Ecommerce Europe contribution to the European Commission's public consultation:

"The digital levy"

Introduction

Ecommerce Europe, the European Digital Commerce Association, welcomes the opportunity to provide constructive feedback to the European Commission's public consultation on "the digital levy", which was published on 18 January 2021. Following the rapid technological developments and accelerated digitalisation sparked by the COVID-19 outbreak, the Commission was tasked by the European Council in its conclusions of 21 July 2020 to put forward proposals for additional own resources, of which the digital levy is seen as a key element.

Ecommerce Europe has been an active stakeholder in the debate and negotiations around the Proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services (2018/0073 (CNS)), also called Digital Services Tax (DST), that was put forward by the European Commission in March 2018. Now as well as in the context of the 2018's DST discussions, Ecommerce Europe remains firmly convinced that only a consensus-based, multilateral, global solution will be able to solve the taxation challenges arising from the fast-digitising economy and thus reduce the risk of double taxation and international trade distortions.

That is why Ecommerce Europe continues to believe that the OECD remains the only venue to achieve a globally coordinated reform of international taxation. We strongly encourage the EU to focus all its efforts on reaching a globally agreed solution at the OECD instead of pursuing an EU initiative. We are concerned that the European Commission's digital levy proposal may undermine and distract from the ongoing work at the OECD, particularly when the new U.S. Administration has recently expressed interest and commitment in re-engaging in multilateral discussions but while acknowledging time is needed for countries to achieve consensus. Pursuing an EU digital levy is likely to make it more difficult to reach a global agreement if other countries consider that the EU will go ahead with the digital levy regardless of an OECD solution. It is concerning therefore that the informal meeting of economic and finance ministers on 16 March reported that the Commission's proposal for a digital levy should be a separate instrument and not linked with the corporate tax rules that are being negotiated in the OECD. This will not lead to simplification but to multi-layered taxation. The EU should only consider a digital levy if the OECD process breaks down. In this event, the EU should focus on using the design principles put forward by the OECD blueprints to ensure any new tax measure is profit-based and applies broadly to all businesses to reduce distortions. In any case, we believe that there should be explicit commitment from all countries to remove unilateral digital taxation measures as soon as an internationally agreed solution is reached, or at least be swiftly updated to be consistent with the agreed framework.

Finally, it is important to note that while digital taxation measures might target large corporations, their effect will trickle down to various actors depending on these companies, such as business users and consumers. As a result, a digital levy would have a negative impact on the global economy when it is in a fragile state and the COVID-19 pandemic is far from over. It has been shown through independent research[1] that SMEs

[1] Copenhagen Economics 2018 Study, The Impact of an EU Digital Service Tax on German businesses. Deloitte Taj 2019 Study, The French Digital Service Tax, an Economic Impact Assessment ; Prometeia-Netcomm 2018 Study on the Italian DST (in Italian); IFO Institut, 2018 Study on the German DST (in German)

and other parties in the supply chain are negatively impacted by digital tax measures, which act as an effective tax on digitalisation and innovation. With the current COVID-19 restrictions, digital channels are an enabler for businesses to continue their economic activities and this will drive the economic recovery ahead.

In this position paper, Ecommerce Europe outlines its recommendations on how to address the tax challenges arising from the digitalisation of the economy.

Recommendations

Ecommerce Europe would like to reiterate that the following principles should be carefully considered by EU legislators in the context of the discussions around a European initiative for a digital levy:

1. The tax reform should be pursued internationally at OECD level

In Ecommerce Europe's opinion, unilateral measures - either at EU or national level - will ultimately damage the multilateral order, with potential retaliatory measures from third countries as a consequence. The way taxing rights for multinational companies are apportioned among countries depends on a clear legal system, underpinned by international tax treaties. Taxes imposed outside of this treaty framework can also lead to double or multiple taxation or spur protracted tax disputes between countries. Governments should work towards international consensus at OECD level, ensuring a coherent, global, long-term framework for trade and cross-border investments. If the EU were to pursue its plans to introduce a digital levy at European level, Ecommerce Europe strongly urges the European Commission to consider potential negative consequences that could place European companies at a disadvantage and that are further detailed in the points below. Additionally, at EU level, a sunset clause should be included, meaning that the EU rules will be repealed once a solution on the digital levy is agreed upon at OECD level. The digital levy should not apply in addition to national Digital Services Taxes nor to companies subject to a reallocation of taxing rights under an agreement reached at the OECD.

