

# Taxing the digital economy

## New developments and the way forward

### SUMMARY

On 8 October 2021, the OECD announced that, following years of intense negotiations, 136 countries had finally reached an agreement on how to tackle the tax policy challenges arising from the digitalisation of the economy. A growing realisation that these challenges cannot be addressed by the existing tax system – over a century old – helped achieve the breakthrough. With this, one of the main questions pertinent to the digital economy – how to fairly tax businesses that rely on intangible assets and have no or only an insignificant physical presence in the tax jurisdictions where they operate – seems to have been answered.

The EU and other international bodies have been discussing these issues for some time. In March 2018, the EU introduced a legislative package on the fair taxation of the digital economy. It contained proposals for an interim and a long-term digital tax. However, there was no immediate political agreement in the Council. As finding a global solution at the OECD level or a coordinated EU approach was not yet feasible at the time, some Member States started designing or implementing their own digital taxes, which gave rise to trade tensions.

The two-pillar solution agreed under the auspices of the OECD will put an end to this fragmentation. Pillar One would reallocate taxation rights concerning the largest and most profitable multinationals, and Pillar Two would introduce a global minimal corporate tax rate. While the consensus has been broadly welcomed, the new rules have also sparked controversy, particularly regarding their impact on developing countries, their complexity and their resilience to possible circumvention. The agreement will be presented for endorsement during the G20 Leaders' Summit scheduled for 30-31 October 2021 in Rome.

*This Briefing updates a [previous one](#) from March 2020.*



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## The main challenges of taxing the digital economy

The advent of the [digital economy](#) has elicited new fundamental policy questions linked to its effects on competition and the need to adapt existing tax systems to the new way of doing business. The existing international taxation framework dates mostly from the early 20th century and is no longer entirely relevant, being tailored to a less globalised economy and relying on the physical presence of businesses in a territory that allows for making a nexus between them and the tax jurisdictions. The European Commission estimates that digital businesses pay a lower effective [tax rate](#) than traditional ones. While under-taxation of the digital economy is challenged by some [studies](#), there is an international consensus that the current rules need to be adapted. They leave too many gaps to be effective – for example, a joint IMF and University of Copenhagen study found that 40 % of global FDI is structured to [minimise tax obligations](#), rather than with genuine business activities in mind.

The academic literature and international bodies, such as the [OECD](#), the [IMF](#) and the [UN](#), have identified the main [tax challenges](#) facing the digital economy. To start with, online business can be carried out without any physical presence, while the current tax rules were designed for 'bricks and mortar' businesses having a permanent establishment. Broadly speaking, most tax treaties are based either on the UN Model Tax Convention or the OECD Model Tax Convention, both of which use the 'permanent establishment' concept when determining whether a business is liable to taxation. Foreign businesses are taxable only if they have such an [establishment](#), itself broadly defined as the place where the business of a given company is wholly or partly conducted. Jurisdictions can tax companies only if there is an established tax 'nexus' (connection) between the two.<sup>1</sup>

However, digitalisation allows businesses to engage in significant business activities without meeting the requirement for a permanent establishment in any given jurisdiction. This is what the OECD calls 'scale without mass'. Such commercial presence need not be accompanied by a physical presence, which can lead to a situation in which taxes do not reflect the value and profits created by a business. The assets and activities of digital businesses can easily be moved across jurisdictions to help them avoid a taxable presence where taxes are higher. Furthermore, there is a risk that vendors on online platforms skip registration in third countries where they effectively conduct transactions. Businesses may create [value](#), or parts of it, in a different jurisdiction to that in which they are physically present. These practices render the task of determining the jurisdiction competent to tax a multinational or digital company complex, and current rules may result in substantial activity without a right of taxation.

Another difficulty arises due to the increasing reliance of digital or transnational businesses on [intangible assets](#), such as software and algorithms, which are crucial for many new business models. These [assets](#) are easy to move around the [world](#), which facilitates the process of [structuring](#) businesses in such a way as to minimise their tax liabilities. Consequently, tax authorities find it increasingly difficult to determine how to identify income generated by intangibles and how such income is allocated amongst different entities forming the multinational groups. The '[arm's length principle](#)' determines how to value transactions between these related entities by setting the amount that they charge each other, known as the 'transfer price'.<sup>2</sup> This price should be the same as if the entities were independent, in other words, what they would have to pay on an open market.

