eu travel tech

eu travel tech position on the EU Digital Service Tax

eu travel tech **acknowledges that today's world economy has been** fundamentally transformed, with digitalisation enhancing and permeating all sectors. Notwithstanding the resulting benefits to businesses and consumers, whilst adapting to fast-paced global markets, this digital transformation inevitably brings challenges, such as the need to ensure that tax systems reflect the new realities of a digital economy.

At eu travel tech we hold in high regard the global community effort to address these tax challenges of the digital economy, and strongly support the European Commission in giving preference to an OECD agreement on an international solution, as previously announced by Vice-President Dombrosvskis and Commissioner Gentiloni.[1] We believe that such a solution is crucial to ensure a level playing field on tax internationally, and to avoid negative and discriminatory implications for the EU economy.

Nonetheless, the European Commission has also declared that in the absence of such an OECD agreement, they are prepared to adopt an EU solution on digital **taxation, including a new digital services tax ('DST') proposal by** mid-2021.[2] In view of this scenario, we strongly encourage European legislators to consider our views and concerns, if and when crafting this proposal.

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eu travel tech specific propositions for a potential new EU DST

eu travel tech believes that the scope of a new EU DST must consider the following:

- The potential new DST proposal should not be ring-fenced to certain digital companies

  In the online travel sector, any new taxation measure should apply equally to online in-house direct distribution of travel (such as airlines, hotels) and indirect distributors (such as online travel agencies/online intermediaries and metasearch companies), since they are competing within the same market.

[1] https://www.politico.eu/article/dombrovskis-hopes-to-save-mercosur-deal/ and https://www.europarl.europa.eu/doceo/document/E-9-2020-002726-ASW_EN.pdf
[2] Idem

For example, major international hotel chains or airlines often capitalize on their size by pulling all their brands in a single online channel (usually, the hotel group/airline website) and then selling products and services directly to consumers. Major chains such as these are likely to fall outside of the scope of existing unilateral DSTs. A DST levied on certain travel companies but not others would effectively cause distortion of the market.

Furthermore, as the economy digitalises, with most 'bricks and mortar' companies having an online presence, the logic behind imposing a DST on some digital companies, but not others, carries little weight. As the OECD has itself stated in the BEPS Action 1 report '*the digital economy is increasingly becoming the economy itself, it would be difficult, if not impossible to ring fence the digital economy from the rest of the economy for tax purposes*'[3].

Considering the above, we would support a wider scope of a potential EU DST solution and believe the OECD's Pillar 1 recommendation around "automated digital services" and "consumer-facing" businesses should be used as the basis. Alternatively, turnover thresholds used to define the scope of other OECD and EU measures may be used in this case as well to ensure that the potential new DST initiative does not discriminate against digital business models. Turnover thresholds are a tested criterion that would ensure fair application of rules to businesses across the board.

In addition to the above, there is an argument that application of a DST to certain industry players but not others may be in contravention of Article 14 (non-discrimination) of the European Convention on Human Rights.

- The potential new DST proposal should recognize the different market power of digital players

  Recent announcements show that large internet search companies with a presence in the travel sector have the ability to pass on the DST to its users (i.e. suppliers, advertisers, content providers) while simultaneously competing with them in the same market. For example, Google announced in September 2020 that it will impose higher Adwords fees in the UK, Austria and Turkey as of November 1 2020.[4] With this move, Google is passing on the costs of the DST bills to the advertisers on their platform. Digital taxes applying to large businesses can lead to smaller companies facing price hikes and double taxation when their business partners pass on the costs of such levies. The same risk applies to European consumers. In comparison,

[3] https://read.oecd-ilibrary.org/taxation/addressing-the-tax-challenges-of-the-digital-economy-action-1-2015-final-report_9789264241046-en#page13
[4] https://www.ft.com/content/fda648aa-bb52-4ab2-aa18-46b5023cb893

most online travel companies operate in a competitive market, with lower margins. The ability of these online travel companies to pass on DSTs is therefore limited.

This creates a situation where online travel companies are 'squeezed' at both ends, by incurring increased costs from large internet search engines and being hit with a DST on its revenue.

- Travel technology companies bring in enormous benefits to EU economies

The members of eu travel tech are the world's leaders in online travel. Our members have transformed the travel marketplace from end to end – from the way individuals plan, search, and book travel, to the way suppliers market and sell to their customers – creating new efficiencies, promoting competition, and ensuring consumers and travel agents can efficiently access a diverse set of supplier options. The innovative technologies these companies develop, along with the competitive marketplace they cover, have resulted in a travel economy that is more efficient, more affordable, and more accessible for millions around the globe. In addition, online travel agencies add value other than just a digital interface. They create comparison shopping, loyalty programs, offer insurance and facilitate payments and when things go wrong, help to resolve issues for travelers and suppliers.

It seems counterintuitive that the same companies that are bringing in valuable travelers from large markets, such as the United States, are being hit with a tax based, in large part, on where the supply is located. This is particularly so at a time when numerous countries around the globe vitally need tourism to stabilize their economies.

