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To Tax Policy and Statistics Division, Centre for Tax Policy and Administration

Comments on the OECD's Consultation Document "Addressing the Tax Challenges of the Digitalisation of the Economy"

Technology Industries of Finland and its member companies are grateful for the opportunity to provide comments to the OECD's consultation document in question, published 13 February 2019.

Technology Industries of Finland represents Finnish technology industries and has over 1,600 member companies, sizes varying from small SMEs and start-ups to world leading MNEs.¹ The technology industry is comprised of five sub-sectors: electronics and the electrotechnical industry, mechanical engineering, metals industry, consulting engineering and information technology. Technology industry is the most important export industry in Finland, with operations constituting over 50 % of all Finnish exports and responsible for 70 % of all investments in R&D carried out in Finland. Nearly 300,000 Finns work in technology companies, while a total of around 700,000 people work in the technology sector directly or indirectly (of a total population of 5,500,000).

1 Key Messages

- Technology Industries of Finland acknowledges that an **international solution to ensure the taxation rules are fit for the 21st century is needed** and that the OECD is the optimal party to review the appropriateness of the current international tax framework, and to achieve global consensus and alignment of rules.
- As was agreed already in the OECD BEPS Action 1 report, the **digital economy should not and cannot be ring-fenced**. The whole economy is being digitalised. Attempts to describe specific "digital business models" will be out-dated, discriminatory and increase complexity and administrative work for both companies and administrations. Separate sets of rules will not promote the goals such as fairer, more effective and efficient taxation, tax certainty or even prevent tax avoidance.
- Much of global growth and wellbeing is due to the uptake of digital technologies. **Taxation should support, not hinder digitalization and digital economy**. The world is borderless and globalized. Trying to create artificial borders to digital economy functions is impossible.
- To safeguard the principles of fairness and integrity in tax policy, any tax on the activities of corporations **should be linked to profit, not revenues**.
- Changes to taxation **must not result in double taxation**. All changes must be linked to **effective dispute resolution methods**, such as multi-lateral mandatory binding arbitration. To be effective, clear deadlines for the processes should be introduced, binding also to the authorities. There should be concrete mechanisms proposed in the final proposal.
- Technology Industries of Finland supports the OECD efforts to continue the work concerning possible remaining BEPS challenges. The basic idea of the minimum tax proposals is fairer to companies and jurisdictions than the pillar 1 proposals. It should be **discussed whether some harmonization to the calculation of tax bases might be supportable**. Limiting

¹ Information on Technology Industries of Finland in English: <https://teknologiateollisuus.fi/en/technology-finland-0>

Full list of Member Companies: <https://teknologiateollisuus.fi/en/membership/member-companies>

the variation of different tax systems would reduce the administrative burden of companies and enhance digitalization and automation of taxation procedures.

- Digital technology should be seen as an opportunity also to the countries. **Digitalisation and automation of taxation procedures could lead to notable savings** both to companies and tax administrations, as well as reduce tax gaps and tax evasion.
- Minimum tax proposals would in principle target the whole economy, being more sustainable and less discriminating. Also fighting against harmful tax practises is a valuable aim. **The income inclusion rule seems to have advantages and is a potential model to be further discussed.** Technology Industries of Finland **supports the discussions to take the current CFC rules as a starting point to draft common CFC rules globally.** However, before proceeding with the minimum tax proposal, an impact analysis should be made on the necessity of further BEPS measures.
- Even though the minimum tax proposal's overall idea is interesting and fairer, there is a significant risk that the final model would be a difficult and burdensome. The OECD, EU, countries and companies have invested great effort in combating harmful tax practices. We have yet to see how successful these new measures will be in reaching the desired outcomes. Before agreeing on any proposals, **a sound and thorough impact analysis should be made on the necessity of further changes.**
- Only a global solution is sustainable and suitable for updating the taxation rules and answering the challenges caused by digitalisation. Any unilateral measures would harm the global economy. Thus, we suggest that any global consensus includes an explicit **agreement to abandon all unilateral measures** (eg. Diverted Profits Taxes, Digital Services taxes etc).
- All of the pillar 1 proposals suggest that an amount of profit can be allocated to user or market jurisdiction, irrespective of whether there is a PE. The mechanism to achieve this is not defined. **Further information on the procedural elements would be needed before this can be commented.**
- Some of the OECD proposals resemble the EU proposals of Digital Services Tax, Digital Permanent Establishment and CCCTB. As the OECD proposal at this stage lacks specific details of the models, comparison to the EU proposals have been made to analyse problems that would arise if the OECD model would have similar elements.

