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Proposal for a

COUNCIL DIRECTIVE

on the common system of a digital services tax on revenues resulting from the provision of certain digital services

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The Digital Single Market is one of the main political priorities of the European Commission[1], which aims at opening up digital opportunities for people and businesses in a market of over 500 million EU consumers. In order to deliver on its potential, the Digital Single Market needs a modern and stable tax framework which stimulates innovation, tackles market fragmentation and allows all players to tap into the new market dynamics under fair and balanced conditions. Ensuring fair taxation of the digital economy is also part of the European Commission's agenda on a fair and efficient tax system in the European Union[2].

The digital economy is transforming the way we interact, consume and do business. Digital companies are growing far faster than the economy at large, and this trend is only set to continue. Digital technologies bring many benefits to society and, from a tax perspective, they create opportunities for tax administrations and offer solutions to reduce administrative burdens, facilitate collaboration between tax authorities, as well as addressing tax evasion.

However, policy makers are currently struggling to find solutions which can ensure a fair and effective taxation as the digital transformation of the economy accelerates, given that the existing corporate taxation rules are outdated and do not capture this evolution. In particular, the current rules no longer fit the present context where online trading across borders with no physical presence has been facilitated, where businesses largely rely on hard-to-value intangible assets, and where user generated contents and data collection have become core activities for the value creation of digital businesses.

At the international level, the OECD already recognised, in its Action 1 report[3] which was released in 2015 as part of the OECD/G20 Base Erosion and Profit Shifting (BEPS) project, that digitalisation and some of the resulting business models present challenges for international taxation. Following that report, the G20 Finance Ministers reiterated their support for the OECD's work on taxation and digitalisation. Hence, the OECD

At EU level, such challenges were identified in the Communication of the Commission "A Fair and Efficient Tax System in the European Union for the Digital Single Market"[4], adopted on 21 September 2017. The current initiative was also mentioned in President Juncker's letter of intent accompanying the State of the Union Address 2017[5]. As regards Member States, several EU Finance Ministers co-signed a political statement ("Joint initiative on the taxation of companies operating in the digital economy") that supported EU law compatible and effective solutions "based on the concept of establishing a so-called 'equalisation tax' on the turnover generated in Europe by the digital companies[6]". This was followed by the

1 COM(2015) 192 final.
2 COM(2015) 302 final.
3 OECD (2015), 'Addressing the Tax Challenges of the Digital Economy: Action 1 – 2015 Final Report', Organisation for Economic Co-Operation and Development (OECD), Paris.
4 COM(2017) 547 final.
5 State of the Union 2017. Letter of intent to President Antonio Tajani and to Prime Minister Jüri Ratas, 13 September 2017, accessible at https://ec.europa.eu/commission/sites/beta-political/files/letter-of-intent-2017_en.pdf.
6 Political statement: joint initiative on the taxation of companies operating in the digital economy – http://www.mef.gov.it/inevidenza/banner/170907_joint_initiative_digital_taxation.pdf submitted by Germany, France, Italy and Spain to the Estonian Presidency of the Council in September 2017.

conclusions adopted on 19 October 2017 by the European Council[7] that underlined the "*need for an effective and fair taxation system fit for the digital era*". Furthermore, the ECOFIN Council Conclusions of 5 December 2017[8] noted the interest of many Member States for temporary measures, such as a levy based on revenues from digital activities in the EU, and considered that these measures could be assessed by the Commission.

This proposal answers these calls for action, and addresses in a targeted way the problem that the current corporate tax rules are inadequate for the digital economy.

The current corporate tax rules were conceived for traditional businesses. The existing tax rules are built on the principle that profits should be taxed where the value is created. However, they were mainly conceived in the early 20th century for traditional 'brick and mortar' businesses and define what triggers a right to tax in a country ("where to tax") and how much of corporate income is allocated to a country ("how much to tax") largely based on having a physical presence in that country. That means that non-tax residents become liable to tax in a country only if they have a presence that amounts to a permanent establishment there. However, such rules fail to capture the global reach of digital activities where physical presence is not a requirement anymore in order to be able to supply digital services. Moreover, digital business have different characteristics than traditional ones in terms of how value is created, due to their ability to conduct activities remotely, the contribution of end-users in their value creation, the importance of intangible assets, as well as a tendency towards winner-takes-most market structures rooted in the strong presence of network effects and the value of big data.

The application of the current corporate tax rules to the digital economy has led to a misalignment between the place where the profits are taxed and the place where value is created, notably in the case of business models heavily reliant on user participation. This poses a double challenge from a tax perspective. Firstly, the input obtained by a business from users, which actually constitutes the creation of value for the company, could be located in a tax jurisdiction where the company carrying out a digital activity is not physically established (and thus not established for tax purposes according to the current rules) and where therefore the profits generated from such activities cannot be taxed. Secondly, even 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. This has also consequences from the perspective of the risk to artificially avoid permanent establishment rules, creates distortion of competition between digital market players, and has a negative impact on revenues.

The Commission has acknowledged that the ideal approach would be to find multilateral, international solutions to taxing the digital economy given the global nature of this challenge. However, the growing challenge of ensuring that all actors in the digital economy are fairly taxed on their income has still not been adequately addressed globally, and reaching the international consensus may take time. This is why the Commission has decided to take action and is proposing today to adapt the corporate tax rules at EU level so that they are fit for the characteristics of digital businesses[9] and to recommend that Member States extend this

7 European Council meeting (19 October 2017) – Conclusions (doc. EUCO 14/17).

8 Council Conclusions of 5 December 2017 – Responding to the challenges of taxation of profits of the digital economy (FISC 346 ECOFIN 1092).

9 Proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence [reference].

solution to their double taxation treaties with non-EU jurisdictions[10] (both constituting a comprehensive solution). Whilst the ECOFIN Council also stressed in its conclusions of 5 December 2017 its preference for a global solution endeavouring to closely monitor future international developments and consider appropriate responses, it welcomed EU action. Despite the present proposals, work at the OECD level is essential in order to reach a global consensus on this topic. The Commission will closely follow the developments.

In the wait of the comprehensive solution, which may take time to adopt and implement, Member States face pressure to act on this issue, given the risk that their corporate tax bases are significantly eroded over time, and also due to the perceived unfairness of the situation. While unilateral measures are in place or are concretely planned in 11 Member States for addressing this problem in a limited way, the trend has been increasing and the measures adopted are very diverse in terms of scope and their rationale. Such uncoordinated measures taken by Member States individually risk further fragmenting the EU Single Market and distort competition, hampering the development of new digital solutions and the EU's competitiveness as a whole.

