

European Commission opens public consultation into collection and exchange of taxpayer information from digital platform providers

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Executive summary

On 7 February 2020, the European Commission (the Commission) [opened a Public Consultation](#) to strengthen the exchange of information framework in the field of taxation (the Consultation). The Consultation focuses on the collection and exchange of data from digital platform providers.

The specific objective of the Commission is to update the European Union's (EU) Directive on Administrative Cooperation (Directive 2011/16/EU, also known as the DAC) to include the ability for tax administrations to collect and then exchange taxpayer data collected by digital platform providers during the course of their operations, delivering a common EU reporting standard in this area.

Detailed discussion

The Roadmap and the Consultation

The consultation process includes two phases - a roadmap and a public consultation - that open at the same time but run for different durations. The Commission generally uses a roadmap to define the scope of: (i) a major new law or policy; (ii) an evaluation of an existing law or policy; or (iii) a fitness check of a bundle of related existing laws and/or policies. Roadmaps describe the

problem to be tackled and objectives to be met, explaining why EU action is needed, outlining policy options and describing the main features of the consultation strategy.

A Roadmap consultation offers interested parties the opportunity to submit feedback or questions on any aspect of the Commission's overall consultative process.

Where the potential impact of a law or policy on the economy, environment or society is so great that an impact assessment is required the roadmap document is replaced by an inception impact assessment document, which goes into greater detail.

In this case, the Commission has published an [inception impact assessment](#) but also retained part of the Roadmap process, allowing interested parties to submit comments via an online web-based survey tool. This tool permits uploading both free-text and attachments. The free-text input may be given with the inputters name, or anonymously, and is automatically published on the Commission's webpage. The Roadmap feedback period is open until 6 March 2020, at midnight Brussels time.

The Consultation will remain open until 6 April 2020 (midnight Brussels time). As with all European Commission public consultations, feedback should be provided via the Commission's web-based survey platform. The questions posed by the Commission are discussed in more detail in this Alert. Individuals making a submission will be given the option to receive a consolidated package of all submissions once the consultation closes.

The Commission will review the feedback and conclude whether guidelines (soft law) addressed to Member States' tax administrations and platforms may eventually achieve the objectives of this initiative, or whether an amendment to the DAC is necessary. This initiative is planned for the second quarter of 2020.

The Commission's policy objectives

The policy aims of the Commission are to ensure the proper functioning of the Single Market, reduce tax evasion and other forms of tax abuse, simplify compliance, and increase the confidence of European citizens in the fairness of the tax system, while ensuring fair competition in the internal market.

A Commission impact assessment will consider what data should be collected and exchanged among national tax administrations and the impact of different policy options. The Commission states that its aim is to collect only the data necessary to perform the risk analysis and facilitate tax

control of the digital platform economy. The Commission further notes that the information to be reported by platforms might also be of relevance for indirect taxation and in particular for value-added tax (VAT). Promoting compliance in VAT will therefore feature within the design criteria for the reporting system.

The inception impact assessment further states:

"This proposal aims at improving cooperation between national tax authorities. In addition to various possible improvements to existing elements of the Directive on Administrative Cooperation in Direct Taxation, this initiative should provide tax administrations with information to identify taxpayers who generate gross income (revenues) through the digital platform economy (whereby digital platforms facilitate transactions between individuals and/or entities).

This aims at ensuring the adequate taxation of such revenues from any perspective (e.g., direct taxes, VAT), while streamlining and updating the exchange of information more generally. It builds upon the recently completed evaluation of the Directive. It also will ensure consistency with ongoing work at (the) EU and international level on taxation of the digital platform economy."

The inception impact assessment document

The inception impact assessment document is composed of four main sections:

- a. Context, Problem definition and Subsidiarity Check
- b. Objectives and Policy options
- c. Preliminary Assessment of Expected Impacts
- d. Evidence Base, Data collection and Better Regulation Instruments

Section A notes that the specific problem the Commission is trying to solve is that Member States' tax administrations have little information to correctly assess and control gross income (revenues) earned in their country from activities made via the intermediation of some form of platform which matches demand and supply as its central business model. The inception impact assessment gives examples of such activities, including "renting a property via a web platform or giving a ride to a person who needs a lift and/or other cases."

This problem is especially noticeable, states the inception impact assessment, when the income or taxable amount passes via platforms established elsewhere (i.e., in other

jurisdictions). The latter, it notes, hold important pieces of tax information and the Commission notes that the relevance of this information keeps increasing: in 2018, one in four Europeans made some use of services offered via collaborative platforms, a higher proportion than in 2016, suggesting a growing trend.

Section A further notes that, in some cases, tax administrations are concerned to ask for or to give tax-related information to other tax administrations because they are not sure whether such information is foreseeably relevant or not. In other cases, Section A notes, tax administrations may not be sure whether they can ask for, and then expect to receive, tax information about a particular group of taxpayers instead of the more typical case of asking for information concerning one specific taxpayer. The Commission's evaluation shows there is also some uncertainty concerning how a joint audit (i.e., having two or more tax administrations auditing together) of a taxpayer should be conducted.

Finally, Section A describes the Commission's basis for intervention, noting that promoting EU-wide standardization of the reporting rules would help platforms comply with reporting obligations across the Single Market, making the EU intervention more effective and efficient. It would allow platforms to follow largely similar information gathering and reporting processes, avoiding unnecessary compliance costs.

Section B of the Impact Assessment sets out the objectives and policy options available to the Commission. The key stated objective of the Commission is to enable tax administrations to obtain information that will further allow them to ensure that taxpayers pay their "fair share" (Section B's exact wording), in particular taxpayers who earn money via the digital platform economy, as well as to provide for better cooperation across tax administrations and keep business compliance costs to a minimum by providing a common EU reporting standard.

