Technology Industries of Finland

4/12/2021

Technology Industries of Finland's submission to the public consultation regarding Fair Taxation of the Digital Economy – Digital Levy

12 April 2021

The Commission has published an initiative (Inception Impact Assessment) for a Digital Levy. A legislative proposal is expected to be tabled already in June 2020. Technology Industries of Finland (TIF) welcomes the opportunity to comment the Digital Levy initiative.

1 Global co-operation is the only sustainable way forward

The COVID-19 pandemic has had severe negative effects on European citizens and businesses. Need for additional tax revenues will grow even more as all countries struggle with the economical crisis. Global co-operation is the only sustainable way to regain growth and tackle the tax issues arising from the digital economy.

Introducing a new, additional EU level corporate income tax would be harmful for the much-needed growth, increase trade tensions and increase tax uncertainty for years to come. The OECD has estimated[1] that in case a multilateral agreement is not reached, the uncoordinated and unilateral actions (DSTs or similar tax models) retaliatory measures, uncertainty, tax and trade disputes could reduce global GDP by even 1.2%. A narrow scope, targeting only certain companies located in a few jurisdictions outside of Europe will likely cause trade tensions and retaliatory measures. The digital levy might also be considered discriminatory and in breach with rules of the World Trade Organisation (WTO). The US Trade Representative found that the previous proposal for an EU digital tax was discriminatory against US companies and retaliatory tariffs were recommended.

TIF supports the important progress and hard work of the OECD to reach a global consensus-based solution by mid 2021. It is mentioned also in the Inception Impact Assessment that

> "it is important not to undermine the ongoing discussions at the OECD nor to fuel international trade tensions."

By continuing to draft the EU digital levy legislative proposal, announced to be released at the same time (June 2021) as the OECD model, there is a discrepancy between the spoken words and actions taken by the EC. The **EC and EU Member States must show concrete support to the OECD's work and suspend the drafting of an EU digital levy.** A digital levy should not be introduced as it is an additional tax to a global solution. All unilateral DSTs and similar tax measures should be repealed.

The digital levy appears to be again another step towards market-based taxation. Implementing such a measure would likely embolden other large market jurisdictions to adopt the same principle

[1] https://www.oecd.org/tax/beps/brochure-addressing-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2020.pdf

Eteläranta 10, P.O.Box 10, FI-00131 Helsinki
Telephone +358 9 192 31
www.techind.fi
Business ID: 0215289-2

Technology Industries of Finland

and seek to increase their share of tax from EU business large and small. This will also increase trade tensions and nullify the work done by the OECD to reach a global solution.

2 A sustainable tax system cannot be based on ring-fencing

The goal should be to make the EU's single market a competitive, appealing and well functioning environment for all businesses. The Inception Impact Assessment describes that technological advancements and digitalisation are profoundly changing our lives, that these changes give rise to innovation, growth and new business models, and that the COVID-19 crisis has been a catalyst towards a more digital world. In other words, the crisis has shown how important digital solutions are. Investing in digitalisation is crucial to regain growth and survive possible future crisis. There is not enough digitalisation and digitalised business in the EU. Introducing a tax aiming to target specifically digitalised business will likely decrease the investments in digital in Europe.

Justification for the digital levy is said to be that digital companies pay low, or no taxes. The International Monetary Fund (IMF) has in May 2020 published a working paper on "Taxing the Digital Economy"[2]. It concludes:

> "**Attempting to tax only certain types of business is ill-advised**, especially as user data is now being exploited widely enough for it to be recognized as an input for almost all businesses."
>
> "What we see is that the tech sectors report implied average tax rates more or less in line with the average of other Fortune Global 500 firms. What is most striking is that the implied tax rates are certainly non-zero, and therefore **we can reject the widely-held hypothesis that on average these companies pay zero or low corporate income taxes at the globally consolidated level.**"

Other academic studies based on empirical data support this conclusion.[3]

Rather than concentrating only on corporate taxation, the tax system should be considered in its entirety. These companies pay also other taxes. Digital sales to EU customers are subject to VAT. Digitalised businesses also employ millions of people, pay social security contributions and generate personal income taxes.

3 Design of the digital levy

There is not much detail given about the actual design of the possible digital levy. One option on the list of possible digital levy models is a tax on revenue created by certain digital activities conducted in the EU. A revenue-based tax would also hit the loss-making companies, which are many due to the crisis, worsening their situation even more.

[2] https://www.imf.org/en/Publications/WP/Issues/2020/05/29/Tec-h-tonic-Shifts-Taxing-the-Digital-Economy-49363

[3] ECIPE ("Digital Companies and Their Fair Share of Taxes," ECIPE Occasional Paper (3/2018)) and Copenhagen Economics ("The Proposed EU Digital Services Tax, Effects on Welfare, Growth and Revenue").

Technology Industries of Finland

TIF also highlights that the Inception Impact Assessment does not mention any threshold to rule out SMEs, but states that

> "in principle, all digital businesses could be affected by the additional compliance burden, although special attention will be paid in the design of the options to prevent that SMEs are disproportionately impacted."

