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TAXING THE DIGITAL ECONOMY AND DIGITAL SERVICE TAX PROPOSALS IMPACTING THE UNITED KINGDOM AND THE EUROPEAN UNION

To Our Clients and Friends:

Tax authorities around the world are trying to understand the fundamental drivers of the digital transformation of the global economy, with the aim of ensuring that companies are taxed where value is created. One key issue for tax authorities is the rapid pace of change that has led to concerns about under-measurement of economic activity associated with digital products, which in turn means the potential non-taxation of such economic activity.

In this client alert, we look at what is driving tax considerations of the digital economy debate and provide an overview of certain digital tax proposals impacting the United Kingdom and the European Union.

The digital economy

The digital economy has had a profound impact on the global business landscape. It has given rise to new global companies and industries, it has transformed business models in traditional industries and it now underpins global value chains. But what is the digital economy?

Literature on the digital economy is characterised by many different phrases and expressions, many of which lack a clear or shared definition. This includes a definition for the expression "digital economy" itself. Most commentators would now agree to a loose definition of the digital economy as the broader economy undergoing the process of becoming increasingly digitalised. The expression "digital company" or "digital sector" is used in reference to companies or sectors whose main business segments relate to digital data, platforms or technologies (e.g. internet publishing, social media platforms and digital networks). The expressions "non-digital companies" and "traditional" companies and sectors tend to be used to describe sectors whose main business segments do not relate to digital data, platforms or technologies, e.g. mining, transportation or construction.

What is "value" and how is it created?

The digital transformation is still taking shape but we already know that it is undermining conventional notions about how businesses are structured, how firms interact and how consumers obtain services, information and goods. Some of the fastest growing technology companies can be described as thin layers that sit on top of vast supply systems (where the costs are) and interface with a huge number of people (where the money is). It is this thin layer that tax authorities are looking to capture in their jurisdictions' respective tax bases.

In theory, revenue created through digital platforms and online activities should be recorded— but it might not be. Take for example an online search engine that offers free searches, maps and emails as part of its services and that is paid by advertisers. It's difficult in this example to define the value of any individual element of the services provided (i.e. the search engine, map or email service) because the free services are often subsidised by paid services or advertisers. Consider also the price of a music or film streaming service where some people get the service for free (with advertisements) and others pay (without advertisements), while some buy the same music or film as downloads.

Where is value created?

While countries generally agree that a multinational's profits should be taxed in the jurisdiction in which it creates value, they do not all agree on where that might be. Some countries have taken the view that the value for companies in the digital sector derives from factors such as user participation (for example, in the European Union where many countries have decided to introduce domestic digital services taxes focusing on user participation, as described below) while other countries see this view as very narrow in perspective (for example, the United States).

What is meant by user participation?

User participation is broadly understood to be the process by which users can create value for certain types of digital businesses through user engagement and active contribution. User participation can broadly be categorised as follows:

- *Generation of content*. Some digital businesses operate online platforms that are substantially made up of user-generated content. Consider a social media company that generates revenue from selling advertising on a platform populated by users' posts and photos. Equally, take a company that generates revenue from selling advertising on a platform that allows users to upload and promote self-created audio or video content. The benefit that users derive from these platforms will in part be a function of the platform software and the overall user experience. But the core business offering remains the content generated by users. It is the nature and quantity of that content that underpins the business' ability to attract users and generate revenue.

- *Engagement with the platform*. Users form strong relationships with certain online platforms with which they engage and participate. The longer users stay on the platform, the more platforms are able to generate valuable data on users' behaviours, interests and consumption habits through the intensive monitoring of their engagement with the platform.

- *Network effects and externalities*. For some digital businesses, the value that a user derives from a platform is strongly correlated with the number of other active users on that platform. Building large user networks can help such businesses achieve economies of scale and allows them to take advantage of the low marginal costs that there may be in making a platform available to new users. Users help to develop these networks through their engagement and through actions which foster connections between users e.g. sharing content, rating content and creating internal networks.

