



European Commission Public Consultation on fair taxation of the digital economy

ETNO-GSMA Tax Policy Committee Response

20th December 2017

The ETNO-GSMA Tax Policy Committee (hereinafter The Committee) appreciates the opportunity to provide its input on the consultation on fair taxation of the digital economy and would like to provide the following comments, complementary to the answers submitted through the on-line form questionnaire.

The Committee strongly believes that the digitalisation of the global economy raises some fundamental questions in the field of taxation, due to the inadequacy of current tax rules, which were designed for the “old” economy, and – as such – are not suitable for the new scenarios of the digital economy.

In broad terms, the inadequacy of current tax rules (taking into account some fundamental concepts within international taxation principles, such as the concept of permanent establishment, the application of transfer pricing principles in the field of intangible goods, and the profit attribution rules) leads to a growing need to re-establish fair taxation on business profits and to safeguard a global level playing field for all kind of businesses. The general objective is (rather than to implement specific digital taxes which may increase the tax burden of actors paying already corporate taxes in the countries where they operate) to find solutions to avoid some gaps in taxation, which can be generated (in the present scenario) not only by tax evasion, but also by tax avoidance and even (in some cases) by the inadequacy of current rules, which generates uncertainty on some fundamental questions, such as “how to tax “ and “where to tax”.

In light of the above, several proposals are being drafted or will be tabled in the near future, either in the form of “quick fixes”, or of long-term solutions, both at international (i.e., OECD and European Union) and (in some cases) national level.

However, at this point in time, it is not yet possible to elaborate an appropriate evaluation of such proposals, since in many cases they only represent some general policy options.

Nevertheless, it is already possible to list some of the priorities and guidelines which policy makers should take into account in the forthcoming adoption of the tax measures aimed at addressing the tax challenges of the digital economy.

Firstly, it is evident that new tax rules (such as the future adoption of a new permanent establishment definition, based on the concept of “virtual permanent establishment”) have to be adopted at an international level. To the extent that this involves complex and long term negotiation, this should not prevent reflection at all levels on possible measures to be taken in the short run to avoid corporate tax avoidance of certain actors.

Therefore, this kind of intervention should be tackled at the OECD level, rather than the European Union level. Most importantly, the national level should be avoided (except for anti-avoidance mechanism), in order to avoid that the adoption of unilateral measures by some single states can entail tax competition and cause situations of unfair double taxation together with an increase of double taxation disputes between countries, which would certainly lead to an ever-increasing complexity in the field of international taxation.

Furthermore, the adoption of sector-specific measures would – per se – undermine the development of the European Union’s Digital Single Market, since it would increase the fragmentation of taxation frameworks.

Secondly, future proposals will have to include from the beginning some essential details in order to allow a proper preliminary evaluation, such as:

- A preliminary impact analysis (e.g. in terms of competition, prices, market development and interaction with other taxes such as VAT and GST);
- A clear definition of the nature of the businesses, products and services, to which the new digital rules would apply (the experience accumulated so far demonstrates that often proposals are issued without a clear view of the sectors and services which are supposed to fall within the scope of those proposals)

Finally, it seems appropriate to highlight the need to elaborate proposals based on the adoption of implementing rules which businesses can easily comply with, and tax authorities can easily audit and enforce.