Hence, it is necessary for the Commission to act and to propose a harmonised approach on an interim solution that tackles this problem in a targeted way (targeted solution). To this extent, this proposal sets out the common system of a tax on the revenues derived from the supply of certain digital services by taxable persons (hereinafter "Digital Services Tax" or "DST"). The specific objective of this proposal is to put forward a measure that targets the revenues stemming from the supply of certain digital services and that is easy to implement and helps to level the playing field in the interim period until a comprehensive solution is available.

This is in line with the general objectives of this proposal, whose aim is:

– to protect the integrity of the EU Single Market and to ensure its proper functioning;

– to make sure that the public finances within the EU are sustainable and that the national tax bases are not eroded;

– to ensure that social fairness is preserved and that there is a level playing field for all businesses operating in the EU; and

– to fight against aggressive tax planning and to close the gaps that currently exist in the international rules which makes it possible for some digital companies to escape taxation in countries where they operate and create value.

• **Consistency with existing policy provisions in the policy area**

[11][12][13]Directive on a comprehensive solution and the Recommendationin the corporate tax framework.

• **Consistency with other Union policies**

10 Proposal for a Recommendation on the corporate taxation of a significant digital presence [reference].
11 COM(2016) 685 final and COM(2016) 683 final.
12 Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods (OJ L 348, 29.12.2017, p. 7–22).
13 COM(2016) 148 final.

[1]2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposed Directive is based on Article 113 of the Treaty on the Functioning of the European Union (TFEU). This provision enables the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the European Economic and Social Committee, to adopt provisions for the harmonisation of Member States' legislation concerning other forms of indirect taxation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition.

- **Subsidiarity (for non-exclusive competence)**

The proposal is consistent with the principle of subsidiarity as set out in Article 5(3) of the Treaty on European Union (TEU). In the wait of a common and coordinated action at EU level to reform the corporate tax framework to cover the digital activities of companies, Member States may introduce targeted unilateral measures to address the challenges of taxing the digital economy companies. Some of such measures, which can be of a very diverse nature, are already in place or are being planned by Member States. In this respect, EU action is necessary in order to mitigate the fragmentation of the EU Single Market and the creation of distortions of competition within the EU due to the adoption of such divergent unilateral actions at national level. Moreover, an EU solution rather than different national policies entails a reduction in the compliance burden for businesses subject to the new rules, and also gives a strong sign to the international community as to the commitment of the EU to act when it comes to ensuring the fair taxation of the digital economy.

- **Proportionality**

The preferred option is considered to be consistent with the principle of proportionality, that is, it does not go beyond what is necessary to meet the objectives of the Treaties, in particular the smooth functioning of the EU Single Market. As follows from the subsidiarity test, it is not possible for Member States to address the problem without hampering the EU Single Market. Moreover, the present proposal aims at setting a common structure of the tax, while leaving sufficient margin of manoeuvre for Member States when it comes to actual setting of certain administrative aspects related to the measure, such as accounting and record-keeping obligations, and also concerning the prevention of evasion, avoidance, and abuse. See also section 9.4.3 of the impact assessment accompanying this proposal.

- **Choice of the instrument**

A Directive is proposed, which is the only available instrument under Article 113 of the TFEU.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

1 COM(2015) 192 final.

- **Impact assessment**

4. BUDGETARY IMPLICATIONS

The proposal will have no implications for the EU budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will monitor the implementation of the Directive once adopted and its application in close cooperation with Member States and evaluate whether this initiative is functioning properly and the extent to which its objectives have been achieved, based on the indicators set out in section 10 of the impact assessment accompanying this proposal.

- **Detailed explanation of the specific provisions of the proposal**

Definitions (Article 2)

This Article provides definitions of various concepts necessary for applying the provisions in the Directive.

Objective scope (Article 3)

This Article defines the objective scope of the DST, that is, which revenues are subject to DST and therefore constitute taxable revenues.

DST is a tax with a targeted scope, levied on the revenues resulting from the supply of certain digital services characterised by user value creation. That covers cases where the participation of a user in a digital activity constitutes an essential input for the business carrying out that activity so that the business is able to obtain revenues therefrom. Such business models are those where the mismatch between taxation of profits and value creation is most acute. However, what is subject to taxation are the revenues obtained from the monetisation of the user input, but not the user participation in itself.

Revenues included in the scope of this tax would be those derived from the supply of any of the digital services below (taxable services):

– services consisting in the making available of advertisement space in digital interfaces; as well as the transmission of data about users which has been generated by such users' activities in digital interfaces;

– services consisting in the making available of multi-sided digital interfaces to users, which may also be referred to as "intermediation services", which allow users to find other users and interact with them, and which may also facilitate underlying supplies of goods or services directly between users.

The supply of advertising services in digital interfaces is defined in a broad sense in line with the business models examined, since the making available of such advertisement space constitutes the way in which a company monetises user generated content or user traffic.

Intermediation services are defined by reference to multi-sided digital interfaces enabling users to find other users and to interact with them, which is the aspect allowing the providers of such services to profit from network effects where, broadly speaking, the value of the service increases with the number of users using the interface. The capacity of these interfaces to create a link between users distinguishes intermediation services from other services which may also be seen as facilitating the interaction between users, but where users cannot get in touch with each other unless they have already established contact by other means (e.g.

providers of payment services). The latter are usually referred to as supplies of IT "solutions", and remain outside the scope of the tax.

Article 3(2) also clarifies that services consisting in the supply of digital content such as video, audio or text by a business to users are not to be regarded as intermediation services and should therefore be excluded as such from the scope of the tax given that it is less certain the extent to which user participation plays a central role in the creation of value for the company. It is necessary to clarify this point because some suppliers of digital content might allow some sort of interaction between the recipients of such content and could thus be seen as falling within the definition of a multi-sided digital interfaces, although the interaction between users remains in such circumstances ancillary to a main supply of digital content (e.g. an interface offering music streaming where users can exchange songs; or a digital game where users can play with other users).

For cases involving the supply of underlying goods or services directly between the users of a multi-sided digital interface, the revenues obtained by the providers of such a service (i.e. one of the users of the interface) remain outside the scope of the tax. The revenues resulting from retail related activities consisting in the sale of goods or services which are contracted online via the website of the supplier of such goods or services (which may involve what is usually referred to as "e-commerce") are also out of the scope of the DST.

<u>Subjective scope (Article 4)</u>

Only entities above both of the following thresholds shall qualify as "taxable persons" for the purposes of the DST.

– Total annual worldwide revenue above EUR 750 000 000, together with associated enterprises.

– Total annual taxable revenues in the EU above EUR 50 000 000, together with associated enterprises.