- *Contribution to brand*. Some digital businesses are reliant on their users for platform content or for the goods and services that are provided on the platform. For example, reviewing and rating content or services provided by third parties is crucial in regulating what appears on the platform and establishing an important trust mechanism for other users.

What is happening at the OECD level?

Background

In 2015 and as part of the OECD/G20 Base Erosion and Profit Shifting (BEPS) package[1], the OECD published its report on "*Addressing the Tax Challenges of the Digital Economy*" (the "**Action 1 Report**"). The Action 1 Report found that the whole economy was becoming increasingly digitalised and, as such, it would be difficult to "ring-fence" the "digital economy" from the rest of the economy for tax purposes.

Following the Action 1 Report, an interim report was delivered in March 2018. This provided an in-depth analysis of value creation across new and changing business models in the context of digitalisation. It also confirmed that there is no consensus among jurisdictions as to how the international tax rules for the digital sector should look. The interim report also noted the political pressures faced by some countries to act unilaterally as soon as possible (rather than wait for a multilateral solution to be agreed). Though it is generally accepted that unilateral measures are not the answer, many countries have announced their intention to introduce their own digital services tax, with the French version already in force (see below).

A long-term solution

The OECD's Policy Note (released in January 2019) and consultation paper (released in February 2019) confirmed that the OECD will focus on two areas (referred to as the two "pillars") in parallel with working towards reaching a new consensus-based long-term solution in 2020.

Pillar 1: Allocation of taxing rights, including nexus issues

The three proposals being considered under Pillar 1 look beyond existing international tax framework concepts that require a physical presence for taxing rights and allocating profit/losses according to the arm's-length principle. The proposals are summarised below.

The "user participation" proposal

This proposal focuses on the value created by certain highly digitalised businesses through developing an active and engaged user base, and soliciting data and content contributions from them. The proposal is premised on the idea that soliciting the sustained engagement and active participation of users is a critical component of value creation for certain highly digitalised businesses and that current profit allocation rules (namely, transfer pricing methods based on the arm's-length principle) ignore (and as such, do not tax) the value that certain business models derive from such user participation.

The "marketing intangibles" proposal

The "marketing intangibles" proposal addresses a situation where a multinational group essentially reaches into a jurisdiction — either remotely or through a limited local presence (such as through a limited risk distributor) — to develop a user/customer base and other marketing intangibles. It sees an intrinsic functional link between marketing intangibles and the market jurisdiction. Taking this link into account, the proposal would modify current transfer pricing and treaty rules to require marketing intangibles and risks associated with such intangibles to be allocated to the market jurisdiction. The proposal considers that the market jurisdiction would be entitled to tax some or all of the non-routine income properly associated with such intangibles and their attendant risks, while all other income would be allocated among members of the group based on existing transfer pricing principles. Currently, under the OECD transfer pricing guidelines, a "marketing intangible" is an intangible that relates to marketing activities, aids in the commercial exploitation of a product or service, or has an important promotional value for the product concerned. It may include trademarks, trade names, customer lists, customer relationships, and proprietary market and customer data that is used or aids in marketing and selling of goods or services to customers.

The "significant economic presence" proposal

Under this proposal, a taxable presence in a jurisdiction would arise when a non-resident company has a significant economic presence on the basis of factors that evidence a purposeful and sustained interaction with the jurisdiction via digital technology and other automated means. Revenue generated on a sustained basis is the basic factor, but such revenue would not be sufficient in isolation to establish nexus. Only when combined with other factors (such as existence of a user base, the volume of digital content derived from the jurisdiction and sustained marketing and sales promotion activities) would revenue potentially be used to establish nexus in the form of a significant economic presence in the country concerned.

Pillar 2: Addressing the remaining BEPS issues

The second pillar seeks to address profit shifting to companies subject to a low effective rate of tax through the development of two inter-related rules.

The income inclusion rule

The income inclusion rule would supplement (rather than replace) existing controlled foreign company rules[2], and would operate as a minimum tax. It would apply in the context of overseas subsidiaries and overseas permanent establishments.

