

OECD outlines digital taxation suggestions

On 24 March the Organisation for Economic Co-operation and Development (the OECD) published its Discussion Draft on 'Tax Challenges of the Digital Economy,' suggesting options for overcoming the challenges, for example by modifying permanent establishment and VAT rules.

"The Draft acknowledges that it would be irrelevant to ring-fence the digital economy from the rest of the economy," explains Rui Cabrita, Lawyer at Olswang. "The OECD has focused instead on the key features of the Digital Economy as a whole that warrant attention, including mobility, the reliance on data, and the associated volatility," adds Aredhel Johnson, Senior Associate at Squire Sanders.

A public consultation will follow on 23 April and a final report is scheduled for September. "Whatever is eventually adopted, it will be critical that countries take a coordinated approach: implementing different solutions, or the same solutions differently, could increase double taxation, and still provide areas of double non-taxation," said Chris Hutley-Hurst, European Counsel at Skadden.

Parliament approves draft Data Protection Regulation

The European Parliament (EP) voted in favour of the European Commission's draft EU General Data Protection Regulation in a plenary session on 12 March in a development that, described by the EP, 'means the position of the Parliament is now set in stone and will not change even if the composition of the Parliament changes following the European elections in May.'

"There has to be considerable doubt as to whether the recent positive vote on the Albrecht draft brings finalisation of EU data protection reforms closer in any meaningful way," said Stephen Groom, Partner at Osborne Clarke. "All reports suggest that the vote was almost indecently quick with very little debate. Knowing full well that Ministers still had concerns, it seems likely MEPs were happy to see the back of the draft, safe in the knowledge that the real 'heavy lifting' will happen in the

autumn when a new Parliament has been voted in and new Commissioners appointed."

The Regulation as amended by the LIBE Committee includes *inter alia*: increased fining powers of up to €100M or 5% of annual worldwide turnover; the Regulation would be applicable to a controller not established in the EU when processing is related to offering goods or services to individuals in the EU; and the controller and processor must designate a Data Protection Officer where processing relates to more than 5,000 data subjects in a 12-month period.

"Online businesses will need to jump through more hoops before they can capture and use online personal information. A key change will be that in many cases consent will be needed. Although it was good news that the EP defined profiling in its draft, the bad news is that it is

a very wide definition," said Kirsten Whitfield, Director at Wragge & Co LLP. "There is real potential for the Regulation to encourage public trust that organisations in Europe will be open and responsible about their use of personal data but only if we get the balance right. If the balance tips too far in favour of the individual, the Regulation could shackle the digital economy."

The draft Regulation will now be examined by the European Council of Ministers. "I think that some of the strict concepts developed by the EP will not survive the Council negotiations. The Council is still very split over many issues, such as the one-stop-shop system," said Dr. Jörg Hladjk, Counsel at Hunton & Williams. Adds Marc Lemprière, Of Counsel at Bignon Lebray Avocats, "No adoption of this regulation is yet certain."

Internet control moves towards private sector with US handover

The United States Commerce Department's National Telecommunications and Information Administration (NTIA) announced on 14 March that it will 'transition key internet domain name functions to the global multi-stakeholder community,' which will *inter alia* give control of administering changes to top-level website domain names and addresses to a non-government entity.

"This is significant because it moves the internet farther away from government control and

towards private sector control," said Michael Vatis, Partner at Steptoe & Johnson. "In announcing the transition, officials have downplayed the move as simply the culmination of transition plans that date back to 1998," explains Mark Brennan, Partner at Hogan Lovells. "It is unknown exactly which stakeholders will exert new influence."

NTIA has asked ICANN alongside other groups to put together a transition proposal. "The US has made it very clear that it will not accept any

proposal that replaces US government oversight with a government-led or intergovernmental solution," said Kimberley Berger, Attorney at Miller Canfield. "NTIA has said any plan must meet several principles, including maintaining the security, stability, and resilience of the DNS and maintaining the openness of the internet," adds Vatis. "Fears that countries like Russia will take over and increase their censorship efforts are based on a misunderstanding of what is going on."

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