2 Profit allocation and nexus rules (pillar 1)

The first part of the report introduces three proposals targeting the challenges identified in the current profit allocation and nexus rules. All proposals would expand the taxing right of user and market jurisdiction, causing fundamental changes to the current international taxation principles. The OECD describes the broader tax challenges relating to the allocation of taxing rights in a highly digitalised business to be:

1. scale without mass - to reduce the number of jurisdictions having taxing rights,
2. a heavy reliance on intangible assets - allocating income from intangible assets to low or no tax jurisdiction entities,
3. data and user participation - highly digitalised business exploiting data and user-generated content, while having little or no taxable presence in the user jurisdiction.

The Public Consultation Document **lacks thorough reasoning on how allocating more taxation rights to user or market jurisdictions improves the taxation system to address the tax**

challenges of the digitalisation of the economy. It also overrides the arm's length principle as an established international standard for taxation of related enterprises. The proposals, for example, do not take into consideration the important/fundamental role and heavy investments to developing intangible assets before any user participation or marketing intangibles occur. In addition, it ignores or even contradicts the importance of the DEMPE functions. Any solution needs to adequately reflect the important role investments in intangible assets make in creating value for the enterprise.

It would be imprudent as a tax policy matter to endorse reallocating the corporate income tax base towards the country of consumption. Over time, such policy will shift the income tax base to major importing states globally, eroding tax bases of export-led and smaller economies. Some countries will view such a move as an invitation to tax imports from other sectors. Today, the taxes are principally paid to the country where the value is created. **In digital businesses value is created through research and development.** R&D-functions require highly educated and skilled employees. All education costs and contributions to digitalization would be a cost to member states and companies, but there would not be taxable income to match these costs.

Finland is a small, exporting country with high R&D intensity and widely digitized economy. All of the pillar 1 proposals would result in Finland (and the countries like) losing considerable amounts of tax revenues.²

Allocating taxation rights to the user or market jurisdiction does not encourage risk-taking or entrepreneurship, as governments in customer countries are getting compensation before owners and creditors, who have financed building of the start-ups. Neither it is fair for the country, where the business has been ramped-up. Governments will be less inclined to incentivise R&D and innovation if the reward from those activities is allocated to the country of the customer which has not borne any of the costs of generating that development e.g education, infrastructure.

Global tax rules of today are complex and ensuring compliance with all of the different requirements of countries is costly. This is especially difficult for SMEs and start-ups as they do not have the funds or personnel to invest in non-productive functions. It is reasonable for a group to allocate the ownership and income from intangible assets to only a couple of countries. The more countries the intangibles are scattered, the more tax disputes and double taxation. If the problem is that income is allocated to low or no tax jurisdictions, this should not be claimed to be solved with changing nexus and profit allocation rules. It is a question of tax avoidance and should be discussed under the proposals in pillar 2 (minimum tax).

Taxation will be more difficult and unpredictable if the nexus and profit allocation rules are tied to the unpredictable factor of user participation. Taxable income could be allocated to a country where there are no actual funds to pay the tax. Departing from the "arms-length" principle for a specific profit allocation rule whilst retaining it for all other transactions creates complexity for both companies and tax administrations. Complex taxation is costly, does not enhance growth, new innovations, wellbeing or tax certainty.

In addition, the **global taxation system must be considered in its entirety.** Indirect taxes (e.g Value Added or Goods and Services taxes) generate significant taxes in the residence country of

² More on the effects of the marketing intangibles proposal's effects to small open countries with high-intensity R&D exporting sectors, such as the Nordic countries, but also bigger countries such as Germany and the US. Future Taxation of Company profits – What to do with Intangibles? by Sigurd Næss-Schmidt, Palle Sørensen, Benjamin Barner Christiansen, Vincenzo Zurzolo, Charlotta Zienau, Jonas Juul Henriksen and Joshua Brown, Copenhagen Economics, 19 February 2019.

the customer. Larger markets with more consumers naturally receive a larger share of such Indirect Taxes. This should be borne in mind when considering proposals which will result in shifting tax revenues away from smaller research and development intensive exporting countries. Also, similar type of problems, as value added taxation has faced over the years, could be triggered, for example related to tracking the location of the customer. VAT can be a comparison point also in the question of implementing new legislation. It is not sufficient to have harmonization in theory, but the **jurisdictions must harmonize the laws also in practice** for the rules not to cause unbearable compliance burden to taxpayers.

2.1 User participation proposal

First proposal introduces an idea, that in certain highly digitalised business models value is created from active and engaged user participation and soliciting this user data. Business models achieving significant value from this source would include:

1. social media platforms;
2. search engines;
3. online marketplaces.

The user participation proposal includes many of the same problems, as the widely discussed and disputed EU digital services tax (DST). Trying to shape separate rules for certain business models will only result in increasing compliance costs, tax burden and tax disputes. In the worst case, it will hinder the growth of the overall economy and reduce investments to digitalisation. It could lead to inequitable differences in the tax treatment between companies, even discrimination.

