Regional Webinar Series:
Recovery & Renewal: EMEA Tax Issues

EMEA Tax Webinars
Digital Services Taxes | 23 June 2020
Introduction
Taxation of the digital economy

Setting the scene

20th century system
- Developed in a bricks and mortar world
- Modern economy increasingly digitalised

Multilateral change
- Shift the foundations or digital overlay?
- Who are winners & losers?

OECD

Unilateral measures
- Principled or opportunistic revenue raiser?
- Targeted at US multinationals?

DSTs
The importance of politics
2 Multilateral Change
Great progress on Amount B so there is substance for a deal on Pillar 1, although there are questions on scope and the focus may be on digital companies right now for many countries.

Pascal Saint-Amans | Director for Tax Policy and Administration OECD | 4 May 2020
The Mnuchin letter – 12 June

“Attempting to rush such difficult negotiations is a distraction from far more important matters.

This is a time when governments around the world should focus their attention on dealing with the economic issues resulting from Covid-19.

Steve Mnuchin | US Treasury Secretary
Reemergence of an EU DST?

Digital tax on companies with a global annual turnover of above €750 million to generate up to €1.3 billion per year

A digital tax would build on OECD work on corporate taxation of a significant digital presence; the Commission actively supports the discussions led by the OECD and the G20 and stands ready to act if no global agreement is reached. A digital tax applied on companies with a turnover above EUR 750 million could generate up to EUR 1.3 billion per year for the EU budget.

EU Commission | The EU budget powering the recovery plan for Europe | 27 May 2020
Unilateral Measures
Moving forward in the context of Covid-19

Political bandwidth at a premium in dealing with response to crisis – increases pressure on already ambitious timeline.

Practical challenges in physical distancing between key stakeholders - summits often key component of building consensus and reaching breakthroughs.

Increased political sensitivities on ceding control over tax revenue when fiscal deficits are surging.

Growing pressure to raise revenues and target those businesses perceived to be immune to economic downturn
Digital Services Taxes: Increasingly full map

**Canada**
- 3% tax from 1 April 2020

**United Kingdom**
- 2% tax on UK digital service revenues from 1 April 2020. First payments not due until 2021.

**France**
- 3% tax applies from 1 January 2019. Collection of 2020 DST postponed until end of year.

**Italy**
- 3% tax in force 1 Jan 2020

**Poland**
- Favour a multi-lateral solution but have implemented a 1.5% tax on online streaming / VoD services effective from 1 July 2020 in response to Covid-19 crisis.

**Denmark / Norway**
- DST if no OECD consensus in 2020.

**Czech Republic**
- Tax at 7% expected mid-2020 but possible deferred collection until Jan 2021.

**Austria**
- 5% tax on digital ads applies from 1 Jan 2020

**Ukraine**
- Draft legislation to impose 20% VAT on digital provided to consumers.

**Taiwan**
- 30% "deemed profit" from digital supplies for an effective rate of 6% effective from 2017 (or 3% in exceptional circumstances)

**Malaysia**
- Service tax on Business-to-Business imported taxable services via a reverse charge mechanism from 1 January 2019
- 6% DST on foreign service providers from 1 January 2020

**Costa Rica**
- Will impose a 13% VAT on digital services from 1 August 2020.

**Brazil**
- Draft DST bill has been submitted to Brazilian Congress for consideration, it is unclear whether there is sufficient political support to enact the proposal.
  - If accepted, a DST of between 1% - 5% would be levied depending on levels of gross revenue

**Chile**
- 19% VAT on non-resident digital service providers from 1 March 2020

**Mexico**
- Will impose a 16% VAT on digital services from 1 June 2020.

**Spain**
- 3% tax to take effect in 2020. No tax to be collected before December 2020

**Indonesia**
- Draft bill proposed by influential lawmaker that will bring digital services supplied by non-residents into scope of 12% VAT

**Philippines**
- DST proposal mooted in 2019 through consultation process, no further discussion since.

**Nigeria**
- Significant economic presence concept to capture non-resident digital service providers

**Turkey**
- 7.5% tax from March 2020.
- "Electronic place of business" concept for VAT purposes.

**Australia**
- 10% GST on tech services to Australian residents. No DST pending international consensus.

**Kenya**
- 1.5% DST currently within Finance Bill before Parliament

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Today's focus

Policy aims?

