OPINION STATEMENT

# Opinion Statement CFE 2/2021 on the EU Digital Levy Consultation

## Issued by CFE Tax Advisers Europe
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CFE Tax Advisers Europe is the European umbrella association of tax advisers. Founded in 1959, CFE brings together 33 national tax institutes, associations and tax advisers' chambers from 24 European countries. CFE was the initiator of the Global Tax Advisers Platform through which it is associated with more than 600,000 tax advisers worldwide. CFE is part of the EU Transparency Register no. 3543183647-05.

We would be pleased to answer any questions you may have concerning our Opinion Statement. For further information, please contact Bruno Gouthière, Chair of the CFE Fiscal Committee or Aleksandar Ivanovski, Director of Tax Policy at info@taxadviserseurope.org. For further information regarding CFE Tax Advisers Europe please visit our web page http://www.taxadviserseurope.org/

## 1. Introduction

CFE takes note of the Digital Levy Roadmap and the public consultation published by the European Commission. CFE also notes the ongoing international negotiations at OECD level on developing technical and policy solutions to agreeing tax allocations rights, in an attempt to ensure digital companies pay tax wherever they have significant consumer-facing activities and generate their profits. CFE have provided previous commentary and input in the context of the existing EU digital tax proposals, and the OECD consultation processes carried out between 2017 and the time of this statement being published. This Opinion Statement complements these previous comments.

CFE observes that many technical details are yet to be finalised by the members of the OECD Inclusive Framework at political level. CFE notes the pivotal role the European Union and its Member states play in seeking to reach and contribute to a global solution to these challenges and working together with the OECD.

CFE maintains the view that a coordinated international policy response is necessary in particular in order to avoid fragmentation of the EU Single Market , and to avoid the risk of double or multiple-taxation. CFE supports collaborative work towards a global, future-proof, longer-term reform of the international tax system that addresses the tax challenges of the digitalisation of the economy.

## 2. Comments on the Proposed Digital Levy

CFE understands that the genesis for the proposed digital levy is to generate an EU-own resource to aid in the economic recovery from COVID-19. Given the measure is intended to be one implemented for recovery purposes, i.e. a measure that would presumably be of limited duration, CFE is concerned that the type of levy being considered would be one that applies on a permanent basis. If the rationale behind introducing an EU digital levy is to aid with the recovery from the COVID-19 crisis, some aspects contained in the questionnaire consultation would appear to be at odds with that aim, such as concepts of whether tax systems are adapted to the digital economy, and nebulous concepts such as fairness.

CFE appreciates that governments are aiming to increase tax revenues to aid with recovery from losses incurred due to the COVID-19 crisis. However, if a tax is being introduced for this reason, to raise revenue to assist in the temporary recovery from the crisis, this raises issues of how long the solution should be put in place, and whether it is right for tax revenue raising to fall on digital companies, or whether it should be more widely spread. It begs the question whether taxes should be raised for all citizens or only for digital companies, given that economic assistance during the COVID-19 crisis has been provided to all citizens.

CFE observes that the consultation and roadmap references that the EU digital levy will aim to be a *"measure that allows for a fairer contribution from the companies that operate in the digital sphere"* in line with the Digital Services Act package recently introduced addressing the dominance of digital companies, particularly in the platform economy. CFE notes that the inception plan indicates that the options for the digital levy being considered 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;
- A tax on digital transactions conducted business-to-business in the EU.

CFE makes the observation that if the digital levy is being introduced in order to address issues of fair taxation, this is one and the same aim as the work being undertaken by the Inclusive Framework of the OECD. The EU, through its participation in that process, and Members States agreeing to be bound by the solution should indicate that the outcome arrived at the conclusion of the negotiations is one that is fair, and the digital levy should therefore fall away on its own rationale.

CFE is concerned by the fact that there is a multitude of turnover digital tax measures being introduced at national level worldwide, and that the complete technical aspects of the proposed OECD solution are not yet known. How an EU digital levy would sit alongside those measures is unclear, and is a matter of concern for tax advisers, business and tax administrations alike. CFE fears that in absence of the measures being connected, there will inevitably be double, triple and quadruple taxation on companies as a result of these multiple digital tax measures. CFE is also concerned that the EU DST tax proposal, although not being progressed at present, may be revisited should agreement at OECD level prove impossible. If the EU digital levy were to also take the form of a turnover tax, this would also be a type of tax not within the scope of double tax treaties, meaning it cannot be credited, and companies would be unable to seek relief from double taxation. An alternative is to make an allocation to a deemed permanent establishment, with a certain cost base being allocated to the permanent establishment, in order to arrive at an income base, and then impose a percentage tax as corporate income tax, assuming that the profitability relates to a customer base. This would also allow for start-ups without profits to provide counter proof, and for business to account for losses. However, such a solution can only be feasible if countries agree on a consolidated corporate tax base and/or, at the minimum, if double taxation conventions are amended accordingly.