- The business model examples given in the proposal describe only a part of digitalised economy. If taxation rules of the digital economy would be applied only to these, the “digital economy” -concept **will be outdated** even before the new set of taxation rules is implemented. Certainty regarding the scope of any targeted measure would also be critical for tax administrations, which are called upon to administer tax laws in a consistent and equitable manner. Non-sustainable tax rules result in a massive addition to the compliance and software costs both for the tax authorities and companies.
- The user participation proposal would modify the current profit allocation i.e. transfer pricing rules to require, for certain businesses, that an amount of profit be allocated to jurisdictions in which those businesses’ active and participatory users are located, irrespective whether those businesses have a local presence. It also dismisses the use of the arm’s length principle and directs to use a kind of residual profit split. The proposal is not effectively disclosing how to calculate the routine remunerations, how to allocate residual profit to user participation and how to deal with the remaining residual profit, comparability of the intangibles.
 - This would be a clear step away from the prevailing international consensus on the arm’s length principle and the transfer pricing methodology under Article 9. Based on transfer pricing rules the first step is, based on economically relevant characteristics, to accurately delineate the transaction. The second step is comparing the accurately delineated transaction with comparable transactions between independent parties. In this process functions performed, risks assumed, and asset employed are taken into account and taxation is based on value creation. In transfer pricing methodology there are 5 transfer pricing methods, one of them being profit split method. Within profit split method it is possible to apply residual profit split

where routine functions are remunerated based on other transfer pricing methods and residual profit is allocated between value creating functions.

- As mentioned in the consultation document, significant challenges exist if the calculation should be done at the level of an individual business line. For a company/group having multiple business lines, this would be a significant additional administrative work, as the company does not need such information for its business management. Thus, the amounts are not collectible from the companies' ERP systems and this calculation would be an unnecessary and additional burden. Already under the current taxation system there has been tax administrations challenging the value allocation of different services and products. In order to be at least slightly accurate, the group should allocate just one business function per company. Understandably this is impossible and unreasonable.
- Allocation of profits between user jurisdictions might be based on e.g. revenues. Even though it is understandable that there is a temptation to use numerical metrics, to try to make the tax model easier. However, revenues do not mean profits. Thus, the loss-making company might end up in a taxable position. In addition, models based on the revenue of each company, makes group companies having a different business model unequal (e.g. the R&D hub or headquarter compared to a sales company).
- The document introduces an idea that also non-routine losses might be allocated to user jurisdiction. In principle, there is a possibility to allocate residual losses also under the current transfer pricing rules. However, the countries are understandably very reluctant to do so. Thus, it is not likely that residual losses would be re-allocated.
- The user participation -model **poses concerns with respect to tracking user location**, see more under heading "GDPR".
- Digitalised companies and businesses form ecosystems, where companies are dependant from each other and also benefit from this interaction. An additional tax targeted to some companies in the ecosystem will inevitably impact other companies as well in this ecosystem.
 - Because of the flow down effect of most turnover-based taxes (e.g. VAT), we are also concerned that **SMEs will bear much of the tax burden** and will see their costs increase when advertising and/or selling their products using platforms subject to the tax.
 - They would also **raise the cost of digital services** (e.g., cloud services), which are critical to the future growth and competitiveness of the economy and businesses in every country. Such taxes could be particularly harmful for low-income countries and for smaller market jurisdictions generally.

Considering these constraints, Technology Industries of Finland **does not support the user participation proposal**.

2.2 Marketing intangibles proposal

The second proposal is based on the concept of marketing intangibles. On the contrary to the other pillar 1 proposals, the marketing intangibles proposal would concern the whole economy, not ring-

fencing digitalised business models. Even though this would target a wider group of companies with a possibly complex and costly new taxation model, the marketing intangible proposal is more sustainable and less discriminating. Similar taxation rules should be applied for all companies, not targeting just some companies and business models.

This being said, the marketing intangibles proposal is problematic for similar reasons as the user participation proposal. The aforementioned research of Copenhagen Economics describes and analyses the specific problems of the marketing intangibles proposal, causing countries like Finland to lose a substantial share of corporate income tax revenues. Other significant problems the marketing intangibles proposal would create (repeated in all of the pillar 1 proposals): jurisdictions' incentives to invest in high-growth, high-risk and R&D-intensive industries would reduce when possible success would result in high revenues being allocated to user/marketing jurisdictions, while losses would remain in the resident jurisdiction. Compliance requirements and costs as well as tax uncertainty would also be increased significantly.