The idea is that this rule would operate as a minimum tax by requiring a shareholder in a company to bring into account a proportionate share of the income of that company if that income was not subject to tax at a minimum rate. The income inclusion rule would apply to any shareholder with a significant (e.g. 25%) direct or indirect ownership interest in that company and would be applied on a per jurisdiction basis. The amount of income to be included would be calculated under domestic law rules and shareholders would be entitled to claim a credit for any underlying tax paid on the attributed income, with such credits also being calculated on a jurisdiction-by-jurisdiction basis. This rule would supplement rather than replace a jurisdiction's controlled foreign company rules.

The OECD papers indicate that the income inclusion rule would apply both to domestic and to overseas subsidiaries and mentions that it would draw from certain aspects of the U.S. tax regime for taxing global intangible low-taxed income (otherwise known as "GILTI" – see below).

Tax on base eroding payments

The second element of Pillar 2 is a tax on base eroding payments that complements the income inclusion rule by allowing a source jurisdiction to protect itself from the risk of base eroding payments. More specifically, this element of the proposal would explore:

- An undertaxed payments rule that would deny a deduction or impose source-based taxation (including withholding tax) for a payment to a related party if that payment was not subject to tax at a minimum rate.

- A subject to tax rule in tax treaties that would only grant certain treaty benefits if the item of income was subject to tax at a minimum rate.

Will a consensus be reached?

On 31 May 2019, the OECD reported that there is an agreement for a "road map" with regard to resolving the tax challenges arising from the digitalisation of the economy and a commitment for continued work toward a consensus-based long-term solution by the end of 2020. The latest document is full of statements about moving towards a "consensus solution" whereas in previous OECD documents there were explicit statements that a consensus had not yet been reached and documents were being published "without prejudice". There is still no consensus but there is a clear intent to move towards one.

The basic proposals in the latest OECD roadmap are unchanged since the February consultation document:

- Pillar 1 focuses on the allocation of taxing rights, and seeks to undertake a coherent and concurrent review of the profit allocation and nexus rules.

- Pillar 2 looks to develop a global anti-base erosion (GloBE) rule which focuses on the remaining BEPS issues and seeks to develop rules that would provide jurisdictions with a right to "tax back" where other jurisdictions have not exercised their primary taxing rights or where the payment is otherwise subject to low levels of effective taxation.

The technical issues arising under Pillar 1 and Pillar 2 are listed as follows:

Pillar 1

- Modified residual profit split
- Fractional apportionment
- Distribution-based approaches
- Business line and regional segmentation
- Design scope limitations
- Treatment of losses
- New nexus rules
- Elimination of double taxation
- Dispute resolution
- Dispute prevention
- Administration
- Modifying tax treaties

Pillar 2

- Inclusion rule
- Switch-over rule
- Undertaxed payment rule
- Subject to tax rule
- Rule co-ordination, simplification and thresholds and compatibility with international obligations
- Other isswues arising in connection with Pillar 2

What is happening at the European Union level?

On 21 March 2018, the European Commission (EC) proposed the introduction of a digital services tax (DST) on revenues resulting from the provision of certain digital activities, as well as the introduction of a new regime relating to the corporate taxation of companies "with a significant digital presence", aimed at addressing the tax challenges of the digital sector in the European Union[3].

At the time, the EC stated that today's international corporate tax rules are not fit for the realities of the modern global economy and do not capture business models that can generate profits from digital services in a country without being physically present. It went on to say that current tax rules also fail to recognise the new ways in which profits are created in the digital world, in particular the role that users play in generating value for digital companies. As a result, there is a disconnect — or a mismatch — between where value is created and where taxes are paid.

The EC put forward an approach involving two distinct legislative proposals:

1. A reform to corporate tax rules (the long-term solution) so that profits are taxed where businesses have significant interaction with users through digital channels, even if a company does not have a physical presence in the jurisdiction in question.

2. A DST (the interim solution), which covers the digital activities that escape tax altogether in the EU. The tax would apply to revenues created from activities where users play a major role in value creation and which are the hardest to capture with current tax rules.

