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European Union

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## **NOTE**

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From: Presidency  
To: Permanent Representatives Committee/Council  
Subject: Digital taxation  
– State of play

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### **1 Introduction**

1. As follow-up to the debate at the Council (ECOFIN) on 17 May 2019 and in preparation of the discussions at the Council (ECOFIN) on 8 November 2019 the Presidency has prepared this note summarising the work undertaken during the current Presidency concerning the OECD international income tax work regarding tax challenges arising from the digitalisation of the economy.
2. The objective of the Presidency is to invite the ECOFIN Council to discuss the state of play at the EU level as well as the way forward in light of the dynamic nature of the OECD work.

## 2 Overview of the work of the OECD

3. The OECD work on digital economy initially commenced around questions whether the international income tax rules continue to be fully up-to-date in the modern global economy where new value drivers come to the fore and physical distances are losing their relevance. It was considered important to evaluate whether digitalization exacerbated risks in relation to base erosion and profit shifting (BEPS).<sup>1</sup> In addition, the changes brought about by digitalisation were seen as requiring the revisit of some fundamental aspects of the international tax system, more specifically rules concerning where to tax (nexus) and how much to tax (profit allocation).
4. The OECD's programme of work on digital taxation<sup>2</sup> was adopted at the Inclusive Framework on BEPS at its May 2019 meeting. It was endorsed by the G20 ministers at their meeting on 9 June 2019.
5. The ongoing OECD work on the tax issues arising from the digitalisation economy consists of two work streams: pillar 1 and pillar 2. Pillar 1 examines rules concerning the reallocation of profit and revised nexus rules. It will explore potential solutions for determining the above mentioned issues of where tax should be paid and what portion of profits should be taxed in these jurisdictions (nexus and profit allocation). The primary direction of this work is to reallocate more taxing rights to the market/user jurisdiction.
6. Pillar 2 consists of a global anti-base erosion proposal (GloBE). It will explore the design of a system to ensure that multinational enterprises – in the digital economy and beyond – pay a minimum level of tax. This pillar is intended to address remaining BEPS issues by providing countries with new tools to protect their tax base from profit shifting to jurisdictions which tax these profits at below the minimum rate.

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<sup>1</sup> BEPS is an OECD project which addresses tax avoidance and aims to ensure that profits are taxed where economic activities generating the profits are performed and where value is created and consists of 15 Actions. Action 1 is called 'Tax Challenges Arising from Digitalisation'.

<sup>2</sup> The OECD's Programme of Work to develop a consensus solution to the tax challenges arising from the digitalisation of the Economy

7. The overall timetable of the whole project is extremely ambitious. The aim of the OECD is to have a political agreement on the architecture in the January 2020 Inclusive Framework meeting. The final OECD report on the project is to be delivered by the end of 2020.

### 3 Discussion within the EU

8. At the ECOFIN meeting on 17 May 2019, the ministers discussed the state of play of current international tax reforms. They assessed possibilities for preparing the negotiations in the OECD and broadly supported continuing discussions on these matters in the EU. The objective of the discussions was to exchange ideas on the technical papers and options discussed in the OECD, taking into account the impact on the tax revenues and businesses of the Member States and to see whether issues common to MS could be identified.
9. In line with the 17 May 2019 ECOFIN discussions, the topic has been dealt with at technical level. Under the current Presidency, six rounds of discussion have been held: meetings of the Working Party on Tax Questions (digital taxation) (WPTQ) on 18 July, 11 October and 25 October, the Fiscal Attachés meeting of 25 September and the meeting of the High Level Working Party on Taxation (HLWP) on 12 July and 28 October 2019.
10. During the discussions, the OECD proposals have been evaluated from several different angles. All Member States see the OECD discussions as a matter of highest priority. Most Member States are supportive of preparatory discussions at EU level. A few Member States have been more hesitant. With regard to pillar 1, items such as the scope of taxpayers affected by the new rules, exemptions from the scope, new nexus criteria have been raised. As regards pillar 2, many Member States consider it important to conduct a timely examination of the EU law compatibility of the OECD proposal, as the negotiations evolve.
11. The Commission has taken action to evaluate the economic impact of the OECD proposals. In addition to the Commission's work, some individual Member States have presented their work conducted so far with regard to the impact analysis. The impact analyses require further refinement as for Member States these would be an essential element in determining policy choices. To that end, Member States should cooperate with the Commission to the extent possible.

## 4 The way forward

12. The Presidency has reserved WPTQ meetings to be held on this topic after the ECOFIN. The Presidency intends to continue offering a platform for Member States for preparatory discussions. The timetable of OECD is very ambitious and different elements of the options are becoming clearer only gradually.
13. As described above, discussions around pillar 1 and pillar 2 have now taken place in the WPTQ and Fiscal Attachés meetings, where multiple items of interest and concerns have been expressed by the Member States. Given the anticipated sequencing of work at the OECD, the coming weeks would be the opportune point in time to identify and further define the issues and/or concerns that are common for EU Member States. Timely progress of work in the Council in this respect would be essential for preserving the possibility to advance these positions in the work of the OECD in a meaningful and timely manner.
14. Against this background, the ECOFIN Council is invited to exchange views on the way forward proposed by the Presidency as follows:
  - a. Before the end of the year, examine initial findings on EU law compatibility of the solutions discussed at OECD level, building on the work done by the Commission on this;
  - b. Work on impact analyses should continue as a priority and to that end Member States should cooperate with the Commission to the extent possible;
  - c. Certain elements discussed at OECD level should be examined at EU level in order to find commonalities for the EU Member States;
  - d. The relevant Council preparatory bodies should be tasked with the above-mentioned priorities to carry out the work under the lead of the Presidency.