Taxation in the digitalised economy

The journey so far from BEPS Action 1

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Taxation in the digitalised economy

Introduction

Update on unilateral initiatives

European Union developments

OECD proposals

US perspective

Next steps and questions
Taxation in the digitalised economy

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Next steps and questions
How did we get here?

OECD

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OECD/G20 - BEPS Action 1

Perceived concerns

01
Scale without mass

02
User data, participation and networks

03
Reliance on intangibles
Taxation in the digitalised economy

Agenda

1. Introduction
2. Update on unilateral initiatives
3. European Union developments
4. OECD proposals
5. US perspective
6. Next steps and questions
Update on unilateral initiatives

United Kingdom

2% on in-scope revenues, targeted at revenue streams linked to UK users derived from in-scope business models

— Public consultation closes 28 February 2019
— Deductible, but not creditable
— Various safeguards
— In-scope business models:
  - Search engines
  - Social media platforms
  - Online marketplaces
## Update on unilateral initiatives (cont.)

<table>
<thead>
<tr>
<th></th>
<th>France</th>
<th>Austria</th>
<th>Italy</th>
<th>Spain</th>
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<tbody>
<tr>
<td><strong>Tax rate</strong></td>
<td>Up to 5%</td>
<td>3%</td>
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<td><strong>Thresholds</strong></td>
<td>— Global turnover more than €750 million</td>
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<td></td>
<td>— Domestic in-scope turnover more than €25 million</td>
<td>— Domestic in-scope turnover more than €10 million</td>
<td>— Domestic in-scope turnover more than €5.5 million</td>
<td>— Domestic in-scope turnover more than €3 million</td>
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<td><strong>Effective</strong></td>
<td>— 1 January 2019</td>
<td>— 2020 (at the latest)</td>
<td>— 30 June 2019</td>
<td>— TBC (approved by government in Jan 2019)</td>
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<td><strong>Levied on</strong></td>
<td>— Revenue streams: direct sales, advertising revenues, resale of private data</td>
<td>— Revenue streams: online advertising</td>
<td>— Revenue streams: digital advertising, digital transmission of data, provision of digital interface</td>
<td>— Revenue streams: digital advertising, digital transmission of data, provision of digital interface</td>
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<td><strong>Other notes</strong></td>
<td>— Expected to raise approximately €500 million</td>
<td>— Expected to raise approximately €200 million</td>
<td>— Closely following EU DST proposal</td>
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Has the EU lost momentum?

EU Digital services tax

— No political agreement reached in December 2018 Ecofin
— Reduced scope (‘Digital Advertisement Tax’) including proposal for a minimum tax based on French German proposal
— Continued conceptual objections by Ireland and Nordics
— Ongoing legal concerns
— Will agreement be reached in March 2019?
— Momentum for longer term solution at OECD level?
Digital services tax: Challenges

The DST has some characteristics of a direct tax
- Rationale: Taxation of profits where value is created
- Tax on revenues as a proxy for tax on profits (other direct taxes also levied on gross profits, e.g. WHT)
- Chargeability on a yearly basis (vs. per transaction)
- Deductibility from CIT base

Compatibility with tax treaties
- If the DST is a direct tax, within the scope of OECD MC article 2?
- If yes, source state allowed to levy DST under article 7 (Business Profits), article 12 (Royalties), and article 21 (Other Income) ?

Risks of double taxation and multiplication of MAPs

Compatibility with EU law
- EU based DST: difficult, although a directive can be contrary to primary EU law
- Unilateral DST:
  - Possible indirect discrimination based on nationality
  - Evidence required that majority of companies subject to DST is foreign
Unanimity in tax matters: Looking ahead

“Moving to qualified majority voting would allow us to make progress on important proposals in the field of tax policy in Europe.”

Pierre Moscovici

01

European Commission intention to move to qualified majority voting for tax initiatives

02

However, strong negative opinions from for example the Netherlands and Ireland
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The OECD Policy note 29 January 2019

First Pillar
Address Nexus and Profit Allocation issues

- User contribution
- Market intangibles
- Significant economic presence

Go beyond arm’s length principle/
Impact larger group of MNEs

Second Pillar
Address broader BEPS issues/Low taxation

- Income inclusion rule
- Tax on base eroding payment
- Coordination rules

Inspired by the US Tax reform/
Introduction of a WHT?

Accuracy and Tax certainty
Simple and Administrable
Avoid double taxation

Recommendations on implementation of a LONG-TERM solution by the end of 2020
OECD Timeline

G20 Mandate
BEPS Inclusive Framework to prepare a report/Task Force on the Digital Economy

OECD Policy note
Identification of two pillars and four approaches to be explored on a ‘without prejudice basis’

Public consultation
To be held in Paris on 13-14 March

Final report
Report on a long-term solution agreed by consensus, including recommendations

OECD Interim report
In-depth analysis of value creation across business models and identification of tax challenges

Consultation paper
Anticipated to be issued week commencing 11 February, 2019

Update to the G20
IF to agree on a detailed work program in May, with a view to reporting progress to G20 Finance Ministers in Japan
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United States perspective

01. US stakeholders view the current proposals as targeted towards US MNEs

02. Increased willingness to discuss alternatives, but certain non-negotiables

03. Recognition that the OECD is the right organisation to broker a multi-lateral agreement on a long term solution

04. Concept of marketing intangibles gaining traction
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Next Steps

— OECD public consultation expected later next month.

— Short consultation period of three weeks.

— Stay tuned for the second KPMG UK webinar on taxation in the digitalised economy.
Any questions?