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Draft Bill - digital services tax and modification of the corporate income tax rate decrease

A Draft Bill which was submitted to the French National Assembly on March 6th 2019 creates a new digital services tax and restricts the 2019 decrease of the corporate income tax rate to companies with a turnover of less than 250m€.

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Creation of a Digital Services Tax ("DST")

- **Regarding its scope,** the DST would target multinational enterprises which exceed the cumulative thresholds of a consolidated worldwide €750M turnover on digital services and a national €25M turnover on digital services. