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From:	Presidency
To:	Permanent Representatives Committee/Council
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Subject:	Proposal for a Council Directive on the common system of a digital advertising tax on revenues resulting from the provision of digital advertising services – Political agreement

I. INTRODUCTION

1. As follow-up to the debate at the Council (ECOFIN) on 4 December 2018[1], with a view to reaching a political agreement at the ECOFIN on 12 March 2019, the Presidency has prepared this note summarising the work undertaken since the last ministerial discussion and indicating the way forward.

2. On 19 October 2017, the European Council in its conclusions[2] underlined the "*need for an effective and fair taxation system fit for the digital era.*"

3. On 5 December 2017, the Council (ECOFIN) adopted its conclusions on "Responding to the challenges of taxation of profits of the digital economy".[3]

1 14885/18.
2 EUCO 14/17
3 15445/17

4. On 21 March 2018 the Commission presented the "digital taxation package:"

- a Communication "Time to establish a modern, fair and efficient taxation standard for the digital economy";
- a proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence;
- a proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services (further referred to as "DSTD");
- a Commission recommendation relating to the corporate taxation of a significant digital presence.

5. After initial discussions in the Working Party on Tax Questions (WPTQ) (Digital Taxation),[4] the High Level Working Party on Tax Questions (HLWP), [5] as well as an initial exchange of views at the informal meeting of ECOFIN ministers on 28 April 2018, it was agreed to focus the discussions, in the first phase, on DSTD.[6]

II. STATE OF PLAY

6. Following the discussions at ECOFIN on 4 December 2018 on the proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services (DST), it was agreed to explore a possible instrument with a narrower scope, covering only targeted digital advertising.

7. Consequently, the text was re-drafted focusing on revenues resulting only from the provision of digital advertising services - the common system of a digital advertising tax (DAT).

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4 On 11 April, 2 May, 14 May, 4 June, 5 June and 13 June 2018.
5 On 18 April and 16 May 2018.
6 ST 9052/18.

8. Five rounds of talks were held: Fiscal Attaches on 11 December 2018, the Working Party on Tax Questions (WPTQ) (Digital Taxation) on 15 January and 20 February 2019, and the High Level Working Party on Tax Questions (HLWP) on 31 January and 28 February 2019.

9. As a result of these discussions the Presidency considers that all aspects of the draft Directive have been examined and all possibilities to make progress at a technical level have been explored. In view of the Presidency, the text as set out in the Annex to this note enjoys broad support from large number of delegations. However, a number of concerns continue to be raised, as explained in Part III of this note.

III. KEY ISSUES

10. A number of delegations continue to have fundamental objections to DAT as a whole, irrespective of the technical adaptations made to the text. In the context of the discussions of both DST and DAT, several delegations continue to object to reaching an agreement on DAT, recalling the need to look at digital taxation in the broader context of the ongoing OECD/G20 discussions. As envisaged in the policy note, approved by the Inclusive Framework on BEPS on 23 January 2019, OECD/G20 is embarking on an ambitious project to address both the challenges of digitalised economy and the remaining BEPS issues by 2020 already.

11. Moreover, several delegations so far continued raising concerns that sale of user data is excluded from the scope of the taxable revenues, which are defined in Article 3 of draft DAT.

12. Some delegations indicate, that, in the light of the narrow scope of DAT, the thresholds set out for taxable persons in Article 4 should be revised or lowered.

13. A number of delegations continue to have hesitations as regards the date of entry into force as well, preferring it to be sooner or later than what the Presidency has suggested.

14. In view of the Presidency, all delegations, nevertheless, continue to agree that they should jointly continue to work towards an agreement on a global solution at OECD level by 2020 to address the tax challenges of the digitalization of the economy. The Presidency would be ready to facilitate discussions and coordination of that process at EU level.

IV. WAY FORWARD

15. Against this background, the Committee of Permanent Representatives is invited to recommend to the Council attempt reaching a political agreement on the compromise text set on in the Annex to this note.

ANNEX

2018/0073 (CNS)

Proposal for a

COUNCIL DIRECTIVE

on the common system of a digital advertising tax on revenues resulting from the provision of digital advertising services

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament,[7]

Having regard to the opinion of the European Economic and Social Committee,[8]

Acting in accordance with a special legislative procedure,

[7] OJ C , , p. .

