

Corporate taxation of a significant digital presence

2018/0072(CNS) - 13/12/2018 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 439 votes to 58, with 81 abstentions, in the framework of a special consultation procedure (Parliament's consultation procedure) a legislative resolution on the proposal for a Council directive laying down the rules relating to the corporate taxation of a significant digital presence.

Parliament approved 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 shall 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.

Given that data has become a new economic resource and that too often multinational companies that heavily rely upon digital activities make tax arrangements allowing them to avoid or evade taxes, Parliament stressed the need to develop a new approach in order to have a **fair and sustainable system of digital taxation**, which will ensure digital companies to pay their taxes where their real economic activity occurs.

Significant digital presence

For corporate tax purposes, a permanent establishment shall be deemed to exist where there is a significant digital presence through which an enterprise carries out all or part of its business.

Every taxpayer shall be required to provide the tax authorities with all the **information** necessary to determine the existence of a significant digital presence.

The data that may be collected from users for the purposes of applying this Directive shall be strictly limited to data indicating the Member State in which users are located, without allowing for identification of the user.

Profits attributable to or in respect of the significant digital presence

Members specified that the economically significant activities performed by the significant digital presence through a digital interface include, *inter alia*, the collection, storage, processing, analysis, exploitation, transmission, deployment and sale of user-level data.

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.

Based on these guidelines, the Commission 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.

Member States shall provide a mandate to the European Commission to negotiate tax treaties with third countries in accordance with the rules set out in this Directive, in particular as regards to the inclusion of the definition of a significant digital presence for tax purposes.

Implementation report and review

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 placed on the administrative burden and additional costs for companies and especially SMEs, 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.

The **Committee on the Taxation of the Digital Economy** (DigiTax Committee) shall verify and control the correct implementation of this Directive by companies. It shall draw up an annual report on its activities and findings and share it to Parliament, the Council and the Commission.

Lastly, the European Parliament shall be informed of the adoption of **delegated acts** by the Commission, of any objections to such acts and of the revocation of such delegation of powers by the Council.