



BRUSSELS | 22 MARCH 2021

ECOFIN Discuss EU Digital Levy Plans

At the [informal ECOFIN](#) meeting held on 16 March, Ministers discussed progress on agreeing a means of taxing the digitalisation of the economy at international level, and the current EU proposals to introduce a digital levy in order to introduce a EU-own revenue source to aid in the recovery from the economic impact of the COVID-19 virus.

Speaking at the meeting on behalf of the Commission, Executive Vice-President Dombrovskis stated *“We still need a global agreement on reforming the institutional system at the level of the OECD and G20. So we welcome the change of position by the new U.S. administration and remain confident of reaching a consensus by mid-2021. In parallel, as mandated by the European*

Council, we are continuing preparations for proposing an EU digital levy, to serve as an EU own resource by 2023. We will ensure that this will complement the OECD process and be WTO-compatible. The crisis makes it even more important to agree on the taxation of digital businesses and other issues such a minimum tax rate. This is both in order to secure much-needed tax revenues and to make sure that everyone pays their fair share of tax.”

The issue will be discussed further by EU leaders at the upcoming Euro Summit from 25 – 26 March 2021. A public consultation concerning the EU digital levy is ongoing, and input can be provided to an online questionnaire until 12 April 2021, via the [Have Your Say](#) portal.

European Court of Justice Dismisses EU Commission's Appeal in Turnover Tax Cases

The Court of Justice of the European Union has [dismissed](#) the European Commission’s appeal against the decision of the General Court that progressive turnover taxes imposed by Hungary and Poland on online retailers are not in breach of EU rules.

The ECJ dismissed the Commission’s grounds of appeal as manifestly unfounded, holding that the Commission had failed to demonstrate that imposition of a progressive turnover tax resulted in a manifestly discriminatory element, necessary to prove that a selective advantage was conferred in a breach of Article 107(1) TFEU.

The decision may well open the door for other domestic taxes to be imposed on digital activities. Significantly, the Court of Justice held in paragraph 41 that *“EU law thus does not preclude progressive taxation from being based on turnover,*

including where such taxation is not intended to offset the negative effects likely to be caused by the activity being taxed. Contrary to what the Commission maintains, the amount of turnover constitutes, in general, a criterion of differentiation that is neutral and a relevant indicator of the taxable person's ability to pay (see, to that effect, judgments of 3 March 2020, Vodafone Magyarország, C-75/18, EU:C:2020:139, paragraph 50, and Tesco-Global Áruházak, C-323/18, EU:C:2020:140, paragraph 70). It does not follow from any rule or principle of EU law, including in the field of State aid, that progressive rates may apply only to taxes on profits. Moreover, like turnover, profit in itself is merely a relative indicator of ability to pay. The fact that it may constitute, as the Commission contends, a more relevant or more precise indicator than turnover is irrelevant in matters of State aid, since EU law on that matter seeks only to remove the selective advantages from which certain undertakings might benefit to the detriment of others which are placed in a comparable situation. The same is true of the possibility of economic double taxation, linked to the combined taxation on turnover and taxation of profits.

The Court of Justice Press Release on the case is available [here](#).

UN Tax Committee Agrees Digital Services Model Tax Treaty Amendment

The subcommittee of the UN Tax Committee of Experts on International Cooperation on Tax Matters dealing with issues relating to the digitalisation of the economy has now [agreed](#) on amending the UN Model Tax Convention to include an Article which will attribute a taxing right for source jurisdictions for payments for automated services.

The proposed change to Convention will be tabled for discussion by the full UN

Tax Committee at the upcoming 22nd Session, scheduled for 19 – 28 April 2021.

The finalised text will be made available in due course via the Tax Committee's [webpage](#), together with other background papers and the agenda.

EU Political Agreement Reached on 1 Billion Euro Customs Control System

Last week the EU Parliament and EU Member States reached provisional political agreement on approving the Customs Control Equipment Instrument for 2021 – 2027, making over 1 billion Euros available for state of the art customs control equipment and processes aimed at identifying weak points at EU borders and reducing evasion of EU taxes and customs.

The Customs Control Equipment Instrument forms part of the Commission's [Customs Action Plan](#). Commissioner for the Economy, Paolo Gentiloni, said of the agreement: *“As our societies and economies evolve, customs authorities are facing new challenges such as the huge increases in international trade volumes, heightened risks of fraud and a growing number of imports of dangerous goods. Once up and running, the €1 billion package agreed today will support Member States with cutting-edge tools to help front-line customs officials deal efficiently with these challenges to our Customs Union.”*

Save the Date: CFE Forum - Tax Transparency, Exchange of Information & Digital Commerce - 6 May 2021

Save the date for the CFE Tax Advisers Europe Forum 2021, to be held virtually on Thursday, 6 May 2021.

The CFE Forum 2021 will welcome tax experts from practice and academia, as well as representatives from the EU Commission and OECD, and will comprise a two-panel programme examining direct and indirect tax issues facing tax advisers. The first panel will discuss cross-border exchange of information in the EU, and implications for taxpayers' rights, including use of information by tax authorities. The second panel will examine the topic of VAT in the digital economy, in respect of the abolition of distance sales rules and making platforms liable for VAT on sales from outside the EU.

More details about the timing of the panels, speakers, and how to register for the Forum will be made available in due course.

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