AmCham EU
SPEAKING FOR AMERICAN BUSINESS IN EUROPE

Priorities - Tax

Taxation of the Digital Economy

ISSUE

In October 2021, the OECD Inclusive Framework reached a political agreement with over 130 countries to reform the global corporate tax framework and address countries' concerns regarding broad tax challenges arising from the digitalisation of the global economy.

The agreement is built on two pillars. The first pillar is meant for the largest and most profitable multinational enterprises - whose revenues exceed EUR 20bn and whose profit margins stand at over 10%, and will reallocate taxing rights over 25% of their residual profit to market jurisdictions. Pillar 2 will impose a global minimum effective tax of 15% for businesses with revenues surpassing EUR 750m.

Recently, and as a response to public perceptions and political pressures, the European Commission, as well as a number of EU and non-EU countries, have been discussing – and in some cases, enacting - turnover-based tax laws targeted at (but not limited to) various types of highly digitalised businesses. As part of the 'own resources' COVID-19 recovery funding, the European Commission is expected to bring forward a proposal effective from 2023 to implement an EU-wide digital levy on certain digital services.

These measures, often known as digital services taxes (DSTs), are based on revenues earned rather than profits, and have been implemented without clearly defined principles. This has the potential consequence of double or multiple taxation, increased prices to SMEs and consumers, disputes, trade tensions and instability.

Conversely, if the OECD agreement is implemented consistently, it can stabilise the international tax system by eliminating DSTs and other harmful unilateral measures, and by introducing robust and binding dispute prevention and resolution mechanisms. Although a political agreement has now been reached, many important technical details remain to be resolved before it is implemented.

KEY TAKEAWAYS

- AmCham EU commends the Inclusive Framework for their work to stabilise the international tax system and welcomes the agreement and the progress made.
- AmCham EU supports the principle of ensuring that tax is levied where value is created and should take into account profitability rather than be applied to gross revenues.
- As digitalisation is being adopted by businesses of various sizes and sectors it is not possible, or desirable to attempt to ring-fence the digital economy.
- Continued consensus and consistent and complete implementation of the OECD agreement is critical to arriving at a sustainable, equitable and robust solution.
- Countries must uphold their commitment to eliminate harmful DSTs and other unilateral measures and not introduce new ones. Turnover taxes as seen in the EU DSTs are damaging to economic growth because they do not take profitability into account, are distortive, are often passed onto SMEs and consumers through higher prices and can result in double and disproportionate taxation.
- The proposal to introduce an EU-wide digital levy should not advance, rather focus at the EU level should be on consistent implementation of the OECD agreement.
- Countries should be free to adopt fiscal and other incentives (e.g. for job creation etc) as they deem appropriate given their economic circumstances.

RECOMMENDATIONS

- Finalise outstanding technical details on Pillars 1 and 2 to ensure that the new tax rules and guidance are based on sound principles, easy to administer and provide certainty to tax authorities and taxpayers alike.
- Ensure that the final rules include effective dispute resolution mechanisms, avoid double taxation and do not inhibit cross-border trade, investment and economic growth.
- Exclude R&D tax incentives when determining the effective tax rate to make minimum tax calculations, and given the importance of research, development and innovation for economic recovery and growth.
- Adopt a simplified compliance mechanism to lower the administrative burden of implementing the global agreement. We should also consider simplifications to identify entities with effective tax rates exceeding the minimum rate or adopting deferred tax accounting as part of Pillar 2 to avoid double taxation.
- Regimes that already impose a minimum charge on the relevant income (e.g. the US GILTI tax) should be treated as Pillar 2 compliant in order to avoid double tax arising.
- Allow sufficient time to ensure a thoughtful, complete and consistent implementation of the global rules. Implementing legislation and guidance needs to be in line with the international agreement, clearly and consistently applied and jurisdictions should not seek to go beyond what has been agreed at the global level.
- Withdrawal of DSTs in countries that have already enacted them, and avoid jurisdictions from circumventing the global agreement by adopting new digital taxes in the future. Proposals for an EU digital levy should also be withdrawn.
- Base future policy developments on sound principles and design them to promote cross-border trade, investment, job creation and economic growth. They should also be congruent with the global agreement, should only target abusive or non-compliant arrangements and should be non-discriminatory.
- The Ottawa principles regarding taxation of e-commerce should be observed: namely of neutrality; efficiency; certainty and simplicity; effectiveness and fairness; and flexibility and sustainability.