The arm's length principle aims to prevent price manipulation and tax avoidance. However, in the digital economy, a large part of profits are generated from unique intangibles such as databases, software and algorithms, and marketing activities making use of brands and trademarks that are specific and valuable only to a given business entity. As such, a comparable, free-market price is often difficult to determine, which impairs the application of the arm's length principle. As a result, digital businesses (due to the nature of their activities) and multinationals (due to their global activity) can actively use transfer pricing rules to maximise [costs](#), which are attributed to their subsidiaries in higher-tax jurisdictions, thereby reducing the taxable income. In parallel, they can increase the taxable income realised by the entity located in the lower-tax jurisdiction. In addition, legal uncertainty may arise due to other broader phenomena, such as the incorporation of [services](#), which increasingly rely on intangibles, into manufacturing.

Furthermore, highly digitalised businesses rely heavily on the use of data and user-generated content. This leads to a situation where it is difficult to determine to what extent the users, who allow platforms to use their data in exchange for free access, contribute to value creation. Some, including the EU, support the notion that taxes should be levied in the country where users are located, since they contribute to value creation and network effects. Indeed, businesses benefit greatly from data analysis, and user data are often sold to online advertisers. However, the value of data collected by a business would not generally figure on its [balance sheet](#) and therefore would not be taken into account when determining income liable to taxation.<sup>3</sup> Some countries, such as the US, refuse to take user-generated data into account for taxation purposes.<sup>4</sup> The current lack of updated rules makes it very challenging to establish exactly how and where value is created, and there is no agreed uniform way of assessing the tax bases and the tax nexus for digitalised businesses.

In addition, the digital economy has increased the complexity of characterising income for tax purposes. The main issue is whether certain rather novel payments and transactions (as, for example, in the case of the [infrastructure as a service](#) business models), should be treated as business profits or classified as royalties or technical services. Under the current treaties, business profits would be subject to corporate tax on net income in a country if they could be attributed to a permanent establishment located therein. On the other hand, royalties and technical services may be subject to withholding tax in the country of the payer. Since the characterisation of income has become very difficult in the digital economy, it may, in effect, lead to taxation mismatches and loopholes.

To paint a more complete picture, it is worth mentioning that the constantly evolving digital economy poses a host of other tax challenges, which are beyond the scope of this briefing. For example, some online transactions made through platforms, particularly peer-to-peer transactions, may not reveal the identity of the users and the payment amount, thereby facilitating tax fraud. Entirely different challenges are connected with shifts in working patterns and the taxable status of workers, due to the rise of 'gig' and [collaborative economies](#). Furthermore, a 2019 [study](#) for the European Parliament Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance (TAX3) mentions that 'delivery channels and business models, such as service-oriented models using software or hardware, cloud computing, 3D printing, collaborative platforms and blockchain, pose legal uncertainty for both taxpayers and administrations, as they are hardly matched by existing rules. The sheer diversity of the digital businesses and digital businesses using multiple business lines are further tax challenges, which shall be addressed by robust measures that would last in face of rapid digital evolution'. Further issues arise with regard to indirect taxation, mainly VAT. These issues concern the import of low-value parcels that are VAT-exempt and the difficulties in enforcing VAT payments on services and intangibles, particularly those sold to private consumers. The EU adopted new rules on [VAT for cross-border goods trade](#) in November 2019, which partially address these issues. Applicable since 1 July 2021, they simplify the VAT rules, notably for online transactions, and remove the VAT exemption for low-value consignments.

