

Warsaw, 6 March 2019 r.

Organisation for Economic Cooperation and Development

Task Force on the Digital Economy

By e-mail: TFDE@oecd.org

REQUEST FOR INPUT ON ADDRESSING TAX CHALLENGES OF THE DIGITALISATION OF THE ECONOMY

Związek Pracodawców Branży Internetowej IAB Polska welcomes the opportunity to contribute to the OECD's consultation process on taxation of the digitalized economy. IAB Polska is representing a wide range of entities of different scope and scale of activity, thus the standpoint below addresses the concerns of various types of businesses.

A. Revised profit allocation and nexus rules

1. *The need for the tax reform*

IAB Polska understands and accepts the need for a reform of international tax rules on distribution of taxation rights aimed at adjusting them to the present, widely digitalized economy.

It should be crucial to achieve international consensus via the OECD, ensuring a coherent global framework remains in place for trade and cross-border investment. Otherwise, the risk of double taxation or protracted tax disputes between countries may prove the efforts to create a new, more adequate international taxation system futile. From this perspective, IAB Polska would like to express its concerns on the accuracy of the proposals, which are at present discussed within the OECD.

2. *The scope of the new regulations*

If changes to the international tax rules are needed, they should apply more generally and not only to the most digitalized companies with the highest revenues. As it has already been

agreed within the OECD works, it is not possible to “ring-fence” the digital economy¹. The governments should seek consensus on the methodology and degree to which taxation rights should shift (more generally) to the place of consumption from the place where products and services are created. With narrow definitions and targeted policy instruments, every country could seek to impose new taxes on imported products and services, while maintaining or reducing taxes on exports, which could harm trade, cross-border investment, and economic growth.

The wider economy is digital or rapidly digitalizing, which includes the widespread use of data analysis, customer feedback, automated data feeds, computer-mediated transactions, customized products and services, targeted offers, and more. This is why, in IAB Polska opinion, the envisaged tax reform should not be based on the idea that there may be one determinant of changing the nexus rules and profit allocation like user participation or marketing intangibles, as suggested in the two proposals presented in Public Consultation Document. Moreover, the ideas based on user participation or marketing intangibles would lead to the solutions which do not address the tax challenges resulting from digitalization in complex, but they would rather lead to inequalities in taxation rules for different types of businesses (e.g. user participation proposal is aimed at three selected kinds of enterprises: social media platforms, search engines and online marketplaces which does not seem to have any legal or factual justification).

3. *The need to establish reasonable thresholds for the new rules*

Having said the above, IAB Polska would also like to express the need for the new rules to be applicable only under the condition that some reasonably established threshold of business activity is conducted in the given jurisdiction. Implementation of the thresholds is necessary in order to protect the small and medium local enterprises whose presence in foreign jurisdiction is limited and does not infringe materially the current rules on split of taxing rights between the countries against the administrative burden connected with fulfilment of the new taxation rules (tax compliance in different jurisdictions, etc).

4. *Administrative matters*

The distribution of taxing rights among countries should be clearly defined and not subject to a range of interpretations or assessments. This is needed to avoid costly disputes and excessive compliance costs for taxpayers. The goal of international tax policy should be a predictable tax regime, that allows companies operating across borders to make long-term investments.

¹ OECD Tax Challenges Arising from Digitalisation – Interim Report, 16 March 2018

Additionally, compliance simplifications should be implemented, so that the taxpayer could settle its total tax obligation in one country, which could further be distributed between the countries with taxing rights towards given portions of the profit.

B. Global anti-base erosion proposal

The subject of the second part of Public Consultation Document is more general anti-BEPS measures, namely (i) income inclusion rule, which would allow the country to tax the profits generated at the level of foreign subsidiary or a branch of its taxpayer in case this profit is not taxed at the certain level in its country of origin and (ii) tax on base eroding payments allowing source jurisdiction to deny tax deduction for a payment to a related party, if that payment was not subject to tax at a minimum rate and to grant certain treaty benefits only if the item of income is sufficiently taxed in the other state.

IAB Polska understands the need of elimination of certain loopholes in tax law, which have been used in tax avoidance schemes. The fact that the above measures are planned to be applicable generally and not only to highly digitalized businesses, should be appreciated.

Nevertheless, IAB Polska would like to underline that the envisaged regulations should be designed with due care in order to avoid situations, where they will lead to double taxation. The conditions, under which the jurisdiction will be allowed to deny deduction / tax certain foreign income must be precise and clear for all parties. In particular, the jurisdiction may not require unlimited efforts from the taxpayer to prove that e.g. certain minimum taxation was applied in the foreign country, etc. Therefore, there should be a presumption that the conditions for application of treaty benefits are fulfilled. Such a presumption could be rebutted by the tax authority, however the burden of the proof should be at tax authorities side.

Kind regards,

A handwritten signature in black ink, appearing to read 'W. Schmidt', with a long, sweeping flourish extending to the right.

Włodzimierz Schmidt

CEO & President of the Board