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# Is the EU Moving the Goalposts on Digital Services Taxes?

By Jefferson VanderWolk

On March 16, 2021, Valdis Dombrovskis, the Executive Vice-President of the European Commission, made some remarks at an informal press conference following a meeting of the EU's Economic and Financial Affairs Council (ECOFIN), including the following:

"Lastly, on digital taxation: We still need a global agreement on reforming the institutional system at the level of the OECD and G20. So we welcome the change of position by the new U.S. administration and remain confident of reaching a consensus by mid-2021. In parallel, as mandated by the European Council, we are continuing preparations for proposing an EU digital levy, to serve as an EU own resource by 2023. We will ensure that this will complement the OECD process and be WTO-compatible."

In case you are wondering, an "EU own resource" is a revenue-raising measure that is applied by all EU member states, on identical terms, for the purpose of funding the EU's budget. Although the EU is not a sovereign government, it does spend money in various ways, and therefore it needs to have sources of funding. Up to now the EU's own resources have consisted of customs duties, a share of VAT collected by member states, and a further contribution by member states based on their respective gross national incomes.

The OECD process that Dombrovskis was referring to is the OECD/G20 Inclusive Framework's two-pillar project on the tax challenges of digitalization, sometimes called BEPS 2.0. The project is aimed at finding a global consensus on how to tax corporate profits from the cross-border provision of digitalized services and products, and to clarify the taxation of cross-border marketing and distribution activities (Pillar One) as well as consensus on a global minimum tax regime common to all countries (Pillar Two).

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The proposals regarding both pillars are strictly limited to changes in income taxes on business profits.

One of the main purposes of the OECD/G20 project is to create a single, globally agreed set of tax rules regarding the subject matter of both pillars. The 139 countries participating in the negotiations have agreed, up front, that if a global agreement is reached, all inconsistent tax measures relating to the same subject matter—such as digital services taxes—will be repealed and no new ones will be introduced.

What, then, did Dombrovskis mean by saying that, "in parallel" to the OECD/G20 process, the European Commission was preparing an EU digital levy that "will complement" that process? My dictionary defines the verb "complement" as "to complete or enhance by providing something additional." This suggests that the EU is planning to proceed with its digital levy even if a global consensus is reached by the OECD/G20 Inclusive Framework.

If that were the case, the EU would be in conflict with the Inclusive Framework members' commitment to refrain from introducing additional new rules on taxing digital services. On March 17, the day after Dombrovskis' remarks, Pascal Saint-Amans of the OECD urged an EU Parliament committee to hold off on introducing the proposed digital levy, given the agreed goal of eliminating digital services taxes worldwide. The EU Parliament's Economic and Monetary Affairs Committee, and its sub-committee on tax matters, are currently considering a report on the proposed digital levy, which could lead to a resolution on the issue by the full EU Parliament sometime in April.

The EU Parliament's draft report repeats a controversial claim made in the European Commission's Inception Impact Assessment of Jan. 14, 2021, on the proposed digital levy, to the effect that "digital business models face significantly lower effective tax rates than traditional business models which rely on physical presence." This proposition, which is presented as a fact by the Commission and the Parliamentary drafters, conflicts with research presented in a May 2020 working paper of the International Monetary Fund, "Tec(h)tonic Shifts: Taxing the 'Digital Economy'," which concluded, "What we see is that the tech sectors report implied average tax rates more or less in line with the average of other Fortune Global 500 firms." Other research papers have also found, contrary to the widely held belief in an unlevel playing field, that highly digitalized businesses are paying taxes at similar rates to those paid by other types of businesses.

It is currently unclear what the outcome of the current processes both in the EU and in the OECD/G20 Inclusive Framework will be. The EU, with its 27 member countries, has had problems in the past in reaching unanimity in tax matters, and the Inclusive Framework, which has 139 member countries, is attempting something that is unprecedented in history and extremely ambitious as a political matter—namely, global agreement on a detailed set of income tax rules.

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