## EU proposals for taxing the digital economy

The digital taxation issue has been discussed both in the EU over the past few years,<sup>5</sup> as well as globally, with efforts carried out under the Group of Twenty ([G20](#))/OECD [base erosion and profit sharing action plan](#) (known as [BEPS](#)). The EU's initial position was that digital taxation needs to be addressed with an interim, temporary solution accompanied by a long-term, permanent fix. This position reflected a twofold ambition: to mitigate the risk of fragmentation of the single market elevated by the emergence of unilateral national measures, and to plan for measures on addressing this issue that would help shape global discussion under the BEPS. The European Commission proposed a package on [fair taxation of the digital economy](#) on 21 March 2018.

The [interim proposal](#) was for a Council directive that would tax revenues created by certain digital services that are currently untaxed, such as those generated by the online sale of advertising space, by digital intermediary activities between users (that facilitate the sale of goods and services), and by the sale of data generated by users. It would only apply to enterprises operating above two

thresholds: total annual worldwide revenues above €750 million, and total annual EU revenues exceeding €50 million. The Commission proposed a single rate of 3 %, to be levied on gross revenues obtained from the provision of those digital services for which user value creation is crucial. It would apply to both non-resident and domestic businesses and to domestic and cross-border transactions. Tax revenues would be allocated to each Member State proportionately to the number of users of the taxable service. The Commission intended for this tax to be temporary until the implementation of the comprehensive reform envisaged in the second proposal.

The [long-term solution](#) proposed was to be a Council directive determining 'where' and 'what' to tax in the digital economy. It defined a 'significant digital presence' that could be established even when there is no physical presence in a Member State's territory. Businesses would be liable to tax if they met at least one of the following criteria in a taxable year: annual revenue exceeding €7 million; over 100 000 users in a Member State; and more than 3 000 business-to-business contracts for digital services concluded by the business. A proportionate share of profits would then be taxable in the Member State in which the business had a taxable digital presence. The rate would be equivalent to 'bricks and mortar' establishments. The tax would cover not only corporate taxpayers incorporated or established in the Union, but also those incorporated or established in a non-EU jurisdiction which has no double taxation treaty with the Member State in which a significant digital presence of the taxpayer is identified.

Taxation is subject to unanimous agreement in the Council, with Parliament involvement limited to giving a non-binding opinion under the consultation procedure. Parliament has generally supported fair taxation of the digital economy. It supported the Commission [proposal](#) on the common consolidated corporate [tax](#) base ([CCCTB](#)), which was designed to distribute the tax base among the Member States. As early as March 2018, Parliament voted to introduce the concept of [digital permanent establishment](#). Parliament thereby supported the proposal that companies generating revenues in a Member State without having a physical presence but having a digital permanent establishment, get the same tax treatment as those with a physical permanent establishment. The CCCTB proposal has, however, been blocked in the Council. Similarly, [Parliament](#) has supported both short- and long-term solutions tabled by the Commission, widening their [scope and coverage](#) and backing integration of the concept of significant digital presence in the proposed Council directives on corporate taxation.<sup>6</sup> The Council however has given [preference](#) to working towards reaching a global solution at OECD level, and has postponed work on these proposals.

## Digital taxes at Member State level

In the absence of immediate measures on digital taxation at EU or global level, some Member States have decided to continue with national initiatives. Others have announced plans to implement digital taxes or to wait for international solutions. Many of the national taxes have features in common with the 2018 Commission proposal, such as the global threshold and the tax base. The section below gives a brief overview of the digital tax developments across the EU in recent years.<sup>7</sup>

### Austria

The Austrian Digital Services Tax ([DST](#)), adopted in 2019, is effective as of 1 January 2020. It applies to companies with a global turnover of €750 million or more, and a national turnover of at least €25 million. Revenues from domestic online advertising services are liable to tax when they are targeted at Austrian users. The tax rate has been set at 5 %.

### France

On 24 July 2019, the French [DST](#) became law, applying retroactively from January 2019. The tax applies to companies with a global digital turnover of more than €750 million and a digital turnover of more than €25 million in France. It covers targeted online advertising, the management and sale of user data for advertising and the connection of users through digital platforms. It is applied at a

3 % rate on the gross revenues generated by those digital activities where French users play a major role in value creation. If an agreement is implemented at OECD level, it will [replace](#) the DST.

