Position Paper for the European Commission’s Consultation on

A Fair and Competitive Digital Economy – Digital Levy

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1. About the Irish Tax Institute

The Irish Tax Institute is the leading representative and educational body for Ireland's Chartered Tax Advisers (CTA) and is the country's only professional body exclusively dedicated to tax.

The Chartered Tax Adviser (CTA) qualification is the gold standard in tax and the international mark of excellence in tax advice. We benchmark our education programme against the very best in the world. The continued development of our syllabus, delivery model and assessment methods ensure that our CTAs have the skills and knowledge they need to meet the ever-changing needs of their workplaces.

Our membership of over 5,000 is part of the international CTA network which has more than 30,000 members. It includes the Chartered Institute of Taxation UK, the Tax Institute of Australia, and the Taxation Institute of Hong Kong. The Institute is also a member of the CFE Tax Advisers Europe (CFE), the European umbrella body for tax professionals.

Our members provide tax services and business expertise to thousands of Irish owned and multinational businesses as well as to individuals in Ireland and internationally. Many also hold senior roles in professional service firms, global companies, Government, Revenue, state bodies and in the European Commission.

The Institute is, first and foremost, an educational body but since its foundation in 1967, it has played an active role in the development of tax administration and tax policy in Ireland. We are deeply committed to playing our part in building an efficient and innovative tax system that serves a successful economy and a fair society. We are also committed to the future of the tax profession, our members, and our role in serving the best interests of Ireland's taxpayers in a new international world order.

2. Introduction

The Irish Tax Institute welcomes the opportunity to contribute to the European Commission's public consultation on a proposed EU digital levy.

Undoubtedly, the increasing digitalisation of the economy has created challenges for the existing international corporate tax framework, which the Institute recognises needs reform. In our view, a coordinated international tax policy response, involving both EU Member States and countries outside of the European Union, is required to address the challenges caused by rapid digitalisation.

We support the ongoing work at the G20 and OECD level to reach a stable global consensus-based solution on how and where companies should be taxed in a digitalised world and note the pivotal role the EU and its Members States can play in working together with the OECD to find a global solution.

3. The objective of the proposed EU digital levy

The main objective of the proposed EU digital levy, as set out in the Inception Impact Assessment[1] and consultation questionnaire on the initiative, is to introduce a measure that allows for a fairer contribution from companies that operate in the digital sphere, to support the economic recovery and provide a more stable medium-term outlook.[2]

Whilst we recognise that governments in Members States and the EU must consider how to generate tax revenues to pay for extensive supports granted to citizens during the COVID-19 pandemic, several aspects of the consultation questionnaire appear to be somewhat inconsistent. For example, there are questions focusing on the extent to which tax systems are adapted for the digital economy and to vague concepts, such as, fairness.

If the purpose of the digital levy is to raise revenues to assist in the economic recovery following the pandemic, it raises questions as to whether it should be solely imposed on digital companies or should it be more widely spread, given COVID-19 economic supports have been provided to all citizens and sectors. Any decisions on a new tax measure should first and foremost be guided by the Ottawa taxation framework principles of neutrality, efficiency, certainty and simplicity, effectiveness and fairness and flexibility.[3]

The consultation questionnaire states that the digital levy would be designed in a way that is consistent with the Digital Services Act package and the Commission's digital strategy for ensuring a fair and competitive digital economy.[4] In our view, this objective in a taxation context, is one and the same as the objective which the 139 members of the Inclusive Framework on BEPS are working to resolve at present at the G20/OECD.

[1] Inception Impact Statement, Ref. Ares (2021)312667 - 14/01/2021
[2] Inception Impact Statement, Ref. Ares (2021)312667 - 14/01/2021
[3] Electronic Commerce: Taxation Framework Conditions – A Report by the Committee in Fiscal Affairs, 8 October 1998.
[4] https://ec.europa.eu/info/sites/info/files/communication-shaping-europes-digital-future-feb2020_en_4.pdf

The OECD's Pillar One Blueprint[5] proposes to deliver a sustainable taxation framework reflective of today's digitalised economy, as members of the Inclusive Framework negotiate policy and technical solutions to expand taxing rights and profit allocations of market jurisdictions, in an effort to ensure digital companies pay tax wherever they have significant consumer-facing activities and generate their profits.

Regrettably, unilateral digital tax measures implemented by some countries have caused trade tensions and consequential delays in the international tax negotiations at the G20/OECD. Whilst many technical details in respect of both of the Pillar One and Pillar Two[6] proposals are yet to be finalised, pending decisions by Inclusive Framework members at a political level, there is a concerted effort and momentum at present that a global consensus-based solution can be agreed by mid-2021. We believe that the EU has a pivotal part to play in reaching this target date.