The first threshold (total annual worldwide revenues) limits the application of the tax to companies of a certain scale, which are those which have established strong market positions that allow them to benefit relatively more from network effects and exploitation of big data and thus build their business models around user participation. Such business models, which lead to higher differences between where profits are taxed and where value is created, are those falling within the scope of the tax. The economic capacity of the businesses qualifying as taxable persons should be seen as indicating their capacity to attract a high volume of users, which is necessary for such business models to be viable. Moreover, larger companies are more easily able to engage in aggressive tax planning, which is the reason why the same threshold has been proposed in other EU initiatives, such as the CCCTB. The objective of an annual worldwide revenue threshold determined on the basis of a company's financial year is also to give legal certainty and make easier and less costly for businesses (and tax authorities) to determine whether they are eligible for the payment of the DST, especially given that some of them may not record separately the revenues from the activities falling within scope of this tax. This threshold should also exclude small enterprises and start-ups for which the compliance burdens of the new tax would be likely to have a disproportionate effect.

The second threshold (total annual taxable revenues in the EU), in contrast, limits the application of the tax where there is a significant digital footprint at EU level in relation to the type of revenues covered by the DST. It is set at EU level in order to disregard differences in market sizes which may exist within the EU.

If the business belongs to a consolidated group for financial accounting purposes, the thresholds refer to the revenues at the level of the consolidated group.

Whether established in a Member State or in a non-EU jurisdiction, a business meeting both conditions above would qualify as a taxable person. Depending on where the taxable person is established, the scenarios where DST liability may arise can involve a taxable person established in a third country having to pay DST in a Member State, a taxable person established in a Member State having to pay DST in another Member State, or a taxable person established in a Member State having to pay DST in that same Member State.

<u>Place of taxation and chargeability (Article 5-6)</u>

Article 5 assigns taxing rights (which jurisdiction is entitled to collect the DST). In line with the concept of user value creation that underpins the objective scope of the DST, this provision determines that the DST is due in the Member State or Member States where the users are located.

This approach follows the logic that it is the user involvement in the digital activities of a company the one generating the value for that company, which may not necessarily entail a payment from the users' side (e.g. viewers of advertising in a digital interface); or which may involve payment from some users only (e.g. multi-sided digital interfaces where only certain users have to pay for accessing the interface, while other users have free access). Therefore, it is the Member State where the user is located the one with taxing rights in respect of DST, regardless of whether the user has contributed in money to the generation of revenue for the company. Specific rules to determine when a user is deemed to be located in a Member State are provided.

In cases where the users are located in different Member States, Article 5 also clarifies that the tax base will have to be distributed in either Member States according to some allocation keys. Such allocation keys have been determined taking into account the nature of each of the digital activities referred to in Article 3.

For revenues resulting from the supply of advertising in a digital interface, the revenues should be allocated to a Member State in proportion to the number of times an advertisement has been displayed on a users' device in that Member State. Revenues obtained by multi-sided digital interfaces involving an underlying supply of goods or services between the users of the interface should be allocated to a Member State in proportion to the number of users located in that Member State having concluded such underlying transactions; and in the absence of such underlying supplies, in proportion to the number of users in that Member State with an account in that interface. And finally, revenues resulting from the transmission of data about users should be allocated to each Member State based on the number of users in that Member State whose data has been transmitted.

This provision further clarifies that, for the purposes of determining the place of taxation, the place from which the payment for the taxable services is made should not be taken into account . For cases involving the supply of underlying goods or services directly between the users of a multi-sided digital interface, the place where such underlying transactions take place should not be taken into account either.

Based on the provision in Article 5, the users are deemed to be located in the Member State of the Internet Protocol (IP) address of the device used by them or, if more accurate, any other method of geolocation. The IP address is a simple and effective proxy for determining the user location. Moreover, if the taxable person is aware by other means of geolocation that the user is not located in the Member State where the IP address indicates, that taxable person will still be able to rely on that other means of geolocation to determine the place of taxation, as set out in Article 6.

The new tax will be chargeable in a Member State on the proportion of taxable revenues obtained by a taxable person in a tax period in that Member State, in accordance with Article 6.

Calculation of the tax, taxable amount and rate (Articles 7-9)

Article 7 lays down the rule on how the DST should be calculated.

Article 8, together with the definition of 'revenues' in Article 2, sets that the DST is levied on the gross revenues of a business (it is not a transaction-by-transaction tax) obtained by a taxable person by itself or together with associated enterprises, and resulting from carrying out the digital activities falling within the scope of the tax. The taxable amount is net of value added tax and other similar taxes. It is also clarified that, if the taxable person belongs to a consolidated group for financial accounting purposes, the revenues to take into account for the purposes of the taxable amount are those generated at the level of the consolidated group.

Article 9 sets out a single rate across the EU of 3%.

Obligations (Articles 10-20)

Articles 10 to 20 provide the set of obligations which would have to be fulfilled by taxable persons with DST liability. Article 11 clarifies that the taxable person obtaining taxable revenues is liable for the payment of the tax.

In order to manage the administrative aspects related to this tax, a simplification mechanism in the form of a One-Stop-Shop (OSS) is made available to resident and non-resident taxable persons. The functioning of the OSS is based on the idea that a taxable person with DST liability in one or more Member State should enjoy a single contact point (the Member State of identification) through which all his DST obligations can be fulfilled (identification, submission of the DST return, and payment).

As explained in Article 2, 'Member State of identification' means the Member State where a taxable person is liable for the payment of DST, unless he has DST liability in more than one Member State, in which case he may choose the Member State of identification among them.

The fact that a taxable person may be resident for corporate tax purposes in a Member State has no impact in determining the Member State of identification for the purposes of the DST, given the different nature of the tax. This also intends not to impose a disproportionate administrative burden on Member States where a taxable person may be established for direct taxation purposes, but where he may not have any DST liability. Therefore, a taxable person with DST liability in several Member States will be able to make use of the OSS in his Member State of identification in respect of all his DST obligations, and regardless of whether he is tax resident for corporate income tax purposes in other Member States. For instance, a taxable person with DST liability in two Member States (Member State A, where he is resident for corporate tax purposes, and Member State B, where he is not resident for corporate tax purposes) which has chosen Member State B as Member State of identification, will be able to fulfil his DST obligations in respect of both Member States A and B through the OSS.

Article 11 establishes an obligation for a taxable person to notify via a self-declaration system the Member State of identification that he is liable for the payment in the EU, and specifies the details to be communicated. That taxable person will obtain an identification number in accordance with Article 12. That identification number will be valid until the taxable person notifies the Member State of identification that he is no longer liable for the payment of the DST in the EU in accordance with Article 13. Article 14 clarifies the rules concerning a possible change in the Member State of identification.

Moreover, that taxable person must submit a DST return in the Member State of identification under Article 15, with the details specified in Articles 16. In particular, that means having to declare, for each Member State where the DST is due for the relevant tax period, the total amount of taxable revenues and the DST due. The total DST due in the EU, as well as the information about the thresholds laid down in Article 4 will also have to be reported. In order to avoid discrepancies in the functioning of the OSS, a provision regulating possible DST return amendments has been introduced in Article 17. Payment arrangements are governed by Article 18, which also specifies that possible refunds of the tax to taxpayers, once the DST due has been already transferred to from the Member State of identification to the Member State where that DST was due, should be made by the latter directly to that taxable person. Article 19 concerns accounting, record-keeping and anti-fraud measures which are for Member States to set up.