- The marketing intangibles proposal does not provide rules for defining the concept of marketing intangibles, calculating non-residual profit, or how the value of marketing intangibles would be determined. Should the marketing intangibles proposal be further discussed, a clear, unambiguous definition of marketing intangibles is indispensable so that the scope of the proposal is clear. A company that has a strong brand and valuable marketing intangibles has usually also invested heavily in trade intangibles and R&D. Technology Industries of Finland strongly suggests that **marketing intangibles are narrowly defined, and trade intangibles should continue to be rewarded under existing transfer pricing rules. Trade intangibles must be fully excluded when determining marketing intangibles.**
- Clear and undisputable definition of "marketing intangibles" is of utmost importance but difficult. If a marketing intangible could be defined, the DEMPE-analysis could be used.
 - The proposal seems to suppose that there is a definition of intangible rights. However, no clear definition exists and depends on each jurisdiction's own interpretation and legislation. This will cause a multiplying possibility of interpretation and valuation error. Clear guidance is required.
 - In the current OECD transfer pricing rules the concept of "marketing intangibles" is already used. There is a significant risk of misconstruction if for the same term is used in traditional arm's length analysis and new legislation. "Marketing intangibles" -term is now used as a top category for immaterial rights. Some of the intellectual property rights (for example trademark, brand name) can be somewhat defined and legally protected. Some of the intangibles suggested to be included in the marketing intangible are different (for example customer data, relationships and lists).
 - Thus, the concept seems to include intangibles already subject to current transfer pricing rules, resulting in significantly increasing administration burden and double taxation.
- Allocation of non-routine returns from marketing intangibles would apply regardless of which entity legally owns the marketing intangibles (the proposal even seems to indicate that the marketing intangibles are owned by the local entity), controls DEMPE functions etc, carries the risks. Analysis should be undertaken to determine how group companies will receive the relevant information and have the means to pay the taxes, if they do not bill and receive the income generated by the marketing intangibles.

- It is not reasonable to say, that a new marketing jurisdiction has generated value to a company's already strong brand from day one the company starts marketing operations there. Otherwise, the marketing intangible proposal is a tax for a valuable brand.
- The proposal leaves open whether the model is applicable to all types of situations and tax payers or if the remuneration is e.g. EBIT or cost based the marketing and sales expenses are covered by the entrepreneurial entity.
- **It should be discussed whether there should be divergence between B2B and B2C business transactions.**
 - Most business-to-business transactions do not involve marketing intangibles in the location of ultimate consumption. The seller may not control the location of market consumption. For example, business to business sales of raw materials, component parts, services and other items consumed in production by business purchasers, may have no correlation to the location of ultimate consumption. Moreover, the seller may lack access to information to identify the ultimate market jurisdictions. Therefore, there is less conceptual justification in the business-to-business context for deviating from the arm's-length standard and existing transfer pricing principles (as enhanced by the BEPS actions).
 - For B2C businesses, the markets/users are in a much more significant value-creating role than for B2B businesses, for which e.g. the number of potential customers is often much more limited to start with. Also, generally speaking B2B businesses compete much more based on technological advancements (trade intangibles), whereas branding and equivalent activities (marketing intangibles) are much more relevant for B2C businesses.
- Also concerning this proposal, the global taxation system must be considered in its entirety. **Marketing actions are done in order to sell** services and products in that market jurisdiction. Successful marketing increases demand and generates sales of services and products in the jurisdiction. Such **sales are typically subject to value-added taxation or similar**, generating tax revenues in country. This is especially true if the model were to be limited to B2C sales.

Technology Industries of Finland **does not support the significant economic presence proposal.**

2.3 Significant economic presence proposal ("SEP")

The SEP proposal appears to aim to introduce rules for a concept of a digital permanent establishment (based on significant economic/digital presence). This resembles the long-term digital taxation proposal of the EU Commission. The OECD report describes that the SEP proposal was revisited more recently than the other two proposals under pillar 1. Thus, the proposal is at a more high-level than the other proposals. It also lacks concrete mechanics and leaves open the scope as to types of transactions covered as well as possible thresholds yet to be defined.

- **Trying to introduce a specific list of transactions will make the approach unsustainable as business models change constantly.** In addition, targeting only some actions could be discriminatory. On the other hand, broad definitions would create uncertainty as companies and tax authorities grappled with whether particular activities

were in scope. Companies would be required to adjust their systems so, that they could track their revenues by the particular categories. This will be an additional, expensive burden for the companies. Broad scope also risks slowing the take-up of innovative technologies across all sectors by penalizing businesses that seek to take advantage of digital technologies.