## Hungary

In 2014, an advertisement tax was introduced on the turnover from broadcasting or publishing advertisements, with several progressive tax rates ranging from 0 % to 50 %. After a 2015 Commission [investigation](#) found that this tax constituted State aid and was therefore incompatible with competition law, Hungary replaced these progressive rates with two flat rates: a 0 % rate for the part of the taxable revenues below HUF100 million (approximately €312 000) and a 5.3 % rate for the part of the taxable amount that is higher than the aforementioned threshold. Hungary then raised the latter to 7.5 % for taxpayers with sales revenues from advertising exceeding HUF100 million. In 2017, the European Court of Justice ([ECJ](#)) annulled the Commission's decision; however, Hungary suspended the tax temporarily by setting its rate at 0 % between 1 July 2019 and 31 December 2022.

## Italy

The Italian [web tax](#), effective as of 1 January 2019, applies to digital business-to-business transactions and is due both by resident and non-resident businesses, whenever they provide more than 3 000 transactions annually, at a rate of 3 % levied on the service fees charged. Italy also introduced its own [DST](#) as of 1 January 2020, at a rate of 3 %. This tax covers companies with total worldwide revenues of €750 million and revenues of at least €5.5 million obtained from digital services provided in Italy. Digital services that generate taxable revenues include targeted advertising on a digital interface, linking users of multi-sided digital interfaces, and transmitting user data generated from the use of platforms. It will be repealed once an international solution is agreed.

## Poland

As of 1 July 2020, all video-on-demand (VOD) platforms operating in the country have had to pay an [additional levy](#) on their revenues obtained from subscription fees or advertising. The tax is set at 1.5 % of these revenues.

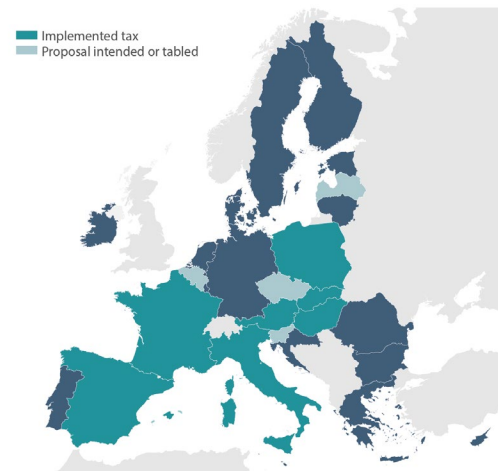
## Slovakia

The Slovakian tax, which covers income obtained by digital platforms and websites for intermediating [services](#) in transport and accommodation, was introduced in 2017. Effective from 1 January 2018, these businesses were considered as having their [permanent establishment](#) in Slovakia and were therefore eligible to pay corporate tax at a rate of 21 %.

## Spain

The Spanish tax on [certain digital services](#) entered into force on 16 January 2021. It is levied on three [types of services](#): online advertising services (when they appear on a device used in Spain), online intermediation services (when at least one user is located in the country), and the data transfer services for sale of user data (when it has been generated in Spain). The tax is set at 3 % of the taxable base, which is the gross income generated from the provision of these services. The tax covers the companies whose global net turnover exceeds €750 million, and which generate at least €3 million

Figure 1 – Digital taxation in the EU



Source: Author's elaboration.

a year from providing those services that are subject to the tax, in Spain. The authorities reportedly consider this a [temporary measure](#) before an OECD solution is found.

## Other EU countries

The situation in the rest of the Member States varies. [Belgium](#) discussed a formal proposal but decided to hold out until a global solution is found. The October 2021 parliamentary elections in [Czechia](#) mean that the proposal will have to be considered by the newly elected members. In September 2021, the [Latvian Parliament](#) decided to consider a bill to introduce the digital services tax. In [Slovenia](#), the bill to introduce the digital tax was defeated in the Parliament in October 2020.

