INLINE

# 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. The Inclusive Framework/OECD published the two blueprints – one for each pillar of the OECD proposal – on 12 October 2020. The OECD also conducted a public consultation on each blueprint which closed in December 2020. The feedback from the consultation was discussed by the OECD and industry stakeholders during a series of workshops in January 2021.

2. The OECD Inclusive Framework has yet to reach an agreement on a consensus-based solution for taxing the digital economy. The new self-imposed deadline is mid-2021. Outstanding issues include the scope of the proposal (automated services and/or consumer facing businesses) and related definitions; the level of global revenue to be used as benchmark; and terms of implementation (voluntary or mandatory).

3. During the presentation of the two blueprints in October 2020, Pascal Saint-Amans, Director of the OECD Centre for Tax Policy and Administration, stated that reaching an agreement on the pillars would entail withdrawing existing unilateral digital services taxes and preventing new ones from being implemented.

4. The European Union and its Member States broadly remain committed to the OECD negotiations, although the EU has confirmed that it will proceed on its own if multilateral discussions fail to result in agreement by mid-2021.

5. The Biden Administration has re-committed to multilateral negotiations on the two pillars of the OECD proposal, and no longer advocates a 'safe harbour' approach. G20 finance ministers are scheduled to meet again on 7 April 2021.

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# Snapshot

- The European Union, the United States and several European Union Member States and other countries 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.
- Following delays caused by Covid-19 and political impasses, the Inclusive Framework members have decided to reach a common solution by mid-2021.

# Organisation for Economic Cooperation and Development (OECD)

- The OECD Inclusive Framework on BEPS, which includes 137 participating countries and jurisdictions, has been negotiating a common agreement on a proposal for taxation on digital services since 2017. '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, which was 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 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 initial 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.
- Following a meeting of the G20 Inclusive Framework on 8-9 October 2020, which did not yield an international consensus-based solution, the OECD released a 'digital package' with two reports on the blueprints for respectively Pillar 1 and Pillar 2 (12 October 2020). The reports were complemented by an impact assessment and economic analysis of the proposal, and a covering statement. The OECD also opened a public consultation until December 2020.
- Following the publication of the blueprints and the October G20 meeting, the OECD decided to postpone the self-imposed deadline to reach an agreement to mid-2021 due to delays caused by Covid-19, the US's withdrawal from negotiations and disagreement over outstanding issues. These include the scope and modalities of a digital taxation, the quantum, as well as the choice between mandatory and safe harbour implementation.
- G20 Finance Ministers met on 26 February 2021 and reiterated their commitment to 'achieve a global and consensus-based solution by mid-2021', namely by July 2021. The next meeting of G20 finance ministers is scheduled for 7 April 2021.

- In early 2021, digital companies including Netflix, Microsoft, Amazon and Booking.com called on the OECD's Inclusive Framework to 'simplify' the proposal and to ensure it will be a harmonised solution – one that avoids 'overlapping national levies'.

# 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.

- The EU eventually decided to focus on the OECD framework and has repeatedly reiterated that an OECD-wide digital tax 'remains [its] preferred option'. European Commission Executive Vice-President Margrethe Vestager confirmed during a Parliament hearing on 23 March 2021 that the EU will strengthen efforts to reach an agreement on both pillars of the OECD/G20 Inclusive Framework by mid-2021.

- Following stagnating discussions, the EU repeatedly stated that if the OECD Framework failed to reach a consensus by the end of 2020, it would proceed on its own and draft an EU framework for digital taxation before the end of 2020 (see also the comments made following the US decision to suspend engagement in discussions over Pillar 1). In light of the Covid-19 crisis and the US elections in November 2020, the EU decided to postpone the deadline to mid-2021.

- Such a commitment is also reiterated in the European Commission's latest work programme for 2021, which includes a 'digital levy and a proposal for digital levy as own resource' (legislative proposal for a digital tax) foreseen for Q2 2021. These proposals are likely to be tabled by June 2021 and be operational from 2023. The European Commission has also launched a public consultation on 'A fair & competitive digital economy – digital levy', which is open until 18 April 2021.