Article 20 establishes that every Member State has to appoint a competent authority for the purposes of managing all administrative obligations in respect of the DST, as well as the administrative cooperation requirements set out in Chapter 5.

<u>Administrative cooperation as regards obligations (Articles 21-23)</u>

Provisions laid down in Articles 21-23 govern the necessary exchanges between Member States as regards the identification of taxable persons and the submission of DST returns, as well as the transfer of funds corresponding to DST payments by the Member State of identification to the Member State where the DST is due.

Proposal for a

COUNCIL DIRECTIVE

on the common system of a digital services tax on revenues resulting from the provision of certain digital services

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament[1],

Having regard to the opinion of the European Economic and Social Committee[2],

Acting in accordance with a special legislative procedure,

Whereas:

(1) The global economy is rapidly becoming digital and, as a result, new ways of doing businesses have emerged. Digital companies are characterised by the nature of their operations, which are strongly linked to the internet. In particular, digital business models largely rely on the ability to conduct activities remotely and with limited or no physical presence, the contribution of end-users to their value creation, and the importance of intangible assets.

(1) The current corporate taxation rules, which was mainly developed during the 20th century for traditional businesses, is based on the idea that taxation should take place where value is created. However, the application of the current rules to the digital economy has led to a misalignment between the place where the profits are taxed and the place where value is created, notably in the case of business models heavily reliant on user participation. It has therefore become evident that the current corporate tax rules are inadequate for the purposes of taxing the profits of the digital economy and need to be reviewed.

(2) This review constitutes an important element of the Digital Single Market[3], given that it needs a modern and stable tax framework for the digital economy to stimulate innovation, tackle market fragmentation and allow all players to tap into the new market dynamics under fair and balanced conditions.

(3) In its Communication "A Fair and Efficient Tax System in the European Union for the Digital Single Market"[4], adopted on 21 September 2017, the Commission identified

1 OJ C , , p. .

2 OJ C , , p. .g

3 Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee and the Committee of the Regions 'A Digital Single Market Strategy for Europe' (COM(2015) 192 final of 6.5.2015).

4 Communication from the Commission to the European Parliament and the Council 'A Fair and Efficient Tax System in the European Union for the Digital Single Market' (COM(2017) 547 final of 21.9.2017).

the challenges posed by the digital economy to the existing tax rules, and also committed to analyse the policy options available. The ECOFIN Council conclusions of 5 December 2017[5] invited the Commission to adopt proposals in order to respond to the challenges of taxation of profits of the digital economy, while taking note of the interest of many Member States for temporary measures based on revenues from digital activities in the EU that would remain outside the scope of double tax conventions.

(4) The ideal approach would be to find multilateral, international solutions to taxing the digital economy given the global nature of this challenge, and this is why the Commission is actively engaged in the international debate. However, whilst work at the OECD on this issue is currently ongoing, this problem has still not been adequately addressed mainly due to a lack of international consensus. Hence, action to adapt the corporate tax rules at EU level should be taken[6] and agreements with non-EU jurisdictions reached in line with the Recommendation[7], so that the corporate tax framework fits the new digital business models (comprehensive solution).

(5) In the wait of such comprehensive solution, which may take time to adopt and implement, Member States face pressure to act on this issue given the risk that their corporate tax bases are significantly eroded over time. Uncoordinated measures taken by Member States individually can fragment the EU Single Market and distort competition, hampering the development of new digital solutions and the EU's competitiveness as a whole. This is why it is necessary for the Commission to act and to propose a harmonised approach on an interim solution that tackles this problem in a targeted way (targeted solution) while a comprehensive solution at EU level is discussed.

(6) This proposal sets out, as a targeted solution, the common system of a digital services tax on revenues resulting from the supply of certain digital services by certain taxable persons (hereinafter "Digital Services Tax" or "DST"). The tax should be calculated by applying the rate to the taxable amount, as defined in the legal text.

(7) The specific objective of this proposal is to put forward an easy-to-implement measure that targets the revenues stemming from the supply of certain digital services where users contribute significantly to the process of value creation. Such factor (user value creation) also underpins the Directive and the Recommendation on the taxation of digital activities, which aim at reflecting this concept in the existing corporate tax framework.

(8) This proposal defines the following elements of the DST: objective scope (what is taxed), subjective scope (who is taxed), place of taxation (in which Member State the DST is due), chargeability, taxable amount, rate, and related obligations including a One-Stop-Shop collection mechanism.

(9) The DST is a targeted solution because it is applied to revenues resulting from the provision of certain digital services only (taxable revenues). Such digital services are those largely reliant on user value creation where, therefore, the mismatch between the place where the profits are taxed and the place where the users are established is typically exacerbated. It should be kept in mind that what is subject to taxation are the

5 Responding to the challenges of taxation of profits of the digital economy – Council conclusions (5 December 2017) (FISC 346 ECOFIN 1092).

6 Proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence [reference].

7 Proposal for a Recommendation on the corporate taxation of a significant digital presence [reference].

revenues obtained from the processing of the user input, but not the user participation in itself.

(10) In particular, the revenues resulting from the supply of the following services should subject to the DST: (i) the making available of advertising space in a digital interface addressed at users; (ii) the making available of multi-sided digital interfaces which allow users to find other users and to interact with them, and which may also facilitate the conclusion of underlying supplies of goods or services directly between users (sometimes referred to as "intermediation" services); and (iii) the transmission of data collected about users, and which has been generated from such users' activities in digital interfaces. If no revenues are obtained from the supply of such services, there should be no DST liability. Other revenues not directly stemming from the supply of such services should also fall outside the scope of the tax.

(11) Services provided by multi-sided digital interfaces should be defined by reference to their capacity to enable users to find other users and to interact with them. The differential aspect of multi-sided digital interfaces is that they allow for a user interaction which could not take place without the interfaces matching the users (the interface allows users to get in touch with other users). Some of the services typically referred to as communication or payment services may also be seen as facilitating the interaction between users through a digital interface, but users cannot usually get in touch with each other unless they have already established contact by other means. The revenues resulting from the supply of such services should remain outside the scope of the tax because such suppliers do not operate as a marketplace, but rather produce or make available the digital interface itself, support software or other information technology instruments allowing customers to reach out to other persons with whom they already have a relationship in most of the cases, such as instant messaging services, e-mail services or e-payment services.

(12) Services consisting in the supply of digital content other than that represented by a multi-sided digital interface itself should be excluded from the scope of the tax. Even if some sort of interaction between the recipients of such digital content may be allowed and therefore the supplier of such services could be seen as making available a multi-sided digital interface, it is less clear that the user plays a central role in the creation of value for the company supplying the digital content and therefore the revenues obtained from such supplies should fall outside the scope of the tax.