## The OECD agreement

As a result of its intensified work over the past few years on resolving the tax challenges posed by digitalisation, the OECD tabled a number of proposals for a global solution in October 2019.<sup>8</sup> The new system, endorsed by the G20 finance ministers and leaders, rests on two pillars based on input from the work carried out within the BEPS and the wider [OECD/G20 Inclusive Framework](#), as well as from stakeholders.<sup>9</sup> Intense negotiations followed, with a major stumbling block being whether pillar one should be mandatory or obligatory (a '[safe harbour](#)'). The decisive push came with a change of administration in Washington: unlike his predecessor, Joe Biden has been a strong supporter of finding a global compromise on taxing the digital economy, to end the tax [race to the bottom](#) around the world.<sup>10</sup> After the [main elements](#) of the accord were agreed in July 2021, the OECD [announced](#) that the final compromise was struck on 8 October 2021. The framework does not focus specifically on the tech/digital companies, but rather, on all companies falling within certain thresholds.

A total of [136 jurisdictions](#) (out of the 140 members of the OECD/G20 Inclusive Framework on BEPS) joined the [Statement on the two-pillar solution](#) to address the tax challenges arising from the digitalisation of the economy, which finalises a political agreement from July 2021.<sup>11</sup>

Pillar One aims to ensure a fairer distribution of profits and taxing rights among countries. Its scope is limited to the largest and most profitable multinational enterprises (MNEs), with a global turnover above €20 billion and a level of profitability above 10 % (profit before tax/revenue). The OECD estimates it will cover around 100 enterprises in total. Pillar One will reallocate some taxing rights of those MNEs from their home countries to the markets where they conduct business activities and generate profits (that is, where their consumers are). This reallocation will occur regardless of whether they actually have any physical presence there. Taxing rights over 25 % of MNEs' residual profits – defined as profits in excess of 10 % of revenue (referred to as *Amount A* in the statement) – will be reallocated to the relevant market jurisdictions. The MNEs concerned must generate at least €1 million in revenue from that jurisdiction. For smaller jurisdictions with GDP below €40 billion, this threshold is set at €250 000. MNE groups active in the financial services and extractive industry sectors will be exempted from Pillar One. Tax certainty will be ensured by the binding dispute prevention and resolution mechanisms, which will avoid double taxation. In certain cases, developing countries will be able to benefit from an elective dispute resolution mechanism, which will prevent the creation of excessive burdens on their low capacity administrations.<sup>12</sup>

Pillar One will also set, by the end of 2022, a simplified and streamlined approach specifying how to apply the 'arm's length principle' to in-country baseline marketing and distribution activities. In other words, it will provide a simplified method for enterprises to calculate the taxes they would owe on their foreign operations such as marketing and distribution. It will focus in particular on helping low capacity countries, which frequently find it difficult to administer transfer-pricing rules. The statement calls this *Amount B*.

Pillar One also provides for the abolition and standstill of DSTs and similar measures under the Multilateral Convention (MLC). No new DSTs or other relevant similar measures may be enacted from 8 October 2021 to 31 December 2023, that is, the coming into force of the MLC. The OECD expects a reallocation of taxing rights on more than US\$125 billion of profit under Pillar One.

Pillar Two introduces a global minimum corporate tax at a rate of 15 %. This will set a limit on tax competition and prevent a race to the bottom. The tax would apply to all companies with an annual revenue above €750 million. Pillar Two consists of two sets of rules: domestic and treaty-based.

The first set of rules contains two *Global anti-Base Erosion (GloBE)* rules that are applied domestically: i) an *Income Inclusion Rule (IIR)*, which introduces a top-up tax on a parent entity in reference to low-taxed income of any of its [constituent entities](#) (hereafter referred to as constituent enterprises) located in a low-tax jurisdiction. The IIR determines when the foreign income of a constituent enterprise should be included in the taxable income of the parent company. The rule would apply to profits obtained abroad after a deduction of 8 % of the value of tangible assets and 10 % of payroll costs. Those deductions would be reduced annually during a 10- year transition period, at the end of which they would amount to 5 %; ii) an *Undertaxed Payment Rule (UTPR)*, which denies tax deductions or requires an equivalent adjustment (a top-up tax), for example, when an enterprise makes payments back to its parent company established in a low-tax jurisdiction. This tax will be set according to the extent the low-tax income of a constituent enterprise is not subject to tax under an IIR. The MNEs at an early phase of their international activity will be excluded

