

Warsaw, February 11, 2021

EUROPEAN COMMISSION

FEEDBACK ON THE EUROPEAN COMMISSION'S PROPOSAL FOR A DIRECTIVE REGARDING DIGITAL TAX (LEVY)

Interactive Advertising Bureau Poland (IAB Poland) welcomes the opportunity to contribute to the European Commission's consultation process on introduction of modern, stable regulatory and tax framework to respond to the developments and challenges of the digital economy.

We strongly support the aim of consensus-based and long term reform of the international tax system to address the challenges arising from the digitalization of the economy.

IAB Poland is a Polish advertising industry organization that unites and represents entities of the interactive industry. IAB Poland 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.

We note that the work on digital taxation should - despite the complexity of this topic - proceed as smoothly as possible. It is very worrying that individual European countries, waiting for a long-awaited legislative initiative in this area, are independently establishing their own legislation. Obviously, they do it according to different principles and thus contribute to fragmentation of the EU market. On February 2, 2021, a similar initiative was announced by Poland, which intends to tax, among others, Internet advertising and seems to be the national variant of the digital tax.

A. Context, Problem definition and Subsidiarity Check

IAB Poland agrees that the current rules of international tax law are not tailored to the specificity of digital economy enterprises and activities conducted by means of information and communication technology. It may lead to significant differences in the level of taxation of enterprises.

Therefore, the members of IAB Poland see and understand the need for a reform of international tax rules on distribution of taxation rights aimed at adjusting them to the present, widely digitalized economy. Digital companies should also contribute their fair share to society.

IAB Poland strongly supports actions aimed at achieving an international consensus to reform the international tax system in order to meet the challenges of digitization of the economy and lead to fair and effective taxation of digital economy enterprises in a country where value is actually created.

Nevertheless, only the introduction of needed changes in international taxation rules on a global level will be an effective, proportionate and safe solution for the economies of countries and enterprises.

Therefore it should be crucial to achieve international consensus at the OECD level, ensuring a coherent global framework remains in place for trade and cross-border investment. In our opinion, the general direction of changes in international tax system regarding digitalized economy should be assessed positively and IAB Poland is strongly supporting the OECD initiative, in particular solutions expressed in *Tax Challenges Arising from Digitalisation – Report on Pillar One Blueprint* dated 14 October 2020.

IAB Poland is convinced that the OECD's proposal more comprehensively and generally meets the challenges of the digitalized economy than the unilateral digital services taxes proposed by some countries and the European Union. Revising the taxation of the digital economy in EU should not be an obstacle to growth and innovation in the European digital sector, which is already under strong fiscal and regulatory pressure.

According to the information from the OECD, it can be assumed that by the end of 2021 an agreement between OECD member states on the key aspects the taxation of the digital economy is expected to be reached. As a result, the potential fiscal burden introduced by the EU may have very limited application while administrative burden for the business to adjust to the new rules would be high. Changes to international taxation (proposed by OECD) should address the problem of inadequate taxation of the digital economy, so that there will be no need to maintain the rules on additional fiscal burden (digital levy) in the EU.

In the light of the above, the introduction of a solution – that is supposed to be only temporary – seems to be defective and could constitute an excessive and unjustified administrative burden (from the point of view of companies that would be subject to additional obligations).

B. Objectives and Policy options

IAB Poland is aware that – in the absence of a global agreement – some Member States have in the meantime introduced certain temporary tax measures affecting businesses that are part of the digital economy. Therefore new EU initiative is aimed to mitigate distortions and the risk of fragmentation of the EU single market resulting from the uneven playing field between operators in the digital sphere as well as the digital sector and other sectors of the economy.

IAB Poland understands the need to unify the situation in the European Union. In our opinion, introducing a European fiscal burden on the digital economy (digital levy) is more appropriate solution than introducing separate taxes in particular Member States. The introduction of digital services tax by individual countries limits the development

of digitization in the EU and leads to the need for enterprises to incur disproportionate costs in order to properly fulfill their tax obligations.

However, in our opinion, introduction of any of the proposed mechanisms, i.e.:

- corporate income tax top-up to be applied to all companies conducting certain digital activities in the EU
- tax on revenues created by certain digital activities conducted in the EU
- tax on digital transactions conducted business-to-business in the EU

will not constitute a solution that will meet the basic principles of taxation (including, in particular, the principle of fairness and equality of taxation). Entry into force of the proposed legislative solutions may lead to unequal treatment of economic entities.

IAB Poland is of the opinion that the suggested changes in EU law are not precise enough to respond appropriately to all challenges related to digital economic environment. IAB Poland is of the opinion that the EU idea 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 and do not have sufficient justification for the new allocation of taxing powers.