(13) Digital content should mean data which are produced and supplied in digital form, such as computer programs, applications, games, music, videos or texts, irrespective of whether they are accessed through downloading or streaming.

(14) For cases involving multi-sided digital interfaces facilitating an underlying supply of goods or services directly between the users of that interface, such underlying transactions and the revenues obtained by the users therefrom should remain outside the scope of the tax. The revenues resulting from retail activities consisting in the sale of goods or services which are contracted online via the website of the supplier of such goods or services, and where the supplier does not act as an intermediary, should also be out of the scope of the DST. Whether a supplier is selling goods or services online on his own account or providing intermediation services should be determined by taking into account the legal and economic substance of a transaction, as reflected in the arrangements between the relevant parties. For instance, a supplier of a digital interface where third-party goods are made available could be said to provide an intermediation service (i.e. the making available of a multi-sided digital interface)

where no significant inventory risks are assumed, or where it is the third party effectively setting the price of such goods.

(15) Services provided by trading venues as defined in Directive 2014/65/EU consisting in the reception and transmission of orders in relation to financial instruments, the execution of such orders or the placing of financial instruments without a firm commitment should not fall within the scope of this Directive. Services by crowdfunding platforms subject to EU regulation [XXX] which consist in the transmission of orders in relation to financial instruments between users of such interfaces, the placing of financial instruments in the interface or the facilitation of granting of loans between users of such a crowdfunding platform should no raise DST liability. Such services involve intermediation and hence allow users to interact with other users, often via digital interfaces. However, unlike the services covered by this Directive, such investment services have the essential and distinct objective of supporting the real economy (or consumption or production) by allowing for public, business or consumer funding, investments, savings, including pension savings, and payments. Investment services can also involve the transmission of data from third parties. Since such data transmission is limited to and forms part of the provision of financial services and is regulated as such under Union law it should also be excluded from the scope of this Directive.

(16) Only certain entities should qualify as taxable persons for the purposes of the DST, regardless of whether established in a Member State or in a non-EU jurisdiction. In particular, a taxable person should be above both of the following thresholds: (i) a total amount of annual worldwide revenues of EUR 750 000 000; and (ii) a total amount of annual taxable revenues within the EU of EUR 50 000 000.

(17) The first threshold (total annual worldwide revenues) should limit the application of the DST to the companies of a certain scale, which are the ones mainly able to provide those digital services for which user contribution plays a fundamental role, and which heavily rely on extensive user networks, large user traffic, and the exploitation of a strong market position. Such business models, which depend on user value creation for obtaining revenues and are only viable if carried out by companies with a certain size, are those creating the higher difference between where profits are taxed and where value is created that this Directive aims at tackling. Moreover, the risks of being able to engage in aggressive tax planning lie in larger companies, and this is why the same threshold has been proposed in other EU initiatives[8]. Such a threshold should also bring legal certainty, given that it would make easier and less costly for companies and tax authorities to determine whether an entity is eligible for the payment of the DST. It should also exclude small enterprises and start-ups for which the compliance burdens of the new tax would be likely to have a disproportionate effect.

(18) The second threshold (total annual taxable revenues in the EU) should limit the application of the tax where there is a significant digital footprint at EU level in relation to the type of revenues covered by the DST. It is set at EU level in order to disregard differences in market sizes which may exist within the EU.

(19) To comply with the existing legal framework, any entity qualifying as a taxable person and obtaining taxable revenues in a Member State should be subject to the DST, irrespective of that entity being established in a Member State or in a non-EU jurisdiction.

8 See Article 2 of the Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) (COM(2016) 683 final).

(20) Special rules should be set out for entities belonging to a consolidated group for financial accounting purposes. The revenues obtained by an entity from supplies to associated entities or entities belonging to the same consolidated group for financial accounting purposes should be excluded from the scope of this tax. For the purposes of determining whether an entity is above the applicable thresholds and thus qualifies as a taxable person, the thresholds should be applied in respect of the total consolidated group revenues.

(21) In order to alleviate possible cases of double taxation where the same revenues are subject to the Corporate Income Tax (CIT) and DST, Member States should allow businesses to deduct the DST paid as a cost from the CIT base in their territory, irrespective of whether both taxes are paid in the same Member State or in different ones.

(22) The DST should be due in the Member State where the users involved in the activities generating taxable revenues are located. Where the users are located in different Member States, the DST tax base should be allocated across jurisdictions in a proportional way on the basis of certain allocation keys. Such allocation keys should be established depending on the nature of each of the digital services within the scope of the DST. Identifying the place where the user is located and, therefore, the place of taxation should possible due to the Internet Protocol (IP) address of the users' device or, if more accurate, other means of geolocation. The place of taxation should not take into account whether users have contributed in money to the generation of the revenue, the place from where the payment in exchange for the supplies giving rise to a DST liability has been made, or the place where a possible supply of underlying goods or services contracted via a multi-sided digital interface has been made.

(23) Any processing of personal data carried out in the context of this Directive should be conducted in accordance with Regulation (EU) No 2016/679[9], including that which may be necessary in relation to Internet Protocol (IP) addresses or other means of geolocation. In particular, regard should be given to the need to provide appropriate technical and organisational measures to comply with the rules relating to the lawfulness and security of processing activities, the provision of information and the rights of data subjects. Whenever possible, personal data should be rendered anonymous.

(24) DST should be chargeable in a Member State on the proportion of taxable revenues obtained by a taxable person in a tax period in that Member State. The taxable amount should be equal to the gross taxable revenues obtained by a taxable person only allowing deducting value added tax and other similar taxes. he applicable rate should be set at 3%.

(25) Taxable persons should be liable for the payment of the DST, as well as responsible to fulfil a series of administrative obligations. A simplification mechanism in the form of a One-Stop-Shop (OSS) should be set up for taxable persons with DST liability in one or more Member States, so that all their DST obligations can be fulfilled at once (identification, submission of the DST return, and payment). The obligations should be fulfilled in a single Member State (Member State of identification), which should collect the information and the payment of the DST on behalf of other Member States

9 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1–88).

where the DST is due, and subsequently share that information and the collected DST amounts with them.

(26) Member States should be able to lay down accounting, record-keeping or other obligations aimed at ensuring that the DST due is effectively paid, as well as other measures to prevent tax evasion, avoidance and abuse.

(27) In order to ensure uniform conditions for the implementation of this Directive as regards the exchanges of information between Member States necessary for the functioning of the OSS, implementing powers should be conferred on the Commission. The Commission should also be able to propose common rules concerning accounting, record-keeping or other obligations to be laid down by Member States. Those powers should be exercised in accordance with Regulation (EU) No182/2011[10] laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers.