Legal status?

Interaction with OECD's work?

Scope and exemptions?

Rate?

Please see Appendix for more detail
Where to focus, how to respond
Understand the impact, shape the discussion

User data
- Functionality to identify user location
- Audit trail v privacy constraints
- Consistency with other regulators

Local interpretations
- Country by country
- Identify areas of divergence
- Continue lobbying?

Quantify
- Calculate incremental costs
- Identify double tax relief

Commercial impact
- Impact on margins and market messages
- Contractual positions
- Future business models
The US response

Section 301 of the Trade Act gives broad authority to investigate and respond to a foreign country’s trade practices perceived to be unfair to US interests.

$2.4bn

The value of French imports which the US threatened to impose 100% tariffs following its s301 investigation
…The United States remains opposed to digital services taxes and similar unilateral measures…

…As we have repeatedly said, if countries choose to collect or adopt such taxes, the United States will respond with appropriate commensurate measures.

Steve Mnuchin | in a letter to the finance ministers of France, Italy, Spain, and the UK on 12 June 2020
Where are We Heading?
Predictions…

Change is coming, but what form will it take?
BEPS 2.0
Latest from the OECD
Two Pillar approach

**Pillar 1**
Nexus / profit attribution
- Automated digital services and consumer-facing businesses
- Amount A – share of residual profit
- Amount B – fixed remuneration
- Amount C - Additional return

**Pillar 2**
Global anti-base erosion
- All businesses
- Minimum effective rate of tax
- Tax on "undertaxed" base eroding payments

Do the pillars actually address the Tax Challenges arising from the digitalisation of the economy?

- [ ]
Timetable for delivery

29-30 January
Inclusive Framework meeting
“Statement by the OECD / G20 Inclusive Framework on BEPS on the Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalisation of the Economy”

22-23 February
G20 Finance Ministers meeting
Endorsement of progress made

July
Virtual Inclusive Framework Meeting
Updating members on progress made

October
Inclusive Framework Meeting
G20 Finance Ministers Meeting

November
G20 Leaders Summit
Delivery of consensus-based solution

Agreement on key policy features
Elements of the implementation of Pillar 1 may be decided in 2021
6 Digital Service Taxes Country Comparison
## DSTs – Country Comparison

<table>
<thead>
<tr>
<th>Entry into force / Status</th>
<th>Austria</th>
<th>France</th>
<th>Italy</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Entry into force</strong></td>
<td>Entered into force on January 1, 2020</td>
<td>Entered into force on 26 July 2019 (for revenues generated as from 1 Jan 2019)</td>
<td>Entered into force on January 1, 2020</td>
</tr>
<tr>
<td><strong>Status</strong></td>
<td>Issuance of guidelines has been announced, but no draft circulated so far.</td>
<td>Draft guidelines released on 23 March 2020</td>
<td>Draft guidelines should be released in June/July</td>
</tr>
</tbody>
</table>

### In-scope revenue

- **Austria:** Online targeted advertising and intermediary services for online advertising
- **France:** Online targeted advertising, Transfer of users’ data for consideration, Intermediation services (marketplace and matchmaking services) and ancillary services
- **Italy:** Online targeted advertising, Transfer of user’s data for consideration, Intermediation /multilateral digital interface services (like marketplace, matchmaking service or social media)

### Revenue threshold

- **Austria:** At a group level, for the prior calendar year: > 750 m€ global revenue and > 25 m€ from online advertisement services in Austria
- **France:** At a group level, for the prior calendar year: > 750 m€ globally and > 25 m€ in France
- **Italy:** At a group level, for the prior calendar year: > 750 m€ globally and > 5.5 m€ in Italy