- Separately, the European Commission is reported to be working on a bill to implement an international minimum corporate tax rate – which is also the subject of the OECD's negotiations on Pillar 2. This was confirmed in March 2021 by Benjamin Angel, Director of the Commission's Unit on Direct Taxation, Tax Coordination, Economic Analysis and Evaluation (DG TAXUD).

- Back in December 2019, the European Parliament adopted a non-binding resolution on 'Fair taxation in a globalised and digitalised economy: BEPS 2.0', 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.

- On 23 March 2021, the Economic and Monetary Affairs (ECON) Committee of the European Parliament adopted a non-legislative report on 'Digital taxation: OECD negotiations, tax residency of digital companies and a possible European Digital Tax', prepared by Rapporteurs Andreas Schwab MEP (EPP, Germany) and Martin Hlavacek MEP (RE, Czechia). The report calls on the European Commission to present proposals by June 2021 and anticipate their compatibility with G20/OECD-level measures if they are agreed on.

- Some political groups of the European Parliament have also advocated for international – rather than unilateral – solutions to digital taxation. Renew Europe, for instance, has been calling on Member States to respect the Commission's commitment (and obligation) to put forward an EU digital levy in June 2021. The European People's Party (EPP), on the other hand, has said it will 'continue to fight' for an OECD/multilateral solution, especially now that there is a possibility to get the US on board with the OECD proposal.

- The Portuguese Presidency of the Council of the EU's priorities and work programme (January - June 2021) commits to address the challenges of European taxation, including the model for taxing the digital economy, under the principles of fairness and tax efficiency. The programme does not refer explicitly to the ongoing multilateral negotiations on digital taxation at the OECD level.

- Some EU Member States are reported to be considering adopting a 'staged approach', meaning that implementing the tax would start with digital services and then move on to consumer-facing businesses.

- The European Council addressed digital taxation during its summit on 25-26 March 2021, where it reiterated its 'strong preference for a global solution on international digital taxation [...] by mid-2021.' The Council also confirmed that the EU will be ready to move forward if a global solution cannot be achieved, with the Commission introducing a digital levy by 1 January 2023 'at the latest.' According to early discussions, countries such as France, Italy and Spain would prefer the EU to move forward on its own, whereas others such as Ireland, Malta, Luxembourg, Sweden, Finland, Latvia, Germany, Romania, and the Netherlands would rather prioritise the OECD work.

# EU Member States and United Kingdom

*The section below only includes European Member States that have either **approved/put in place** or tabled initiatives to introduce a digital services tax.*

| Country | Tax level | Key points |
|---|---|---|
| Austria | 5%<br>(in place)<br>(online advertising services) | • The Digital Services Tax has been effective from 1 January 2020.<br>• 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%<br>(tabled)<br>(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.<br>• 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.<br>• **The DST would remain in place only until an international solution agreed at EU or OECD level enters into effect** (so-called 'sunset clause').<br>• 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%<br>(tabled) | • The Czech Government proposed 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.<br>• The tax would **remain in place until an OECD agreement is reached.**<br>• On 10 June 2020, the two Czech ruling coalition parties agreed to introduce a 5% digital tax on the local revenues of global internet companies – thus reducing the initial percentage rate. As of December 2020, the new proposal was still pending Parliamentary approval. **The ruling parties have also agreed to postpone the effective date of the proposed digital tax to wait for agreement at the OECD level.** |