[8] OJ C 367, 10.10.2018, p. 73–77.

Whereas:

(1) The global economy is rapidly becoming digital and, as a result, new ways of doing business have emerged. Digital companies are characterised by the fact that their operations are strongly linked to the internet. In particular, digital business models rely to a large extent on the ability to conduct activities remotely and with limited or no physical presence, on the contribution of end-users to value creation, and on the importance of intangible assets.

(2) The current corporate taxation rules were mainly developed during the 20th century for traditional businesses. They are based on the idea that taxation should take place where value is created. However, the application of the current rules to the digital economy has led to a misalignment between the place where profits are taxed and the place where value is created, notably in the case of business models heavily reliant on user participation. It has therefore become evident that the current corporate tax rules for taxing the profits of the digital economy are inadequate and need to be reviewed.

(3) That review constitutes an important element of the Digital Single Market,[9] given that the Digital Single Market needs a modern and stable tax framework for the digital economy to stimulate innovation, tackle market fragmentation and allow all players to tap into the new market dynamics under fair and balanced conditions.

[9] Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee and the Committee of the Regions 'A Digital Single Market Strategy for Europe' (COM(2015) 192 final of 6.5.2015).

(4) In its Communication "A Fair and Efficient Tax System in the European Union for the Digital Single Market"[10] adopted on 21 September 2017, the Commission identified the challenges that the digital economy posed for existing tax rules, and committed to analyse the policy options available. The ECOFIN Council conclusions of 5 December 2017[11] invited the Commission to adopt proposals responding to the challenges of taxing profits in the digital economy, while taking note also of the interest expressed by many Member States for temporary measures aimed at revenues resulting from digital activities in the Union that would remain outside the scope of double tax conventions.

(5) Given that the problem of taxing the digital economy is of a global nature, the ideal approach would be to find a multilateral, international solution to it. The Commission is actively engaged in the international debate for that reason. Work at the OECD is currently ongoing. However, progress at international level is challenging. Hence, action is being taken to adapt the corporate tax rules at Union level[12] and to encourage agreements to be reached with non-Union jurisdictions,[13] so that the corporate tax framework can be made to fit the new digital business models.

(6) Pending such action, which may take time to adopt and implement, Member States face pressure to act on this issue, given the risk that their corporate tax bases are being significantly eroded over time. Uncoordinated measures taken by Member States individually can fragment the Single Market and distort competition, hampering the development of new digital solutions and the Union's competitiveness as a whole. This is why it is necessary to adopt a harmonised approach on an interim solution for digital advertising services until a comprehensive solution is in place.

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10 Communication from the Commission to the European Parliament and the Council 'A Fair and Efficient Tax System in the European Union for the Digital Single Market' (COM(2017) 547 final of 21.9.2017).

11 Responding to the challenges of taxation of profits of the digital economy – Council conclusions (5 December 2017) (FISC 346 ECOFIN 1092).

12 Proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence (COM(2018) 147 final).

13 Commission Recommendation relating to the corporate taxation of a significant digital presence (C(2018) 1650 final).

(7) That interim solution should establish the common system of a digital advertising tax (DAT) on revenues resulting from the supply of digital advertising services by certain entities. It should be an easy-to-implement measure targeting the revenues stemming from the supply of digital advertising services where users contribute significantly to the process of value creation.

(7a) This Directive should not prevent a Member State from maintaining or introducing taxes, duties or charges which cannot be characterised as similar to DAT, having regard in particular to its scope, function and other special features, provided that those taxes, duties or charges are not limited solely to digital companies but are charged on all taxpayers, whether digital or non-digital.

(8) The following elements of DAT should be defined: the taxable revenues (what is taxed), the taxable person (who is taxed), the place of taxation (what proportion of taxable revenues is deemed to be obtained in a Member State and when), chargeability, calculation of the tax, rate, and related obligations regarding tax collection and administrative cooperation.

(9) DAT should be applied to revenues resulting from the provision of digital advertising services since these services are largely reliant on user value creation.

