



National digital services tax: France takes its gloves off

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1 Background

On 21.03.2018, the EU Commission drew up a proposal for the implementation of an EU-wide “digital services tax”, within the framework of its “Digital Single Market Strategy” (see KMLZ Newsletter 17/2018). In December 2018, after it became apparent that it would be difficult to enforce the implementation of an EU-wide digital services tax, France announced that it intended to realise a digital services tax at national level. The French Ministry of Finance has now presented the main contents of this new tax bill to the public (*Projet de loi relatif à la taxation des grandes entreprises du numérique* of 06.03.2019).

2 Contents of the bill

In particular, the French bill is aimed at taxing large internet companies. According to the Ministry of Finance, these companies have not yet made an adequate contribution to national tax revenue. This has mainly been due to the fact that, in the digital age, the value added is largely generated by the online behaviour of internet users and the current (value-added) tax law does not take this sufficiently into account.

2.1 Companies affected

The tax is intended to impact all companies, which generate at least EUR 25 million digital revenue in France and EUR 750 million worldwide. It is irrelevant whether or not the company is located in France. Thus, German companies may also be affected by the tax.



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2.2 Supplies of services affected

The following supplies of services are to be covered by the French digital services tax:

- Placement of online advertising based on user data;
- sale of data collected online for advertising purposes (e.g. by search engine operators, price comparison platforms);
- provision of online platforms through which internet users can interact with one another (e.g. online marketplaces, dating sites, app stores).

The following supplies of services should be explicitly excluded: Direct sale of goods and services, including digital contents (e-commerce, video and music on demand); news and payment services; supply of advertising services where advertising messages are identified solely on the basis of the content of the website and are identical for all internet users; sales of data not collected via the internet or for purposes other than advertising; regulated financial services.

2.3 Tax base

The tax amounts to 3% of the revenue earned from the above mentioned supplies, as far as there is a connection to the French State territory. The share of revenue relating to the national territory is calculated from the total revenue to which a coefficient of digital presence in France is applied. The coefficient is calculated in proportion to the number of French users using the service.

2.4 Entry into force and practical implementation

The tax is intended to apply, with retroactive effect, as from 01.01.2019 and is to remain in force until such time as an equivalent tax is introduced at OECD level. Basically, the tax is to be declared and paid according to the same procedures as VAT. Tax returns are to be filed annually (at the end of April). Tax will be due in two instalments, each of which will account for at least half of the amount of tax owed for the previous year. The instalments will be due at the end of April and October. Taxpayers may reduce their advance payments subject to certain conditions, in cases where the advance payments would be in excess of the actual tax due. For 2019, only one instalment must be paid and this will be at the end of October. This rate will be based on 2018 revenue and will be deductible from French corporation tax.

3 Outlook

Although no EU-wide digital services tax was agreed at the recent meeting of EU finance ministers on 12.03.2019, the other European finance ministers want to achieve the introduction of a global digital services tax by summer 2020 at G7, G20 and OECD level. At the same time, in addition to France, Spain and Austria are also now planning to introduce a national digital services tax. However, neither Spain nor Austria are as advanced in their plans for such a tax as France. Nor does any other country seem as determined to introduce a digital services tax as France. Whether the digital services tax will actually be introduced in France will be evidenced in the forthcoming legislative process. However, companies should prepare themselves for the fact that, as things currently stand, France will be the first country to introduce a digital services tax - and then possibly with retroactive effect as of 01.01.2019.