

Digitalisation and Taxation Unilateral Measures

Future of Taxation 2020

BMF / Joint Vienna Institute / IMF / Österreichische Nationalbank
in collaboration with WU Wien and University of Vienna

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Overview

- 21st century shaped by increasing levels of digitalisation
- Growing concern about tax inequality, revenue gaps, base erosion and profit shifting
- Discussions at OECD and EU level without results (so far)
- Current development: Solo runs by countries across the globe



Proposal for EU DST directive (COM(2018) 148)

- **Business models captured:** those which would not be able to exist in their current form without user involvement
- **Taxable services:**
 - Targeted (digital) advertising,
 - digital "intermediation services" (by online „marketplaces“), and
 - transmission of data collected about users
 - e.g. *Google, Facebook, Amazon (Marketplace), Youtube, Airbnb, Uber*
- **Not covered (examples):** Streaming services (e.g. *Netflix, Disney+*), music providers (e.g. *Spotify, iTunes*), electronic payment service providers (e.g. *Paypal*), digital sale of goods
- **Nexus:** Location of users (access from user's device/account)
- **Revenue thresholds:** EUR 750 million globally
+ EUR 50 million within the EU
- **Tax rate:** 3%
- **Current status:** Remained a sole proposal

Proposal for EU DAT directive

- Compromise issued by Germany and France
- **Subject:** Digital targeted advertising
- **Not covered :** Online marketplaces services, processing of user data,
- **Nexus:** Location of users (access from user's device/account, \triangleq EU DST proposal)
- **Revenue thresholds:** EUR 750 million globally (all revenues) + EUR 50 million within the EU (revenues from digital advertising services)
- **Tax rate:** 3%

- **Current status:** Remained a sole proposal

The Austrian digital tax

- Drafted in accordance with Austrian advertisement tax, predominantly inspired by EU DAT proposal
- **Subject:** *All* online advertising services (not solely *targeted* advertising, ≠ EU DAT proposal!)
- **Nexus:** Accessibility via a domestic IP address + focus (content/design) on domestic users (German language etc)
- **Revenue thresholds:** EUR 750 million globally (all revenues) + EUR 25 million in Austria (revenues from digital advertising services)
 - ⇒ **Advertisement tax:** Exemption limit of EUR 10,000/year

The Austrian digital tax

- **Tax rate:** 5% ($\hat{=}$ Austrian advertising tax)
- **Expected tax revenues:** EUR 25 Mio (2020)–EUR 34 Mio (2023)
⇒ **Overall tax revenues 2019:** EUR 110.4 Mrd ($\hat{=}$ 0.02–0.03%)
- **Peculiarity:** EUR 15 Mio of yearly revenues earmarked for “financing of digital transformation processes of Austrian media companies” (state aid???)

- **Current status:** Levied (passed on by the “GAFA companies”)

The French “taxe GAFA”

- **Subject:** Targeted advertising, provision of online marketplaces (≠ EU DST proposal: processing of user data not included)
- **Nexus:** Accessibility of digital interface by users residing in France
- **Revenue thresholds:** EUR 750 million globally + EUR 250 million in France
- **Tax rate:** 3%

- **Current status:** Suspended (aim: facilitate proceedings at the international level)

US probes into national digital taxes ("Section 301 Investigations")

- Announced by US Trade Representative Robert E. Lighthizer on 2 June 2020
- *“President Trump is concerned that many of our trading partners are adopting tax schemes designed to unfairly target our companies. We are prepared to take all appropriate action to defend our businesses and workers against any such discrimination.”*
- **Subjects:** DSTs adopted or under consideration by Austria, Brazil, the Czech Republic, France, the EU, India, Indonesia, Italy, Spain, Turkey and the UK
- **Focus:** Discrimination against US companies, retroactivity, possibly unreasonable tax policy (e.g. extraterritoriality, taxing revenue not income; penalizing particular technology companies for commercial success)

- **Current status:** Pending

The Hungarian advertising tax – pending CJEU case

- **Subject:** Advertising services (offline + online)
- **Revenue threshold:** HUF 100 million (EUR 275,000)
- **Tax rate (since July 2017):** 7.5%
 - ⇒ originally (2014): progressive tax rate
0%/1%/10%/20%/30%/40% (50%)
 - ⇒ amended during the state aid procedure: 0%/5.3%
- **Current status:** Levied
- Considered **unlawful state aid** by EC (Decision (EU) 2017/329)

The Hungarian advertising tax – pending CJEU case

Commission decision annulled by GC (T-20/17) – Arguments:

- Commission decision based upon a hypothetical “normal” tax system
- Progressive tax rate not exclusive for income taxation systems
- Tax design in accordance with pursued aim (redistribution)

The Hungarian advertising tax – pending CJEU case

Pending: CJEU decision

- AG Kokott's opinion in line with GC's argumentation
- Hungarian DAT case predominantly influenced by individual factors – representative for state aid issues regarding other national digital taxes (particularly Austria)?

Thank you very much for your attention!

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Wir stellen die Fragen.



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