(10) Therefore, taxable revenues should be those resulting from the placing on a digital interface of advertising targeted at users of that interface. If no revenues are obtained from the supply of such advertising services, there should be no DAT liability. Other revenues obtained by the entity providing such services but not directly stemming from such supplies should also fall outside the scope of the tax.

(11) Services consisting in the placing on a digital interface of a client's advertising targeted at users of that interface should not be defined by reference to who owns the digital interface through which the advertising appears on a user's device, but rather by reference to the entity responsible for enabling the advertising to appear on that interface. This is because the value for a business placing a client's advertising on a digital interface lies with user traffic and the user data which is typically taken into account for the purposes of the placement, regardless of whether the interface belongs to the business itself or to a third party who is renting out the digital space where the advertisement will appear. However, it should be clarified that in cases where the supplier of the advertising service and the owner of the digital interface are different entities, the latter should not be considered to have provided a taxable service for DAT purposes. This is in order to avoid possible cascading effects and double taxation.

(11a) An anti-avoidance provision should ensure that taxpayers do not circumvent the tax through specific business arrangements, such as the sale of user data. Such arrangements should be ignored to the extent that they are not put in place for valid commercial reasons which reflect economic reality.

(12) *deleted*

(13) *deleted*

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(20) *deleted*

(21) *deleted*

(22) Only certain entities should qualify as taxable persons for the purposes of DAT, regardless of whether they are established in a Member State or in a non-Union jurisdiction. In particular, an entity should qualify as a taxable person only if it meets both of the following conditions: (i) the total amount of worldwide revenues reported by the entity for the latest complete financial year for which a financial statement is available exceeds EUR **[750 000 000];**~~750 000 000;~~ and (ii) the total amount of taxable revenues obtained by the entity within the Union during that financial year exceeds EUR- **[50 000 000]**~~50 000 000~~.

(23) The first threshold (total annual worldwide revenues) should limit the application of DAT to the companies of a certain scale, which are the ones mainly able to provide digital advertising services for which user contribution plays a fundamental role, and which heavily rely on extensive user networks, large user traffic, and the exploitation of a strong market position. Such a business model, which depends on user value creation for obtaining revenues, is only viable if carried out by companies with a certain size. Moreover, the opportunity of engaging in aggressive tax planning lies with larger companies. That is why the same threshold has been proposed in other Union initiatives.[14] Such a threshold is also intended to bring legal certainty, given that it would make it easier and less costly for companies and tax authorities to determine whether an entity is liable to DAT. It also excludes small enterprises and start-ups for which the compliance burdens of the new tax would be likely to have a disproportionate effect.

(24) The second threshold (total annual taxable revenues in the Union) should limit the application of the tax to cases where there is a significant digital footprint at Union level in relation to the type of revenues covered by DAT. In particular, it is important for the EU to provide a favourable environment for R&D activities and innovation, in particular for start-ups in the fast-growing digital sector. Thus additional taxes for such companies should be avoided. The threshold should safeguard businesses operating in the traditional economy that are in the process of becoming more digitalised. It should be set at Union level in order to disregard differences in market sizes which may exist within the Union.

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[14] See Article 2 of the Proposals for a Council Directive on a Common (Consolidated) Corporate Tax Base (C(C)CTB) (COM(2016) 683 final, COM(2016) 685 final).

(25) To comply with the existing legal framework, any entity qualifying as a taxable person and obtaining taxable revenues treated as obtained in a Member State should be subject to DAT in that Member State, irrespective of whether that entity is established in that Member State, in another Member State or in a non-Union jurisdiction.

(26) Special rules should be set out for entities belonging to a group. The revenues obtained by an entity from supplies to other entities belonging to the same group should be excluded from the scope of the new tax. For the purposes of determining whether an entity is above the applicable thresholds and thus qualifies as a taxable person, the thresholds should be applied in respect of total group revenues. The fact that the thresholds in Article 4 are assessed for the group as a whole does not change the fact that each entity providing the taxable services in the group individually is a taxable person. Where one or more taxable persons established in the European Union belong to a group, the group shall be permitted to nominate a single entity established within the Union for the purposes of paying DAT and fulfilling the obligations on behalf of each taxable person in that group. This option should ease the compliance and administrative burden on businesses.