It has been put forward that the EU digital levy would sit alongside any global solution agreed at the G20/OECD level[7], even though Inclusive Framework members, including EU Members States, have committed to the removal of existing digital tax measures that have been unilaterally introduced, when implementing any globally agreed solution. In view of this commitment, we believe there is a high risk that the proposal for an EU digital levy could seriously undermine the renewed engagement by members of the Inclusive Framework in recent weeks to reach a solution by mid-2021.

We note a recent publication by the IMF[8] which warns of the potential pitfalls of designing policies specific to a "so-called digital economy" given digitalisation is pervasive across the entire economy. A fact that was recognised by the European Commission Expert Group on Taxation of the Digital Economy[9] and the OECD in its BEPS Action 1 Report.[10]

The IMF report notes from "*the point of view of efficiency and neutrality, establishing a parallel tax regime for digital services and other digitalized business models would drive an inefficient wedge between the digital and the non-digital sectors of the overall economy. Moreover, poorly- designed and uncoordinated measures run the risk of becoming entrenched*." [11] The IMF cautions that uncoordinated digital tax measures, may bring, including the creation of an undesirable disincentive for investment, the proliferation of double taxation and potentially political economy costs from retaliation.[12]

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[5] OECD (2020), Tax Challenges Arising from Digitalisation – Report on Pillar One Blueprint: Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting, OECD Publishing, Paris.
[6] OECD (2020), Tax Challenges Arising from Digitalisation – Report on Pillar Two Blueprint: Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting, OECD Publishing, Paris.
[7] Inception Impact Statement, Ref. Ares (2021)312667 - 14/01/2021
[8] De Mooij, Ruud, Alexander Klemm, and Victoria Perry, eds. 2021. *Corporate Income Taxes under Pressure: Why Reform Is Needed and How It Could Be Designed*. Washington, DC: International Monetary Fund - page 221
[9] European Commission Expert Group on the Digital Economy Report, May 2014.
[10] OECD (2015), Addressing the Tax Challenges of the Digital Economy, Action 1- 2015 Final Report, OECD/G20 Base erosion
and Profit Shifting Project, OECD Publishing, Paris.
[11] De Mooij, Ruud, Alexander Klemm, and Victoria Perry, eds. 2021. *Corporate Income Taxes under Pressure: Why Reform Is Needed and How It Could Be Designed*. Washington, DC: International Monetary Fund - page 221
[12] Ibid

4. Issues regarding the proposed operation of the digital levy

The technical details on how the EU digital levy would operate in practice have not been set out in the consultation. The Inception Impact Assessment[13] states that options for the digital levy under consideration, include:

- A corporate income tax top-up to be applied to all companies conducting certain digital activities in the EU;
- A tax on revenues created by certain digital activities conducted in the EU; and
- A tax on digital transactions conducted business-to-business in the EU.

It is not possible to comment on the proposed options as the meaning of 'digital activities' and 'digital transactions' for the purpose of the digital levy have not been determined. In addition, it is unclear how corporate tax bases for businesses that do not have a permanent establishment in a country would be defined. It is likely that double taxation would arise, for example, if the digital levy takes the form of a turnover tax, which would not generally be a covered tax under double tax treaties. It is also uncertain how the proposed digital levy could sit alongside any revised international tax framework which may be agreed by members of the Inclusive Framework.

As the whole economy is becoming increasingly digitalised, we believe policymakers should be cautious in attempting to segregate companies operating in 'digital sector' from traditional business. Afterall, policymakers should be guided by the Ottawa taxation framework principles[14] in formulating any new tax measure. The IMF has recommended that "*the international tax system should continue to be based on mutually accepted concepts and norms, but appropriately adapted to the modern economy*."[15]

The difficulties which exist in ringfencing the digital economy are evident from the very significant work which has been undertaken by the OECD in seeking to define the scope of Pillar One. The issue of the range of businesses to be considered in scope of the new 'taxing right' under Pillar One has been the subject of wide-ranging technical analysis by the OECD, with extensive feedback provided by stakeholders operating across a range of business sectors to identify the differences across various business models.

