The EU Digital Services Tax (DST) Proposal

WIRTSCHAFTS UNIVERSITÄT WIEN VIENNA UNIVERSITY OF ECONOMICS AND BUSINESS

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Structure

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Turnover Taxes: An Interim measure?

- Economy digitalized now – existing rules cannot deal with!
- BEPS AP1 – considered this issue – 3 options:
  - Digital PE
  - Withholding taxes
  - Equalization levy (turnover taxes)
- Equalization levy – equal treatment of foreign, domestic suppliers – could be targeted to digital transactions – various options provided (digital platforms v. value contributed by users; only low tax v. credit against CIT)

Turnover Taxes: An Interim measure?

- India – first mover in 2016 – equalization levy enacted
- 6% levy on NR service providers – 'specified services' – received by Indian business or separate NR Indian PE
- As of today, only advertising services covered – may be extended per news reports
- Exemption where service provider PE in India, *de minimis threshold* (USD 1500) for non-business payments
- Deducted, paid by recipient, exempt from income tax

Objectives, aims, legal basis of the EU Proposal

- Commission – need for rejigging corp tax rules – digital economy – international, long term solution preferred
- But long term solutions take time – unilateral measures in place or planned in 10 Member States
- Unilateral solutions – further fragment single market, distort competition – harmonized 'interim' solution needed – also claim for consistency with "subsidiarity"
- Targeted measure – revenues – supply of digital services

Objectives, aims, legal basis of the EU Proposal

- Aims:
  - Protect integrity of internal market – proper functioning
  - Tax bases not eroded – public finances in EU sustainable
  - Social fairness – level playing field for all businesses in EU
  - Fight ATP - digital companies – no tax where value created
- Proportionality – set common structure – flexibility for administrative aspects

Objectives, aims, legal basis of the EU Proposal

- Legal basis – Art. 113 addressing indirect taxes, requiring unanimity – "adopt provisions for the harmonisation of …..indirect taxation to the extent…necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition"

- Fragmentation – reason stated for competence – but natural when State sovereignty – not clear how making functioning better since barriers created; not clear how preventing distortion of competition

Taxable revenues and taxable person

- Targeted tax – services where there is user value creation (advertising, collection/sale of data) or services allowing interaction of users for exchange of goods/services – user role more complex, monetizing user input – tax!

- Gross revenue from following situations included:
  - Placing ads on websites, software or apps (incl. 3rd party ads);
  - Providing a digital platform – users can find/interact with other users – ***may*** also facilitate supply of goods/services b/w them
  - Transmission of user data collected - websites, softwares, apps

- Google Adsense, Uber/AirBnB, Facebook – all covered!

Taxable revenues and taxable person

- Mere payment or communication services through digital interface – excluded – dependant on support software!
- E-commerce transactions, involving sales; intra-consolidated group transactions – outside scope
- If main purpose of making available own interface – supply digital content to users – excluded (only user-user)
- Taxable person – accrual thresholds – single entity/group:
  - Total worldwide revenues – exceed EUR 750 million per yr
  - Total EU revenues – exceed EUR 50 million per yr

Place of Taxation and Revenue Allocation

- Taxable revenues – deemed obtained – member State where users are located:
  - For ad services, State where member sees ad on device;
  - For digital platforms, State where users use a device **and** concludes underlying transaction or if not covered, State where user opens account allowing access to interface;
  - For data transmission, if data generated from device in State used to access website, software etc. and then transmitted the same tax year

Place of Taxation and Revenue Allocation

- Revenue allocation – divided again by type of service:
  - For ad services, proportion of total revenues attributed to the number of times an ad appears on device in State
  - For digital platforms, proportion of total revenues attributed to number of users concluded underlying transactions in State; where not applicable, number of users opened account in State allowing access
  - For data transmission, proportion of total revenues to number of users – data generated & transmitted – having used a device in State to access

Calculation and tax rate

- DST chargeable on proportion of taxable revenues obtained in one tax period by a taxable person as calculated per the Directive – due 1 day after end of period;
- 3% rate applicable for DST
- One stop shop system – one State – find taxpayer, collect tax, allocate tax

Discussion points

- Legal basis – Art. 113 – questionable – same as ATAD re: claims of improving functioning of market, competition
- How to measure 'value creation'? Why always user State even if just interacting in platform?
- If yes, why exclude certain other businesses (Amazon etc.) where users play key role as well?
- Also applicable in domestic cases – prevent EU law concerns – hard to see "equalization" from a turnover tax

Discussion points

- Is the allocation fair? For some digital platform services, place where users use account and conclude transaction not fair. For eg. AirBnB – what if property in 3rd State? – going beyond immovable property taxation norms!

- How about travelling users? For example, if a user makes an AirBnB booking while on a train from Austria to France via Germany; but booking, payment while in Germany?

- What if digital PE agreed on? How to dismantle tax? Biggest fear – temporary measures are never temporary!

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Thank You!