(27) This Directive should not prevent a Member State from allowing businesses to deduct the DAT paid from the corporate income tax base in their territory, irrespective of whether both taxes are paid in the same Member State or in different ones.

(28) The taxable revenues of an entity should be treated as obtained in a Member State in a tax period if the users with respect to a taxable service provided by that entity are located in that Member State. A user should be deemed to be located in a Member State in a tax period on the basis of certain specific rules, based on the place where a user's device has been used.

(29) Where the users with respect of a taxable service are located in different Member States or non-Union jurisdictions, the relevant taxable revenues obtained from that service should be allocated for each transaction to each Member State in a proportional way on the basis of the number of times an advertisement has appeared on users' devices in a tax period in a Member State.

(30) *deleted*

(31) *deleted*

(32) *deleted*

(33) Identifying the place where a user's device has been used and, therefore, the place of taxation should be possible due to the Internet Protocol (IP) address of the user's device**. Where this information is not available, an entity may seek to identify user location on the bases of alternative evidence where such evidence will give a reasonable estimation of user location, such as geolocation tools.** ~~.~~ The place of taxation should not take into account whether users have contributed in money to the generation of the revenue or the place from where the payment in exchange for the supplies giving rise to a DAT liability has been made.

(34) Any processing of personal data carried out in the context of DAT should be conducted in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council,[15] including that which may be necessary in relation to Internet Protocol (IP) addresses. In particular, regard should be given to the need to provide appropriate technical and organisational measures to comply with the rules relating to the lawfulness and security of processing activities, the provision of information and the rights of data subjects. Whenever possible, personal data should be rendered anonymous.

(35) The taxable revenues should be equal to the total gross revenues obtained by a taxable person, net of value added tax and other similar taxes. Taxable revenues should be recognised as obtained by a taxable person at the time when they become due, regardless of whether they have actually been paid by then. DAT should be chargeable in a Member State on the proportion of taxable revenues obtained by a taxable person in a tax period that is treated as obtained in that Member State, and should be calculated by applying the DAT rate to that proportion. There should be a single DAT rate at Union level in order to avoid distortions in the Single Market. The DAT rate should be set at 3%.

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[15] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

(36) Taxable persons providing taxable services are liable for the payment of DAT, as well as subject to a series of administrative obligations. Identification, declaration of DAT (DAT return) and payment of DAT should be carried out in respect of each Member State where the taxable person is liable to DAT. To minimise the burden for businesses, it is proposed that the identification procedure and the DAT return have a harmonised format. The precise details of such harmonised formats should be agreed through implementing legislation. The DAT return should contain the same information and should have the same format in all Member States. Therefore the same DAT return should be sent to each Member State where DAT is due. The taxable person should indicate in that DAT return all relevant DAT identification numbers given to that same person. The fact that all Member States where DAT is due know the information concerning DAT liability of the same taxpayer in other Member States constitutes an immediate "exchange of information" giving each Member State the complete picture within the Union for each taxpayer.

(36a) DAT is owed by the taxable person directly to each Member State where DAT is due. Accordingly, each Member State where DAT is due should be entitled to enforce payment of DAT directly against the taxable person liable for it, as well as to carry out tax audits and control measures aimed at examining a taxable person's DAT liability. Such enforcement and control measures should be governed by the rules and procedures applicable in each Member State where DAT is due.

(36b) A taxable person not established in the European Union should nominate an entity established in a Member State belonging to the same group as the taxable person or a tax representative established in one Member State for the purposes of paying DAT and fulfilling the administrative obligations on behalf of the taxable person. This requirement should guarantee the quality of the DAT management. The nominated group entity or tax representative should be responsible for ensuring the tax compliance of the third-country business, including filing the DAT declarations in due form. He should also be liable for the DAT of the business in order to secure the payment of the tax due to the national tax administrations. Where a taxable person not established in the European Union fails to fulfil its DAT obligations, Member States may require an entity established in the European Union belonging to the same group as the taxable person to pay DAT and fulfil the obligations on behalf of the taxable person.

(37) Member States should be able to lay down accounting, record-keeping or other obligations aimed at ensuring that the DAT due is effectively paid, as well as other measures to prevent tax evasion, avoidance and abuse.

