International Fiscal Association

YIN SESSION

BRANCHES: AUSTRIA, CANADA, UNITED KINGDOM

DIGITAL SERVICES TAXES: PERSPECTIVES AND CHALLENGES FROM CANADA, AUSTRIA, AND THE UNITED KINGDOM

SPEAKERS:

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OVERVIEW

Introduction to DSTs

Topic 1. Overview of DST Frameworks

Topic 2. In-scope activities

Topic 3. Current challenges

Topic 4. Trade and Political Tensions

Questions

INTRODUCTION TO DSTs

- **BEPS 1.0**: Action 1 "Addressing the Tax Challenges of the Digital Economy" failure → market economies begin to adopt unilateral DSTs
- **Unilateral DSTs**: tax on gross revenue generated on specified digital activities provided to users/consumers within a market economy
- **DSTs share general characteristics**:
  - Tax on gross revenue
  - Rely on a calculation of national presence
  - Apply to a scope of digital services
  - Apply to companies meeting specific revenue thresholds
- DSTs are applied irrespective of whether the digital service involves payment (e.g. Amazon or Netflix) or is free to the user (e.g. Google or Facebook)

DST GLOBAL LANDSCAPE

- **BEPS 2.0:** OECD Two-Pillar Solution Global Tax Deal 2021 → **Pillar One: new taxing right Amount A:** modifies existing profit allocation and nexus rules. Deadline 2023
- **Failure of Pillar One** appears to have fuelled the proliferation of DSTs and other digital taxes
- **KPMG Report (Dec, 2024):**
  - 35 countries have enacted digital economy taxes (inc. WHT, Digital PEs, and Significant Economic Presence (SEP) rules)
  - Some 15 countries have active DSTs
  - Several countries have proposed/stalled DSTs (including Israel, New Zealand, Belgium, Czech Republic)

Country	Status	Effective Date	Rate
Argentina	Enacted	Dec 15, 2020	5, 10, 15%
Austria	Enacted	Jan 1, 2020	5%
Belgium	Proposed (paused)	TBC	3%
Canada	Enacted	June 28, 2024	3%
Columbia	Enacted	Jan 1, 2024	3%
Czech Republic	Proposed (stalled)	TBC	7% or 5%
France	Enacted	Jan 1, 2019	3%
Israel	Proposed	TBC	3-5 % (based on French DST)
Italy	Enacted	Jan 1, 2020	3%
Kenya	Repealed (replaced with SEP)	Dec 27, 2024	1.5%
Nepal	Enacted	July 17, 2022	2%
New Zealand	Proposed (stalled)	Jan 1, 2025	3%
Poland	Enacted Proposed (extending in scope activities)	July 1, 2020 TBC	1.5% 7%
Sierra Leone	Enacted	Jan 1, 2024	1.5%
Spain	Enacted	Jan 16, 2021	3%
Tanzania	Enacted	July 1, 2022	2%
Tunisia	Enacted	Jan 1, 2020	3%
Turkey	Enacted	March 1, 2020	7.5% (range 1 to 15%)
Uganda	Enacted	July 1, 2023	5%
United Kingdom	Enacted	April 1, 2020	2%

Data drawn from KPMG Report, Dec 2024. Note: list does not include countries with equalization taxes, WHT, or digital PEs etc.

DST GLOBAL LANDSCAPE

- **EUTAX Observatory (2023):**
  - 2016-2023: 12 countries with active DSTs, and 19 with proposed or paused DSTs
  - The 31 countries involved cover all continents and all levels of development
  - Balance of OECD and non-OECD countries implementing DSTs
  - OECD country thresholds high (targeting larger tech firms), non-OECD country thresholds low (targeting a wider range of firms)
  - DSTs → significant rise in revenue

- **Italy 2025 Draft Budget:**
  - Current threshold: EUR 750m (global) and EUR 5.5m (Italy)
  - Proposes to extend the DST to residents and non-residents and remove the threshold entirely

