



The EU Commission publishes its proposals on the taxation of Digital Economy

Today the European Commission published a communication on the tax challenges raised by digital economy envisaging the adoption of both long-term and short-term legislative measures for ensuring fair taxation of profits within the EU.

Together with the aforementioned Communication, the Commission also published two legislative proposals that are addressed to EU and non-EU entities and deal respectively with a) rules relating to the corporate taxation of a "significant digital presence" in EU Member States and b) rules relating to a digital services tax on revenues resulting from the provision of certain digital services within the EU.

The first legislative proposal contains long-term measures for taxing digital economy. Such proposal would enable taxation of profits from digital activities, insofar as such profits are attributable to a significant digital presence maintained by entities (EU or non-EU) in a Member State. The requirement of a significant digital presence is deemed to be met if the business carried on in the relevant Member State consists wholly or partly of the supply of digital services through a digital interface and at least one of the following conditions is met at the group level (per tax period):

- (a) revenues resulting from the supply of digital services to users located in a Member State exceeds € 7 million;
- (b) the number of users of digital services located in a Member State exceeds 100.000;
- (c) the number of business contracts for the supply of digital services concluded by users located in a Member State exceeds 3.000.

The first legislative proposal also envisages rules to determine the profits which are attributable to the significant digital presence. Such rules largely resemble OECD principles. The determination of profits shall be based on a functional analysis and shall take into account economically significant activities performed by the significant digital presence which are relevant to the development, enhancement, maintenance, protection and exploitation of the enterprise's intangible assets. In order to determine the profits attributable to the significant digital presence, the taxpayer shall use the profit split method, unless it is proved that an alternative method based on internationally accepted principles is more appropriate having regard to the results of the functional analysis.

The second legislative proposal includes a short-term (interim) tax measure, consisting in the introduction of a digital services tax on the revenues resulting from the provision of certain digital services. The aims of the proposal are to gather revenues (the estimated annual revenue is € 5 billion) and to avoid a

proliferation of unilateral measures for the taxation of digital economy, which could lead to a patchwork of national responses which would be damaging for the functioning of the Single Market.

The digital services tax would apply at the rate of 3% on revenues created from activities where users play a major role in value creation, including revenues from the following activities:

- selling of online advertising space;
- making available to users of a multi-sided digital interface;
- selling of data collected about users and generated from users' activities on digital interfaces.

Tax revenues would be collected by the Member States where the users are located and shall be limited to revenues realized by groups of companies with total annual worldwide revenues of € 750 million and EU taxable revenues of € 50 million.

Lastly, the European Commission also published a recommendation putting forward a proposal for amending existing double tax conventions concluded by Member States with non-EU jurisdictions in order to introduce both the concept of a significant digital presence and the rules for attributing profits to such significant digital presence.

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