(38) In order to ensure uniform conditions for the implementation of this Directive as regards the administrative obligations to be fulfilled, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No182/2011 of the European Parliament and of the Council.[16]

(39) Since the tax administrations of all Member States rely in principle on the same data, the Directive provides for an exchange of information with regard to any changes of the declared revenues resulting from tax audits and control measures. Changes to the figures contained in a DAT return initiated by the taxable person should be made only by means of amendments to that return and should be submitted by the taxable person electronically to each Member State where DAT was due not later than three years after the date on which the initial return was required to be submitted. The provisions on the official secrecy of information are aligned with the Directive 2011/16/EU.[17] Member States should, wherever necessary, make use of the provisions adopted by the Union regarding administrative cooperation in tax matters such as Council Directives 2011/16/EU and 2010/24/EU,[18] or of other measures available internationally, such as the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, Article 26 of the OECD Model Tax Convention and the OECD Model Agreement on Exchange of Information in Tax Matters.

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16 Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p.13).

17 Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64, 11.3.2011, p. 1).

18 Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (OJ L 84, 31.3.2010, p. 1).

(40) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents,[19] Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(41) The objectives of this Directive aim at protecting the integrity of the Single Market, ensuring its proper functioning and avoiding distortion of competition. Since those objectives, by their very nature, cannot be sufficiently achieved by Member States but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(42) The DAT is supposed to be only an interim solution until a comprehensive solution is in place (see recital 6). Therefore, a fixed date of expiry combined with a review clause and a link to the developments at global level ensure this interim character,

HAS ADOPTED THIS DIRECTIVE:

Chapter 1

SUBJECT MATTER AND DEFINITIONS

Article 1
Subject matter

This Directive establishes the common system of a digital advertising tax ('DAT') on the revenues resulting from the provision of digital advertising services.

[19] OJ C 369, 17.12.2011, p. 14.

Article 2

Definitions

For the purposes of this Directive, the following definitions shall apply:

(1) 'entity' means any legal person or legal arrangement that carries on a business through either a company or a structure that is transparent for income tax purposes;

(1a) 'established within the Union' means having established a business in the Union or a fixed establishment there;

(1b) 'not established within the Union' means having neither a business in the Union nor a fixed establishment there;

(2) 'group' means all entities including a parent undertaking and all its subsidiary undertakings pursuant to Article 2 paragraph 11 of Directive 2013/34/EU of the European Parliament and of the Council[20];

(3) 'digital interface' means any software, including a website or a part thereof and applications, including mobile applications, accessible by users;

(4) 'user' means any individual or any legal person or legal arrangement, whatever its nature is, that accesses a digital interface with a device;

(5) *deleted*

(5a) ‘targeted advertising’ means any form of digital commercial communication aimed at promoting a product, a service or a brand, targeted at users of a digital interface based on data collected on them.

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20 Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

~~(5b) sale of user data means any form of transmission of data for consideration (including e.g. licensing of data).~~

(6) 'Internet Protocol (IP) address' means a series of alphanumerics assigned to networked devices to facilitate their communication over the internet;

(7) 'tax period' means a calendar year.

Article 3

Taxable revenues

1. The revenues resulting from the placing on a digital interface of targeted advertising by an entity~~, including revenues received in relation to the sale of user data connected to the targeted advertising,~~ shall qualify as 'taxable revenues' for the purposes of this Directive.

(1a). Revenues resulting from arrangements having been put into place for the main purpose or one of the main purposes of circumventing taxation under this Directive, shall be deemed to be taxable revenues under this Directive.

2. The reference in paragraph 1 to revenues shall include total gross revenues, net of value added tax and other similar taxes.

3. Paragraph 1 shall apply whether or not the digital interface is owned by the entity responsible for placing the advertising on it. Where the entity placing the advertising does not own the digital interface, that entity, and not the owner of the interface, shall be considered to be providing a service falling within paragraph 1.

4. *deleted*

5. *deleted*

6. *deleted*

7. Revenues resulting from the provision of a service falling within paragraph 1 by an entity belonging to a group to another entity in that same group shall not qualify as taxable revenues for the purposes of this Directive.

8. If an entity belonging to a group provides a service falling within paragraph 1 and the revenues resulting from the provision of that service are obtained by another entity in the group, those revenues shall be deemed for the purposes of this Directive to have been obtained by the entity providing the service.