TOPIC 1: OVERVIEW OF DST FRAMEWORKS

SPEAKERS: JENNIFER FARRELL, CHRISTIAN KNOTZER, ERIC HENDRY & CRISTIANA BULBUC

AUSTRIA

- ***Digitalsteuergesetz*** (Digital Tax Act) enacted in October 2019; effective from 1 January 2020 (+ corresponding ordinance)
- Extension of Advertising tax, existing already since 2000 (only applicable to advertising services in printed media, TV, …)
- Based on (failed) **EU DST/DAT directive** in some aspects
- Levied on remuneration for **online advertising services** that are provided within Austria by **online advertising service providers**
- **Tax rate = 5 %**

AUSTRIA

- **Online advertising service providers**
  - Deliver or support online advertising services in Austria
  - Thresholds:
    - EUR 750 million **worldwide revenue**
    - EUR 25 million **domestic revenue from online advertising services**
    - May be calculated on MNE group level
  - Record-keeping and reporting obligations
- Tax revenue = **EUR 103 million in 2023**

UNITED KINGDOM

- **DST is a 2% turnover tax**: applies to the turnover (not profit) of certain digitalised businesses groups (not individual companies) from 1 April 2020
- **Revenue Thresholds**: focus is on groups that generate, within a 12-months accounting period, > than:
  - £500m in global digital services revenues, and
  - £25m in UK digital services revenues

UNITED KINGDOM

- **Revenue collected**: first year DST raised ca. £358 m (ca. $436.76 m), 30% more than initially forecasted (90% from 5 tech giants, including Apple). By 2024-2025 DST is projected to raise around £3 bn (ca. $3.66 bn)
- **Aim**: impose tax on a relatively small groups of large MNEs that are mostly headquartered in the US. The MNEs carry on certain highly digitalised businesses with such a limited physical presence in the UK that the amount of UK corporation tax that they pay does not reflect the value that the UK government believes that they generate from the UK users of their services

CANADA

- Structured as a **3%** tax on in-scope **gross revenue**
- **Coming into force:** June 28, 2024, and originally announced as part of Canada's 2021 Federal Budget
  - Delayed from 2022-2024 with hopes of Pillar One success
  - Retrospective "first year of application": applies to in-scope revenues in 2022, 2023 and 2024
- **Application:** all businesses (including Canadian residents) with over EUR 750m per year in total group revenue and at least C$20m in in-scope group revenue
- **Revenue**: No tax collected yet, but first returns will become due June 30, 2025
  - Estimated in Budget 2021 when announced to raise C$3.4B in revenue over five years. More recent Parliamentary Budget Officer estimate was C$7.4B over five years

TOPIC 2: IN-SCOPE ACTIVITIES

SPEAKERS: JENNIFER FARRELL, CHRISTIAN KNOTZER, ERIC HENDRY & CRISTIANA BULBUC

AUSTRIA

- **Online advertising services …**
  - Advertising services provided on a **digital interface** (esp banner, search engingе adverts and comparable services)
  - Digital interface = any kind of **software** (websites/apps)
- **… in Austria**
  - Two-fold domestic nexus
    - Received on the device of a user with **domestic IP address** and
    - Content & design (also) **targets domestic users**

UNITED KINGDOM

- **DST is payable on**: the "UK digital services revenues" arising to a person in an accounting period. UK digital services revenues = a group's digital service revenues as are attributable to UK users from three "digital services activities" (including any associated online advertising service):
  - social media services;
  - online marketplaces (excluding financial marketplaces and payment services providers);
  - internet search engines
- **Relief:** A group's first £25m of UK revenues are exempt from DST

UNITED KINGDOM

- **Safe Harbour:** Groups may elect to use an alternative basis of charge (ie alternative to the 2% rate on revenues) if they have low or negative UK operating margins. Aim: to limit the extent to which DST on gross revenues has a disproportionate effect on such businesses.
- **Interaction with UK Corporation tax & other DSTs**: DST may be deductible for a company as an allowable expense against UK corporation tax; 50% relief (5 countries' DSTs including Canada, not Austria); no credit.
- **Possible issues arising from various DSTs applying**: double (possible triple) taxation, increased compliance costs, distortion of business decisions, trade tensions, complexities in profit attribution.