2. Tax rules should be enforceable against all players globally and ensure level playing field

In addition to the preference for global tax rules, any introduction of a European digital tax should take into account that it should be both globally and easily enforceable, in order to avoid putting non-EU based companies at a competitive and unfair advantage vis-à-vis EU-based businesses. The Commission mentions in its Roadmap that the EU initiative is likely to have an impact on foreign businesses operating in the EU, without providing more details on what this actually means or whether businesses not based in the EU but operating in the EU would fall within the scope of the EU instrument. Even if that were the case, Ecommerce Europe would have serious doubts about the actual enforceability of such a provision towards businesses with no establishment in the EU. We ask the Commission to clarify how such an instrument would be enforced, as all players operating in the EU and falling within the scope should face similar consequences for non-compliance or fraud, for the sake of a level playing field.

3. A fair and modern taxation system must be channel-neutral

Ecommerce Europe believes that any new tax rules should not "ring-fence" the digital economy. In the Roadmap, the European Commission identifies as one of the building blocks for the design of the instrument that it should have a "forward-looking design" and should take into consideration the future evolvement of the digital economy with a view to putting into place a sustainable tax framework and providing tax certainty for businesses. Ecommerce Europe fully supports the general principle of designing a forward-looking approach, although in our opinion this can only be a channel-neutral approach, which is not ringfencing the digital economy.

In fact, the wider economy is rapidly digitalising, increasingly including the widespread use of data analysis, customer feedback, automated data feeds, computer-mediated transactions, customized products and services, targeted offers and more. With digitalisation becoming a crucial element of offline business models, and the accelerated development of omnichannel businesses, it is becoming more and more complicate to distinguish what is digital from what is not. That is why a modern taxation framework should not ring-fence the digital economy, and treat businesses equally, regardless of their business model and distribution channel.

Additionally, in the Inception Impact Assessment, the Commission claims that “digital business models rely heavily on intangible assets, [...] and thus pay less tax compared to more traditional businesses”. While Ecommerce Europe fully agrees that business models have evolved due to digitalisation, we are not aware of concrete evidence to suggest that digital companies pay less tax relative to traditional businesses. Indeed, when comparing the effective tax rates of large tech companies with those in other sectors, the International Monetary Fund (IMF)[2] concluded: “What we see is that the tech sectors report implied average tax rates more or less in line with the average of other Fortune Global 500 firms. What is most striking is that the implied tax rates are certainly non-zero, and therefore we can reject the widely-held hypothesis that on average these companies pay zero or low corporate income taxes at the globally consolidated level.” (page 71). In addition, a study[3] conducted in the context of the Digital Services Tax Proposal in 2018 by Copenhagen Economics, suggests that the argument that digital companies provide significantly less taxes than traditional firms is not supported by empirical evidence. Similarly, the European Center for International Political Economy (ECIPE) showed[4] that there is no systematic difference in income taxes paid by digital corporations compared to traditional companies. Ecommerce Europe would therefore ask the Commission to provide further evidence to substantiate these claims, in particular as the line between non-digital and digital businesses is becoming less evident.

4. Taxes should be based on profits, not on revenues

Ecommerce Europe believes that any change to the (international) tax framework should be based on profits/losses, not on revenues. Taxes based on revenues have a regressive effect on start-up and scale-up companies, which invest and often operate at a loss in their growth phase, as well as on companies that operate in a low margin environment, such as retail.

The Roadmap points to the fact that COVID-19 has weakened Europe’s economy. While recognising the severe impact of the pandemic on the economy, Ecommerce Europe does not believe that introducing a digital levy will help those businesses that have been hit the hardest. In contrast, while the companies targeted by such a digital levy would pay the tax to EU tax authorities, they will likely pass on the tax burden to business users and consumers using online intermediaries or online platforms. This can particularly be expected in low-margin sectors such as retail, for companies that, for instance due to COVID-19 have made losses, or for start-ups, which are in early stages and have negative margins. On a longer term, these effects could ultimately lead to a price increase. Hence, it should therefore be considered that the introduction of a digital levy implies that not large global companies, but businesses, of which many are

[2] IMF Working paper No.20/76 - Tec(h)tonic Shifts: Taxing the “Digital Economy”, p. 71
[3] The proposed EU Digital Services Tax: effects on Welfare, Growth and Revenues, p. 4
[4] Digital Companies and Their Fair Share of Taxes: Myths and Misconceptions, p. 15

SMEs, and consumers using the services are bearing the tax burden. Therefore, taxes on revenues will ultimately likely function as consumption taxes. This is an undesirable outcome, particularly given current COVID-19 restrictions, where digital channels are an enabler for business to continue their economic activities and this will drive the economic recovery ahead. Ecommerce Europe thus calls on the European Commission to consider the cascading effect of such a tax.