IAB Poland believes that changes to the tax rules should apply more generally and not only to the most digitalized companies with the highest revenues. Moreover, in many cases it would be difficult to draw a line between the digital and traditional business and clearly ring-fence the digital economy from the rest of the economy for tax purposes. Traditional companies will provide a larger number of their services through information and communication technologies and it will be impossible to clearly separate the digital economy from the traditional one.

As indicated in the Roadmap: *The initiative should be designed in a way that is compatible with the international agreement to be reached in the OECD as well as broader international obligations.*

In the opinion of IAB Poland, it is necessary to clearly indicate that the proposed levy could potentially function only until appropriate changes (aimed at fair and effective taxation of the digital economy) are introduced at the level of international tax law.

If the rules on the new digital levy in EU were to be applied in parallel with the new international rules – it is necessary to ensure that the planned changes to the EU law provide for appropriate safeguards or tax relief mechanisms to avoid additional excessive tax burdens or double taxation of European digital enterprises.

It is crucial to ensure the neutrality of the burden for taxpayers whose income from digital activities are taxed in the territory of a specific country. The digital levy should be deductible from the income tax. This would be consistent with the need to ensure that the state of

consumers can tax an appropriate proportion of that company's income, but there would be no risk of double taxation or increased taxation as compared with the traditional enterprises.

Moreover, in our opinion, the subject scope of the tax should be based not only on the revenue level but also other conditions, such as amount of users or customers, number of contracts or certain time threshold (meeting requirements for a specified period). These requirements would ensure that only companies that have a certain level of relationship with the country will be taxed there (companies that have significant digital presence in the country).

The document prepared by the European Commission should clearly indicate that the new burdens (digital levy) will not apply to small and medium-sized enterprises.

IAB Poland would 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.). Entities with revenues below a particular level (threshold) in order to protect the small and medium local enterprises should be excluded from the scope of the digital levy.

As indicated by the OECD, any new tax must be in compliance with existing international obligations. EU countries will need to consider all their existing treaties and determine to what extent they would impact any interim measure (digital levy). These constraints may place significant restrictions on the design options for any interim tax measure.

C. Preliminary Assessment of Expected Impacts

In the opinion of IAB Poland, the introduction of a digital levy will have very far-reaching effects, which should also be included in the Roadmap of the European Commission.

Once the proposed solutions are introduced, it will be possible to legally transfer the burden to end consumers (citizens of the EU Member States and small and medium-sized enterprises). The introduction of digital levy may lead to the opposite effects than planned, i.e. the burden of this tax will be incurred primarily by consumers and entities using digital platforms. This will result in higher prices for consumer goods and reduce profit for entrepreneurs using digital platforms (often SMEs).

Companies that will be subject to a digital levy, work closely with local small businesses and startups. IAB Poland express its concern that the introduction of the new digital levy will have a negative impact on these companies (the largest entities will transfer some of the costs related to the digital levy to SME).

Moreover, the potential risk of double taxation may also lead to numerous disputes between taxpayers and the tax administrations, which will also increase administrative costs.

The necessity to bear additional burdens may lead to reduction of funds allocated to the development of digitization and reduce the interest of companies in taking modern solutions. Analyses concerning analogous taxes show that the risk of shifting the burden to consumers and contractors is real. As a result, the development of digitization in the EU may be hampered. It means that the major victims of a digital levy will be the companies leading digitalisation and having the desire to develop.

As indicated above, a planned digital levy (as presented in the Roadmap) may be regarded as discriminating against specific economic entities. The introduction of a digital levy in the EU may lead to additional measures by other countries (including, in particular, the USA) that may have negative consequences for entrepreneurs from the European Union.

For example, it is worth to note that the Office of the US Trade Representative (USTR) issued reports stating that India, Italy, and Turkey, Austria, Spain, and the UK were discriminatory. The USTR is still looking into similar levies in a number of other countries, including Brazil, the Czech Republic, Indonesia and the European Union¹. This could lead to the introduction of import tariffs on goods sold by EU entities.

About IAB Poland

Interactive Advertising Bureau Poland (IAB Poland) is a Polish advertising industry organization that unites and represents entities of the interactive industry. IAB Poland members include more than 200 companies, including the biggest web portals, global media groups, interactive agencies, media houses and technology providers. In 2012 the organization received the MIXX Awards Europe, honoring the best IAB bureau in Europe.

The mission of IAB Poland is to support development of the Internet industry and take regulatory actions to enhance the competitiveness of the market, conducting research projects, leading educational programs and providing legal protection.

The organization cooperates closely with American bureau as well as with European hubs, such as IAB Europe and others, both global and local organizations. IAB Poland holds a number of initiatives that aim to educate both the market and Internet users. Those initiatives are: “Safe youngsters on the Internet”, “Watch legal”, “Everything about cookies”, “Comment, not offend”, “Advertise consciously. Initiative for fair advertising”.

¹ <https://ustr.gov/sites/default/files/files/Press/Releases/StatusUpdate301InvestigationsBEUIndCR.pdf>