CANADA

- **Scope:** Canada's DST applies to revenue from four sources ("digital services revenue")
  - Online marketplaces (except financial services)
  - Online advertising
  - Social media services
  - User data
- **Nexus with Canada:** Revenue is only in-scope to the extent of its nexus with Canada, typically measured as the extent to which it was derived from users located in Canada ("*Canadian* digital services revenue")
- Generally considered broad-based in comparison to other DSTs, similar in scope to French DST (e.g. all targeted ad revenue is in scope in Canada vs. only search engine revenue in UK)
- No safe-harbour for low-margin businesses, but C$20M deduction is available to be shared by all in-scope members of a related group

TOPIC 3: CURRENT AND FUTURE CHALLENGES

- EU Context
- Conflicts with tax treaties
- Tax Compliance

AUSTRIA

- DSTs in an **EU context**
  - Proposal for a directive on a **significant digital presence** (COM(2018)147) – 21 March 2018
  - Proposal for a directive on a common **digital services tax** (COM(2018)148) – 21 March 2018
  - Proposal for a directive on a common **digital advertising tax** (Doc.6873/19 FISC 135 ECOFIN 242) – 1 March 2019
  - **EU digital levy?** European Commission Work Programme 2021; put on hold in light of Pillar One developments
- Unilateral measures (Italy, France, Spain, …)

UNITED KINGDOM

- **US/UK DTT - MAP**: The UK government states that it is 'confident' that the UK DST 'is consistent' with its international obligations, including those under DTTs. However, both the UK/US Treaty and the OECD Model apply not only to taxes on net income but to taxes on total income or elements thereof. Therefore, UK DST may well breach the DTTs
- **WTO**: post-Brexit, US-UK don’t have an agreed trade agreement in place. However, UK is a WTO member and is prohibited from providing less favourable treatment to, or discriminating against, service providers from other WTO members

UNITED KINGDOM

- **Domestic**: according to the National Audit Office, HMRC is in the process of identifying non-compliance and businesses found to be liable will be retrospectively assessed for the 2021-2022, etc tax years. As of September 2022, 71 groups of companies did not submit DST returns (covering 123 online services). Out of these, HMRC are still engaged with 26 groups (such discussion are around the scope and whether such groups are covered by the legislation). Out of 30 groups of companies that submitted a return, HMRC are still engaged with 20 groups (possibly around the quantum and what revenue is in scope). Update to these figures is expected end of 2025

- No litigation yet because no solution to Pillar One (dis-application and review end of 2025). Thus, discussions with HMRC will be protracted (for y/e 2021, no case is expected before the Courts before 2028/2030). Plus, it is difficulty to enforce and recover debt where there is no UK presence

- **International arbitration under BITs/IIAs/FTAs**: UK has BITs, IIAs and FTAs in force with various countries, such as China. Proceedings against UK could be brought by companies under such agreements against UK (esp. if DTT does not apply)

CANADA

- **Existential threats:**
  - Domestic political uncertainty and Canada-US trade relationship (to be discussed)
- **Compliance challenges:**
  - Novel concepts defined by new legislation requires taxpayers to define and track new streams of revenue
  - Retrospective impact and climate of uncertainty
  - Simplifying election available to taxpayers to mitigate compliance challenges associated with retroactivity

TOPIC 4: TRADE AND POLITICAL TENSIONS

Speaker discussion

QUESTIONS?

REFERENCES

- Borders *et al*. Digital Service Taxes (EUTAX Observatory, 2023)
- KPMG, Taxation of the Digitalized Economy: Development Summary (Dec 19, 2024)