9. Services falling within paragraph 1 are referred to in Chapters 2 and 3 as 'taxable services'.

Article 4

Taxable person

1. 'Taxable person', with respect to a tax period, shall mean an entity providing the taxable services described in Article 3(1) meeting both of the following conditions:

   (a) the total amount of worldwide revenues reported by the entity for the relevant financial year exceeds EUR **[750 000 000]**~~750 000 000~~;

   (b) the total amount of taxable revenues obtained by the entity within the Union during the relevant financial year exceeds EUR **[**50 000 000**]**.

2. Where an entity reports or obtains revenues in a currency other than euro, the revenues shall be converted into euro for the purposes of paragraph 1 by applying the exchange rate as published in the *Official Journal of the European Union* on the last date of the relevant financial year or, if there is no publication on that day, the rate published on the previous day.

3. In paragraphs 1 and 2, 'the relevant financial year' means the financial year covered by the latest available financial statements issued by the entity before the end of the tax period in question.

4. The rule in Article 5(1) shall apply in determining under paragraph 1(b) whether taxable revenues are obtained within the Union.

5. Taxable revenues shall be recognised for the purposes of this Directive as having been obtained at the time when they fall due, irrespective of whether the relevant amounts have actually been paid.

6. If the entity referred to in paragraph 1 belongs to a group, the thresholds in that paragraph shall be applied instead to the worldwide revenues reported by, and taxable revenues obtained within the Union by, the group as a whole. However, each entity within the group providing the taxable services described in Article 3(1) and not the group as a whole shall qualify as a taxable person if the conditions in paragraph 1 are fulfilled.

Chapter 2

PLACE OF TAXATION, CHARGEABILITY AND CALCULATION OF THE TAX

Article 5
Place of taxation

1. Taxable revenues obtained by an entity in a tax period shall be treated for the purposes of this Directive as obtained in a Member State in that tax period if users with respect to the taxable service are located in that Member State in that tax period.

   The first subparagraph applies irrespective of whether such users have contributed in money to the generation of those revenues.

2. With respect to a taxable service, a user shall be deemed to be located in a Member State in a tax period if the advertising in question appears on the user's device at a time when the device is being used in that Member State in that tax period to access a digital interface.

3. For each tax period, the proportion of an entity's total taxable revenues that is treated under paragraph 1 as obtained in a Member State shall be determined for each transaction in proportion to the number of times an advertisement has appeared on users' devices in that tax period.

4. For the purposes of determining the place of taxation of the taxable revenues subject to DAT, the place from which any payment for the taxable service is made shall not be taken into account.

5. For the purposes of this Article, the Member State where a user's device is used shall be determined by reference to the Internet Protocol (IP) address of the device**. If this information is not available, an entity may seek to identify user location on the bases of alternative evidence where such evidence will give a reasonable estimation of user location, such as geolocation tools.**

~~If this information is not available, an entity may seek to identify user location on the basis of alternative evidence where such evidence will give a reasonable estimation of user location.~~

6. The data that may be collected from users for the purposes of applying this Directive shall be limited to data indicating the Member State where the users are located, without allowing for the identification of those users.

Article 6

Chargeability

DAT shall be chargeable in a Member State on the proportion of taxable revenues obtained by a taxable person in a tax period that is treated under Article 5 as obtained in that Member State. The DAT shall become due in that Member State on the next day following the end of that tax period.

Article 7

Calculation of the tax

DAT shall be calculated for a Member State for a tax period by applying the DAT rate to the proportion of taxable revenues referred to in Article 6. The percentage for calculating the proportion of taxable revenues shall be rounded off to two decimal places for this purpose.

If the amount contains at least three decimal places and the value of the third decimal is six or more, the second decimal is increased by one. If the value of the third decimal is four or less, the second decimal remains the same. If the value of the third decimal is five, the second decimal remains the same in case it is even and is increased by one in case it is odd. If a digit is 9 and has to be increased by one according to the above rules, then the previous digit is increased by one and the rounded digit is 0.

Article 8

Rate

The DAT rate shall be 3%.