Furthermore, Ecommerce Europe believes that such a revenue-based tax could have a distortionary effect on economic activity and on digitalisation, due to the tax's focus on businesses relying on online platforms for targeted advertisements, business users of marketplaces (in particular SMEs) and European exporters relying on online marketplaces. In the context of the COVID-19 pandemic, we believe it should be encouraged rather than discouraged for companies to innovate and expand their business model to new digital channels.

Finally, a revenue-based tax, and the expected consequent price increase, could push consumers to buy products and services that might be of lower quality or less efficient. These effects are well-known, which is why revenue-based taxation is typically reserved for products that have well-defined health or environmental consequences, including petrol/diesel, tobacco, and alcohol. That is why Ecommerce Europe strongly advocates for the reformed tax rules to be based on profits and losses, rather than on revenues, and to focus on the reallocation of taxing rules, rather than adding incremental taxation layers, which would lead to double taxation.

5. Tax rules should be simple, easy to administer and provide legal certainty

New tax rules should be designed in such a way that they are easy to comply with and simple to calculate, in order to avoid higher compliance costs for businesses that are already paying their fair share of taxes. The distribution of taxing rights among countries should be clearly defined and not subject to a range of interpretations or assessments. This is needed to avoid costly disputes and excessive compliance costs for taxpayers. The goal of international tax policy should be a predictable tax regime that allows companies operating across borders to make long-term investments. To achieve this certainty for tax authorities and companies alike, we would recommend that any solution that may be adopted includes mandatory binding arbitration as a minimum standard with peer review.

6. The concept of *value creation* should be carefully assessed and defined together with stakeholders

Although Ecommerce Europe generally supports the intention to update the taxation framework to match the current digital reality, albeit at OECD level, we would like to ask the Commission to consider the following challenges it entails. First, Ecommerce Europe is cautious about the Commission's redefined interpretation of *value creation* (matching it with the country where customers are based and revenue is made), while the corporate tax system currently relies on a different notion of value creation. In the Inception Impact Assessment, it is for instance stated that "the place of value creation might not be aligned with the place of taxation". Similar to the concerns raised by Copenhagen Economics[5], Ecommerce Europe foresees potential challenges in linking value creation to user contributions, in particular as the interactions between digital businesses and consumers can vary greatly, from instances where consumers buy tangible products to more intangible exchanges of data. Ecommerce Europe would therefore like to ask the

[5] The proposed EU Digital Services Tax: effects on Welfare, Growth and Revenues, p. 9

Commission to clarify how the term *value creation* should be interpreted and what can be understood as *value.*

Additionally, when changing the focus of the tax system to the country where the user or customer is located, it should be considered that European countries with a strong dependency on export could be negatively impacted as this principle could be adopted by non-EU countries with large markets resulting in a shift in taxing rights away from the EU. Finally, Ecommerce Europe would also like to ask the Commission to take into account that on national level, companies can get subsidies or tax cuts for innovation and research and development, which are considered to be compensated through taxation once, and if, the company makes a profit from these innovations. Ecommerce Europe would like to flag the importance of incentives for innovation to the Commission ahead of the discussions on the potential introduction of a European digital levy.

Final remarks

Ecommerce Europe appreciates the EU's ambition to take a leading role in the current debate and strongly supports the work currently undertaken at OECD level. We call on both the EU and the various countries involved to support the OECD process, in order to secure the timely delivery of a global solution. We believe that is crucial to avoid further fragmentation caused by unilateral measures, either at EU or national level, that will only lead to double taxation, market distortion and retaliation from other countries. We look forward to further cooperating and continuing constructive discussions with the European Commission, the OECD and other stakeholders to make sure that companies will be taxed in a fair and non-discriminatory way through the adoption of a structural, long-term and global solution.

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