- On the other hand, introducing a wider concept of digitalized business might **extend the taxation model to rapidly digitalizing “traditional economy”**, leading to difficult and burdensome compliance costs and double taxation. In many cases, “digitisation” involves the use of technology and automation to increase operational efficiencies or replace routine or administrative functions, which do not fundamentally change how enterprises generate revenues.
- Some of the factors are limited by consumer protection legislation: eg. the law might require a company to have a website in local language, allow payment in local currency, legislate the means of delivery. To have tax implications depending on local consumer protection legislation is problematic.
- The digital economy is also about trying to find more efficient ways of business. The **environmental aspect** should be taken into consideration also when analysing the SEP proposal. Making digital, environmentally sustainable solutions less appealing might have negative effects.
- The SEP proposal leaves open whether some thresholds should be introduced. If a 'significant economic/digital presence' would be deemed to exist based on some specific revenue or customer threshold, these limits should be carefully analysed, taking into account different business models and sizes of markets.
- In comparison, in the EU digital permanent establishment -proposal, a PE is deemed to exist if one of the limits of 7 million euros revenue, 100,000 B2C users or 3,000 business contracts is exceeded. The limits are set to exclude small presence (and SMEs). However, the thresholds do not fulfil that goal.
 - 100,000 consumers are 0,03% of the population of the US, but 25 % of the population of Malta.
 - A consumer game or licence to use a software can have a price of 1 €, which would mean that the limit of 100,000 users means a turnover of only 100,000 €.
 - Contract is defined as a business contract if it is used for carrying out business. There is no limit on how big the client company should be or any minimum limits for the value of purchase. Internet security service to a small, 1-10 person employing firm costs approximately 20-50 € per year, summing up to a turnover of 60 000 € – 150 000 €.
- As a simplified method for allocating profit, the SEP contemplates using a fractional apportionment approach. A withholding tax is contemplated as a collection mechanism.
 - a) Fractional apportionment method: Once determined the tax base would be allocated based on defined factors, for example sales, assets and employees (thus, resembling the EU Commission proposed Common Consolidated Corporate Tax Base (CCCTB) -model). Any simplified apportionment factors would need to account of the value creators of the digitalised economy.

- The CCCTB attribution formula being a percentage calculated based on amounts of tangible assets, employees and sales by destination does seem to fail to allocate taxable profit where the value is created based on the OECD current TP rules. This is especially true concerning digital economy companies, where tangible assets are less relevant, and the businesses derive much of their value from intangible assets. The apportionment formula does not encourage member states to invest in digitalization and new technologies, R&D etc.
- The CCCTB apportionment formula does not value environmental issues, efficiency, productivity, value add. It does not give weight to benefits of circular economy, digitalization, automatization, robotics etc. It could hinder the companies' incentives to find environmentally friendly, effective solutions if the taxable income is allocated e.g. based on tangible assets.
- CCCTB could also lead to inefficient group structures: equity and assets trapped to companies (and not to investments), personnel and fixed assets (or leasing/renovation costs) located in countries with the lowest tax rates.
- The CCCTB formula does not recognize the value creators of digital economy.
- Technology Industries of Finland suggests that an apportionment method similar to the CCCTB formula is not to be proposed.

b) Withholding tax (WHT): WHT is levied on gross basis and excess WHT can be claimed to be refunded. The refunding process usually is time consuming, or the double tax remains a final expense, in case not refunded or credited. The refund process might also lead to tax fraud, as has been witnessed in some countries. Being gross basis a WHT targets also companies in a loss-making position, such as start-ups. These loss-making companies will not have the capacity to cover for the additional tax burden, which will force them to increase their prices towards their customer or cut other expenses, such as investments or employment costs. Depending on what type of transactions would be covered in the model, individuals might become a group targeted. Obligations to report all the payments to the tax authorities and proceed with the myriad payments, repayments and tax returns of related taxes concerning would result in a massive addition to the work load of the tax authorities and significantly disincentivise cross-border e-commerce.

3 Taxation where the value is created and monetary payments take place

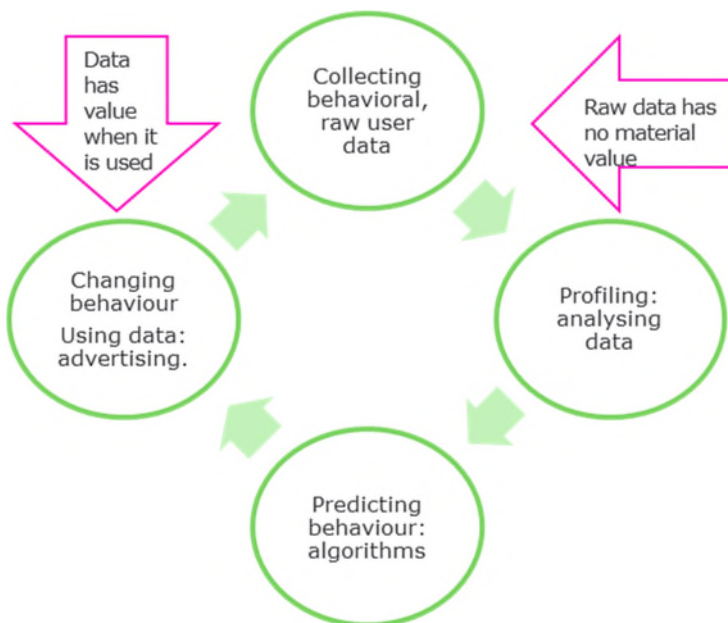
Under the current OECD TP rules, an essential principle for a fair taxation is to ensure that a business pays taxes where its profits and value are created and generated. Technology Industries of Finland agrees that this established principle is the reasonable way to allocate taxable profits and value. Where value is created cannot differ based on whether the good or service is delivered digitally or physically.