The EC's proposal faced steep opposition from certain jurisdictions including Ireland, Finland, Denmark and Sweden and a year after the proposal was first announced EU finance ministers formally abandoned the proposal. The EU then confirmed that it would focus on the broader international tax discussions underway at the OECD and G20 level, and that if progress was not made by the end of 2020 on global efforts, the EC would revisit the issue.

What is happening in the United Kingdom?

In 2018, the United Kingdom's government announced it would move forward with a unilateral DST. The measure proposed in the consultation document introduces a 2% tax for certain revenues arising after 1 April 2020. This would apply to businesses generating revenues of more than £500 million, and UK revenues of at least £25 million, from relevant activities.

The UK government's preferred approach is to define business activities that derive the most value from user participation and then impose tax on revenue associated with those activities. The in-scope business activities are the provisions of search engines, social media platforms and online marketplaces. The following activities have been said to be specifically out of scope:

- The provision of payment or financial services.

- The sale of own goods online.

- The provision of online content.

- The provision of radio and television broadcasting services.

Taxable revenues will be revenues derived from in-scope activities that relate to UK users ("UK revenue"), wherever those revenues are realised. The first £25 million of revenues that relate to UK users will be exempt from the DST. Where in-scope activities are integrated with out-of-scope activities, the revenues will need to be apportioned.

Where revenue is derived from online advertising, UK revenue will be defined as revenue from advertisements displayed to UK users. Where revenue is derived from other forms (e.g. subscriptions or commissions) the determination will be made by reference to whether the payment comes from a UK user or relates to a transaction that involves a UK user.

A user may include an individual, corporate or other legal person. A "UK user" will be defined by reference to their physical presence. The consultation indicated that a UK user may be determined by the typical location of the individual or the IP address or other customer information.

The proposed measures include a safe harbour to protect loss-making businesses or businesses with very low profit margins from the scope of the tax but the precise design of this will be consulted upon and the devil (as always) is in the detail. Until draft legislation is published we will not know how the measures will work and at this stage there is no indication as to when the draft legislation will be published.

It is also worth noting that the UK DST has been said to be a temporary measure until a global solution can be reached. The UK government intends to legislate for the UK DST to be reviewed in 2025 to assess whether it is still required. The question is whether a review in five or six years is appropriate in such a fast paced area.

The UK government expects that the tax will raise £1.5 billion over four years[4].

What is happening in the United States?

Global Intangible Low Tax Income

Public Law 115-197, known colloquially as the Tax Cuts and Jobs Act[5], made significant changes to the taxation of U.S. multinational companies' foreign profits. GILTI, or "Global Intangible Low Tax Income," was introduced to discourage companies from using intellectual property or other forms of tax planning to shift profits out of the United States and is effective for tax years beginning after 31 December 2017.

How does GILTI reduce the incentive for U.S.-based multinational companies to shift profits out of the United States into low- or zero-tax jurisdictions? The incentive to shift profits from one jurisdiction to another is the function of the difference between the countries' statutory tax rates. That difference is the tax savings a company receives per dollar shifted. The GILTI regime imposes a U.S. tax of 10.5% on GILTI, creating a minimum tax on all GILTI. Companies subject to GILTI are allowed to use 80% of their foreign tax credits to reduce U.S. tax on GILTI, resulting in theory in equilibrium between a 10.5% U.S. tax and a 13.125% foreign tax.

Under GILTI, the U.S. tax rate on foreign profits is now at or below most tax rates in the developed world and this, therefore, is considered to limit the incentive for U.S. multinationals to move their headquarters out of the United States.

Base Erosion Anti-Abuse Tax

The Base Erosion Anti-Abuse Tax (BEAT) was also enacted as part of the Tax Cuts and Jobs Act. The BEAT is a minimum tax on inbound investment. Companies resident in the U.S. pay whichever is greater: (1) their liabilities under normal rules; or (2) tax charged at a lower rate but on a base that differs from the normal base in not allowing deductions for items (such as interest, royalties, and management fees) paid to related parties abroad that are commonly associated with profit shifting. The BEAT thus sets a floor that limits the extent to which the tax base can be eroded by such payments. The BEAT applies regardless of the rate of tax applicable in the foreign country on receipt of the payments in question, and applies to a broad range of payments. Generally a taxpayer must have annual gross receipts of at least $500 million to be subject to the BEAT.