### Main exemptions

- **Austria:** Services already subject to the existing advertisement tax applicable to print, TV and radio advertisements; No other exemptions.
- **France:** Digital content, Payment services, Telecom services, Intragroup transactions
- **Italy:** Digital content, E-commerce, Payment services, Telecom services, Online financial activities, Intra-group transactions

### Taxable basis

- **Austria:** Fee received for the online advertisement services; Payments to unrelated parties rendering services that flow into the advertisement services can be deducted from the assessment base.
- **France:** Amounts collected/cash-in [no reference to GAAP] * ratio of local presence based on user location
- **Italy:** Total worldwide revenues from digital services (gross of costs and net of VAT and other indirect taxes.) * ratio of local presence based on user location (IP as presumption), Not clear the financial measure to be considered for identifying relevant revenues (collected/booked)

<table>
<thead>
<tr>
<th>Rate</th>
<th>Austria</th>
<th>France</th>
<th>Italy</th>
</tr>
</thead>
<tbody>
<tr>
<td>5%</td>
<td>3%</td>
<td>3%</td>
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## DSTs – Country Comparison

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<tr>
<th></th>
<th>Austria</th>
<th>France</th>
<th>Italy</th>
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</thead>
<tbody>
<tr>
<td><strong>Sunset clause</strong> (i.e. withdrawal in case of global consensus)</td>
<td>Obligation of the Ministry of Finance to periodically re-evaluate the law based on whether a consensus on the level of the EU or the OECD has been reached. No clear sunset clause though.</td>
<td>No.</td>
<td>Yes. Effective upon implementation in Italy of relevant legislation</td>
</tr>
<tr>
<td><strong>Safe harbour clause?</strong> e.g. low-margin / tax loss</td>
<td>No.</td>
<td>No.</td>
<td>No.</td>
</tr>
<tr>
<td><strong>Elimination of double taxation?</strong></td>
<td>No.</td>
<td>No.</td>
<td>No.</td>
</tr>
</tbody>
</table>
| **Payment date** | 15th of the second month following the month in which the tax liability arose (the month the advertisement service was rendered). | **2019 DST**: Single advance payment paid in Nov 2019 (and final balance payment due in April 2020)  
**2020 DST**: Option to defer advance payment to December 2020 | February 16 of the following year (e.g. 2020 due February 16, 2021) |
| **Creditable against local corporate tax?** | No, but it is considered a deductible business expense. | No.                                         | Yes, based on the assumption the DST does not qualify as an income tax. The deduction is available in the in the fiscal year of actual payment (i.e. for 2020, in FY 2021). |
| **DST group option?** | No. However, guidelines are expected to include some relief. | Yes.                                        | Obligation of naming a single entity for tax return and payment obligations |
## DSTs – Country Comparison

