Digitalised economy: recent consultations and developments

International Tax | Large Corporate

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Spring saw a number of announcements relating to the taxation of the digitalised economy. The CIOT remains engaged with the debate on which governments and the international tax community are firmly focused.

On 13 March 2018, the UK government published an updated position paper setting out its views on *Corporate tax and the digital economy*. This was followed by the publication of the OECD's Interim Report 2018 on *Tax Challenges arising from Digitalisation* on 16 March, which outlines the work that has been undertaken in working towards a multilateral solution and concludes that there is no consensus on the need for, or merits of, interim measures. Finally, on 21 March the EU Commission published an 'interim' proposal for a *common system of a digital services tax on revenues resulting from the provision of certain digital services alongside a long-term solution around the corporate taxation of a significant digital presence (a digital permanent establishment)*.

The CIOT has been involved in the debate around whether the international tax system deals satisfactorily with the modern global economy since the digital economy was identified as an action point of the G20/OECD BEPS project in 2013. Since then we have engaged with the UK government, the OECD and the EU Commission on the topic. We have submitted responses to the EU Commission's proposals and will be writing again to the UK government on its ongoing work in this area.

The CIOT has consistently advocated that a long term, sustainable solution will only come from a multilateral approach, across the globe. Such an approach is the best way to avoid the problems that would inevitably arise from unilateral actions: double taxation and significant compliance burdens for businesses, which would stifle

economic growth and innovation. There is also a negative impact on the competitiveness of countries (or groups of countries) introducing unilateral measures. In addition, perversely, differences between tax systems, which would result from unilateral action, are likely to give rise to arbitrage/tax planning opportunities.

However, we also recognise the political pressure on governments to ensure that the tax system is perceived as fair, which includes ensuring that multinational groups pay an appropriate amount of tax locally and globally. The tax system should also generate sustainable and stable revenues and we suggest that, in responding to this pressure, tax authorities and the EU should be clear and consistent on the 'mischief' that any proposals, such as the Digital Services Tax (DST), are aimed at and ensure that double taxation relief mechanisms are available where there is no mischief.

In our view, interim measures are not necessary and are, instead, counter-productive to the multilateral discussions and negotiations. We would prefer to see governments refrain from taking interim measure at this time, particularly given the relatively short time period in which the OECD has committed to reaching a global, long-term solution. However, to the extent that they are considered, any interim measures should be aimed at approximating and raising the tax on what could be considered to be the profit that should be allocated to a jurisdiction if the value created by digitalisation could be measured and so attributed. These approximations may well be crude, and any such measures need to be targeted only on those businesses where this value is most likely to occur.

We also support the conclusions reached in the OECD Interim Report 2018 around the considerations for the design of interim measures (Chapter 6 part 3). In particular, paragraph 412 says that '*Countries …. recognise the need to take the following considerations into account: (i) to be compliant with a country's international obligations, (ii) be temporary; (iii) minimise over-taxation; (v) minimise the impact on start-ups, business creation and small businesses more generally, and (vi) minimise cost and complexity.*'

In our response to the EU on the proposed DST, we note how the proposals do not measure up to these aims as set out by the OECD.

In relation to a long-term, multilateral solution, the CIOT recognises that certain elements of value in modern digitalised supply chains are not easily captured by the

current tax system; and thus some element of profit may be allocated to countries on the basis of factors that were designed with the physical economy in mind (and some of these maybe untaxed). Digitalisation has influenced how and where groups interact with their users, process data and exploit assets to generate value. It is legitimate, therefore, to explore the extent to which these new factors can and do generate value, and how this may be reflected in the tax system.

The work that is being undertaken by the UK government, the OECD and the EU in relation to multilateral long-term solutions is all essentially focussed on how the new sources of value, such as user participation, can be measured so that profits can be attributed in respect of them. However, this work is only serving to emphasise the very real complexities that arise in seeking to determine and measure any such value, how to attribute profit and then how to tax it.

In its responses, the CIOT reiterates it supports all efforts to reach international consensus and a multilateral long-term solution and will remain engaged with this debate as it develops in the coming years. The OECD intends that a Final Report will be produced relatively quickly, in 2020.

Our full responses to the EU Commission can be viewed on the CIOT website:

EU corporate taxation of a significant digital presence - CIOT response

EU digital services tax - CIOT response