UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS

February 10, 2021

The Honorable Paolo Gentiloni
European Commissioner for Economic and Financial Affairs,
Taxation and Customs
European Commission
Rue de la Loi/Wetstraat 200
1049 Brussels
Belgium

Re: Comments on the Inception Impact Assessment on the EU Digital Levy

Dear Commissioner Gentiloni,

This letter is in response to the European Commission's request for comments from interested stakeholder groups on its Inception Impact Assessment on the Digital Levy initiative dated January 14, 2021 (the IIA). USCIB[1] is a business association stakeholder and appreciates this opportunity to offer comments on this phase of the project. We have been following closely the evolution of the concept of the digital levy as a new own resources option since it was introduced into discussion last July. Our preliminary comments regarding the digital levy concept are based on our review of the IIA and earlier Commission documents.

We urge the EU to continue its work within the principles established by the Inclusive Framework on BEPS and not focus on additional taxes or levies on digital activities of multinational enterprises (MNEs) as a targeted source of own resources revenue. A digital levy, if enacted, will create tension between governments and additional burdens and complexities for taxpayers. We are therefore opposed to a digital levy option if it is in conflict with those principles and it targets nonresident digital MNEs. In this letter, we summarize the context in which the digital levy has emerged and note the clear contradiction with the work of the Inclusive Framework.

Introduction

To date, there is little detail (or guidance) from the EU on the design of a digital levy. If a Commission proposal is adopted, it is expected to have an effective date of 2023. Language in the IIA that strongly promotes the digital levy concept appears to be inconsistent with the direction of the OECD Inclusive Framework's ongoing deliberations on the "Tax Challenges Arising from Digitalization".

We are concerned from language in the IIA that the digital levy could be designed in a way that would be in conflict with principles that have guided the Inclusive Framework, namely, (1) no "ring-fencing" of

[1] USCIB promotes open markets, competitiveness and innovation, sustainable development and corporate responsibility, supported by international engagement and prudent regulation. Its members include top U.S.-based global companies and professional services firms from every sector of our economy, with operations in every region of the world. With a unique global network encompassing leading international business organizations, USCIB provides business views to policy makers and regulatory authorities worldwide and works to facilitate international trade and investment.

digital groups or digital activities, (2) avoid double taxation, and (3) the simplification in design, administration and compliance.

Even before she took office in November 2019, President von der Leyen pledged her Commission to propose a solution for the taxation of the digitalized economy if no agreement was reached by the Inclusive Framework. The Commission position was endorsed by European Parliament and remains unchanged. The go-it-alone proposal (yet to be defined) is still conditional on the outcome of the Inclusive Framework deliberations scheduled for June 2021.

The indications in the IIA are that the digital levy would apply in addition to (i) any Inclusive Framework proposal or (ii) the EU proposal in the event there is no agreement at Inclusive Framework level. The IIA provides:

"The new initiative will help address the issue of fair taxation related to the digitalization of the economy and, at the same time, is intended to not interfere with the ongoing work at the G20 and the OECD level on a reform of the international corporate tax framework"

Regarding this stated purpose, we are concerned that it appears that the EU intends to create an additional tax burden focused on digital activities (however defined), beyond either the reallocation of tax base among countries through the Inclusive Framework's Pillar One or the GloBE minimum tax under Pillar Two. This kind of unilateral measure, especially if targeting nonresidents, will risk tax disputes between countries and create double taxation and other financial burdens on MNEs, reducing business investment and adversely impacting the economic growth necessary to create the financial resources governments need to recover from the global health crises. We oppose this additional tax targeting digital activities and urge the EU and its members to continue to pursue a multilateral solution through the Inclusive Framework to address the tax challenges of digitalization.

COVID Relief

The EU passed a Euro 750 billion (roughly $900 billion) relief package in the fall of 2020 which is in addition to national relief measures of the individual Member States. As the EU COVID relief plan does not fall under existing national or Union budgets, the EU will have to borrow funds and finance the related debt through targeted tax increases and/or the introduction of government levies that create new revenue sources or increase existing ones.

The digital tax levy was introduced last year as one of several new own resources options. The EU published the IIA on January 14, the first day of the public consultation hearing on the Inclusive Framework's Blueprints. The digital levy emerged as one of the options for which the Commission will design and prepare a legislative proposal before the end of the first semester (June 2021, coinciding with the current consensus agreement deadline for the Inclusive Framework).