The digital economy relies heavily on intangible assets, which are becoming more and more the value drivers within multinational groups and which are difficult to identify and value. Technology Industries of Finland is strongly of the opinion, that the solution to this challenge cannot be that intangible assets will be afforded less weight in the future when determining where taxation rights lie. In the pillar 1 proposals value creating functions of users is emphasized but there is no discussion on the value creation provider and creator of the platform and/or the brand etc. in the first place. From TP perspective creating unique and valuable intangibles (+DEMPE functions) is generally acknowledged as value creating.

In considering how and where value is created by digital businesses, it should be borne in mind that raw user data has no material value. Pure existence of users or advertisements in certain country do not contribute to value creation. Data has value when it is used. Any value that user data may have arises from its aggregation, organization, and analysis, which does not occur at the user's location. Even the enterprise's work of collecting raw data occurs through equipment and systems not located or developed in the users' jurisdiction. The collection and analysis of data on customer preferences long predates and is not unique to digital means of doing business. Accordingly, we do not believe the collection of data creates value at the location of the user.

Also, a valid discussion that should be considered is whether personal data can even be passed on or sold. A person continues to have rights for his/her own personal data and data does not "get worn out" but can be used multiple times for various analysis.

The problems linked to GDPR are discussed below. Introducing legislation based on personal location data would trigger similar types of questions as has been discussed and which value-added taxation legislation has had challenges for years. **It is noteworthy that VAT is transaction-based tax, and thus there is always a monetary payment to track, which would not be the case with the now proposed taxation models.**



4 GDPR

The GDPR came into force in May 2018. The aim is to protect the EU citizens from privacy and data breaches. Under GDPR, personal customer data is for example name, email address or IP address. Companies should limit the amount of personal data stored, to only sufficient amount of data relevant and reasonable to business, for specified purposes. All irrelevant personal data must be destroyed, when not needed anymore.

The OECD proposals in pillar 1 suggest that company's tax liability would be triggered based on where the customer or user is deemed to be located, requiring a lot of location and behavior information to be collected and stored for an indefinite time. At a time when society is questioning

the amount of personal data that is retained by companies, it seems to be quite a surprising course to take – to base the calculation of a new tax on personal location data, requiring companies to store vast amounts of personal data for tax compliance purposes.

Various Finnish organisations and individuals are founding members of MyData³, a Nordic model for human-centered personal data management and processing. The idea is to open new business opportunities to develop innovative personal data services, while at the same time strengthening digital human rights and individuals' rights to control their own data. Linking taxation to user location data would in principle mean banning privacy enhancing technologies. If, on the other hand, data security is considered important, the users must be allowed to use applications blocking tracking (eg. VPN-applications). VPN allows a user to change the virtual (IP) location. This would create a possibility to allocate users to a country of low taxation.

5 Global anti-base erosion proposal (pillar 2)

The OECD also proposes models to address the continued risk of profit shifting to entities subject to no or very low taxation. Contrary to the pillar 1 proposals, where the question is "Where do you pay taxes?", the question to be answered in pillar 2 is "Do you pay enough taxes somewhere?" Both of the proposals aim to ensure that a company pays a "reasonable amount" of tax globally. The proposals are not limited to highly digitalised businesses, making them more sustainable and not as discriminating.

Technology Industries of Finland supports the OECD efforts to continue work concerning possible remaining BEPS challenges. The basic idea of the minimum tax proposals is fairer to companies and small export driven jurisdictions, such as Finland, than the pillar 1 proposals. Finland's corporate income tax (CIT) system is based on the idea of wide tax base and relatively low tax rate. The tax procedures are kept simple, digitalized and automated as much as possible to avoid administrative burden and tax disputes. The CIT rate is 20 %, there are few tax incentives, so the effective tax rate is close to 20 %. Should the minimum tax model reduce taxable income allocation to no or low tax jurisdictions, it could make Finland a more competitive environment³ for companies to reside and do business.

The proposal leaves open the questions on what the minimum tax rate is and how it would be determined. If the minimum tax rate is calculated similarly as in CFC rules (e.g. 3/5 of each country's nominal tax rate) there might be an incentive to keep CIT rate high. Likely a hypothetical question, but worth a quick thought: should there also be a maximum tax? The pillar 1 models would allocate more taxing rights to the user/market country, and taxable income would be attributed irrespective of the tax rate of that country. Should country B have its own tax rate at a level of 34 %, the tax rate of Finland would be considered too low ($3/5 \times 34 \% = 20,4 \%$) and the income could be subject to taxation also in country B. Thus, the minimum tax rate must be calculated based on effective tax rate, not nominal, which is of course more difficult.

