

EACA Comment on Digital Taxation

EACA welcomes the opportunity to provide comments and clarifications on the Commission's proposals related to the "Fair taxation of the digital economy" (Proposal for a Directive laying down rules relating to the corporate taxation of a significant digital presence (COM (2018) 147), Proposal for a Directive on common system of a digital services tax on revenues resulting from the provision of certain digital services (COM (2018) 148)).

1. General remarks on taxation

EACA represents communication agencies [agencies], all of which are incorporated or have a physical presence in the EU. Their services are subject to national tax. We understand that the Commission's primary intention is to fairly and efficiently tax "digital activities" of companies that do not have a physical presence in the EU but still have large audiences in those countries. We do not believe that the draft Directives aim to cover agencies.

Nevertheless, the Commission's proposals risk

- agencies to be taxed multiple times for providing one and the same service to their clients, i.e. advertisers (e.g. buying ad space on behalf of their clients)
- agencies to be taxed for services that they do not provide (e.g. the placement of an ad)
- agencies and advertisers to suffer from an increase of media prices, as platforms are likely to pass on the additional taxation costs to them. This will distort competition and counter the initial intention of the proposed measures, namely to tax a digital interface and not the businesses using their services.
- offsetting the current tax system, which would create an uneven level playing field of entities with a physical presence in the EU and those that have a 'digital presence', while threatening to double tax the entities that might fall into both categories
- substantially intruding into users' privacy in order to determine the place of taxation, which is likely to be in conflict with the GDPR and appears disproportionate regarding the additional tax income expected by the Commission.

2. Comments on the Digital Services Tax

The current draft of the [Digital Services Tax Directive](#) (DST) seems to suggest that, with regard to digital advertising, it applies to intermediaries in the supply chain rather than digital media owners. As a result, the DST would be levied on companies which already have a taxable presence in a country by virtue of their business activity (a significant number of employees, office space and associated infrastructure) and already pay full corporate taxes on their profits.

Should the Council agree to move forward with the Commission's proposal, we believe that such a tax should only apply where there is a misalignment between the place where the profits are taxed and the place where value is created. Articles 2 and 3 should then be amended to make clear that the DST only applies to companies

- that carry out a digital activity in countries where they do not have a physical presence
- where they can conduct activities remotely by virtue of being a digital business
- or where a company has a permanent establishment in the jurisdiction where the users are located; the value created by user participation is not taken into account when deciding how much tax should be paid in each country.

3. Clarifications on placing of advertising

We also feel that the concept of the "placing on a digital interface of advertising" needs clarification. It is our understanding that the Commission aims to capture the act of **selling of ad space by a platform**, rather than **the placing of an advertisement**, which covers buying ad space (from a platform).

Platforms provide the opportunity for ads to be delivered/placed/seen on their sites and are paid for the advertising space, i.e. the service of providing that space. Platforms own ad space and sell it to agencies (who buy the space on behalf of their clients), advertisers or other third parties. We would assume that, when referring to "placing advertising", the Commission refers to the selling of ad space. Accordingly, an agency's purchase of advertising space from platforms on behalf of their clients would not fall under the draft proposal's definition of "placing on a digital interface of advertising".

About EACA

The European Association of Communications Agencies (EACA) represents more than 2 500 communications agencies and agency associations from nearly 30 European countries that directly employ more than 120 000 people. EACA members include advertising, media, digital, branding and PR agencies.