CFE observes that corporate income top-up taxes are being proposed in a number of Member States at present, also with the aim of aiding the economic recovery from the COVID-19 impact. Any EU tax which also takes the form of a corporate income top-up tax would very likely result in double taxation. It is also unclear from the Roadmap and questionnaire which digital sources may come within scope of the tax, or how corporate tax bases for businesses that are not operating in-country will be defined. It is foreseeable that businesses could be faced with complying with an OECD agreed digital tax measure, national digital turnover taxes, national corporate income tax top-up taxes, and an EU corporate income tax top-up. Issues of nexus, tax base, inclusions, adjustment of revenue in the multiple jurisdictions, issues of creditability against other taxes paid are just some of the problems businesses will face in such a scenario.

CFE is of the view that should agreement fail to be reached at OECD level and an EU digital levy is introduced, it should take the form of one single coordinated measure that can be hypothecated, in the place of multiple EU tax measures sitting alongside national digital taxes. Every additional tax introduced represents an additional cost of doing business for digital companies, which in all likelihood will be pushed through to consumers, rather than being absorbed by companies themselves. Should companies be able to credit the tax against their corporate income tax in their respective countries, the tax would then be general, non-discriminatory and companies could avoid double taxation. However, any new tax that is not covered under tax treaties would require a new modality for relief, requiring the revision of tax treaties.

CFE believes that establishing legal and tax certainty in the international taxation framework is of the utmost importance and must be a priority of policy makers, particularly for the EU. Full support should be given to agreeing a global solution. Whilst CFE appreciates the importance of measures to ensure fair taxation, at present, in CFE's view, it will be immensely difficult in reality for tax administrations, taxpayers and tax advisers alike to work with a multitude of new digital tax measures.

Any additional new EU digital levy intended to sit alongside the global solution agreed by the OECD's Inclusive Framework which deviates from settled tax practice and the international tax framework will inevitably lead to great tax uncertainty for all stakeholders. Increased administrative and compliance cross-border burdens will disproportionately affect the ability of smaller enterprises to carry out and expand their business domestically and cross-border. Similarly, the cost of double taxation will adversely affect SMEs far more than MNEs.

Further, the introduction of an EU digital levy alongside other digital taxes will result in increased tax disputes. Issues surrounding dispute resolution mechanisms have already been identified by the majority of stakeholders who provided input on the OECD digital tax consultation processes as a significant problem for taxpayers. An EU levy would further stretch scarce resources to deal with disputes, increase waiting lists before appropriate fora and ultimately contribute to increased tax uncertainty. Implementation of any new tax must also be done in a manner to avoid uncertainty for taxpayers, ensuring that sufficient information is provided and taxpayers' rights are safeguarded. New tax obligations should not be overly onerous on taxpayers and proper controls should be exercised over tax obligations.

## 3. Concluding Remarks

CFE supports the ongoing process of reaching a globally acceptable solution for the tax challenges of the digital economy. We also are cognisant of the fact that the preferred solution of the relevant international stakeholders is arriving at a common position on taxation of the digital economy, in absence of which a plethora of uncoordinated national measures throughout Europe and beyond could follow, potentially creating further opportunities for tax arbitrage. Introducing an additional EU digital tax could result in unintended outcomes that are not aligned with the policy objectives of the international process to agree a tax solution at OECD level.

CFE believes that establishing tax certainty in the international taxation framework as well as the protection of taxpayers' rights and the avoidance of double taxation is of utmost importance and must be a priority for policymakers. Accordingly, CFE believes that the focus should remain on the ongoing work of the OECD, and on minimising the enormous administrative burdens that will accompany any agreed solution.

The CFE hopes that these comments will be helpful. Monitoring and informing our members on the progress of the EU proposals, further OECD developments and unilateral measures introducing national digital taxes will remain a priority for the CFE Tax Advisers Europe organisation.