(28) Member States should, wherever necessary, make use of the provisions adopted by the Union regarding administrative cooperation in tax matters such as Council Directives 2011/16/EU[11] and 2010/24/EU[12], or of other measures available internationally, such as the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, Article 26 of the OECD Model Tax Convention and the OECD Model Agreement on Exchange of Information in Tax Matters.

(29) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents[13], Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(30) Since the objective of this Directive cannot be sufficiently achieved by Member States and EU action is needed in order to ensure the proper functioning of the EU Single Market, and given that this Directive does not go beyond what is necessary in order to achieve this objective,

HAS ADOPTED THIS DIRECTIVE:

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10 Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p.13).

11 Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64, 11.3.2011, p. 1).

12 Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (OJ L 84, 31.3.2010, p. 1).

13 OJ C 369, 17.12.2011, p. 14.

Chapter 1

SUBJECT MATTER AND DEFINITIONS

Article 1
Subject matter

1. This Directive establishes the common system of a digital services tax ('DST') on the revenues resulting from the provision of certain digital services.

Article 2
Definitions

For the purposes of this Directive, the following definitions shall apply:

(1) 'entity' means any legal person or legal arrangement that carries on business through either a company or a structure that is transparent for tax purposes;

(1) 'consolidated group for financial accounting purposes' means all entities that are fully included in consolidated financial statements drawn up in accordance with the International Financial Reporting Standards or a national financial reporting system;

(2) 'digital interface' means any software, including a website or a part thereof and applications, including mobile applications, accessible by users;

(3) 'user' means any individual or business that accesses an entity's digital interface, either by registering with, logging on, or visiting such an interface;

(4) 'digital content' means data supplied in digital form, such as computer programs, applications, music, videos, texts, games and any other software, other than the data represented by a digital interface;

(5) 'Internet Protocol (IP) address' means a series of digits assigned to networked devices to facilitate their communication over the internet;

(6) 'tax period' means a calendar year.

Article 3
Taxable revenues

1. The revenues resulting from the provision of each of the following services by an entity shall qualify as 'taxable revenues' for the purposes of this Directive:

   (a) the making available on a digital interface of advertising space for advertising that is aimed at users of that interface;

   (a) the making available to users of a multi-sided digital interface which allows users to find other users and to interact with them, and which may also facilitate the provision of underlying supplies of goods or services directly between users;

   (b) the transmission of data collected about users and generated from users' activities on digital interfaces.

2. The reference in paragraph 1 to revenues shall include the total gross revenues received in exchange for the provision of services falling within that paragraph, net of value added tax and other similar taxes.

3. Point (b) of paragraph 1 shall not include:

(a) the making available of a multi-sided digital interface where the sole or main purpose of making the interface available is to supply digital content to users, or to supply communication services to users or to supply payment services to users;

(c) the supply by a trading venue or a systematic internaliser of services consisting in the reception and transmission of orders in relation to financial instruments, the execution of orders on behalf of clients or the placing of financial instruments without a firm commitment basis, as referred to in points (1), (2), and (7) of Section A of Annex I to Directive 2014/65/EU;

(d) the supply by a regulated crowdfunding service provider of services consisting in the reception and transmission of orders in relation to financial instruments or the placing of financial instruments without a firm commitment basis, as referred to in points (1) and (7) of Section A of Annex I to Directive 2014/65/EU, or in the facilitation of the granting of loans.

4. Point (c) of paragraph 1 shall not include the transmission of data by a trading venue, systematic internaliser or regulated crowdfunding service provider.

5. In paragraphs 3 and 4:

(a) 'trading venue' and 'systematic internaliser' have the meanings given in points (24) and (20) respectively of Article 4(1) of Directive 2014/65/EU;

(e) 'regulated crowdfunding service provider' means a provider of crowdfunding services who is subject to authorisation and supervision under any harmonisation measure adopted under Article 114 of the Treaty for the regulation of crowdfunding services.

6. Revenues resulting from the provision of a service falling within paragraph 1 by an entity belonging to a consolidated group for financial accounting purposes to another entity in that group shall not qualify as taxable revenues for the purposes of this Directive.

1. Services falling within paragraph 1 are referred to in Chapter 2 of this Directive as 'taxable services'.

Article 4
Taxable person

1. 'Taxable person', with respect to a tax period, shall mean an entity meeting both of the following conditions:

(a) the total amount of worldwide revenues reported by the entity for the relevant financial year exceeds EUR 750 000 000;

(b) the total amount of taxable revenues obtained by the entity within the Union during the relevant financial year exceeds EUR 50 000 000.

2. Where an entity reports or obtains revenues in a currency other than euro, the revenues shall be converted into euro for the purposes of paragraph 1 by applying the exchange rate as published in the *Official Journal of the European Union* on the last date of the relevant financial year or, if there is no publication on that day, the rate published on the previous day.

3. In paragraphs 1 and 2, 'the relevant financial year' means the financial year covered by the latest available of the financial statements issued by the entity before the end of the tax period in question.

4. The rule in Article 5(1) shall apply in determining under paragraph 1(b) whether taxable revenues are obtained within the Union.

5. Taxable revenues shall be recognised for the purposes of this Directive as having been obtained at the time when they fall due, irrespective of whether the relevant amounts have actually been paid.

2. If the entity referred to in paragraph 1 belongs to a consolidated group for financial accounting purposes, that paragraph shall be applied instead to the worldwide revenues reported by, and taxable revenues obtained within the Union by, the group as a whole.

Chapter 2

PLACE OF TAXATION, CHARGEABILITY AND CALCULATION OF THE TAX

Article 5
Place of taxation

1. Taxable revenues obtained by an entity in a tax period shall be treated for the purposes of this Directive as obtained in a Member State in that tax period if users with respect to the taxable service are located in that Member State in that tax period.

The first subparagraph applies irrespective of whether such users have contributed in money to the generation of those revenues.

3. With respect to a taxable service, a user shall be deemed to be located in a Member State in a tax period if:

   (a) in the case of a service falling within Article 3(1)(a), the advertising in question appears on the user's device at a time when the device is being used in that Member State in that tax period to access a digital interface;

   (c) in the case of a service falling within Article 3(1)(b):

      (i) if the service involves a multi-sided digital interface that facilitates the provision of underlying supplies of goods or services directly between users, the user uses a device in that Member State in that tax period to access the digital interface and concludes an underlying transaction on it in that tax period;

      (ii) if the service involves a multi-sided digital interface of a kind not covered by point (i), the user uses a device in that Member State in that tax period to register with or to log on to the digital interface;

   (d) in the case of a service falling within Article 3(1)(c), data generated from the user having used a device in that Member State to access a digital interface, whether during that tax period or any previous one, is transmitted in that tax period.

