have discussed enacting (and have in some cases actually enacted) tax laws that impose turnover-based taxes targeted at (but not necessarily limited in scope to) various types of highly digitalised businesses.

These measures are gross revenue taxes calculated with reference to a businesses' interactions with users or consumers in a jurisdiction rather than profits earned in relation to activities physically undertaken by a business in a jurisdiction. These measures – proposed in response to public perceptions and political pressures – can result very high effective tax rates on low margin businesses, which could harm cross-border trade, investment, and growth. As technology and the digitalisation of businesses continues to bring efficiencies, productivity gains and lower costs, EU activity should seek to work in harmonisation with the OECD and other countries to encourage, not inhibit, economic growth.

Digital levy inception impact assessment

AmCham EU supports the principle of ensuring that tax is levied where value is created and profit earned, but because digitalisation is being adopted by businesses of various sizes and sectors, consensus at the international level is critical to arriving at a sustainable, equitable solution.

The inception impact assessment outlines the problem the digital levy seeks to address as one in which digital businesses are able to shift profits and are undertaxed. In recent years we have seen the Anti-Tax Avoidance Directives (ATAD 1 and 2), the OECD Base Erosion & Profit Shifting (BEPS) measures and US tax reform which have changed the tax landscape, eliminated no-tax income (for US companies) and curtailed profit shifting. At the time of the 2018 digital tax proposals there were academic studies by both the European Centre for International Political Economy (ECIPE)[1] and Copenhagen Economics[2] which, based on analysis of empirical data on effective tax rates in the digital and other sectors, found that digital business did not in fact pay less tax than other sectors.

A digital evolution has been accelerated due to the pandemic lockdown measures, impacting all sectors of the economy. We strongly agree with the OECD's BEPS Action 1 Report ("the Action 1 Report"[3]) that the digital economy cannot be ring-fenced. Digitalisation delivers smart, sustainable, and inclusive growth for private and public sector alike and any final consensus should not inhibit continuing innovation from information and communications technologies. Turnover taxes as proposed in the EU Digital Services Tax (DST) Directive and enacted through the various existing Member State DSTs are damaging to economic growth because they do not take profitability into account, can result in disproportionate taxation, and thus leave less available to invest back into businesses, jobs, and growth. In addition, consumers/customers may directly bear the added costs imposed by DST measures through higher fees/prices.

It is therefore not possible nor desirable to try to ringfence the digital economy. Taxes based on this notion would be complex to implement and put a significant burden on companies' IT and human resources resources to comply with.

[1] "*Digital Companies and Their Fair Share of Taxes*" ECIPE (2/2018)

[2] "*The Proposed EU Digital Services Tax, Effects on Welfare, Growth and Revenue*" Copenhagen Economics (9/2018)

[3] http://www.oecd.org/ctp/addressing-the-tax-challenges-of-the-digital-economy-action-1-2015-final-report-9789264241046-en.htm

The European Commission proposed a Directive in March 2018 that seeks to introduce a DST at a rate of 3% on gross revenue (net of VAT and other similar taxes) derived in relation to location of EU "users", through monetisation of that engagement through the following revenue streams (save for certain exceptions):

a) the placing on a digital interface of advertising targeted at users of that interface;
b) the making available to users of a multi-sided digital interface which allows users to find other users and to interact with them, and which may also facilitate the provision of underlying supplies of goods or services directly between users; and
c) the transmission of data collected about users and generated from users' activities on digital interfaces.

Entities with both total annual worldwide (i.e. not only within the EU) revenue above EUR 750 million and total annual taxable digital revenues in the EU above EUR 50 million would be subject to the DST, irrespective of whether they are established in a Member State or in a non-EU jurisdiction. Furthermore, the proposed Directive sets out rules with regard to the place of taxation of the DST which is based on the location of the users of the taxable service, which differs significantly from international norms regarding allocation of taxing rights, and in many cases is not information that is available to businesses in scope.

To date, apart from listing three broad policy options (a corporate income tax top-up, a tax on revenues, and a tax on business-to-business digital transactions) the Commission has not been clear how a digital levy would be structured different to the earlier proposed 2018 DST Directive. Given the ongoing work by the OECD Inclusive Framework to reach an international consensus on the precise issues underpinning the Commission's goals of addressing perceived tax inequities created by businesses operating in scale without mass sectors, we are concerned that any action is likely to the OECD's work. And if the Commission seeks to structure a digital levy as an "add-on" to any OECD Pillar One framework, that in itself would appear to frustrate the goal of removing unilateral measures in order to have global consensus. We therefore would suggest that the Commission pause any policy development on this issue until there is certainty as to the success or failure of the Inclusive Framework's activities, while giving sufficient time to the new US administration to re-start its involvement in the OECD process.

Recommendations

- A digital evolution is underway and will continue to impact all sectors of the economy. The Commission's Digital Strategy is clear that digitalisation can deliver smart, sustainable and inclusive growth across Europe. Tax policies of the EU should be seeking to encourage and support this objective.
- Because of the ongoing work by the OECD Inclusive Framework of 139 jurisdictions to consider changes affecting corporation taxing rights in the era of increasing digitalisation, it is critical to maintain the focus on reaching a multilateral solution on needed changes, and so we recommend the Commission should await the outcome of the international negotiations before considering EU-level measures. We therefore recommend that the EU focuses all its efforts on reaching a globally agreed solution at the OECD, also giving sufficient time to the new US administration.
- The perceived problem which the EU proposal seeks to address, i.e. that digital businesses can shift profits and are undertaxed, should be re-examined based on up-to-date empirical data, in light of the ATAD 1 & 2, BEPS and US tax reform measures implemented in recent years.
- Where countries have already enacted DSTs, or are in the process of enacting similar measures, such laws should ensure comprehensive double taxation relief and dispute resolution mechanisms are in place, including sunset clauses linked to the success of the OECD project, the targeting of abusive arrangements only, and utilising revenue thresholds that are practical and appropriate to ensure compliance and non-discrimination.
- As EU countries engage in the OECD process, we urge that any final proposals avoid double taxation and ensure that they do not inhibit cross-border trade, investment, and economic growth.
- The Ottawa principles regarding taxation of e-commerce should be observed: neutrality; efficiency; certainty and simplicity; effectiveness and fairness; and flexibility and sustainability.