

## Indirect Tax Alert

# France's Parliamentary Commission agrees on Digital Services Tax

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### Executive summary

France's *Commission Mixte Paritaire* - a mixed commission composed of seven members of the Senate and seven members of the National Assembly - reached, on 26 June 2019, an agreement on the provisions of the French Digital Services (DST) bill.

This latest draft includes a provision specifying the localization criterion but its main features remain similar to the version submitted by the Government.<sup>1</sup> The Government will have to provide Parliament with annual reports on the efficiency and use of the tax as well as on the state of the Organisation of Economic Co-operation and Development (OECD) and EU negotiations on digital taxation.

The National Assembly is now expected to vote on the tax on 4 July and the Senate on 11 July. French President Emmanuel Macron will then have 15 days to sign the bill into law, after the vote of both houses, unless the bill is deferred to the Constitutional Court.

It is important to note that with respect to calendar year 2019, a unique advance payment of the tax will be required in November 2019, meaning that companies must now assess both their computations and their filing requirements, once the bill is enacted.

## Detailed discussion

### Scope of the tax

Should no new amendments be made, which is likely, the tax would apply to two categories of services largely inspired from the draft of the EU DST Directive, 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 buying, stocking and diffusion of advertising messages and the management and communication of users' data."

Expressly **excluded from the scope** of the tax is 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: Based on 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.
- ▶ Payment services: It is worth noting that the bank and insurance sector has been excluded since services provided through digital interfaces dealing with interbank and settlement systems or settlement and delivery systems, through trading interfaces within the meaning of Article L. 420 of the French Monetary and Finance Code and through interfaces specialized in participatory investment advices. Further, certain regulated financial services listed in a decree from the Minister for Economy and Finance and provided by financial service providers whose activity is subject to authorization are excluded from the scope.
- ▶ 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.

### Deemed French services

- ▶ A user of a digital interface is deemed to be located in France if he visits such interface through a terminal located in France. Location in France is determined by any means, including the IP (Internet Protocol) address.
- ▶ 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.

### Thresholds for in-scope activities

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

### Tax base and rate

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

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 included when they have a direct and indivisible link with the volumes or value of such goods.<sup>2</sup>

## Filing and payment

The tax shall be declared, recovered and controlled according to the same procedures as those applicable to French VAT, subject to some adjustments.

The triggering event, which is also the due date, is 31 December. However, as noted above, for 2019, a unique advance payment will be due in November 2019 and will be computed on the total amount of the 2018 revenue deriving from in-scope activities. Yet, the percentage of French deemed services is assessed taking into consideration in-scope activities rendered between the day following the official issuance of the law and 31 October 2019.<sup>3</sup> The balance payment for the whole tax with respect to 2019 will occur in April 2020 and the percentage will be determined based on the period between the day following the official issuance of the law up to December 2019.

Such computation appears to be highly challenging for taxpayers since it relies on data non-readily available and not used for other tax purposes. It will require a swift adjustment of the information technologies system to extract relevant data with respect to French DST.

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.

## Compliance

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 French Tax Code applying to cases where the taxpayer has not responded to the request for justifications and information from the tax administration in a satisfactory manner. Since this request is made to the entity liable to the DST, in practice it creates a right for the FTA to request information and documents from foreign companies to verify the computation of the DST and the data selected to assess such computation. It is worth stressing that such information request is not tantamount to a tax audit, leading the requested entity not to benefit from the rights and warranties of an audited taxpayer.

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 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.

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## Endnotes

1. See EY Global Tax Alert, [French Government submits draft bill on digital services tax to Council of Ministers](#), dated 8 March 2019.
2. Within the meaning of 1 of Article 1 of Council Directive 2008/118/EC dated 16 December 2018 on the general arrangements for excise tax and repealing Directive 92/12/EEC.
3. Indeed, the *Commission Mixte Paritaire* feared that, for FY 2019, all concerned entities would not retroactively have a geographical split of their taxable services.

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