

Committed to Europe

EC proposal on taxation of digital activities

Orange welcomes the European Commission (EC) initiative on digital taxation, both its long term approach and its intermediary measures, while some clarifications are needed for the latest.

Considering the current unfair and unjustified situation regarding tax asymmetries between digital players, we strongly hope they will, this time, gather strong support at EU level allowing a smooth adoption, at the benefits of the EU citizens and society.

Corporate taxation is based on the principle that profits should be taxed where the value is created. To that end, permanent establishment rules, largely based on physical presence, currently determine when a business becomes taxable in a given country and have been relevant for traditional businesses. But as regards large tech companies and globalized two-sided platforms in particular, the current international tax system is not able to establish a legally binding link between the location of value creation and the location of taxation. In that context, multinational digital companies, benefitting from outdated tax rules unable to capture their widely distributed value chain and the digital nature of their activities, engage into tax optimization reducing artificially their tax base in Europe. Addressing the taxation challenge of a digitalized economy is thus necessary to sustain public budgets, fairness and prevent competition distortions.

OECD has been missioned to address this concern at the Base Erosion and Profit Shifting (BEPS) work stream but is lacking consensus at this stage to move forward. We therefore welcome the EC initiative to propose two directives: one to adapt the corporate taxation rules at EU level so that they fit with the characteristics of digital businesses and another to adopt an interim measure which could be effective in the short term. We fully support in substance the comprehensive solution; this is common sense to revise the permanent establishment's rule by integrating the concept of "significant digital presence". This concept should be fine-tuned to be able to target all digital activities which currently escape tax and without prejudice to all other measures addressing tax avoidance issue. But it will take

time and adopting an interim measure is thus a good lever to face the urgency of the situation and to make pressure at international level to find a real solution to this crucial issue.

However, the draft directive 2018/0073 setting up a digital services tax (DST) should not lead to increase the tax burden of companies already fairly paying taxes in proportion of their activities within the EU and are not using the characteristics of digital to optimize taxation, as described above. The recital 27 of that draft Directive indicates that businesses could deduct the DST paid as a cost from the corporate income tax base in their territory. It should thus be modified to deal with potential double-taxation issue and add that businesses should be exempted from the DST if they pay a corporate tax above the DST due in their territory. This mechanism should also be explicitly mentioned in Article 3. This is all the more legitimate since the DST is explicitly presented as an interim approximation of what should be the corporate tax.

Furthermore, clarifications are required to understand what the taxable revenues and the taxable persons are as the current formulations are subject to interpretations. Also, some digital activities or companies are not in the scope of the DST although they currently avoid taxation. To remain aligned with the principle of equality before tax, and promote fair competition, such exemptions should be duly justified. The DST should cover all digital activities that are not taxed where the value is created and only foresee exemptions based on the size of enterprises, in order to preserve innovation and emerging businesses.

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