



**DET 3 ANSWER
TO EUROPEAN
COMMISSION
PUBLIC
CONSULTATION
ON FAIR
TAXATION OF
THE DIGITAL
ECONOMY**

December 28th, 2017

DET3 | Digital
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Think
Tank

www.det3.eu

MAIL: contact@det3.eu

TFDE, Task Force Digital Economy

DIGITAX@ec.europa.eu

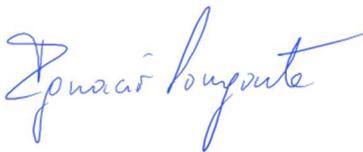
TAXUD-DIGITAX

December 28th, 2017

Dear acting Chair and members of the TAXUD-DIGITAX

We very much appreciate the public consultation period open about this relevant topic and the practical way of approaching the input collection.

The following comments, supplement the answers and feedback included in our on-line questionnaire response filed today, representing our objective coordinated feedback and additional observations on some of the general or specific questions, remaining at your entire disposal for any further clarification.



Sincerely,
Ignacio Longarte
Chairman

DET3 Founders:

BBVA

Telefonica

amaDEUS
Your technology partner


IBERDROLA


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DET3 ADDITIONAL COMMENTS SUPPLEMENTING THE QUESTIONNAIRE

On 5.1: General question on the temporary solution

We understand the sensitivity and multiple angles affecting the current international situation and we validate that we do not desire a proliferation of individual EU countries different targeted measures, but we understand that a sense of agility in the EU reaction timing could be studied ONLY in the case of ensuring that any “targeted temporary solution” is not generating double taxation or unfair extra tax cost for legitimate tax payers in any sector of the EU economy.

Tax payers that have been legitimately approaching its international corporate tax responsibility in a rational manner and without flagrant disconnections between its substance based value generation capacity and the place/legal entity of corporate tax profit allocation should not be harmed by any tax policy decision, but protected in that sense.

On 5.2: Specific questions on the temporary solutions

Any potential “targeted temporary solution” should define with precision the scope of activities/services/transactions that fall in the scope to avoid introducing additional relevant complexity for taxpayers and increased uncertainty due to interpretation issues, and leave internal country to country transactions out of scope.

As it is rather difficult to provide a description of digital transactions that is not too wide or inclusive, and as this tax should not in our opinion apply indistinctively to all on-line transactions, in this context we think is more appropriate to be restrictive during such a potential temporary period, using properly defined inclusions or exclusions.

We’ll be at the Commission disposal for further comments or practical impact assessment on any specific potential proposal draft, but any temporary targeted solution effect should not be extended beyond the typology of digital platform business models previously identified by the EU as indicative route-cause of the digitalized economy taxation issues. In most of them a common denominator is the existence of an immense number of direct user-platform interactions that do not generate monetary flows in one side of the platform.

In any case, regulated industries, or business that require a specific authorization to operate must be excluded of the scope of any temporary solution.

Consideration must be given to facilitate the interaction of any potential targeted short-term solution with the day to day of the current international tax rules and treaty obligations until the next more permanent tax solution phase is designed in the international context.

Any potential “targeted temporary solution” should generate a tax credit within the country of residence of the tax payer or at the level of the targeted digital revenue earner. At least for legitimate tax payers. As a targeted solution is in consideration, we consider that also a “targeted tax relief” mechanism for legitimate or “certified” or “registered” tax payers could be designed in such a potential temporary context.

We think there is a need in this context to ensure good citizen and transparent tax payers with digital business models/transactions or whose traditional business is converging with increased digital elements can recover this extra cost in the effective beneficiary entity corporate income tax return or in any other feasible targeted way, and on an agile basis.

In no case individual consumers should be forced to withheld or act as intermediary tax collector of the digital seller of record liability under this potential digital tax. Moreover, any temporary solution should not involve a third-party intermediation for digital tax collecting purposes.

Focus must be set in preventing that any potential short-term measure seriously hinders the economic viability of recently established or scaling up phase start-ups, defining a threshold based on minimum revenue and/or minimum number of customers per year, or a company life older than X years, or companies with just incidental digital business, or design measures to achieve it.

Maintain these measures for digital start-ups acquired and/or set up by bigger players, as long as their stand-alone metrics remain within the threshold.

On 5.4: Comprehensive solutions for the long term

For the long term, we consider there should be a broader green-field redesign of the overall international taxation system adapted to the future society and economic world, to be put in place after a deep multidisciplinary debate between the relevant geo-political blocks. A sense of criticality and urgency on the tipping point of this collateral debate, that would run in parallel to the one on adapting the current rules is needed, as this green-field analysis will require for sure a period of time.

But knowing how ambitious that is and the number of elements that first would need to be aligned, we think that any corporate tax focused solution for the mid-term should maintain some of the key elements of the current international tax system, but with a straight incorporation of some principles that are clearly informing the digitalized modern economy.

During the following months we shall be in a position to have a more develop explanation of some of the additional options that could in our perspective be considered for the mid-term period, in order to contribute to this relevant debate.

ADDITIONAL DET3 COMMENTS ON THE RECENT EU PUBLISHED DOCUMENTS ABOUT THIS TOPIC:

We have carefully reviewed the September 21st, 2017 Communication from the Commission to the European Parliament and the Council about this topic.

We strongly agree and support the need for a leveled playing field from a tax perspective and the clear need for fostering innovation in the EU too, and we endorse the document conclusion of setting focus in the following 3 areas before taking the next international tax policy common decisions for the mid-term:

- Resolving the place of value creation issue
- Permanent Establishment connected with digitally enabled value creation
- Enhanced Transfer Pricing Guidelines for digitally powered business models

And we respectfully suggest in that respect some immediate **priority areas** to assist in forming the **road-map** for such analysis, which should be executed under a clearly defined timing framework that should not run longer than 2 years to reach conclusions and practical outputs:

- IP and intangibles focus areas:
 - Data as a new class asset.
 - Impact of most of hard/fixed assets going to be “digitalized”.
 - Digital platform, as a central element concentrating value creation in any industry: either “Around - or in”.

- Transfer Pricing focus areas:
 - Guidance to cover and map the data journey across the value chain and set relative contribution to the business.

 - Guidance to evaluate impact of A.I. and D&A in the Significant People Functions BEPs analysis.

- Digital transactions income qualification clarification from a treaties application perspective that can be commonly applied on an international basis in the “mid-term” period.

- Tax Legitimacy focus area:
 - Guidance about when and how to create any tax attribute to relevant non-directly rewarded “active user participation” in any side of a digital platform.

Please see some elaboration about the above points included in our recent paper presented October 13th, 2017 to the OECD request of input:

<https://det3.eu/wp-content/uploads/DET3-answer-to-the-OECD-web.pdf>

Integrating the indicated priority analysis points with the current TP guidelines and structured analysis process, with Treaty regulations, with EU Directives and the recent BEPS measures, it will be possible; but it might become far away such a too complex as an analysis process for any tax payer.

Any future long-term solution should be governed by the principle of “simplicity” and friendly “tax payer experience”.

This document is the result of the objective and consensual analysis of the questionnaire by DET3 members. Our purpose, objectives and values are expressed in the different sections of our www.det3.eu website, explaining how we want to collectively contribute to this relevant social debate. This does not however preclude that each individual member might hold its own position on any aspect affecting them based in their specific needs, situation or industry peculiarities / regulations.