What is happening in Europe?

France

In February 2019, the French Minister of Economy and Finance announced a "tax on certain services provided by enterprises of the digital sector". The proposed tax, which is currently discussed before the French Parliament, would apply to groups operating within the digital sector with an annual consolidated turnover of more than €750 million with at least €25 million of turnover generated in France[6]. The rate of the tax will be 3%.

Under the proposed French DST, in-scope activities are as follows:

- Services consisting of the making available of digital interfaces (intermediation services), which allow users to interact with each other, or facilitate the provision of underlying supplies of goods or services directly between users. Only platforms that charge a fee to users are expected to be targeted[7].

- Advertising on digital platforms.

- The sale and management of personal data for advertising purposes.

Companies selling goods on their website or providing content on a platform—as well as communication and payment services—would be exempt from the French DST. Similarly, regulated financial services and services provided between companies in the same group would be out of scope.

Intermediation services would only be subject to the French DST if the user is located in France or if the user's account is opened from France. For services marketed on the platform, taxation would occur if the advertising is consulted in France by the user or when the user whose data is sold consults the platform in France. The burden of proof for determining the location of the user or the place where the account on the platform is opened rests with the taxpayer.

Companies should take note that the French DST proposal is set to take effect retrospectively from 1 January 2019. The Senate has recently amended the draft bill with a view to provide for its application until 2021 only[8]. However, the National Assembly is likely going to waive such time limit.

The French government expects that the tax could raise around €500 million per year.

Italy

A Italian DST was announced in January 2019 and again targets user participation where one of the following activities arises:

- Intermediation services, which allow users to interact with each other, or facilitate the provision of underlying supplies of goods or services directly between users.
- Advertising on digital platforms.
- The sale and management of personal data for advertising purposes.

As with France, the rate of the tax will be 3% and would be levied where a business generates more than €750 million taxable revenue, of which at least €5.5 million is derived in Italy. This threshold is much lower than the French proposal (€25 million) and the original EU proposal (€50 million).

The place of supply rules for Italy's DST broadly mirror those set out above for France[9].

Spain

In January 2019, the Spanish Government also approved a Spanish DST. Spain has also set the DST at 3%, which will apply to companies earning more than €750 million with only €3 million having derived from Spain.

Provisions relating to activities, place of supply and certain exclusions mirror those set out for France and Italy above.

What is happening elsewhere?

Other jurisdictions that have issued proposals for similar DSTs include Austria and Belgium. Though the operating mechanisms are similar, many of the unilateral measures have different scopes, exclusions and thresholds, and may apply to different sectors. This creates obvious complexities as companies will have to separately analyse the DST impact in each relevant jurisdiction. The Netherlands, Ireland and Luxembourg are among the countries that have expressed reservations over interim DST plans. Germany has not pressed ahead with its own formal plans for a DST after the German Federal Ministry of Finance raised constitutional concerns and questioned the economic effects of a DST. Instead, Germany is now considering treating payments for online advertisements in the same way as license fees with a withholding tax of 15% on online advertising revenue collected by foreign internet companies from German businesses. However, no draft legislation has been published thus far.

Further afield Australia[10], New Zealand[11] and Mexico[12] have also published proposals for a DST. Turkey has published proposals to introduce a 15% withholding tax on payments made to foreign online advertising services providers[13]. India is consulting on a proposal to amend Article 7 of India's double tax treaties on attributing profits to permanent establishments, and Rule 10 in the Income Tax Rules 1962 to bring within the charge to Indian tax a proportion of profits of companies deemed to have a significant digital presence in India[14]. India is considering using a formulaic apportionment approach, akin to that proposed under the EU's Common Corporate Tax Base initiative[15].

The UN is also proposing to issue a report on taxing the digital economy with the aim of giving the perspective of developing countries[16].

