



ETNO AND GSMA BLOGPOST

ETNO and GSMA call for a more equitable and balanced approach towards taxation of the telecommunications sector under the new tax rules proposed by OECD/G20

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Introduction

GSMA, ETNO and their members welcome the OECD/G20 Inclusive Framework landmark agreement for taxation of the digitalizing economy. However, the industry is concerned that the current proposal fails to recognise the essential contribution of the telecommunications sector to the world's economies and its key features with respect to investment, tax and regulatory regimes. Moreover, the framework has shifted from its original purpose of levying taxes on digital services in jurisdictions where the customer resides to a broad application that potentially subjects large multinationals within the telecommunications industry, who already pay their fair share of taxes, to double taxation.

The telecommunications industry provides critical infrastructure to economies worldwide

- Telecommunication operators provide critical infrastructure in the form of telecommunication networks and connected services.
- Telecommunications infrastructure is fundamental to the whole economy and is widely recognised as the backbone for the digital transformation of society. Telecommunication networks enable the provision of vital services that improve lives by supporting the development of an inclusive digital society, they have been instrumental in ensuring continuity of essential services and of business during the pandemic and will play an equally crucial role in the recovery phase.
- Developing and maintaining telecommunication infrastructure requires long term investment and a stable investment horizon, and the industry should be entitled to a fair return on its infrastructure investments. In many European countries, the average Return On Equity for the telecommunications sector is often low¹.
- There is ample evidence of the positive impact of telecommunication infrastructure on economic growth.² For example, one ITU study found that an increase of 10% of mobile broadband penetration increases GDP growth by 1.5% worldwide and up to 2.46% in developing countries.³ As such, levying incremental taxes and fees on telecommunications operators in addition to existing levies, risks discouraging investment and harm economic progress.

The existing international tax architecture properly imposes tax on the telecommunications industry

- Overall the telecommunication industry is highly regulated, typically requires a license to operate in the local jurisdiction, is heavily invested in local infrastructure and is subject to full income taxation in the countries in which their respective customers reside.

¹ Statistics for Western Europe Wireless Telecom operators indicated a -7.25% return on equity on 2019 in addition to a -0.35% return on equity in 2020 as per <https://www.statista.com/statistics/1044049/return-on-equity-in-the-technology-and-telecommunications-in-europe/>

² <https://www.gsma.com/betterfuture/resources/mobile-technology-and-economic-growth>

³ https://www.itu.int/en/ITU-D/Conferences/GSR/2020/Documents/ITU_Global_Econometric_Modeling_GSR-DiscussionPaper.pdf

- The industry is largely facilities-based and profits are linked to where companies hold such facilities.
- Interactions with foreign providers (which are primarily of limited scope due to the local nature of the business and predominantly occur between unrelated parties) are conducted at arms-length and payments to such providers for utilization of their networks are properly taxed in the jurisdiction of such networks.
- Telecommunications providers do not market to customers outside their home jurisdiction.

The current agreement on the Two-Pillar solution for new tax rules risks imposing an excessive tax burden and discriminating against the telecommunication industry

- We consider it appropriate for Multi National Enterprises (MNEs) to be taxed in a fair and transparent way with profits taxed in market jurisdictions where value is created and where their customers are resident.
- We note that in the Reports on Pillar One and Pillar Two Blueprints, the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) recognised that “services providing access to the internet or another electronic network” should be included on the Automated Digital Services (ADS) negative list, since the telecoms industry is heavily regulated, highly capitalised and it makes long-term local infrastructure investment within the market country including the payment of national spectrum license fees.
- Furthermore, the OECD identified telecommunications as operating a key infrastructure for which further work would be conducted to consider an exclusion from Amount A, stating at paragraph 155:
 - “There appear to be good reasons for such an exclusion. Infrastructure services businesses are by definition closely tied physically to the market where the activity is carried out. The source and market are generally the same, so arguably there is no need to apply re-allocation rules, since substantial profits are already allocated to the market.” And,
 - “For this reason, infrastructure businesses are often subject to price regulation to protect consumers. This limits the ability to earn residual profits, providing an additional rationale for exclusion.”
- Over and above other infrastructure providers, the telecommunications industry pays extensive unilateral Telecommunications Service Taxes “TSTs” in many markets, in addition to corporation income taxes, VAT and spectrum license fees⁴.
- We note that under the current proposal of the new tax architecture, the IF rightly envisages appropriate coordination between the application of the new international tax rules and the removal of all Digital Service Taxes and other relevant similar measures on all companies. As such, companies in scope of Pillar 1 & 2 would pay no Digital Service Taxes (DSTs). On the other hand, there is no explicit commitment to withdraw unilateral TSTs. This would result in a discriminatory treatment of the telecommunication sector, as it would be subject to Pillar 1 & 2 **plus** all existing TSTs and spectrum license fees.

We urge IF members and the OECD to consider a more equitable and balanced approach towards taxation of the telecommunications sector under the new tax rules.

- GSMA and ETNO recommend that the telecommunication industry should be exempt from Pillar 1, as it shares with financial services and extractive industries several policy rationales including pre-existing

⁴https://www.gsma.com/publicpolicy/wp-content/uploads/2019/02/Rethinking-mobile-taxation-to-improve-connectivity_Feb19.pdf

sector-specific taxes to justify exclusion. Local governments levying TSTs on local services is further evidence that telecommunications companies are already paying taxes in the jurisdiction where their customers reside.

- As noted above and in our submission to the public consultations on the OECD new tax rules, there are several reasons to justify the exception from Pillar 1. These include that:
 - regulated telecommunication MNEs already pay substantial spectrum license fees for the right to radio frequency spectrum;
 - they are subject to extensive regulation;
 - they invest heavily in local infrastructure
 - they always have local taxable presence and are required to invoice sales and book profits in local domestic legal entities that are subject to tax; and
 - they do not solicit customers outside the country of the operating company.
- If the telecommunications industry is not removed from Pillar 1:
 - there must be appropriate mechanisms in place to eliminate double taxation and to resolve inevitable disputes in a fair and consistent manner;
 - governments should commit to removal of current and future TSTs from regulated telecommunication MNEs as part of signing up to the new G20/OECD tax rules;
 - Pillar 1 and 2 must treat TSTs in a fair and transparent way equal to DSTs, and existing TSTs must be removed with equal timing to DSTs;
 - at the very least, a full credit must be given for TSTs against Pillar 1 & 2 taxation and the definition of profit allocated to a country should take into account long-term capital investment (including spectrum and other costs that are capitalized as indefinite-lived assets), borrowing costs, credits and incentives, and accumulated losses to match infrastructure investments with returns. Otherwise, this will likely lead to double taxation and potentially limit the sovereign right of countries to stimulate the local economy if the framework relies on financial statement income for apportionment or the minimum tax.
- Wireless customers roaming abroad should not create taxable nexus, and associated revenues are currently taxed and should only be taxed in the customers' home country.
- Segmentation should be allowed to separate various lines of business to minimise the risk of artificially shifting wholly domestic profits to foreign jurisdictions.

ETNO (European Telecommunications Network Operators' Association) represents Europe's telecommunications network operators and is the principal policy group for European e-communications network operators. ETNO's primary purpose is to promote a positive policy environment allowing the EU telecommunications sector to deliver best quality services to consumers and businesses.

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The GSMA represents the interests of mobile operators worldwide, uniting more than 750 operators and nearly 400 companies in the broader mobile ecosystem, including handset and device makers, software companies, equipment providers and internet companies, as well as organisations in adjacent industry sectors.

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