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| | | • In addition to a digital services tax, platforms facilitating sales of goods will be deemed suppliers for VAT from 1 July 2021. Platforms that only process payments, advertise goods or redirect customers to other websites will not be treated as deemed suppliers. |
| France | 3% (in place) | • France 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**.<br>• 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.<br>• Since the US walked out of the OECD-level negotiations (17 June 2020), France's Finance Minister Bruno Le Maire has reiterated his government's willingness to tax the 'giants', as he believes the US position was a 'provocation'.<br>• In October 2020, following Member States' failure to reach an international agreement at the OECD level, France decided to restart the collection of the digital tax in December 2020, despite threats of US retaliatory tariffs. The affected tech companies were notified about the amounts due in November 2020. |
| Hungary | 7.5% (adopted but suspended) (online and offline advertising revenues) | • The tax applies to companies with a global turnover exceeding HUF 100 million (about €274,675,00).<br>• As a temporary measure, the advertisement tax rate was reduced to 0%, effective from 1 July 2019 through 31 December 2022.<br>• On 16 March 2021, the Court of Justice of the European Union upheld the General Court's judgement that a Hungarian tax on advertisement revenue does not violate EU state aid law. |
| Italy | 3% (in place) | • The Italian Budget Law for 2020 (Law No. 160 of 27 December 2019) introduced a 3% digital services 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.<br>• 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').<br>• 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% (in place) (audio-visual media services/communication outlets) | • The tax has been effective since July 2020.<br>• 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 | | • In 2019, Slovakia's Ministry of Finance had opened a consultation on a proposal to introduce a digital services tax on revenues of non-residents for services such as advertising, online platforms, and sale of user data; no further steps have however been taken so far.<br>• In addition to a digital services tax, Slovakia is also making changes to its VAT on cross-border online trade. On 1 July 2021, the provisions of the |

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| | | amendment of the Slovak VAT Act regarding cross-border online trade will come into effect. They will reflect EU Directives on the 'e-commerce VAT package'. |
| Spain | 3%<br>(adopted)<br>(online advertising services/data transmission services/intermediation services) | • 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.<br>• In June 2020, the Congress of Deputies approved the bill containing the 'Google tax'. The tax came into **force on 16 January 2021.**<br>• **The Government remains committed to achieving international consensus on taxing the digital economy through efforts led by the OECD.**<br>• In January 2021, Spain postponed **the collection of its digital tax** until 'later in the year' to allow for the approval of the relevant regulatory guidelines and for people to 'have more time to adjust.' |
| United Kingdom | 2%<br>(in place)<br>(social media service, search engine, online marketplace) | • The United Kingdom introduced a new Digital Services Tax that became law on 17 July 2020. It is subject to review in 2025.<br>• The tax is an **interim measure that is intended to be repealed once a global solution has been agreed**.<br>• Businesses will be liable to pay the Digital Services Tax when their worldwide revenues from digital activities are more than £500 million, and more than £25 million of these revenues are derived from UK users. If the revenues exceed these thresholds, its revenues derived from UK users will be taxed at a rate of 2%.<br>• Draft HMRC guidance ('Digital Services Tax Manual') provides detailed examples to assist businesses in identifying in-scope activities, UK users, and attributable UK revenues.<br>• The tax may complicate negotiations of a future US-UK Trade Deal.<br>• Chancellor Rishi Sunak has reportedly decided to wait and see the outcomes of OECD negotiations before deciding whether to introduce an **additional online sales tax**. |

# Other countries

## UNITED STATES

- In January 2020, the United States threatened France (and other EU countries, such as the Czech Republic) with a 100% tariff on exports in retaliation for its decision to impose a digital services tax – which would affect American tech companies. French President Emmanuel Macron and former 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 included suspending 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. As of March 2021, the tariff has not been imposed.

- 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 the French digital tax in 2019 and concluded that it was 'discriminatory'. It then agreed with France to pause retaliatory actions pending the OECD talks.
- Similarly, in January 2021, the USTR announced that the digital services taxes adopted by India, Italy and Turkey, as well as Spain, Austria and the United Kingdom 'unfairly discriminate against big US internet companies.' No retaliatory actions were announced in that occasion.

- On 12 June 2020, then US Treasury Secretary Steven Mnuchin sent a letter to four European finance ministers (UK, France, Italy and Spain) informing them that the United States would suspend talks on digital taxation at the OECD level. This was because the US was 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 – which would allow countries to decide themselves whether to impose a digital tax. He also stated that 'discussions on Pillar 2 [of the Framework – a minimum tax level] remain very much on track' and suggested delinking the two pillars of the talk (which several EU countries opposed).

- Janet Yellen, US Treasury Secretary of the new Biden administration, announced at a meeting of G20 finance ministers on 26 February 2021 that the US "is no longer advocating for safe harbour implementation". During negotiations at the OECD level, the new administration stated that it intends to increase the corporate tax rate and pursue a "multinational agreement to update global tax rules in ways that establish effective minimum taxation rules, prevents global profit-shifting, and ensure that corporations pay their fair share."

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