from the GloBE rules for up to five years provided that they have a maximum of €50 million tangible assets abroad and operate in no more than five other jurisdictions. The GloBE rules will also allow for a *de minimis* exclusion for those jurisdictions where the MNE has revenues below €10 million and profits of less than €1 million. Government entities, international organisations, non-profit organisations, pension funds or investment funds are also exempted. In terms of sectors, international shipping is excluded, with the exception of airlines. The statement specifies that the Inclusive Framework member jurisdictions are not obliged to adopt the GloBE rules. However, they have an obligation to accept their application by other members.

Secondly, Pillar Two comprises a treaty-based rule: the *STTR* – the *Subject to tax rule*. It requires all jurisdictions applying a nominal corporate income tax rate below 9 % (to interest, royalties and a defined set of other payments) to incorporate the STTR into their bilateral treaties with developing countries, which are also members of the Inclusive Framework. The source jurisdictions can impose limited source taxation on certain related-party payments subject to tax below a minimum rate. The statement explains that the 'STTR will prevent companies from avoiding tax on their profit earned in developing countries by making deductible payments such as interest or royalties that benefit from reduced withholding tax rates under tax treaties and which are not taxed (or taxed at a low rate) under the tax laws in the treaty partner; this will help developing countries protect their treaty networks from abuse through profit shifting to low tax jurisdictions'. Countries will be allowed to be exempted from the STTR by offering tax incentives aimed at boosting substantial economic activity

## The United Nations and the taxation of automated digital services

In April 2021, the UN Committee of Experts on International Cooperation in Tax Matters approved the new Article 12B referring to taxing the income derived from automated digital services (ADS). It contains recommended language for bilateral treaty rules and, with the associated Commentary, will be inserted into the 2021 version of the UN Model Tax Convention (MTC).

Income liable to tax is that derived from ADS – services provided with little to no human involvement, such as online advertising, supply of user data, search engines, social media platforms, online gaming and cloud computing services. The Article grants rights to a withholding tax on gross payments for ADS made by a resident of one country to a resident of another country, when these countries are parties to the treaty.

Some legal experts consider this approach to be simpler and more realistic than the OECD one, since it does not use thresholds, is applicable to gross payments and applies only to the digital economy. As such, it could be a simple tool useful for developing countries with a limited administrative capacity. Others however argue that using Article 12B is not in the interest of these countries, because it relies on bilateral negotiations, and that OECD members would be reluctant to introduce it in their tax treaty provisions. It may also introduce unnecessary complications in the MTC.

Since it would only be considered when new bilateral treaties are negotiated (or old ones renegotiated) based on the MTC, its [effect](#) may be less prominent than the OECD tax agreement.

such as building a hotel or investing in a factory. The OECD estimates that the measures under Pillar Two are expected to generate approximately US\$150 billion in new tax revenues globally.

## Views and reactions

While reaching the global solution has been in general welcomed by commentators and the press, some of its aspects have also attracted criticism. On a positive note, *Financial Times* (FT) sees the tax reform as likely to increase the efficiency of trade, since it will remove 'distorting incentives for locating manufacturing in low-tax jurisdictions' in the longer term. An immediate benefit is that the proposal will ease global trade [tensions](#) resulting from the US opposition to various national DSTs. Nonetheless, another [FT analysis](#) underlines that the reform has missed the opportunity of making the tax system more transparent and less complicated, which is likely to give rise to novel ways of circumventing the rules.

[Bruegel](#) think-tank considers that the introduction of a general tax that is not specifically focused on digital services has weakened the argument that the reform seeks to punish the US big tech companies, while at the same time offering a rare opportunity of expanding the global corporate tax base. However, [EconPol Europe](#), the European Network for Economic and Fiscal Policy Research, estimates that Pillar One will only cover 78 of the world's largest 500 companies and the allocation would amount to US\$78 billion, much below the OECD estimates. Less than half of this amount would come from tech companies. EconPol also estimates that had the financial services sector been included, the possible amount would double.

