

Corporate taxation of a significant digital presence

2018/0072(CNS) - 21/03/2018 - Legislative proposal

PURPOSE: to ensure that the activities of digital companies are fairly taxed.

PROPOSED ACT: Council Directive.

ROLE OF THE EUROPEAN PARLIAMENT: the Council adopts the act after consulting the European Parliament but without being obliged to follow the opinion of the latter.

BACKGROUND: rapid transformation of the global economy as a result of digitalisation is putting new pressures on corporate tax systems both at Union level and internationally, and calling into question the ability to establish where digital companies should pay their taxes and how much they should pay. The application of the current corporate tax rules to the digital economy has led to a misalignment between the place where the profits are taxed and the place where value is created.

The current rules no longer fit the present context where online trading across borders with no physical presence has been facilitated, where businesses largely rely on hard-to-value intangible assets, and where user generated content and data collection have become core activities for the value creation of digital businesses.

This proposal comes at a time when policy makers are struggling to find solutions that can ensure fair and effective taxation as the digital transformation of the economy accelerates, and when the existing corporate taxation rules are too outdated for such changes.

The [Commission communication](#) on 'A fair and efficient tax system in the European Union for the digital single market' adopted on 21 September 2017, indicated that new international rules are needed specific to the challenges raised by the digital economy in order to determine where the value of businesses is created and how that value should be attributed for tax purposes.

The European Council Conclusions of 19 October 2017 underlined the need for an effective and fair taxation system fit for the digital era.

IMPACT ASSESSMENT: the preferred option for addressing the issue within the EU is a standalone Directive to modernise permanent establishment rules and profit allocation rules.

CONTENT: the proposal aims to address the tax challenges posed by the digital economy by putting in place a comprehensive solution in the current corporate tax systems in the Member States. In concrete terms, it would allow Member States to tax the profits that are made in their territory, even if a company is not physically present there.

Scope: the proposal affects corporate taxpayers that are incorporated or established in the EU, as well as enterprises that are incorporated or established in a non-Union jurisdiction with which there is no double taxation treaty with the Member State where a significant digital presence of the taxpayer is identified. The proposal does not affect enterprises that are incorporated or established in a non-Union jurisdiction with which there is a double taxation treaty in force with the Member State of the significant digital presence.

Significant digital presence: for the purposes of corporate tax, a permanent establishment shall be taken to exist if a significant digital presence exists through which a business is wholly or partly carried on.

A digital platform would be considered to have a taxable "digital presence" or a virtual stable establishment in a Member State if it meets one of the following criteria:

- the proportion of total revenues obtained in that tax period and resulting from the supply of those digital services to users located in that Member State in that tax period exceeds EUR 7 million;
- the number of users of one or more of those digital services who are located in that Member State in that tax period exceeds 100 000;
- the number of business contracts for the supply of any such digital service exceeds 3 000.

Profits attributable to the significant digital presence: the proposal sets out principles for attributing profits to a digital business. These principles should better capture the value creation of digital business models that highly rely on intangible assets.

Particular attention would be paid to the fact that a significant portion of the value of a digital enterprise is created where users are located and where user data is collected and processed and where digital services are provided.

Incorporation into the Common Consolidated Corporate Tax Base (CCCTB): the Commission is willing to work with the Member States and the Parliament to examine how the provisions of this Directive can be incorporated into the CCCTB.

In this respect, the Commission welcomes the amendments in the reports of the Committee on Economic and Monetary Affairs of the European Parliament on the Common Corporate Tax Base and the CCCTB as a good base for further work on ensuring a fair taxation of digital activities. (Please see [2016/0336\(CNS\)](#) and [2016/0337\(CNS\)](#)).