4. For each tax period, the proportion of an entity's total taxable revenues that is treated under paragraph 1 as obtained in a Member State shall be determined as follows:

   (a) as regards taxable revenues resulting from the provision of services referred to in Article 3(1)(a), in proportion to the number of times an advertisement has appeared on users' devices in that tax period;

   (b) as regards taxable revenues resulting from the provision of services referred to in Article 3(1)(b):

      (i) if the service involves a multi-sided digital interface that facilitates the provision of underlying supplies of goods or services directly between users, in proportion to the number of users having concluded underlying transactions on the digital interface in that tax period;

      (ii) if the service involves a multi-sided digital interface of a kind not covered by point (i), in proportion to the number of users in that tax period who register with or log on to the digital interface;

(c) as regards taxable revenues resulting from the supply of services referred to in Article 3(1)(c), in proportion to the number of users from whom data transmitted in that tax period has been generated as a result of users having used a device to access a digital interface, whether in that tax period or a previous one.

5. For the purposes of determining the place of taxation of the taxable revenues subject to DST, the following elements shall not be taken into account:

(a) if there is an underlying supply of goods or services directly between the users of a multi-sided digital interface referred to in Article 3(1)(b), the place where that underlying supply takes place;

(b) the place from which any payment for the taxable service is made.

1. For the purposes of this Article, the Member State where a user's device is used shall be determined by reference to the Internet Protocol (IP) address of the device or, if more accurate, any other method of geolocation.

6. The data that may collected from users for the purposes of applying this Directive shall be limited to data indicating the Member State where the users are located, without allowing for the identification of those users.

Article 6
Chargeability

1. DST shall be chargeable in a Member State on the proportion of taxable revenues obtained by a taxable person in a tax period that is treated under Article 5 as obtained in that Member State. The DST shall become due in that Member State on the next working day following the end of that tax period.

2. If taxable services are provided by an entity belonging to a consolidated group for financial accounting purposes and the taxable revenues resulting from the provision of those services are obtained by another entity within that group, those taxable revenues shall be deemed to have been obtained by the entity providing the taxable services.

Article 7
Calculation of the tax

DST shall be calculated for a Member State for a tax period by applying the DST rate to the proportion of taxable revenues referred to in Article 6.

Article 8
Rate

The DST rate shall be 3%.

Chapter 3

OBLIGATIONS

Article 9
Person liable for payment and fulfilment of obligations

1. DST shall be payable and the obligations in this Chapter shall be fulfilled by the taxable person providing the taxable services.

3. A consolidated group for financial accounting purposes shall be permitted to nominate a single entity within that group for the purposes of paying DST and fulfilling the obligations in this Chapter on behalf of each taxable person in that group who is liable to DST.

Article 10
Identification

1. A taxable person shall notify the Member State of identification that the taxable person is liable to DST in one or more Member States.

7. The notification shall be made electronically by no later than 10 working days following the end of the first tax period for which the taxable person is liable to DST under this Directive ('the first chargeable period').

8. The Member State of identification shall be:

   (a) the Member State in which the taxable person is liable to DST for the first chargeable tax period;

   (b) if the taxable person is liable to DST for that tax period in more than one Member State, such one of those Member States as the taxable person chooses.

9. The notification required under paragraph 1 shall include at least the following information with respect to the taxable person:

   (a) name;

   (b) trading name, if different from the name;

   (e) postal address;

   (f) electronic address;

   (g) national tax number, if any;

   (h) contact name;

   (i) telephone number;

   (j) Member States where the taxable person is liable to DST;

   (k) IBAN or OBAN number.

10. The taxable person shall notify the Member State of identification of any changes in the information provided under paragraph 4.

11. When an entity is nominated under Article 9(2), the information provided by that nominated entity under this Article with respect to each taxable person in the group

shall also include information with respect to itself in relation to the items listed in points (a) to (g) of paragraph 4.

12. The Commission may adopt implementing acts to determine a common format for the notification required under this Article. Those implementing acts shall be adopted in accordance with the procedure provided for in Article 24(2).

Article 11
Identification number

1. The Member State of identification shall allocate to the taxable person an individual identification number for the purposes of DST and shall notify the taxable person of that number by electronic means within 10 working days from the day on which the notification under Article 10 was received.

13. Each individual identification number shall have a prefix in accordance with ISO code 3166 Alpha 2 by which the Member State of identification may be identified. However, Greece and the United Kingdom shall use the prefix 'EL' and 'UK' respectively.

14. Member States shall take the measures necessary to ensure that their identification systems allow taxable persons to be identified and shall keep an identification register with all the individual identification numbers allocated by them.

Article 12
Deletion from the identification register

1. A taxable person shall notify the Member State of identification by electronic means in any of the following circumstances:

(a) the taxable person ceases to obtain taxable revenues that are treated under this Directive as obtained in the Union;

(b) the taxable person ceases to qualify as a taxable person;

(c) the taxable person ceases to exist;

(d) the taxable person ceases to be liable to DST in the Union for any other reason.

2. The Member State of identification shall delete the taxable person from the identification register at the end of the period of 60 working days following the end of the tax period during which the information referred to in paragraph 1 was notified.

15. Article 10 shall apply if, following deletion of a taxable person from the identification register, the taxable person becomes liable once again to DST in the Union. References in Article 10 to the first chargeable tax period shall be read accordingly.

Article 13

Change in the Member State of identification

1. Where a taxable person has chosen a Member State of identification under Article 10(3)(b), the taxable person shall be bound by that choice for the first chargeable

period for which notification is made under Article 10 and for the two following tax periods.

16. However, if the taxable person ceases to be liable to DST in that Member State of identification chosen under Article 10(3)(b), the taxable person shall change its Member State of identification in accordance with the requirements of Article 10.

17. Any change in a taxable person's Member State of identification shall be notified to the existing Member State of identification, and that change shall apply from the tax period following the tax period in which that information is notified. The existing Member State of identification shall delete the taxable person from the identification register in accordance with Article 12(2).

18. That taxable person shall notify the new Member State of identification in accordance with Article 10, and references in that Article to the first chargeable period shall be to tax period from which the change applies.

Article 14
DST return

A taxable person shall submit to the Member State of identification a DST return for each tax period. The return shall be submitted electronically within 30 working days following the end of the tax period covered by the return.

Article 15
DST return information

1. The DST return shall show the following information:

(a) the individual identification number referred to in Article 11;

(b) for each Member State where DST is due for the relevant tax period, the total amount of taxable revenues treated as obtained by the taxable person in that Member State in that tax period, together with the amount of DST due on that amount in that Member State for that tax period;

(c) the total DST due from the taxable person in all Member States for the relevant tax period.

19. The DST return shall also show, with respect to the tax period, the total amount of worldwide revenues and total amount of taxable revenues within the Union applicable for the purposes of Article 4(1).

20. The Member State of identification may require the return to be made out in their national currency.

2. Upon receipt of a DST return, the Member State of identification shall immediately allocate a DST return number to the return.

