



European Commission ('EC') proposals for Council Directives on the common system of a digital services tax ('DST') on revenues resulting from the provision of certain digital services, and laying down rules relating to the corporate taxation of a significant digital presence.

ETNO-GSMA Tax Policy Committee Response

The ETNO-GSMA Tax Policy Committee (hereinafter The Committee) has taken this opportunity to provide its views on the EC proposals for Council Directives to introduce DST ('the Interim Solution') and introducing rules relating to the corporate taxation of a significant digital presence ('the Long Term Solution'), and would like to provide the following comments.

The Committee believes that increasing public understanding of, and trust in, the tax system is strongly in the interest of the public and of each and every business. The Committee hence welcomes the current debate on the taxation of the Digital Economy. We also consider it appropriate for the Digital Economy to be taxed in a transparent way with profits taxed where value is created, including where material value (critical to that digital business's success) is clearly proven to be generated by users.

We also applaud the speed at which the EC and OECD are acting, and agree that business and governments should engage to achieve multilateral consensus and a meaningful long-term and coordinated international solution as soon as possible; one that focusses on the future adoption of a new permanent establishment definition and profit attribution between territories at an international level. We believe that ideally this kind of solution should be tackled at the OECD level, rather than the European Union level, except if no consensus were reached soon, and would give businesses increased certainty and reduce complexity going forwards.

In respect of the proposed Interim Solution measures, our view is that a company's appropriate tax liability should be based on the profit generated from the company's business activities in that country, not a company's revenues (which are not an indicator of profit). In addition, whilst we understand it has been necessary to include purely domestic transactions in the scope of the proposed DST in order to overcome EU discrimination issues this will also create significant administration and double taxation in a domestic environment.

However, we are aware that some EU countries have already announced, or are expected to announce, a unilateral DST that would follow EC recommendations. Measures that do not prevent unfair double taxation of companies already taxed in the country will increase double taxation disputes, and would certainly lead to an ever-increasing complexity in the field of international taxation. If discussions on interim measures, either at a country or EU level, are taken forward, despite the above concerns we consider it important that the EC and individual Member States ensure that DST is fit-for-purpose.

At present many technical questions have not been adequately addressed and we therefore propose the DST is amended to address the following four matters:

1. To the extent businesses already pay corporate tax on the defined digital profits, the interim measures should permit a full double taxation credit for the DST (i.e. no “double” taxation).

Whilst we understand DST has been proposed as an indirect tax, meaning that crediting DST against corporate income tax (a direct tax) or vice versa could compromise the legal nature of the tax (in addition to the concerns regarding the restriction on the freedom to provide services within the EU), we urge the co-legislators to include in any revised Directive an Article (or other appropriate wording) that enables Member States to allow full tax credit relief.

2. Clear procedures should exist to prevent DST becoming quasi-permanent with sunset clause safeguards established to ensure that future digital taxes will be applied to profits, not revenues.
3. Safeguards (or safe-harbours and reduced DST rates) should be established to ensure the rate of DST is not detrimental to loss-making, low profit margin or export companies. Without these safeguards, DST will likely hamper future digital development in the EU, and could inhibit competition against the more established companies.
4. To the extent the digital activities covered by the DST are ancillary to the wider business of the company (e.g. less than 5% of revenues), the company should not be subject to the DST. Also, the proposals should specify (and be explicit) that any use of data by a business that is ancillary to revenues generated from its existing or new customers should not be subject to the DST.