For the companies, administratively "proving" the effective tax rate in another country might be impossible without causing material compliance/administrative costs. Also, the schedule for preparing local statutory financial statements is time-wise "lagging behind" and not available when the actual payments are made.

It should be discussed whether some harmonization to the calculation of tax bases might be supportable (similar basic idea as the CCTB (two Cs, not three) proposal in the EU. Limiting the

³ <https://mydata.org/>

variation of different tax systems and tax incentives would also make the administrative work easier for companies. This would also enhance simpler taxation processes and tax certainty. See more under topic "Digitisation and Automation of Taxation".

Even though the minimum tax proposal's overall idea is interesting and fairer, there is a risk that the final model would be difficult and burdensome, causing double taxation to the companies already paying a reasonable amount of taxes. The OECD, EU, countries and companies have invested great effort in combating harmful tax practices. We do not have enough experience on how successful the new measures will be in reaching the desired outcomes, but it can be reasonably expected that they remove main material planning alternatives. That has at least been the promise from policy makers. Therefore, it would be beneficial to give the new measures fair chance before launching new and potentially harmful measures. Before agreeing on means included in the minimum tax proposal, **a sound and thorough economic impact analysis should be made**, taking into account changes in corporate taxation due to eg. BEPS, US tax reform, ATAD. Also, an analysis what the costs for implementing the proposals would be or what might be the impacts on trade, jobs, growth, compliance costs etc. to eg. the resident (often HQ) jurisdiction vs. market jurisdiction, export vs. import countries, small vs. big countries and developed vs. developing countries. It should be discussed whether the current transfer pricing methodology could be used to achieve the possibly needed changes.

There are a lot of issues left for further discussions (for example the mechanics, level and calculation of minimum tax, possible limitations to the scope, thresholds, thick-cap rules) making it difficult to comment in detail. Technology Industries of Finland thus presents only the following high-level comments on the minimum tax proposals.

5.1 Income inclusion rule

Income of a foreign branch or other controlled entity would be taxed, if that income has not been subject to tax at a minimum rate in the resident jurisdiction of that branch or entity. This rule is described to supplement the current CFC rules and to draw on aspects of the US GILTI regime.

- Technology Industries of Finland questions the need to have supplementing rules and instead **supports the discussions to take the current CFC rules as a starting point to draft common CFC rules globally**. Having different definitions and conditions would result in double taxation and tax disputes, when companies would possibly have a CFC and/or minimum tax and/or GILTI rules triggered.
- If designed as global CFC rules, the income inclusion rule seems to have advantages and **is a potential model to be further discussed**. The model may not require fundamental changes to current transfer pricing rules and companies in jurisdictions with current CFC rules in place might be not affected with further administrative burden. The model should leave the sufficiently taxed companies unimpacted.
- Concerning the 25 % ownership requirement, there might be difficulties for such owners to receive all the relevant information and allocated income to be responsible to paying additional taxes.
- There is a considerable risk of double taxation if the model does not include effective mechanisms of crediting the already paid tax. All changes must be linked to **effective dispute resolution methods**.

5.2 Tax on base eroding payments

The second part under the minimum tax proposal is tax on base eroding payments, which is divided into two elements:

1. undertaxed payments rule that would deny a deduction for a payment, if not taxed at a minimum rate.
 2. Subject to tax rule, where certain tax treaty benefits would be allowed only if the income is sufficiently taxed.
- Application of effective tax rate test should absolutely **not be done on a transaction by transaction basis**, because this would be a tremendous additional administrative burden for companies and tax administrations.
 - A rule of denying deductibility of the payment in full would cause a considerable risk of double taxation. All changes must be linked to **effective dispute resolution methods**.
 - There should definitely be a limitation to include only related parties' payments, as payments to third parties are seldom linked to tax avoidance. Technology Industries of Finland **does not support a broader scope** concerning Articles 11 and 13 (in subject to tax rule - proposal).
 - The information the payee would be required to provide to the payers is already now burdensome (regarding e.g. withholding taxation), so the goal should be to make the procedures as clear and easy as possible.
 - Concerning subject to tax rule, corresponding adjustment would become dependent on effective taxation of the state of the primary adjustment. State making the primary adjustment under Article 9 is to specify the effective taxation on the adjustment. Nowadays corresponding TP adjustments (in MAP) are made to taxable income regardless of the tax rates or the differences in the tax rates. Unless it is clearly stated that this only applies to cases where there is low or minimal effective taxation in the state of the primary adjustment this might change the current practice of making corresponding adjustments agreed in MAP process i.e. in the future tax rate differences might be calculated into the corresponding adjustments.
 - Similar difficulties relating to how should the related party status be determined are present also in this proposal.