3. Member States shall take the measures necessary to ensure that their identification systems allow DST returns to be identified and shall keep a DST return identification register with all the individual DST return numbers allocated by them.

21. The Commission may adopt implementing acts to determine a common format for the DST return and the DST return number. Those implementing acts shall be adopted in accordance with the procedure provided for in Article 24(2).

Article 16
Payment arrangements

1. The total DST due from a taxable person in all Member States for a tax period shall be paid by the taxable person in the Member State of identification.

22. The total DST due shall be paid to the Member State of identification no later than 30 working days following the end of the tax period concerned and, in making the payment, the taxable person shall make reference to the relevant DST return number.

23. If a taxable person makes a payment without reference to the relevant DST return number, or the reference number does not correspond to any outstanding DST return, the Member State of identification may take steps to clarify the issue. If the issue remains unsolved, the payment shall be returned to the taxable person, and the payment shall not be considered to be made for the purposes of paragraphs 1 and 2.

24. Payment shall be made to a bank account designated by the Member State of identification.

25. The Member State of identification may require the payment to be made in their national currency.

26. A Member State of identification which receives a payment in excess of the total DST due as indicated in the relevant DST return shall reimburse the overpaid amount directly to the taxable person concerned.

27. Where a Member State of identification has received a payment in respect of a DST return subsequently found to be incorrect and amended under Article 17, and that Member State has already distributed that amount to each Member State where DST is due, those Member States where DST is due shall each reimburse their respective part of any overpaid amount directly to the taxable person.

Article 17
DST return amendments

1. Changes to the figures contained in a DST return shall be made only by means of amendments to that return and not by adjustments to a subsequent return.

28. The amendments referred to in paragraph 1 shall be submitted electronically to the Member State of identification within three years of the date on which the initial return was required to be submitted. Amendments after such period shall be submitted electronically directly to the Member State where DST is due.

29. Any additional payment by a taxable person of DST due derived from the amendments in paragraph 1 shall be made to the Member State of identification in accordance with Article 16, and references to 'total DST due' shall be read accordingly. Any reimbursements to a taxable person of DST paid derived from the amendments in paragraph 1 shall be made in accordance with Article 16(6).

Article 18
Accounting, record-keeping, anti-fraud, enforcement and control measures

1. Member States shall lay down accounting, record-keeping and other obligations intended to ensure that the DST due to the tax authorities is effectively paid. Such

rules in a Member State shall apply to any entity with DST liability in that Member State, irrespective of the Member State of identification of that taxable person.

30. The Commission may adopt implementing acts to determine the measures to be taken pursuant to paragraph 1. Those implementing acts shall be adopted in accordance with the procedure provided for in Article 24(2).

31. Member States may adopt measures to prevent tax evasion, avoidance and abuse.

32. A Member State of identification chosen under Article 10 shall act on behalf of the other Member States where DST is due for the purposes of the obligations in this Chapter, but the DST shall be owed by the taxable person directly to each Member State where DST is due. Accordingly, each Member State where DST is due shall be entitled to enforce payment of the DST directly against the relevant taxable person. To that extent, the rules and procedures of each such Member State shall apply, including the rules and procedures relating to penalties, interest and other charges for late payment or non-payment of DST and the rules and procedures relating to the enforcement of debts.

33. Tax audits and control measures by Member States aimed at examining all the information and actions relevant to the calculation of a taxable person's DST liability in that Member State shall be governed by the rules and procedures applicable in that Member State.

Article 19
Appointment of competent authorities

Each Member State shall designate the competent authority to be responsible in that Member State for managing all aspects related to the obligations set out in this Chapter and in Chapter 4, and shall notify the name and electronic address of that authority to the Commission. The names and electronic addresses of the competent authorities shall be published by the Commission in the *Official Journal of the European Union*.

Chapter 4

ADMINISTRATIVE COOPERATION

Article 20
Exchange of information as regards identification

1. The Member State of identification shall transmit any notification received by it under Article 10 to the competent authority of each Member State where DST is due. The notification shall be transmitted within 10 working days from the day on which the notification was received.

2. The Member State of identification shall also inform each such Member State of the individual identification number allocated to the relevant taxable person under Article 11.

34. The Member State of identification shall also inform each Member State where DST is due of any deletion in the identification register made under Article 12 within 10 working days from the day on which the deletion has been made.

Article 21
Exchange of information as regards the DST return

1. The Member State of identification shall transmit DST returns and any amendments to DST returns submitted to it under Article 14 or 17 to the competent authority of each Member State where DST is due. The returns and amendments shall be transmitted within 10 working days from the day on which they were received.

2. If a DST return is submitted in a currency other than euro, the Member State of identification shall convert the amounts into euro by applying the exchange rate as published in the *Official Journal of the European Union* on the last date of the tax period covered by the return or, if there is no publication on that day, on the previous day of publication, and shall transmit that information to the relevant Member States alongside the return, or amendment, transmitted to them under paragraph 1.

35. The Member State of identification shall transmit to the competent authorities of each Member State where DST is due any other information needed to link each payment with a relevant DST return.

Article 22
Exchange of information as regards payment

1. The Member State of identification shall ensure that the amount that a taxable person has paid under Article 16 corresponding to the DST due in a Member State other than the Member State of identification is transferred to the competent authority of that other Member State. The transfer shall take place within 10 working days following the day on which the payment was received.

36. The amount referred to in paragraph 1 shall be transferred in euro to the bank account designated by that other Member State.

37. Member States shall notify the competent authorities of other Member States of the number of the bank account to be used for the purposes of paragraph 2.

38. Any amount received by the Member State of identification in a currency other than euro shall be converted into euro by applying the exchange rate as published in the *Official Journal of the European Union* on the last date of the tax period covered by the return or, if there is no publication on that day, on the previous day of publication.

39. If a taxable person pays a portion only of the total DST due from it, the Member State of identification shall ensure that that portion is transferred to the competent authorities of the Member States where DST is due in proportion to the tax due in each Member State. The Member State of identification shall inform the competent authorities of the Member States where DST is due thereof.

40. If a Member State where DST is due has reimbursed any overpaid amount directly to the taxable person under Article 16(7), that Member State shall inform the Member State of identification of the amount of those reimbursements.

Article 23
Means of information exchange

1. Information and documentation to be transmitted under this Chapter shall be transmitted electronically.

41. The Commission may adopt implementing acts to determine the technical details by which such information and documentation is to be transmitted. Those implementing acts shall be adopted in accordance with the procedure provided for in Article 24(2).

Chapter 5

FINAL PROVISIONS

Article 24
Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

42. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 25
Transposition

1. Member States shall adopt and publish, by [31 December 2019] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately inform the Commission thereof.

   They shall apply those provisions from [1 January 2020].

   When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 26
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 27
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President