A potential new EU DST proposal needs to take into consideration the benefit these companies are bringing to the EU.

In this context, any future EU proposal should not disregard the difficulties the online travel sector, and the broader travel industry, are facing due to this unprecedented health crisis. The Covid-19 global pandemic has resulted in a significant drop in profits and revenues for travel companies and national and local travel restrictions mean that recovery may take a significant amount of time. In fact, recovery in the travel sector may be longer than the projected recovery in other business sectors. In order to offset the negative economic impact of the Covid-19 pandemic on the travel sector, legislators are invited to consider a temporary carve-out of the travel sector from provisions of the future DST.

Furthermore, we recommend that the European Commission's proposal incorporates the following recommendations to ensure provisions are not overly burdensome on companies in scope:

- Rate: the new DST proposal shall be based on a reasonable tax rate, that takes into account the companies' capability to absorb the tax. The EU must avoid excessive rates, favoring rates such as the 2% rate applied in U.K.

- Definition of income: the future rules must provide a clear definition of the "income" in scope. Considering the expected nature of this new tax as a revenue tax, income may be better defined as the revenue amount to which certain offsets in revenue, ie. contra revenue, have been applied (this is the case of customer refunds for example). The rules should therefore clarify that the new DST is applicable to the net margin/ commission and not the gross booking value paid by the traveller. Similarly, future rules should also consider the appropriate level thresholds would apply (legal entity vs group).

- Determination of user location: the parameters to define the location of the user should be clear and consistent. The UK DST legislation allows for a 'reasonable' method to identify user location. HMRC Guidance[5] at DST33000 states '*the legislation consequently does not specify acceptable sources of evidence, use presumptions or impose a prescriptive hierarchy* of evidence. Instead, groups should consider the information they hold and use the most appropriate evidence, or mix of evidence, to identify user location'. We consider the UK approach to be appropriate given the data access and data protection issues that prescriptive proxies such as IP address can have.

- **'Safe harbour' threshold for low**-profit or loss making groups: This safe harbor could look similar to the safe harbor under the UK DST legislation[6] whereby group's earning a low profit margin are liable to a reduced DST rate, with loss making groups not being subject to a DST liability. Based on each taxpayers' taxable capacity and in the interests of tax fairness and considering the economic conditions impacting the online travel sector, we consider this provision to be particularly important.

- Relief from multiple DSTs on the same income: Similar to the UK DST legislation, there should be a provision in the EU proposal which states that

[5] https://www.gov.uk/hmrc-internal-manuals/digital-services-tax
[6] Idem

countries can only levy DST on 50% of in-scope income, if the user in the 'other' country, is a country where DST is also levied. For example, at present, income from a French traveller booking a hotel in Turkey would be subject to DSTs in both France and Turkey, without any relief from the DST in either France or Turkey. This situation is untenable and erodes already low profit margins for travel companies. This is particularly important for companies in the travel sector, which by the nature of the industry have users in multiple territories.

Inclusion of this provision would not eradicate double taxation, as there would still be DST and corporation tax levied on the same income, but it should prevent triple or quadruple taxation scenarios.

- Intercompany income: Income assessed for the potential new EU DST should exclude any intercompany income in cases when a company is majority owned (i.e. >50%).

- Sunset clause: The European Commission, as well as Member States, have made it clear that a global solution at the OECD level would be the preferred solution. For this reason, it is important to insert a so-called sunset clause to the potential EU digital taxation proposal explaining that the EU measure would be repealed once a global solution has been agreed.

Proper mechanisms for administering the potential new DST must also be agreed upon, including:

- Group filing: Any future DST rules must facilitate company group filing rather than filing/payment per entity. The current situation with certain unilateral DSTs, such as the Turkey DST, requiring separate filings for each in-scope group entity is not tenable from a taxpayer resourcing perspective.

- EU level filing / payment: Any future DST rules must include an option for a single EU level DST registration, filing and payment at EU level. This would prevent taxpayers needing to expend additional resources in making DST payments/filings in multiple EU countries. Filing and payment obligations should be set on an annual basis equal to a company's financial year and with reasonable due dates to avoid creating excessive administrative burden on businesses.

- Timing and revenue recognition: The experience of our Members with existing national DSTs shows that there are divergences in relation to timing and revenue recognition provisions. In order to ensure the

implementation of the potential new DST is made easy and practical for businesses, we support using accounting recognition principles as the appropriate basis for relevant provisions.

- DST and digital levy: In line with the July 2020 EU Summit conclusions, the Commission announced in its 2021 Work Programme its intention to present a proposal for a digital levy by June 2021 as a new own-resource to the EU's budget. We would urge policy-makers to meticulously consider the interaction between a potential DST and a future digital levy in order to avoid duplication and disproportionate costs on businesses with subsequent negative consequences on EU competitiveness.

Eu travel tech shares the view that it is important to find a fair and equitable solution for business taxation in a digitalised world. We believe that the considerations presented in this paper would help design a balanced solution that avoids negative and discriminatory implications for the EU economy.