The Digital Levy Survey also has a question on "how SMEs should be treated?" Should the digital levy be intended to target all sizes of companies, it is very likely the digital levy will hit the SMEs hardest as the relative administrative burden is heavier on them. The Commission has stated in its communication "Identifying and addressing barriers to the Single Market"[4] that compliance costs related to business taxation for SMEs can be as much as 30% of taxes paid.

3.1 Scope

The Inception Impact Assessment mentions that ring-fencing is a relevant part of the model:

> "Scope and definition of digital activities/transactions or companies subject to the initiative: This is a vital part of the work to be carried out, considering the different business models of companies present in the digital economy."

The Digital Levy Survey introduces a list of activities which might "be considered as digital activities in the context of a legislative measure". Detailed scope limitations based on business models do not make a simple and sustainable model. The activities list will be outdated rapidly. Any tax legislation must be clear enough to result in unified interpretation, to enhance certainty and prevent disputes. There should not be ring-fencing of only certain types of businesses. Some listed activities should absolutely not be on the list for various reasons. For example, standardised online teaching services and cloud computing services.

Lifelong learning is crucial in the rapidly changing world and to R&D innovations. The education resources will not be adequate to respond to this need. Adding compliance costs and limiting new ways of education is not sustainable.

TIF has made a low-carbon roadmap[5], where one of the most critical factors identified is digitalisation. Without digitalisation of all business fight against climate change cannot be won. E.g. cloud services are 93% more energy efficient with 98% lower carbon emissions than on-premise computing. Additional compliance burdens and tax costs to the cloud computing services, which are a productivity tool and crucial for digitalisation to the whole economy, should not be created.

[4] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Identifying and Addressing Barriers to the Single Market, SWD/2020/54 final https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020SC0054

[5] https://teknologiateollisuus.fi/en/focus/environment-and-sustainability/technology-industries-finlands-low-carbon-roadmap-solutions

Technology Industries of Finland

3.2 OECD model

It is mentioned in the Inception Impact Assessment that

> "The initiative should be designed in a way that is compatible with the international agreement to be reached in the OECD as well as broader international obligations."

The OECD will introduce its final proposal by mid 2021. It is peculiar that the EU digital levy is said to be designed compatible, even though the model that it should be compatible with is not ready yet. The US has just proposed a significant simplification to the OECD Pillar 1 Amount A model, by removing the vague and burdensome scoping altogether. Not considering and analysing this significant step towards a more sustainable, fair and consensus-based solution would be detrimental.

3.3 Data privacy

In the Digital Levy Survey there is also a question on "how to identify where the revenues/profits are generated and how to determine the place of taxation". Options given are IP address and different variations of geolocation data.

Data privacy is a crucial element of sourcing rules. Tracking the individuals' location is justified when trying to prevent crimes, such as credit card fraud, money laundering, trafficking. The instances using the data are usually authorities (police) or strictly regulated banks and the use of data is limited. The tax administrations can also access this type of data, but the use should be limited to similar use, to prevent crime, such as tax frauds. EU digital levy, however, would be a new tax system based on gathering personal data solely for corporate taxation purposes.

TIF requires that clear rules on how the consumer data is collected and used for digital levy purposes, without jeopardizing the principle of data security, for example GDPR-rules, are introduced right away. At a time when society is questioning the amount of personal data that is retained by companies, it seems to be a surprising course to suggest – to base the calculation of a new tax on personal location data, requiring companies to collect and store vast amounts of personal data for tax compliance purposes for an indefinite time.

As the market jurisdiction's taxation rights would be allocated based on the users and consumers located in the jurisdiction, also the countries would have an incentive to gather location data of individuals.

Taxation is likely an acceptable reason under GDPR-rules for the tax-payer company to collect personal geolocation or other relevant personal data. However, sometimes the tax-payer company does not have the consumer data but must rely on data gathered by a third-party company. What would be the legal situation concerning third-party companies or group companies not in a tax paying position? Would digital levy rules require changes to GDPR regulation and changes to all companies bound to GDPR rules?

In addition, there are practical problems with collecting geolocation data, for example.

- The individual user should not be tracked otherwise than when she/he gives her/his approval (enabling the feature on the device). This makes the coverage of the real-time geolocation data unreliable.

Technology Industries of Finland

- The tax-paying company itself might not have access to this data but must rely on other group company or third-party data.
- If the user does not want to give access to geolocation data, must a company demand the user to allow geolocation tracking, i.e. obligatory for the user? Is this possible without changing data privacy legislation?

4 Summary

Technology Industries of Finland suggests that EC and EU Member States show concrete support to the OECD's work and suspend the drafting of an EU digital levy.

Technology Industries of Finland
EU Transparency Register number: 39705603497-38

more information:
Maria Volanen, Head of Taxation Policy, maria.volanen@teknologiateollisuus.fi

Technology Industries of Finland (TIF) represents Finnish technology industries and has over 1,600 member companies, sizes varying from small SMEs and start-ups to world leading MNEs. 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 private investments in R&D carried out in Finland. Over 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).[6]

[6] For further information of TIF's member companies, please see https://teknologiateollisuus.fi/en