The Commission will consider what data should be collected and exchanged among national tax administrations and the impact of different policy options. Section B notes that the Commission's aim is to have tax administrations collect only the data necessary to perform risk analysis and facilitate tax control of the digital platform economy, noting that the information to be reported by platforms might also be of relevance for indirect taxation, and for VAT in particular. The

Commission's work will therefore also explore how any new reporting system could be developed in such a way that also allows the data collected to also be used to increase VAT compliance levels.

The Commission will consider whether guidelines (i.e., "soft-law") addressed to Member States' tax administrations and platforms may eventually achieve the objectives, or whether an amendment of Council Directive 2011/16 (the DAC) is necessary.

Section C (Preliminary Assessment of Expected Impacts) sets out that the Commission expects that this work will result in two main impacts, namely on tax revenues (mainly direct taxation and VAT) and on EU competitiveness, as tax administrations "will have more tools to check that taxpayers pay their fair share" (again, the exact wording as set out in the inception impact assessment). Section C finally notes that the Commission's analysis will look into the relevant costs and burden reduction potential, to the extent possible, noting that a structured and harmonized transmission of data may simplify technical and administrative processes for all the stakeholders, resulting in the easier handling and management of data. This simplification potential will be identified and quantified as much as possible during the Commission's work.

Section D (Evidence Base, Data collection and Better Regulation Instruments) sets out that the Commission's work on data collection and the economic analysis has already started, and that publication of the assessment's findings is expected at the same time as a possible legislative proposal.

Questions posed by the Commission

The Roadmap survey

As noted, the online Roadmap survey provides concerned individuals the ability to submit any open feedback on the process or content of the public consultation. It does not ask specific questions, and instead provides the participant with the opportunity to upload free text and attachments of their choice.

The Public Consultation survey

The public consultation survey is split into six categories:

- ▶ Introduction - providing some information about the role of the Commission
- ▶ About the consultation - providing background information on the objectives and process that the consultation will follow

- ▶ **About You** - asking the participant to share various demographic data about themselves. This section further permits the participant to provide an anonymous submission and also gives the option to receive a report summarizing all responses, once the consultation period is over
- ▶ **Digital platforms** - asks a series of more than 10 questions regarding the participant's use of digital platforms (including frequency), as both a supplier of services and purchaser of services. This section also asks the participant to what extent they agree or disagree with series of questions on the topic of tax reporting as related to digital platforms
- ▶ **Joint tax audits** - asking four questions relating to joint tax audits. These questions are more technical in nature and designed to be answered by the representative of a multinational enterprise or other business that may have experienced a joint audit in the past or may expect to be the subject of one in the future. The questions are as follows:
 - Do you consider that there is a need to revise the EU legal framework to include some more specific details on joint audits?
 - Do you consider that the result of a joint audit should be taken into account if the taxpayer applies for ex ante certainty by way of an Advanced Pricing Arrangement (APA) or requests a Mutual Agreement Procedure (MAP) for solving a dispute that has already arisen?
 - Do you consider that tax administrations should be obliged to participate in a joint audit when they receive a request to this end from one or more other tax administrations?
 - Do you consider that the taxpayer should be granted the right to request a joint audit?
- ▶ **Final remarks** - providing the participant with the ability to upload a file attachment containing any other contribution they would like to make to the Consultation.

Next steps

In addition to the public consultation lasting eight weeks, the Commission will run targeted consultations for Member States' tax authorities, to provide a comprehensive and balanced picture in terms of regulatory costs (i.e., administrative burdens and compliance costs), benefits and savings. These consultative activities are planned to start in February 2020.

The Commission will summarize the input received in a synopsis report explaining how the input will be taken into account and, if applicable, why certain suggestions cannot be taken up.

Furthermore, the Commission will be organizing a large, high-level stakeholder consultation event in April 2020, through its related conference, the working title of which is "Tax Compliance in a Digitalised World."

Implications

As noted by the Commission, its specific objectives are to update the EU's Directive on Administrative Cooperation (Directive 2011/16/EU), potentially in 2020. Given previous experiences, that timeline would indicate a January 2022 implementation at the EU Member State level, although that timing has not been confirmed by the Commission. Alternatively, as noted, the Commission may choose to pursue a soft law approach.

The opening of this eight-week public consultation marks a further step in the global expansion of tax and financial transparency. It follows the enactment of new platform-focused information gathering laws and the implementation of third-party liability rules for online marketplaces in many jurisdictions.

Taxpayers should also note related work by the Organisation for Economic Co-operation and Development (OECD) in this area, with the OECD likely to launch a similar public consultation in the near future, as discussed in a 2019 public meeting of the Business and Industry Advisory Committee (BIAC) to the OECD. As noted in the inception impact assessment, the OECD Forum on Tax Administration recently published the report "The Sharing and Gig Economy: Effective Taxation of Platform Sellers" where it highlighted the challenges tax administrations face when dealing with new business models and looked at approaches to help ensure the effective taxation of those earning income from the sale of goods or services in the sharing and gig economy. The OECD report, the Commission says, makes a strong case for the development of a legal framework for standardized reporting of information between jurisdictions.

Affected taxpayers should consider actively participating in the Commission's public consultation process, so that their views are known on the extent of the work necessary (and associated costs) at the local jurisdiction level to meet any new EU-wide reporting requirement.

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EYG no. 000709-20Gbl

1508-1600216 NY
ED None

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