Specific Comments on Certain IIA Sections

<u>Context, Problem definition and Subsidiarity check</u>

We reproduce again a key statement in the IIA:

The new initiative will help *address the issue of fair taxation* related to the digitalization of the economy *and, at the same time, is intended to not interfere with the ongoing work at the G20 and the OECD level on a reform of the international corporate tax framework*. (emphasis added)

Adjacent to this statement in the IIA is a reference to Council Conclusions of 21 July 2020, but in those conclusions there is no link between the digital levy and the quest for fair taxation. Rather, the digital levy proposal is part of the COVID-inspired search for a new own resources category to finance the COVID relief package. The digital levy conflicts with the Commission's fair taxation strategy that was set by the previous Commission's leadership before the current leadership took office in November 2019. That strategy is a commitment to the multilateral Inclusive Framework process as the best way to decide a solution to the taxation of the digital economy. If there is an Inclusive Framework agreement, the Commission will draft the legislation for the Member States to implement. If there is no Inclusive Framework agreement, the Commission will "go it alone" and propose a legislative solution for the Member States to consider (such as, for example, a GloBE-like tax). The digital levy concept is distinct from the Commission's "go it alone" pledge and is not linked to the Inclusive Framework outcome this year. It clearly appears to be a unilateral tax measure of the kind the Inclusive Framework project intends to eliminate.

Commission's Objectives and Policy Options

The information in the IIA on the digital levy proposal provides no comfort that the initiative does not contradict the Commission's stated commitment to the Inclusive Framework process. That process includes as an important condition for consensus the elimination of existing and proposed unilateral tax measures. The IIA provides:

"The main objective of the initiative is to come forward with a measure that allows for a fairer contribution from the companies that operate in the digital sphere for the purposes of the recovery and to support a more stable medium-term outlook."

The most important guidance in this section is as follows:

"The [digital levy] initiative should be designed in a way that is compatible with the international agreement to be reached in the OECD as well as broader international obligations."

The IIA identifies three specific "policy options."

- A corporate income tax top-up to be applied to all companies conducting certain digital activities in the EU.
- A tax on revenues created by certain digital activities conducted in the EU.
- A tax on digital transactions conducted business to business in the EU.

According to the IIA, each of these three options is to be considered taking into account "developments at international level." Even on the basis of these very brief descriptions, each one of these options appears to be intended to ringfence the digital economy for taxation purposes – incompatible with the expected international agreement to be reached in the Inclusive Framework as well as broader international obligations.

Evidence Base, data collection and better regulation instruments

We consider the use of economic modelling to be an important component of the Commission's impact assessment. The IIA refers specifically to the possibility for an economic model to "take into account the existing corporate tax system and potential fiscal interactions" and the close connection between the digital sector and the rest of the economy. We encourage the Commission to model the economic impacts of any additional tax.

The IIA and relevant Commission communications continue to assert that digital companies do not pay their fair share of tax. We note that during the debate over the Commission's original digital tax proposals (the proposed digital services tax and significant digital presence directives) in 2018, studies were published to refute Commission and member state assertions that the large digital companies that would be subject to those EU proposals did not pay their fair share of tax. We reference two 2018 studies by highly reputable European-based firms in particular which refute these assertions based on their empirical examination of the tax burdens of digital companies. ("The Proposed EU Digital Services Tax, Effects on Welfare, Growth and Revenues," Copenhagen Economics (September 2018) and "Digital Companies and Their Fair Share of Taxes," ECIPE Occasional Paper (3/2018)). These studies contain insightful comparative empirical analyses on effective tax rates and profit margins in the digital and other sectors. It appears the Commission is relying on the same kinds of negative assumptions of the taxation of the digital sector in the IIA justification for a digital levy that those two studies already refuted in 2018.

Conclusion

We urge the Commission to avoid designing and implementing a digital levy as a unilateral measure of the kind that the Inclusive Framework project is intended to eliminate, namely one that ringfences the taxation of digital companies of a certain size.

We appreciate the opportunity to submit this consultation letter and are available to discuss with you at your convenience the issues described in this letter in further detail.

Sincerely,

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