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SUBJECT: REQUEST FOR INPUT ON WORK REGARDING THE TAX CHALLENGES OF THE DIGITALISED ECONOMY

Dear Sir/Madam

EY appreciates the opportunity to comment on the OECD's request for input on work regarding tax challenges of the digitalized economy, which was issued by the OECD on 22 September 2017, and to contribute to the public consultation and discussions regarding this fundamental and important topic.

EY would first like to express its concern about the current environment, where individual countries and potentially the European Union are moving in a direction that has led, or may lead, to taxation that may conflict with long established international principles, such as the principles embodied in more than 3,000 existing bilateral tax treaties. These principles are designed to prevent double taxation and provide for a neutral platform on which companies can perform their critical business activities without being discriminated against, or favored, based on residence, industry sector, or forms of commerce. Furthermore, these principles, which have evolved over several decades, have contributed greatly to worldwide economic growth. A departure from these principles in a non-coordinated fashion is not conducive to the prevention of double taxation and, therefore, to sustained economic growth.

As pointed out within the Action 1 Final BEPS Report, the digital economy is the overall economy. The digital economy cannot be ring fenced or separately distinguished. The trends of digitization are pervasive in companies within all industry sectors, and the business models we see today are likely to see wide spread adoption in various forms in nearly all global enterprises. This means that special measures may inconsistently and haphazardly become generally applicable rules. Taxation policy that specifically identifies businesses based on the level of reliance of these businesses on digitalization — which seems to be implied by the term "highly digitized" in the invitation to comment — is therefore likely to be arbitrary and discriminatory. Developing tax policy for a few companies that are perceived today as "highly digitalized" deviates from the important policy of neutrality (i.e., the view that taxation should be targeted at specifically defined activities, without making a distinction between the type of businesses performing such activities and the country of residence of these businesses).

EY also notes the importance of the conclusion of the Action 1 Final Report regarding the impact BEPS measures will have on the issue of the non-taxation of corporate profits, which appears to be the key catalyst for considering new, special taxation regimes for the digital economy. In the invitation to comment, the OECD requests comments on the impact of the overall BEPS measures on the taxation of highly digitalized business models. EY observes that the myriad of new measures following from the BEPS Final Reports are approximately two years old and implementation began only in 2016; moreover, certain measures such as the OECD's Multilateral Instrument (MLI) and the EU Anti Tax Avoidance Directive (ATAD) are only expected to broadly enter into force as of 2019. Therefore, these measures are too new to objectively evaluate in terms of their effectiveness. However, there is no reason to believe that, following the introduction of the BEPS measures, the OECD's Inclusive

Framework members will be lacking the means necessary to ensure that corporate profits are taxed in the appropriate source or residence country. The appropriate country of taxation will be determined by the existing agreements and obligations reflected in the many bilateral tax treaties. The interaction between these treaties and domestic tax legislation (including for example controlled foreign company rules and the rules introduced by ATAD) determine the division of taxing rights between source and residence countries. If new measures are introduced which are in tension with these existing source-residence rules, only dialogue and consensus between the countries impacted by these changes will prevent double taxation. EY therefore stresses the importance of a global dialogue in relation to these complex issues and that the OECD is the best forum to assist countries in working through these matters, which will require time to appropriately evaluate.

Moreover, specifically targeted taxation regimes outside of tax treaty frameworks or international principles (including equalization levies, targeted withholding taxes and similar structured regimes focused on certain activities or a small group of companies or regimes) will be perceived as being selective, will lead to double taxation and will not promote equality and growth within the global economy.

In summary, EY would like to stress the importance of:

- a thorough and principled analysis of the issues at stake,
- a measured, coordinated approach by all the Inclusive Framework members that gives recent related BEPS measures sufficient time to be assessed and adheres to long-established international principles, and
- a recognition of the potentially destructive nature of company- or industry- or business model-specific tax regimes.

Yours faithfully,
On behalf of EY

Alex Postma

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