

# Corporate taxation of a significant digital presence

2018/0072(CNS) - 05/12/2018 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Economic and Monetary Affairs adopted, in the framework of the consultation procedure, the report by Dariusz ROSATI (EPP, PL) on the proposal for a Council directive laying down the rules relating to the corporate taxation of a significant digital presence.

The committee recommended that the European Parliament approve the Commission's proposal subject to the following amendments:

**Objective:** the proposal aims to ensure that the activities of digital businesses are taxed in the EU in a fair way. It would apply to entities, **irrespective of their size and where they are resident** for corporate tax purposes, whether in a Member State or a third country.

Members stressed the importance of putting in place a **fair and sustainable system of digital taxation**, which will ensure digital companies to pay their taxes where their real economic activity occurs.

The European Parliament concluded in its final reports of the **Committee of Inquiry** into Money Laundering, Tax Avoidance and Tax Evasion and the Special Committees on Tax Rulings and Other Measures Similar in Nature or Effect the need to address the tax challenges connected to the digital economy.

**Digital services:** digital services covered shall include the sale of goods or services ordered online via digital interfaces (e-commerce platforms). Digital services shall not include the services listed in Annex III.

**Significant digital presence:** for the purposes of corporate tax, a permanent establishment shall be taken to exist if a significant digital presence exists through which a business is wholly or partly carried on.

A digital platform would be considered to have a taxable 'digital presence' or a virtual stable establishment in a Member State if it meets one of the following criteria:

- the proportion of total revenues obtained in that tax period and resulting from the supply of those digital services to users located in that Member State in that tax period exceeds **EUR 7 million**;
- the number of users of one or more of those digital services who are located in that Member State in that tax period exceeds **100 000**;
- the number of business contracts for the supply of any such digital service exceeds **3 000**;
- the volume of data in the form of digital content collected by the taxpayer in a taxable year exceeds **10 %** of the group's overall stored digital content.

A taxpayer shall be required to disclose to the tax authorities all information relevant to the determination of the significant digital presence.

As establishing corporate tax rates is a sovereign decision of Member States, each of them retains the right to fix the corporate tax rate that will be applicable to digital services' revenues on its own territory.

**Profits attributable to significant digital presence:** Members believe that the profits attributable to or in respect of the significant digital presence shall be **proportionate** to the economic reality of the business activity in the corresponding Member State.

The economically significant activities carried out by the significant digital presence through a digital interface shall include, *inter alia*, the collection, storage, processing, analysis, exploitation, transmission, deployment and sale of data at the user level.

Member States shall allocate adequate staff, expertise and **budget resources** to their national tax administrations as well as resources for the training of staff to be able to attribute profits to the permanent establishment and to reflect the digital activities in that Member State.

In order to guarantee a uniform application of the Directive in the European Union, the **exchange of information** on tax matters shall be automatic and mandatory, as laid down by Council Directive 2011/16 /EU.

**Guidelines:** by the date of the entry into force of the Directive at the latest, the Commission shall issue guidelines for tax authorities on how a significant digital presence and digital services are to be identified, measured and taxed. Those rules shall be harmonised across the whole Union.

It shall issue guidelines with a clear methodology for companies to self-assess whether and which of their activities are to be counted into the significant digital presence. Members proposed that companies - whether established in the EU or outside – shall be able to **appeal** against the decision that the services they provide are digital services in accordance with national law.

The **European Parliament** shall be informed of the adoption of delegated acts by the Commission, of any objection formulated to them, and of the revocation of that delegation of powers by the Council.

**Implementation and review report:** the Commission shall evaluate the implementation of the Directive no later than three years after its entry into force and report to the European Parliament and the Council.

In this report, particular attention shall be paid to the impact of the system of taxation provided for in this Directive on Member States' revenues, the impact on users' personal data and the impact on the Single Market as a whole, with particular regard to the possible distortion of competition between companies subject to the new rules laid down in this Directive.