KPMG Meijburg & Co Tax Lawyers

ECOFIN discusses new French-German proposal for an EU Digital Services Tax

On December 4, 2018, the Economic and Financial Affairs Council of the EU (ECOFIN) held an exchange of views on the digital services tax, but failed to reach an agreement on a compromise text tabled by the Austrian Presidency of the EU. Member States also had the opportunity to comment on a last minute proposal presented by France and Germany that would reduce the scope of the tax to revenues for advertisement only.

Background

On March 21, 2018 the European Commission issued several proposals on "A Fair and Effective Tax System in the EU for the Digital Single Market" which included proposals for Directives on a digital services tax (DST) and on the introduction of a digital permanent establishment concept. Additionally, the European Commission recommended that Member States implement this concept in their double tax treaties (see our previous memorandum). However, the primary focus of the discussions over the last few months has been on the implementation of an EU-wide DST, with a goal of achieving consensus before the end of 2018.

According to the latest Presidency compromise text presented on November 29, 2018, the DST would apply as of January 1, 2022:

- to businesses that cumulatively meet certain thresholds (i.e. entities with a total annual worldwide revenue above EUR 750 million and a total annual revenue stemming from digital services in the EU above EUR 50 million),
- at the single rate of 3%,
- on gross income from certain digital services, including the supply of advertising space, making available of marketplaces, and the sale of user data.

Member States reached general agreement on most of the definitions and on the fact that, in principle, the collection of the DST should take place without the one-stop-shop mechanism. Further, the compromise text included the following amendments to the European Commission's initial proposal:

- The exclusion of regulated financial services entities from the scope of the DST, and
- The addition of a "sunset clause" and a "review clause" whereby the directive will expire as soon as a solution to the challenges arising from digitalization is reached at the OECD level.

Although the majority of Member States had already indicated they could support this compromise, some delegations continued to raise their objections. In this context, Member States were given the opportunity, during the ECOFIN meeting, to comment on a last minute proposal presented by France and Germany. According to a joint declaration, France and Germany agreed to focus the scope of the DST on revenues from the supply of advertising space only, and to submit - in a second step - proposals on taxing the digital economy and on minimum taxation, in line with the work of the OECD.

Most Member States that participated in the debates were open, with various degrees of support, to discussing this new initiative. Nevertheless, some countries expressed clear opposition to the Franco-German initiative as it stands. This group included Estonia and Sweden, with Ireland underlining "strong principled concerns" on the proposal. Member States therefore failed to unanimously agree on the EU DST.

It is now expected that the technical working groups of the Council will draft a juridical text that reflects the Franco-German initiative, with a view to adopt a final text by March 2019. The formalized text should take the form of a compromise text on the current EU Commission's proposal. At this stage, it is not foreseen that the Commission will present a new proposal.

Meijburg & Co comment

The Franco-German initiative largely reduces the scope of the DST, covering far fewer companies compared to the initial DST proposal. Based on the Franco-German initiative, companies with no revenues from the supply of advertising space would be off the hook for the time being, as far as the EU DST is concerned. Large companies with significant revenues from the supply of advertising space and that are subject to DST may be faced with a 3% tax on turnover as of January 1, 2021, if an international solution has not been agreed at the OECD level and transposed into EU law by 2020. Nevertheless, it remains to be seen whether all Member States will be able to agree on the new proposal put forward by France and Germany, and particularly whether Romania, which will hold the upcoming Presidency of the EU, will maintain political momentum on this topic. However, failure to reach an agreement on this issue is likely to trigger a multiplication of unilateral initiatives. Italy, Spain and the UK have already announced their intention to introduce a tax on digital services, if a compromise is not reached at the EU level. It is also worth noting that Germany seems to favor a debate on minimum taxation at the OECD level, as an alternative to the implementation of an EU-wide DST.

Should you have any queries, please do not hesitate to contact your Meijburg & Co tax advisor.

Meijburg & Co
December 2018