All Eyes on EU's Next Move After OECD Digital Economy Report

Posted on Mar. 19, 2018

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After publication of the OECD's progress report on taxing the digital economy, which established guidelines for short-term measures, stakeholders are turning a wary eye toward the European Commission as it pushes its own proposals ahead.

OECD officials presented their highly anticipated interim report on March 16 during the ninth installment of the OECD's *Tax Talks* webcast series, breaking down its main findings. The OECD's inclusive framework on base erosion and profit shifting on March 14 approved the report, which was prepared at the request of G-20 finance ministers.

One of the report's key takeaways is that there is no consensus on the need for or merit of interim measures to tax the digital economy, and so it does not recommend the introduction of those measures, according to Achim Pross, head of the International Cooperation and Tax Administration Division at the OECD's Centre for Tax Policy and Administration.

However, the report sets out design guidelines that countries should consider before they proceed with interim measures before a global consensus on taxation of the digital economy can be reached, Pross said.

The interim measures should be temporary, targeted, and compliant with a country's international obligations, including tax treaties, WTO membership, and EU membership, he said. Measures should also minimize overtaxation, have little effect on start-ups, and curb costs and complexity, Pross said.

Pascal Saint-Amans, director of the Centre for Tax Policy and Administration, noted the March 15 leak of the commission's apparent plans for an interim digital services tax and said the OECD's report is unlikely to prevent the EU from moving forward with its own unilateral measures since countries are sovereign. That draft proposal calls for a 3 percent tax on gross revenues derived in the EU, and covers two types of digital services.

The commission declined to comment on the OECD's interim report and on the leak, saying only that EU Tax Commissioner Pierre Moscovici will attend the G-20 finance ministers meeting on March 19-20 in Buenos Aires, where the OECD will present its report.

Saint-Amans underscored the high degree of political interest among members of the inclusive framework in continuing to work toward a consensus-based solution, to bridge gaps between differences of opinion, and to produce a final report by 2020. "The OECD at the end of the day would like to be the adult in the room helping countries work together and facilitate international agreement for a solid multilateral framework, which will eliminate double nontaxation . . . and double taxation," he said.

Questions . . . and Eventual Answers?

Stakeholders welcomed the OECD's interim report, with some expressing their dislike for proposals targeting digital companies and others raising questions about whether the EU and others will indeed adhere to the OECD's guidelines for short-term measures.

The Business and Industry Advisory Committee (BIAC) to the OECD, meanwhile, praised the report for seeking to deliver global consensus on taxing the digital economy without damaging cross-border trade, investment, and growth.

"Digitalization is the key to future growth, so a structured conversation with a very broad group of countries aimed at global solutions is now urgent," said Will Morris, chair of the BIAC's Committee on Taxation and Fiscal Affairs. "Unilateral action would only lead to costly fragmentation, double or multiple taxation, and harmful barriers for our economies."

The Computer & Communications Industry Association welcomed the OECD report and took note of the commission's draft proposal, reaffirming its view that the digital economy can't be ring-fenced.

"We encourage the EU to seek international tax reform through the OECD rather than pursuing problematic, unilateral actions aimed at online platforms for political reasons," said Christian Borggreen, the association's European vice president.

The OECD has realized "it can no longer hold back the tide," Heather Self of Blick Rothenberg said. "The U.K., the EU, and potentially others are going to impose some sort of turnover taxes in any case, so the OECD is [trying] to set a framework to limit the potential damage," she added.

Indeed, the OECD deserves credit for trying to keep a long-term, consensus-based approach alive, according to Robert J. Kovacev of Steptoe & Johnson LLP.

However, "the rush to implement unilateral interim measures will hurt rather than help such efforts," he said, adding that it's uncertain whether interim measures will truly be temporary. "History suggests that once imposed, taxes tend to stay on the books," he said.

The OECD's report is useful for outlining principles for interim measures, especially since some G-20 countries have called for immediate interim actions, according to Tommaso Faccio, head of secretariat at the Independent Commission for the Reform of International Corporate Taxation.

The key issue, however, is where the world is going in the digital economy space, he said. "It has been clearly shown that digitalization is not restricted to a specific group of companies but affects the whole economy, and this means that a comprehensive approach is required, not another patch-up solution," Faccio said, expressing support for global formulary apportionment as an alternative to taxing multinational enterprises.