Unilateral measures now exist (or are being considered) in almost every region across the globe.

Global harmonisation?

As noted above, many of the OECD's proposals being put forward would lead to tax regimes that go beyond the well-established arm's-length principle and beyond the limitations on taxing rights determined by reference to a physical presence generally accepted as a cornerstone of the current tax rules.

Profit Allocation Proposals

User participation and data certainly play a role in all highly digitalised business models but exactly which role varies and is likely to change over time. Data also plays an important role in less digitalised business models. Intellectually, there is no difference between data gathered by a social media platform and data gathered by pharmaceuticals from patients that help develop and target certain drugs during clinical trials, or loyalty store cards that provide data on spending habits to retail stores. The value of data — whether a business is highly digitalised or not — comes from developing the systems to collect and store the data, creating tools to analyse the data, as well as actually using the data in combination with other relevant factors to make decisions that adds value to the business.

Any proposal that weighs too heavily on user participation fails to give weight to other relevant business practices and the significant people functions that design marketing campaigns, build highly sophisticated algorithms and provide strategic direction, in comparison to loyal and engaged customer bases. Therefore, ring-fencing companies that are currently recognised as highly digitalised and focusing on user participation does not offer a sustainable solution.

Do the marketing intangible or significant economic presence proposals offer a better solution? The concept of "marketing intangibles" has attracted some support — including from the United States — but this proposal has the potential to impact a much wider range of companies than the user participation proposal. And while the significant economic presence test has the benefit of relative simplicity through a highly formulaic approach, underlying data gathering implications are not straightforward.

Each profit allocation proposal will have different implications for individual companies depending on the business sector in which they operate or whether it is consumer based or business to business. Much will depend on how key concepts are defined and, as the latest OECD report makes clear, the technical analysis must be undertaken once principles are agreed. Even with an agreed process for reaching a new global agreement, securing agreement amongst OECD members on apportionment principles will be difficult.

Ultimately, the profit allocation proposals will more likely reduce economic distortions and double taxation since they have some regard to the underlying economic activity and profitability in a country. However, the economic impact and the efficient administration of any proposal requires further analysis.

GloBE Proposal

Minimum taxation of outbound investment has long existed in the controlled foreign company rules of many developed countries, for which both BEPS and the EU Anti-Tax Avoidance Directive (ATAD) envisage a heightened role. These rules vary widely but broadly the common feature is that some types of income earned by foreign subsidiaries are taxed immediately to the parent, rather than only on remittance through dividend payouts (generally with credit for foreign taxes paid). The anti-tax avoidance directive mandates a controlled foreign company rule which tests the difference between tax paid and that which would be paid in the EU member state of the parent. This approach, therefore, can be designed to be consistent with current norms, with required domestic law changes capable of leveraging off existing controlled foreign company rules—though a common design approach would be preferable to reduce complexities and compliance burdens.

But there are complexities for tax authorities. For example, in identifying tax paid abroad and verifying that it has not been refunded or credited against some other tax. Of course, there is the important design issue of setting the rate at which the minimum tax would be set.

There is also the question of potentially arbitrary outcomes because the GloBE would be applied indistinctly to any transaction deemed undertaxed — even where such transactions have been made for valid commercial reasons and reflect genuine economic activities. However, some might argue that — on balance — this is a price worth paying for resolving prominent difficulties.

A few points to ponder

1. Any proposal needs to give proper consideration to tax certainty as well as provide effective dispute resolution measures. To do anything else could have several unintended implications. For example, research shows a correlation between tax avoidance and tax uncertainty, and that tax uncertainty alters key investment decisions, namely the timing of large investments and the level of capital expenditure.

2. All of this at a time when technology is making the world smaller and, as a result, competition for foreign capital investment by almost every developed and developing country is intensifying. It is important that investment decisions are based on commercial factors such as infrastructure (including technology), skills and human capital, financial markets, corporate governance and sustainability. A country’s tax system should be considered after all other commercial factors have been taken into account.