Some [developing countries](#) and advocacy groups considered that the deal does not take their [interest](#) sufficiently into account and that it benefits mostly the wealthy nations, thus increasing inequality. [Oxfam](#) regards the deal as a [watered-down](#) solution and 'a mockery of fairness', with loopholes that may be exploited by the MNEs. It estimated that 52 developing countries would receive only around 0.025 % of their collective GDP in additional annual tax revenue from Pillar One. Oxfam also underlined that the 15 % minimum global corporate tax rate is well below the 20 % to 30 % rate recommended by the UN Financial Accountability, Transparency and Integrity ([FACTI](#)) Panel. Similarly, it is significantly below the 25 % recommended by the Independent Commission for the Reform of International Corporate Taxation ([ICRICT](#)). The [BEPS Monitoring Group](#) argued that a 15 % minimum rate would not remove the incentive for MNEs to shift profits out of source countries, because they mostly have rates of at least 25 %.

The [Tax Justice Network](#) criticised the deal stating that it will not keep profit-shifting in check. At the same time, it will provide significant revenues to a limited number of OECD members while leaving out everybody else, particularly the lower-income countries. The Financial Accountability and Corporate Transparency ([FACT](#)) Coalition called the deal 'historic', but expressed concerns that the voices of developing countries calling for a more equitable share in the revenues has not been taken into account, risking the long-term political viability of the reform.

## European Parliament

Parliament has been a long-standing supporter of imposing fair taxes on the digitalised economy, which the current system often fails to do. It [was in favour](#) of both EU proposals on digital taxes, widening their scope and coverage and backing the integration of the digital tax into the proposed Council framework on corporate taxation. In a [resolution](#) of April 2021, the Parliament stated that the scope of the new taxing rights should cover all large MNEs that could engage in BEPS practices, and at least automated digital services and consumer-facing businesses, while not placing further and unnecessary burdens on SMEs and avoiding making services more expensive for consumers.

The MEPs expressed concern that an overly complex system could create opportunities for circumventing the newly agreed rules and urged the negotiating parties to strive for a simple and workable solution. Parliament also stressed that the resolution mechanism should not put developing countries at a disadvantage. The MEPs called on the Commission to be ready to develop its own proposal by the end of 2021, especially as the OECD proposals apply only to a small group of companies and may not be sufficient.



The Information Technology Industry Council ([ITI](#)), a global ICT trade association, welcomed the proposal as providing greater clarity on tax reform. It also called for the urgent withdrawal of the unilateral tax measures, which weaken the international tax system and impact cross-border businesses.

## Way forward

On 13 October 2021, the deal was endorsed by the G20 finance ministers and central bank governors during their meeting in Washington. The official [communiqué](#), issued at the end of the meeting, calls for swift development of the model rules and multilateral instruments so that the new rules could come into effect at global level in 2023, as indicated in the detailed implementation plan. This plan has been included in an annex to the October statement.

Table 1 – Implementation plan of the OECD tax reform

Pillar One	Pillar Two
Early 2022 – Text of a Multilateral Convention (MLC) and Explanatory Statement to implement Amount A of Pillar One	November 2021 – Model rules to define scope and mechanics for the GloBE rules
Early 2022 – Model rules for domestic legislation necessary for the implementation of Pillar One	November 2021 – Model treaty provision to give effect to the subject to tax rule
Mid 2022 – High-level signing ceremony for the Multilateral Convention	Mid 2022 – Multilateral Instrument (MLI) for implementation of the STTR in relevant bilateral treaties
End 2022 – Finalisation of work on Amount B for Pillar One	End 2022 – Implementation framework to facilitate co-ordinated implementation of the GloBE rules
<b>2023 – Implementation of the Two-Pillar Solution</b>	

Source: [OECD](#).

The plan aims to finalise the work on the instruments and rules throughout 2022 and bring the global solution into effect in 2023. The proposal will now be passed on to the [G20 Leaders' Summit in Rome](#) for final endorsement. The summit will take place on 30-31 October 2021. A 2023 implementation target is an [ambitious timeline](#), particularly considering potential problems that may arise during the ratification phase. Crucially, it is yet unclear how this will play out in the [US Congress](#), where some [procedural hurdles](#) are under discussion.