6 Digitisation and automation of taxation

The consultation raises a specific question on "What could be the best approaches to reduce complexity, ensure early tax certainty and to avoid or resolve multi-jurisdictional disputes?" Rather than seeing digitalization as something to be reined in through new taxation rules, digital technology should be seen as an opportunity to ensure tax certainty and reduce complexity. **Digitalization and automation as well as harmonization of taxation procedures could lead to notable savings to both companies and tax administrations, as well as reduce the tax gaps and tax evasion.**

In Finland, the Tax Administration is active in providing tax payers tax certainty and lessen administrative burden of companies and authorities through proactive guidance, advance

discussions, cross-border dialogue, co-operative compliance and enhanced co-operation. Digitalisation of taxation can bring about noteworthy savings. The Finnish Tax Administration is the first country in Europe to combine all taxation software and processes into one system. The savings for the Tax Administration alone is estimated a total of approx. 6,5 % decrease in the total annual costs of the Finnish Tax Administration. The taxation procedures have been digitalised almost fully. Savings to companies due to the decrease in compliance costs, interest expenses and tax disputes cannot be estimated yet. Automation also minimizes the tax gap and tax evasion. The Finnish Tax Administration is also investing in software robots (estimated savings equivalent to 1,3 % of total annual costs) blockchain and AI. Similar savings could be achieved in all countries with investments in the automation of taxation. In addition to savings both to companies and member states, automation of taxation would mean an appealing location for businesses to function and grow. Instead of introducing new and overlapping set of taxation rules, which would have a huge negative impact to the tax certainty for a long time, the OECD could concentrate on making taxation procedures automated and digitalized, which would improve tax certainty.

In order to build data economy, real time economy (RTE)⁴ should be enhanced. RTE is about digitalisation of the monetary processes and making them interoperable with all the other digital processes. The monetary data is produced and stored in banking, accounting, brokering, taxation and post-trade services. This data should be made accessible and interoperable. Three key drivers are 1) real time accounting and taxation, 2) digital growth and balance and 3) data economy. The first key driver is being processed in Finland, Nordic and Baltic countries with projects on making financial data collected from various data sources in a structured format, making it possible for the authorities to get real-time information and reports (e.g. financial statements and tax returns) automatically and close to real-time. The real-time financial data is valuable for the company in enhancing business and creating new business models. **Making taxation as easy, effective and accurate as possible enables the company to concentrate on productive business activities, reduces risk of non-compliance**, has a possibility for notable saving for companies and administration, reducing also tax gaps and tax fraud. There are projects ongoing, for example RTECO⁵ (ecosystem designed to improve digitalization and portability of financial information between companies and administration), including two ecosystems: eReceipt and digital company ecosystem. The Nordic countries have started the Nordic Smart Government⁶ -project, with a vision that of a data driven Nordic region, where data and digitisation enable value creation by sharing data across the Nordic region in an automatic, secure and intelligent manner, for example to reduce administrative work and to enhance innovation and growth.

7 Summary

Technology Industries of Finland is strongly of the opinion that the digital economy should not and cannot be ring-fenced. All companies should be taxed according to similar set of rules designed along commonly agreed principles. Therefore, Technology Industries of Finland **does not support the user participation proposal or the significant economic presence proposal**.

The marketing intangible proposal is problematic for similar reasons as the user participation proposal. Public Consultation Document lacks thorough reasoning on how allocating more taxation rights to user or market jurisdictions updates the taxation system to address the tax challenges of the digitalisation of the economy. **Technology Industries of Finland does not support the marketing intangible proposal**.

⁴ <https://www.youtube.com/watch?v=taBKE9IquEc>

⁵ <https://teknologiateollisuus.fi/fi/rteco>

⁶ <https://nordicsmartgovernment.org/>



Minimum tax proposals would in principle target the whole economy, being more sustainable and less discriminating. Also fighting against harmful tax practises is a valuable aim. **The income inclusion rule seems to have advantages and is a potential model to be further discussed.** Technology Industries of Finland **supports the discussions to take the current CFC rules as a starting point to draft common CFC rules globally.** However, before proceeding with the minimum tax proposal, an impact analysis should be made on the necessity of further BEPS measures.

In addition, Technology Industries of Finland **supports digitalisation and automation as well as harmonization of taxation procedures, and real time economy linked to taxation. Some long-term harmonization to the calculation of tax bases might be supportable.** Limiting the variation of different tax systems would also reduce the administrative burden of companies and enhance digitalization and automation of taxation procedures.

Technology Industries of Finland is looking forward to a constructive and continuous discussion on these proposals and trust that you will remain open to the opinions of the digital technology industries.

Technology Industries of Finland

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