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DIGITALEUROPE's Submission to the OECD Consultation on the Secretariat Proposal for a "Unified Approach" under Pillar One



Executive Summary

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies.

Key Messages

- ▶▶ DIGITALEUROPE welcomes the ambitious work and important progress made by the OECD to achieve a multilateral consensus-based solution in 2020, with the aim to sustainably address the tax challenges arising from the digitalization of the economy.
- ▶▶ We welcome and support the OECD's work on Pillar I that deals with the allocation of taxing rights and nexus rules based on corporate profits rather than gross revenue.
- ▶▶ DIGITAL EUROPE believes that as part of the Pillar 1 agreement, there should be explicit agreement from all countries to remove existing and proposed Unilateral Tax measures.
- ▶▶ DIGITALEUROPE believes that a simple, practical solution is most

important. It will allow for a simpler regime enabling businesses to comply and both developing and developed countries to implement the provisions.

- ▶▶ DIGITALEUROPE underscores that a comprehensive and coherent reform of the international taxation system will promote legal certainty, reduce disputes and avoid risks of double taxation.
- ▶▶ DIGITALEUROPE believes that any solution should not “ring-fence” the digital economy. A clear and unambiguous scope is required to enable certainty for tax authorities and taxpayers alike.
- ▶▶ As regards the profit allocation method, Amount A should not result in a market jurisdiction being excessively or “over” rewarded, and there should be no double counting with Amounts B and C.
- ▶▶ In order to underpin any of these reforms, DIGITALEUROPE calls for a strong dispute resolution mechanism, such as mandatory binding arbitration, to resolve disputes in both a clear and timely manner.

Detailed comments

Scope – No ring-fencing

- ▶▶ DIGITALEUROPE agrees with the BEPs Action 1 report which concluded that it is not possible to ring-fence the digital economy. All companies are digitalising and the digital economy is increasingly becoming the economy.
- ▶▶ The membership of DIGITALEUROPE has differing views as to the exact scope of the Unified proposal. Our members do agree though that clarification is of the essence: indeed, whatever the scope ultimately determined, it must be clear and unambiguous in order to provide certainty to both tax authorities and taxpayers and in order to prevent disputes.

Profit Allocation mechanism – Amount A

- ▶▶ Amount A should not result in the market jurisdiction being excessively or “over” rewarded. For example, if a business is already in a country and compensating the country via Amount B and Amount C, at an appropriate “arms-length” amount, no additional return should be allocated to the market.

- ▶▶ If a simple and more formulaic approach is favored the simplified profit allocation formulas should be based on principles in order to be sustainable. The simplified allocation factors (e.g. a percentage of revenue) should be determined primarily by the application of the “arms-length” principle.
- ▶▶ We note that the Amount A reallocation is limited to a portion of non-routine/residual returns. It should be clearly stated that trade intangible returns are out of scope and excluded from the simplified formula.
- ▶▶ Consideration should be given to the interaction of existing withholding taxes and the Amount A re-allocations in order to avoid double taxation. To the extent there is an allocation to a market jurisdiction under Amount A, then withholding taxes should be dis-applied.
- ▶▶ Furthermore, the Amount A rules need to make clear which country (or countries) is the surrendering state (entity) in terms of the profits now reallocated to the market countries. In this respect, we favor a deduction or exemption approach and do not support a credit system. Allowing the surrender state entity(ies) a deduction or exemption for the Amount A profit allocation would be both effective and simple whereas a credit approach will be unnecessarily complex and will inevitably lead to double taxation.
- ▶▶ The proposal references the notion of withholding taxes. Gross revenue based withholding taxes should not be the collection mechanism. Companies should be responsible for voluntarily reporting and paying the agreed taxes resulting under this proposal
- ▶▶ Finally, If the value of the local market jurisdiction is to be established through proxies referencing active customers/sales, we recommend that a clear, unambiguous set of rules to identify the customer location are developed, with a clear hierarchy of how these rules should be applied. For example, the indicators of customer location under the Electronically Supplied Services VAT rules could be used as a guide.

Amount B

- ▶▶ We understand the conceptual logic around Amount B and the potential benefit in agreeing global norms and reducing disputes. However, detailed guidance and establishment of mandatory guardrails would be necessary to achieve the desired objectives.

- ▶▶ We note that agreeing a fixed percentage for Amount B for all situations will be extremely complex. Therefore, the specified percentage returns under Amount B should be considered elective “safe harbors” for common fact patterns rather than a rate that is designed to apply to all different fact patterns or is mandatory. If the facts are non-standard or outside the definition, then existing transfer pricing principles should apply.
- ▶▶ In addition, if countries cannot agree on Amount B this should not prevent the remainder of the pillar 1 solution being agreed to and implemented.

Enhanced Nexus rules – for reallocation purposes only

- ▶▶ The unified approach would likely set up a new concept of enhanced nexus, granting taxing rights to countries where companies do not necessarily have a permanent establishment, which will require changes to tax treaties and countries’ domestic law.
- ▶▶ We believe the treaty changes creating this new nexus rule should explicitly state that the rule is purely for the purposes of corporation tax / the market allocation and does not create nexus for VAT purposes or any other non-tax or regulatory purposes.
- ▶▶ Countries must also agree that the profits reallocated under the Pillar 1 rules should not create any deemed payment transaction. Countries should not seek to assert deemed payments to which they apply VAT, WHT, or other taxes.

FOR MORE INFORMATION, PLEASE CONTACT:



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About DIGITALEUROPE

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DIGITALEUROPE Membership

Corporate Members

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National Trade Associations

Austria: IOÖ

Belarus: INFOPARK

Belgium: AGORIA

Bulgaria: BAIT

Croatia: Croatian

Chamber of Economy

Cyprus: CITEA

Denmark: DI Digital, IT

BRANCHEN

Estonia: ITL

Finland: TIF

France: AFNUM, Syntec

Numérique, Tech in France

Germany: BITKOM, ZVEI

Greece: SEPE

Hungary: IVSZ

Ireland: Technology Ireland

Italy: Anitec-Assinform

Lithuania: INFOBALT

Luxembourg: APSI

Netherlands: Nederland ICT,

FIAR

Norway: Abelia

Poland: KIGEIT, PIIT, ZIPSEE

Portugal: AGEFE

Romania: ANIS, APDETIC

Slovakia: ITAS

Slovenia: GZS

Spain: AMETIC

Sweden: Foreningen

Teknikföretagen i Sverige,

IT&Telekomföretagen

Switzerland: SWICO

Turkey: Digital Turkey Platform,

ECID

Ukraine: IT UKRAINE

United Kingdom: techUK