The European Commission [announced](#) in July that it has postponed its plans for tabling a proposal for an EU [digital levy](#) in order to fully focus on the OECD proposal. It remains to be seen whether the levy will be proposed and what its impact will be. The [letter of intent](#) delivered by the Commission President, Ursula von der Leyen, in the context of her 2021 State of the Union speech, envisages two legislative proposals on the implementation of the OECD global agreement in the EU legal framework: one on the re-allocation of taxing rights, the other on minimum taxation.

## MAIN REFERENCES

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[Impact of digitalisation on international tax matters. Challenges and remedies](#), Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, February 2019.

Remeur C., [Understanding BEPS: From tax avoidance to digital tax challenges](#), EPRS, October 2019.

## ENDNOTES

- <sup>1</sup> For taxation purposes, *nexus* can be defined as the tax liability of the taxpayer in a specific tax jurisdiction.
- <sup>2</sup> The charges could be, for example, for inputs, finished products, delivered services, or the use of intellectual property rights.
- <sup>3</sup> The [OECD](#) also raises the point that valuing data as an asset becomes even more complex due to legal questions about data ownership. Under most legislation, it is considered to be the property of the individual from whom it is derived.
- <sup>4</sup> Having said that, a growing number of individual [states](#) are considering introducing such taxes.
- <sup>5</sup> This was evident in the outcome of the September 2017 [Digital Summit](#) in Tallinn and in the European Council [conclusions](#) of October 2017, which called for the Commission to propose measures on digital taxation by early 2018. Member States then broadly agreed that the proposals should include both long-term and interim solutions, in December 2017.
- <sup>6</sup> These concerned both the [common corporate tax base](#) proposal ([CCTB](#)) and the [common consolidated corporate tax base](#) proposal ([CCCTB](#)). Regarding the digital services tax, Parliament proposed to lower the [threshold](#) above which companies would need to pay the tax from €50 million to €40 million, and to broaden the tax base. Considering the significant digital presence tax, Parliament also expanded its definition and added a further criterion determining such presence.
- <sup>7</sup> On 21 October 2021, the US Department of the Treasury published a [joint statement](#) by the United States, Austria, France, Italy, Spain and the United Kingdom, in which all the European signatories committed to withdrawing their national digital taxes before the entry into force of the global OECD agreement in 2023.
- <sup>8</sup> The OECD started its work with the publication of a 2015 report on [BEPS Action 1 - Addressing the Tax Challenges of the Digital Economy](#), which identified the main risks (nexus, data and characterisation) and presented policy options to mitigate them. This was followed by a 2018 [interim report](#) that analysed the impact of digitalisation on business models and international tax systems, and by a 2019 [policy note](#) in which it proposed a two-pillar approach. Consequently, a [public consultation](#) took place, and the OECD launched a [programme of work](#) to develop a consensus solution with detailed instructions on how to fix identified challenges by the end of 2020.
- <sup>9</sup> The proposals were developed within the [OECD/G20 Inclusive Framework on BEPS](#), comprising 140 countries and jurisdictions that work together on the implementation of 15 measures to tackle tax avoidance, improve the coherence of international tax rules and to ensure a more transparent tax environment.
- <sup>10</sup> According to the 2021 [OECD Tax Database](#), the average statutory corporate tax rate among OECD countries has fallen from 32.3% in 2000 to 22.9% in 2021. In 1980, OECD members' corporate rates were rarely less than 45 per cent.
- <sup>11</sup> Late joiners from the EU included [Estonia](#), [Hungary](#) and [Ireland](#), which for various reasons withheld their support until the last days before the successful conclusion of the negotiations. The last members of the OECD/G20 Inclusive Framework which have not yet joined the agreement are Kenya, Nigeria, Pakistan and Sri Lanka.
- <sup>12</sup> The statement defines 'developing countries' as those with gross national income (GNI) per capita of US\$12 535 or less in 2019.

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