Chapter 3

OBLIGATIONS

Article 9

Person liable for payment and fulfilment of obligations

1. DAT shall be payable and the obligations in this Chapter shall be fulfilled by the taxable person providing the taxable services.

2. Without prejudice to paragraph 1 and Article 4(1) where one or more taxable persons established within the Union belong to a group, that group shall be permitted to nominate a single entity established within the Union and belonging to the group for the purposes of paying DAT and fulfilling the obligations in this Chapter on behalf of each taxable person in the group who is liable to DAT.

3. Where a taxable person not established within the Union belongs to a group of which one or more entities are established in the Union, the taxable person shall nominate one of those entities for the purposes of paying DAT and fulfilling the obligations in this Chapter on behalf of the taxable person.

4. Where a taxable person not established within the Union belongs to a group of which one or more entities are established in the Union, and where the taxable person has not fulfilled its obligations pursuant to paragraph 3, Member States may require one of those entities to pay DAT and fulfil the obligations in this Chapter on behalf of the taxable person.

5. A taxable person not established within the Union and not part of a group shall nominate a tax representative established in one Member State for the purposes of paying DAT and fulfilling the obligations in this Chapter on behalf of that taxable person.

6. Where a taxable person is not established within the Union, and where that taxable person belongs to a group with no entities established in the Union, the taxable person shall nominate a tax representative established in one Member State for the purposes of paying DAT and fulfilling the obligations in this Chapter on behalf of each taxable person in that group who is liable to DAT.

7. Where an entity or a tax representative is appointed in accordance with paragraphs (2) to (6) of this Article, the reference to the taxable person in this chapter shall include the reference to the tax representative or nominated entity for the purposes of this Chapter.

Article 10

Identification

1. A taxable person shall identify in each Member State where that taxable person is liable to DAT.

2. The identification shall be made electronically by no later than 30 days following the end of the first tax period for which the taxable person is liable to DAT under this Directive ('the first chargeable period').

3. *deleted*

4. The identification required under paragraph 1 shall include at least the following information with respect to the taxable person:

   (a) name;

   (b) trading name, if different from the name;

   (c) postal address;

   (d) electronic address;

   (e) national tax number, if any;

   (f) contact name;

   (g) telephone number;

   (h) *deleted*

   (i) IBAN or OBAN number.

5. The taxable person shall notify each Member State where it is liable to DAT of any changes in the information under paragraph 4 within 30 days after the change has occured.

6. When an entity or tax representative is appointed under Article 9(2) to (6) the information provided by that nominated entity or tax representative under this Article with respect to each taxable person in the group or each represented taxable person shall also include information with respect to itself in relation to the items listed in paragraph 4.

7. The Commission may adopt implementing acts to determine a common format for the notification required under this Article. Those implementing acts shall be adopted in accordance with the procedure provided for in Article 24(2).

Article 11

Identification number

1. A Member State where DAT is due shall allocate to the taxable person an individual DAT identification number and shall notify the taxable person of that number by electronic means within 30 days from the day on which the notification under Article 10 was received.

   When a tax representative is nominated under Article 9(5) or (6), a Member State where DAT is due shall allocate to the tax representative an individual DAT identification number and shall notify the tax representative of that number by electronic means within 30 days from the day on which the notification under Article 10 was received.

2. Each individual identification number shall have a prefix in accordance with ISO code 3166 Alpha 2 referring to the Member State where DAT is due. However, Greece and the United Kingdom shall use the prefix 'EL' and 'UK' respectively.

3. Member States shall take the measures necessary to ensure that their identification systems allow taxable persons to be identified and shall keep an identification register with all the individual identification numbers allocated by them.

Article 12

deleted

Article 13

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Article 14

DAT return

1. A taxable person shall submit to each Member State, where it is liable to DAT, a DAT return for each tax period. The return shall be submitted electronically within 90 days following the end of the tax period covered by the return.

2. Where a taxable person has made use of the option in Article 9(2) or is obliged under 9(3) or 9(6) to nominate an entity or a tax representative, that entity or tax representative shall be permitted to file a consolidated DAT return on behalf of all taxable persons in the group.

Article 15

DAT return information

1. The DAT return shall show the following information:

   (a) all DAT identification numbers allocated by Member States under Article 11; when a tax representative is nominated under Article 9 (5) or (6), the DAT identification numbers of the representative.