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<thead>
<tr>
<th>Entry into force / Status</th>
<th>Spain</th>
<th>Turkey</th>
<th>UK</th>
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<tbody>
<tr>
<td>Draft bill under discussion in Parliament envisaged for 2020, with payment due in 2021 (questions on whether this will be possible)</td>
<td>Entered into force on March 1, 2020 DST Communiqué published on March 20, 2020, effective March 1, 2020.</td>
<td>Entered into force 1 April 2020 Final legislation and initial guidance published 19 March 2020</td>
<td></td>
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<table>
<thead>
<tr>
<th>In-scope revenue</th>
<th>Spain</th>
<th>Turkey</th>
<th>UK</th>
</tr>
</thead>
<tbody>
<tr>
<td>Online targeted ads</td>
<td>Online advertising services;</td>
<td>Revenues derived from UK users in relation to (including associated online advertising revenues):</td>
<td></td>
</tr>
<tr>
<td>Transfer of user’s data for consideration</td>
<td>Sale of digital content and digital services related to those contents;</td>
<td>▪ the provision of a social media service,</td>
<td></td>
</tr>
<tr>
<td>Intermediation services (marketplace and matchmaking)</td>
<td>Services related to the provision and operation services of digital platforms where users can interact with each other; and Intermediation services regarding in-scope services.</td>
<td>▪ an internet search engine, or</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>▪ An online marketplace</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Revenue threshold</th>
<th>Spain</th>
<th>Turkey</th>
<th>UK</th>
</tr>
</thead>
<tbody>
<tr>
<td>At a group level, for the prior calendar year:</td>
<td>At a group level, for the prior calendar year:</td>
<td>Annual revenue thresholds:</td>
<td></td>
</tr>
<tr>
<td>▪ &gt; 750 m€ globally and</td>
<td>▪ &gt; 750 m€ globally and</td>
<td>▪ &gt;£500m of worldwide revenue from digital services activities</td>
<td></td>
</tr>
<tr>
<td>▪ &gt; 3 m€ in Spain</td>
<td>▪ &gt; 20 mTRY in Turkey</td>
<td>▪ &gt;£25m UK revenue</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Main exemptions</th>
<th>Spain</th>
<th>Turkey</th>
<th>UK</th>
</tr>
</thead>
<tbody>
<tr>
<td>Digital content (including intermediation)</td>
<td>Services subject to the treasury share payment;</td>
<td>Online financial marketplaces (e.g. facilitating trading of financial instruments, commodities or foreign exchange),</td>
<td></td>
</tr>
<tr>
<td>Payment services</td>
<td>Services subject to the special communication tax;</td>
<td>▪ Intra-group activities.</td>
<td></td>
</tr>
<tr>
<td>Telecom services</td>
<td>Services delivered within the scope of banking activities; and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Intragroup transactions (100% threshold)</td>
<td>Services within the scope of R&amp;D activities.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Taxable basis</th>
<th>Spain</th>
<th>Turkey</th>
<th>UK</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues obtained (net of VAT) * ratio of local presence based on user location (IP as presumption)</td>
<td>Gross revenue obtained from in-scope services (gross of costs and net of VAT and other indirect taxes.) provided in Turkey</td>
<td>Revenue recognised in the income statement (or in profit and loss) of the consolidated group accounts prepared using acceptable accounting framework</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Not clear the financial measure to be considered for identifying relevant revenues (collected/booked)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Not clear the identification of user location</td>
<td></td>
<td></td>
</tr>
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<th>Rate</th>
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<th>Turkey</th>
<th>UK</th>
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<tbody>
<tr>
<td>3%</td>
<td>7.5%</td>
<td>2%</td>
<td></td>
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<td><strong>Sunset clause</strong></td>
<td>Yes.</td>
<td>No.</td>
<td>No (just an obligation on HM Treasury to review before end of 2025 and prepare report)</td>
</tr>
<tr>
<td>(i.e. withdrawal in case of global consensus)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Safe harbour clause?</strong></td>
<td>No.</td>
<td>No.</td>
<td>Yes.</td>
</tr>
<tr>
<td>e.g. low-margin / tax loss</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Elimination of double taxation?</strong></td>
<td>No.</td>
<td>No.</td>
<td>50% relief for online marketplace transaction which is subject to an equivalent DST outside the UK</td>
</tr>
<tr>
<td><strong>Payment date</strong></td>
<td>TBC</td>
<td>By the end of the month following the relevant taxation period (the taxation period is a one-month period)</td>
<td>9 months and one day after end of company's first accounting period e.g. for group with calendar year end, first payment due 1 October 2021.</td>
</tr>
<tr>
<td><strong>Creditable against local corporate tax?</strong></td>
<td>Deductible expense as non-recoverable indirect tax (no express provision)</td>
<td>Yes, it can be treated as deductible expense for resident taxpayers.</td>
<td>No.</td>
</tr>
<tr>
<td><strong>DST group option?</strong></td>
<td>No.</td>
<td>No.</td>
<td>2%</td>
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