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To: European Commission
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Additional comments to the EBIT response to the European Commission's questionnaire on an EU Digital Levy

Brussels, 12 April 2021

Dear Mr Gentiloni,

EBIT's Members[1] thank the European Commission for the opportunity to provide additional comments to its questionnaire as part of its public consultation on an EU Digital Levy.

EBIT Members believe that reaching a global consensus on modernizing the international tax system, including key players such as the US, China and India, as well as the EU, is critical to bringing stability and the conditions for economic prosperity as we seek to recover from the COVID-19 pandemic. The last thing the global economy needs in this pandemic is protectionism, tariffs and trade wars. In this context it is very encouraging that progress is being made towards a consensus solution at the OECD on Pillar One and Two.

We do see a contradiction in the EU's approach: namely officially favouring a global solution while at the same time working on a unilateral, European-only measure which would come on top of ('complement') the global approach. EBIT Members are concerned that the EU's unilateral plans to develop an additional Digital Levy on companies doing business in the EU in parallel may pose a risk of needlessly complicating the OECD process, put EU businesses potentially at a disadvantage, will trigger additional compliance costs and result in double or multiple taxation.

It will be key to have clarity of objective regarding the EU Digital Levy and we would need more detail on who would pay and on what basis. Is the Digital Levy an income tax for which relief should be given under the treaties? The position of treaty partners is not known but is likely going to be negative as they will need to give relief for the Digital Levy - under the treaties or via an increase of the tax burden. This may lead to discrimination with bricks and mortar businesses which do not have the burden of the Digital Levy. Structuring the Digital Levy as a revenue-based tax (outside the scope of the treaties) would come with many shortcomings and risks which have been well-documented in the many responses to the EU's proposed DST directive and individual countries' DST initiatives. This would also raise the question of whether the levy would replace or complement existing national DST initiatives (to the extent these can continue to exist following an agreement on Pillar One or if there is no agreement). Companies in scope are already facing double and multiple taxation as a result of these measures (not to mention a significant additional administrative burden) and an EU Digital Levy would only add to this. A tax on digital B2B transactions within the EU

[1] EBIT Members include Airbus Group, BP, Caterpillar, Constellation Brands, Diageo, GSK, Huawei, International Paper, Johnson and Johnson, JTI, Naspers, PepsiCo, Pfizer, P&G, Raytheon Technologies, RELX, Schroders and SHV Group. For more information on EBIT see: www.ebit-businesstax.com

would mean a departure from the principle that tax systems are generally designed to avoid taxing business inputs, like, e.g., in VAT. This would negatively impact the take-up of digital practices in EU businesses. A corporate income tax top-up to be applied to all companies conducting certain digital activities in the EU may be the most straightforward option from a purely mechanical design perspective but it could have a damaging effect on investments in digitalisation and negatively impact economic growth. More generally, the Digital Levy would also create severe 'boundary issues' as in EBIT's Members' view there is no separate digital economy: increasingly all businesses are digital.

It is hard to see how a separate EU Digital Levy is 'compatible with' the OECD Pillar One initiative; these options are mutually exclusive. Any of the options under consideration in the European Commission consultation would constitute a 'unilateral measure' that would need to be abolished/abandoned as a condition for countries (notably the US) to sign up to Pillar One, in order to stabilise the international tax system. The Digital Levy would be duplicative and necessarily result in double taxation. Proposing to layer it on top of the OECD's Pillar One profit reallocation actually reduces the chances of reaching agreement at the OECD level. If the Digital Levy was to go ahead, a company already subject to a Pillar One allocation should be excluded appropriately from the levy to avoid double taxation as well as the additional compliance and administrative burden.

If, by contrast, the principal aim of the levy is to provide the European Commission with 'own resources', then it would make more sense for the European Commission to propose that a portion of profits falling to be reallocated under Pillar One (or else under some other mechanism such as Pillar Two or VAT receipts from digital transactions) are allocated to the European Commission directly. This would be a more sustainable long-term option rather than a separate digital levy that cannot survive the enactment by national governments of Pillar One.

As to the form of this public consultation, EBIT Members are of the opinion that the multiple choice questions in the online survey are difficult to answer and are sometimes ambiguous: often we do not agree with or cannot identify the premise of the question, which means at times the only answer can be "none of the above". For some questions this has also meant that we were unable to reach consensus. Hence, we have left the answers to a number of questions blank and thought it would be more helpful to provide a short narrative to accompany our answers as follows.

We believe that the tax systems in the EU are adapted to some extent to the challenges of a global and digital economy and that the case has yet to be convincingly made that (post-BEPS 1 and the 2017 US tax reforms) anything further is required. Further adaptations could be expected in light of any consensus among G20/OECD/Inclusive Framework countries (or a subset of them, perhaps comprising various EU Member States). No case seems to have been made for a 'complementary' levy on top.

In regard to the question of users participating in the creation of value of digital companies, e.g. by sharing their data, we believe that whilst raw input data is necessary and sometimes freely available it is of very limited use as such. Hence the real added value is only created by the company through further developing (for example cleansing of data, combining data sources, ...) and analysing that data.

We do not necessarily believe that digital companies are treated differently or that some digital activities are being taxed less by governments than non-digital companies of similar size, but that rather depends on the detail of individual tax systems. There's no evidence at all of any 'digital activities' being taxed less than non-digital, in conceptual terms or de facto. However, when it comes to corporate taxes, the PE rules are the same. Just because a company is taxed more in the US (say), where the value is created, and less in France (say), where the sales are made, doesn't mean that "digital activities" are taxed "less".

We wish to reiterate that the sale of user data by digital companies is taxed and that it is simply a question of *where* it is taxed.

The statement that many digital companies do not pay their fair share of taxes is wrong and potentially misleading in our view. There are several academic studies broadly showing that digital companies pay a slightly higher than average effective rate of tax than non-digital ones (if you look at the big household name tech businesses).[2]

On the question that tax authorities are not able to appropriately collect taxes on digital activities, we disagree but that is perhaps not the entirety of the question. There are tax authorities that are perfectly able to do so, and some that aren't. The IRS for instance does this very effectively. Again, there is only a question of allocation of taxing rights rather than ability to collect. From our day-to-day experience as tax practitioners, the most important challenge for businesses and national tax systems is the lack of understanding at governments/tax authorities of value creation and of constantly changing business models and the fact that there is no separate digital economy.

EBIT Members trust that the above additional comments are helpful and are taken into account. We are keen to continue to engage in further discussions and consultations on this important subject.

Yours sincerely,

European Business Initiative on Taxation – April 2021

For further information on EBIT, please contact EBIT's Secretariat via Bob van der Made, Telephone: + 31 6 130 96 296; Email: bob.vandermade@pwc.com).

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[2] See for instance:
https://www.copenhageneconomics.com/publications/publication/the-proposed-eu-digital-services-tax-effects-on-welfare-growth-and-revenues
Dr. Matthias Bauer, Digital Companies and Their Fair Share of Taxes: Myths and Misconceptions, European Centre for International Political Economy, ECIPE Occasional Paper, March 2018
http://ecipe.org/app/uploads/2018/02/ECI_18_OccasionalPaper_Taxing_3_2018_LY08.pdf .
Aqib Aslam and Alpa Shah, IMF Working Paper: Tec(h)tonic Shifts: Taxing the "Digital Economy," International Monetary Fund WP/20/76 at p. 70-71 (May 2020)