3. Tax competition between jurisdictions has remained largely unaddressed in the digital economy debate but must be considered if tax authorities are to introduce consistent and co-ordinated rules that move investment decisions away from individual tax systems.

4. On one side of the spectrum, many would encourage the OECD and tax authorities to give existing BEPS measures and domestic measures a chance to work on the digital economy. Domestic measures (e.g. the diverted profits tax, anti-fragmentation rules and new rules introduced to tax offshore receipts in respect of intangible property in the UK) and international measures (e.g. the 2017 and 2018 OECD revised transfer pricing guidelines) have not existed long enough to determine their effect on profit shifting and base erosion. The other side of the spectrum argues that existing BEPS measures and domestic rules do not go far enough and do not address the issue of non-taxation in the context of the digital economy.

5. No proposal is without difficulty and much depends not only on the detail of specific proposals and their implementation, but also on the weights attached to the various criteria used to assess the proposals (i.e. profit shifting, practicality, legal implications, suitability and tax competition).

6. The latest OECD report acknowledges that the solution should reflect the right balance between precision and efficient administration for jurisdictions at different levels of development, underpinned by sound economic principles and conceptual basis. It also notes that it is important to ensure a level playing field between all jurisdictions — large or small, developed or developing.

7. What sort of solution do we ultimately expect to see? A combination of proposals in Pillar 1 and Pillar 2 is almost certain but in what combination remains to be seen.

What next?

Many factors, including political and economic interests, are contributing to the current digital tax debate but it has become evident that governments around the world are unwilling to wait and see whether the BEPS initiative as a whole package will eliminate tax challenges arising from the digital economy. That said, thus far, the OECD has been successful in keeping to its adopted time-tables and though it is unlikely that unanimity will be achieved on all issues, it is quite likely that in January 2021 there will be some significant changes to the way international business is taxed.

With regard to domestic DST measures in the EU, these could be subject to legal challenge as they arguably break well-established international tax principles (e.g. fundamental freedoms, the principle of proportionality and state aid). The United States has stated that it is opposed to tax policies and proposals that single out digital companies and has recently warned it was considering a complaint at the World Trade Organization over "discriminatory" new taxes on American digital companies[17]. Watch this space!

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[1] https://www.oecd.org/tax/beps/

[2] *See* https://www.oecd.org/tax/designing-effective-controlled-foreign-company-rules-action-3-2015-final-report-9789264241152-en.htm.

[3] https://ec.europa.eu/taxation_customs/business/company-tax/fair-taxation-digital-economy_en.

[4] HM Treasury, Budget 2018, Digital Services Tax, click here.

[5] https://www.whitehouse.gov/wp-content/uploads/2018/02/WH_CuttingTaxesForAmericanWorkers_Feb2018.pdf.

[6] http://www.assemblee-nationale.fr/15/projets/pl1737.asp

[7] https://www.economie.gouv.fr/direct-video-presentation-projet-loi-taxation-grandes-entreprises-numerique

[8] http://www.senat.fr/leg/tas18-101.html

[9] https://www.reuters.com/article/us-france-tax-internet/french-tax-on-internet-giants-could-yield-500-million-euros-per-year-le-maire-idUSKCN1QK0ET

[10] https://news.bloombergtax.com/daily-tax-report-international/austrian-digital-tax-plans-to-be-finalized-in-government-meeting

[11] https://mnetax.com/new-zealand-to-explore-digital-services-tax-on-multinationals-32469

[12] https://tax.thomsonreuters.com/blog/mexico-considers-tax-on-digital-services/

[13] https://mnetax.com/turkey-issues-guidance-on-controversial-digital-tax-32638

[14] https://www.tax-news.com/news/India_Consults_On_Unitary_Taxation_Proposals____97083.html

[15] http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2017)599395

[16] https://www.taxnotes.com/worldwide-tax-daily/digital-economy/un-digital-economy-tax-report-consider-withholding-taxes/2019/05/03/29g09

[17] See https://home.treasury.gov/index.php/news/press-releases/sm0316; and https://www.france24.com/en/20190312-us-warns-wto-action-over-discriminatory-new-digital-taxes.

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