

French Government submits draft bill on digital services tax to Council of Ministers

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Executive summary

On 6 March 2019, the French Government submitted a draft bill detailing France's proposed tax on digital services (the GAFA tax) to the French Council of Ministers.

Its main features are similar to the Digital Services Tax (DST) proposed by the European Commission on 21 March 2018,¹ with a single rate of 3% levied on gross income derived from certain digital services for which the French Government deems user participation is essential for creating value; namely, targeted online advertising, which include the sale of user data, and online intermediation services (i.e., platforms), whether they are provided in the context of a relationship between businesses (B to B), between businesses and consumers (B to C) or between consumers (C to C).

Only companies with worldwide revenues from taxable services of €750 million per annum and with a total amount of taxable revenues from taxable services obtained in France exceeding €25 million per annum, would be subject to the tax.

The draft bill has been submitted to the French Parliament under an accelerated procedure. According to the bill, the tax will apply with retroactive effect, from 1 January 2019. Importantly, taxpayers will also be required to pay a unique advance payment computed on the 2018 taxable amounts which will be due in October 2019.

Detailed discussion

Background

On 6 December 2018, after substantial European Union (EU)-wide negotiation, the French Minister for Economy and Finance Bruno Le Maire announced that France would unilaterally move ahead and present a draft bill to implement a new tax on digital services (the GAFA tax) which would be applicable in France as from 1 January 2019.

The draft bill was submitted to the French Council of Ministers on 6 March 2019. It introduces a 3% tax on gross revenues generated from the provision of digital services in Articles 299 et seq. of the French Tax Code (FTC).

By aligning with the 3% rate stated in the European Commission project supported by France, the Government anticipates the tax to raise approximately €500 million per year.

Scope of the tax

The tax would apply to two categories of services, namely:

1. "The supply, by electronic means, of a digital interface that allows users to contact and interact with other users, including for the delivery of goods or services directly between those users."
2. "Services provided to advertisers or their agents enabling them to purchase advertising space located on a digital interface accessible by electronic means in order to display targeted advertisements to users located in France, based on data provided by such users."

These services include, among others, the sale of users' data insofar as it relates to either of the services.

The following services have been expressly excluded from the scope of the tax:

- ▶ The provision of a digital interface by which a person or entity uses it as a single or main basis to provide users with digital content, communication services or payment services.

In light of the text, the tax should not be targeted at the providers of streaming video services or on-demand music services, as well as mail or payment services, when they are paid-for services.

- ▶ Certain regulated financial services listed in a decree from the Minister for Economy and Finance and provided by financial service providers which are subject either to authorization and supervision under European

harmonization measures for financial services regulation or to supervisory systems considered equivalent, in accordance with a legal act of the EU, to such harmonization measures.

- ▶ Services provided between companies which are directly or indirectly linked to other companies by an exclusive control relationship, within the meaning of II of Article L. 233-16 of the French Commercial Code. These are the services provided within the group for consolidation purposes.

The following services are not considered taxable under the draft bill:

- ▶ Direct sale of goods or services online
- ▶ Advertising services for which the advertising messages are determined solely on the basis of the content of the website and which are identical for all users, as well as the sale of data collected by means other than internal or for purposes other than advertising.

Under the draft bill, the following services are deemed to be made or supplied in France:

1. Interfacing services on a digital interface when one of the users concluding an operation is located in France or, in the absence of an operation, when one of the users has an account that has been opened from France to access these services.
2. Advertising services distinguishing:
 - ▶ Sales of data generated or collected during the consultation of digital interfaces by users, when the data was obtained from the consultation of such interface(s) by a user located in France.
 - ▶ All other services, when the advertising message was placed during the year on a digital interface consulted by a user located in France.

Taxpayers are defined as companies for which the annual sums received in consideration for **taxable services** cumulatively exceeds both of the following thresholds:

- ▶ €750 million of worldwide revenue
- ▶ €25 million generated in France

For companies that are members of a consolidated group in the sense of the French Accounting rules, compliance with the thresholds is assessed at the group level.

Tax base, rate and compliance

The tax base will include all revenues (i.e., gross revenues) received by the taxpayer (excluding Value Added Tax (VAT)) for taxable services deemed to be made or supplied in France, and a single rate of 3% applies.

The portion of the revenues attributable to France is computed on the basis of the worldwide revenues from taxable services, to which will be applied a percentage representative of the share of the services attached to France. The criteria for determining this percentage are, depending on the nature of the service provided, either the location of the user in France, or the number of accounts opened from France allowing access to the services offered by the interface.

All sums collected should be taken into account, regardless of the billing methods (commissions, subscriptions or other). However, amounts paid for the use of a digital interface facilitating the sale of excisable goods (e.g., wine, alcohol, gas, tobacco, mineral oils, etc.), shall not be taken into account when they have a direct and indivisible link with the volumes or value of such goods.²

The triggering event, which is also the due date, is 31 December. The tax shall be declared, recovered and controlled according to the same procedures as those applicable to French VAT, subject to some adjustments.

Persons liable to pay VAT under the normal regime will be required to make two advance payments, the sum of which must be at least equal to the amount due in respect of the previous financial year.

A mitigation of the advance payments is possible, subject to conditions, for taxpayers who consider that the payment of such advance payment would lead to pay an amount exceeding the final tax due.

In addition, the project allows companies to opt for a single tax return and payment at the group level. The option is valid for three years. For the tax due for the year 2019, this option must be exercised before 30 September 2019.

Taxpayers must be able to provide, at the French Tax Authority's (FTA's) request, all documents detailing sums collected, by category of services, further distinguishing between those relating to the provision of a service in France and those relating to the provision of services outside France.

An automatic assessment procedure is created in article L. 16 C of the FTC applying to cases where the taxpayer has not responded to the request for justifications and information from the tax administration in a satisfactory manner.

Furthermore, if the person liable is not established in a country of the EU or in any other State party to the Agreement on the European Economic Area having concluded with France an administrative assistance agreement against fraud and tax avoidance and a mutual assistance convention on the collection of taxes, it must appoint a tax representative subject to the VAT and established in France who undertakes to file a tax return on its behalf and where applicable, to pay the tax in its place.

Finally, for 2019, a unique advance payment computed on the 2018 taxable amounts will be due in October 2019.

Deductibility for corporate income tax purposes

In the absence of specific provisions, the tax would be deductible from the corporate income tax (CIT) base.

Implications

With the imposition of the GAFA tax, France joins a growing number of countries who are moving unilaterally to introduce similar taxes outside of the EU legislative process.

Businesses with digital activity in France should therefore now assess and quantify whether the GAFA tax impacts them, as well as ensuring all reporting and compliance requirements can be met. This is particularly important given the potential retroactive impacts of the tax, should it come into effect in its proposed form.

As noted, the draft bill has been submitted to French Parliament under an accelerated procedure. Discussions on the draft bill must now occur in the National Assembly. Both chambers of the French Parliament must pass the draft bill before it is signed by the President and published in the *Official Journal*.

Endnotes

1. See EY Global Tax Alert, [European Commission issues proposals for taxation of digitalized activity](#), dated 21 March 2018.
2. Within the meaning of 1 of Article 1 of Council Directive 2008/118/EC dated 16 December 2008 on the general arrangements for excise tax and repealing Directive 92/12/EEC.

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