   (b) for all Member States where DAT is due for the relevant tax period, the total amount of taxable revenues treated as obtained by the taxable person in those Member States, together with the amount of DAT due on that amount in those Member States.

2. The DAT return shall also show, with respect to the tax period, the total amount of worldwide revenues and the total amount of taxable revenues within the Union applicable for the purposes of Article 4(1).

3. Member States may require the return to be made out in their national currency. A conversion shall be made pursuant to Article 4(2).

4. *deleted*

5. *deleted*

6. The Commission may adopt implementing acts to determine a common format for the DAT return. Those implementing acts shall be adopted in accordance with the procedure provided for in Article 24(2).

Article 16

Payment arrangements

1. The DAT due from a taxable person in each Member State for a tax period shall be paid by the taxable person in each Member State, where it is liable to DAT no later than 90 days following the end of the tax period concerned.

2. *deleted*

3. Payment shall be made to the bank account designated by each Member State.

4. *deleted*

5. Member States may require the payment to be made in their national currency.

6. *deleted*

7. *deleted*

Article 17

DAT return amendments

1. Changes to the figures contained in a DAT return initiated by the taxable person shall be made only by means of amendments to that return and not by adjustments to a subsequent return.

2. The amendments referred to in paragraph 1 shall be submitted electronically to all Member States where DAT was due not later than three years of the date on which the initial return was required to be submitted.

3. Any additional payment by a taxable person of DAT due derived from the amendments in paragraph 1 shall be made at the same time when the amended DAT return is submitted.

Article 18

Accounting, record-keeping, anti-fraud, enforcement and control measures

1. Member States shall lay down accounting, record-keeping and other obligations intended to ensure that the DAT due to the tax authorities is effectively paid.

2. Member States shall foresee that the taxable person has to be able to demonstrate that non-declared online advertising revenues were obtained from non-targeted advertising.

3. *deleted*

4. Each Member State where DAT is due shall enforce payment of the DAT against the relevant taxable person. To that extent, the rules and procedures of each Member State shall apply, including the rules and procedures relating to penalties, interest and other charges for late payment or non-payment of DAT and the rules and procedures relating to the enforcement of debts.

5. *deleted*

Chapter 4

ADMINISTRATIVE COOPERATION

Article 19

Appointment of competent authorities

Each Member State shall designate the competent authority to be responsible in that Member State for managing all aspects related to the obligations set out in Chapter 3 and in this Chapter, and shall notify the name and electronic address of that authority to the Commission. The names and electronic addresses of the competent authorities shall be published by the Commission in the *Official Journal of the European Union*.

Article 20

Exchange of information

The competent authority of each Member State shall communicate within 30 days to the competent authority of all other Member States where the taxable person is liable to DAT any changes in the declared revenues referred to in Article 15 (1) (b) and (2) because of tax audits and control measures. Information communicated between Member States in any form pursuant to this Directive, shall be covered by the obligation of official secrecy and enjoy the protection extended to similar information under the national law of the Member State which received it. Such information may be used for the administration and enforcement of the domestic laws of all the Member States concerning the taxes referred to in Article 2 of Directive 2011/16/EU.

Article 21

Means of information exchange

1. Information and documentation to be transmitted under this Chapter shall be transmitted by electronic means using CCN network.

2. The Commission may adopt implementing acts to determine the technical details by which such information and documentation is to be transmitted. Those implementing acts shall be adopted in accordance with the procedure provided for in Article 24(2).

Chapter 5

FINAL PROVISIONS

Article 24

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 25

Transposition

1. Member States shall adopt and publish, by [31 December 2021] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately inform the Commission thereof.

   They shall apply those provisions from [1 January 2022].

   When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

3. The Commission shall by 31 December 2020 prepare a report assessing the progress made on the revisions to the international corporate tax standards to address the challenges arising from digitalisation agreed at the OECD level, accompanied, if appropriate, by a proposal to postpone the application of this Directive or to repeal this Directive.

4. This Directive shall expire upon the entry into application of the revisions to the international corporate tax standards to address the challenges arising from digitalisation agreed at OECD level, or by 31 December [2025] at the latest.

Article 26

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 27

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

The President