The European Commission published two legislative proposals on the taxation of digital activities in 2018, one of which included an interim digital services tax. These legislative proposals have remained in abeyance while the international tax negotiations at the G20/OECD level have been progressing. Though, the European Council confirmed in March that the EU would be ready to move forward if the prospect of a global solution is not forthcoming by mid-2021.[16] This could mean businesses operating in the EU would face a plethora of national digital tax measures sitting alongside multiple EU tax

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[13] Inception Impact Statement, Ref. Ares (2021)312667 - 14/01/2021
[14] Electronic Commerce: Taxation Framework Conditions – A Report by the Committee in Fiscal Affairs, 8 October 1998 https://www.oecd.org/ctp/consumption/1923256.pdf
[15] De Mooij, Ruud, Alexander Klemm, and Victoria Perry, eds. 2021. *Corporate Income Taxes under Pressure: Why Reform Is Needed and How It Could Be Designed*. Washington, DC: International Monetary Fund - page 351
[16] Statement of the Members of the European Council, 25 March 2021 https://www.consilium.europa.eu/media/48976/250321-vtc-euco-statement-en.pdf?_cldee=Y21jZ3Vpbm5lc3NAdGF4aW5zdGl0dXRlLmll&recipientid=contact-194ef107fdf9e71180fd3863bb3600d8-1bbb469920144dfd99b90201310505b2&esid=d17f595e-588e-eb11-b1ac-000d3aabc670

measures. Each supplementary tax introduced would represent a cost of doing business for digital companies. Any new tax not considered a covered tax under double tax treaties would inevitably lead to double and indeed, multiple taxation for companies operating within the EU and result in an escalation of tax disputes.

Dispute resolution mechanisms have already been identified as a significant issue for taxpayers, by stakeholders participating in the OECD consultation process on the tax challenges of digitalisation. In our view, an EU digital levy would further compound already stretched existing dispute resolution mechanisms and ultimately, contribute to increased tax uncertainty.

The cost of double taxation and increased administrative and compliance burdens associated with multiple layers of taxation is a recognised barrier to growth for scaling businesses, expanding, and trading cross-border.

5. Need for tax certainty to assist the economic recovery

We believe that establishing legal and tax certainty in the international taxation framework is of the utmost importance and must be a priority for policymakers. Tax certainty is recognised as a key factor that influences investment and other commercial decisions and therefore has a significant impact on economic growth.[17] The European Commission has noted that uncertainty may have negative effects on investment, trade, and compliance.[18]

It is worth noting that significant changes in our tax laws have taken place within the EU in recent years, with the implementation of BEPS measures, including Country-by-Country Reporting, Controlled Foreign Company rules, interest limitation rules, anti-hybrid rules and updated OECD transfer pricing guidelines. In addition to the introduction of these complex tax measures, businesses have also had to contend with a multitude of unilateral digital tax measures by several EU Members States.

Alongside these significant legislative changes, businesses are striving to comprehend the likely impact of the corporate tax reforms under discussion at the G20/OECD. Simultaneously, businesses are seeking to understand the potential effect of the measures being contemplated by the EU, in the absence of an international consensus agreed at the G20/OECD.

In a world that is continuing to grapple with the impact of the COVID-19 pandemic, now more than ever businesses need certainty to make the necessary investment decisions required to support the economic recovery. We believe a coordinated international policy response to address the tax challenges related to the rapid digitalisation of the economy is essential to facilitate this crucial cross-border trade and investment.

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[17] IMF/OECD (2019), 2019 Progress Report on Tax Certainty, Paris. www.oecd.org/tax/tax-policy/g20-report-on-tax-certainty.htm
[18] European Commission Working Paper No. 67 – 2017: 'Tax Uncertainty: Economic Evidence and Policy Responses', March 2017

In our view, the proposal for an EU digital levy risks creating a further layer of uncertainty for business at a critical juncture. We would suggest that such uncertainty could create a disincentive for investment within the EU Single Market at a time when it is needed most to support the recovery of the European economy.

6. Conclusion

As stated at the outset, the Institute fully supports the ongoing efforts at the G20/OECD level to reach a stable global consensus-based solution to address the tax challenges arising from the digitalisation of the worldwide economy. We consider the EU, and its Members States have a central role to play, working within the G20/OCED process, to achieve this. We firmly believe the focus should remain on this work and on minimising the vast administrative burdens that will inevitably go with any agreed solution.

Otherwise, a proliferation of uncoordinated national digital tax measures could be introduced across Europe and beyond, leading to increased incidences of double taxation and more tax disputes which could further fragment the EU Single Market.

In a world that is continuing to grapple with the impact of the COVID-19 pandemic, now more than ever businesses need certainty. In our view, introducing an additional EU digital levy at this time, could not only undermine the renewed engagement by members of the Inclusive Framework to internationally agree a solution by mid-2021, but also increase the risk of double taxation for businesses operating in the EU and act as disincentive to investment within the Single Market, at a time when it is needed most to support the recovery of the economies of Member States.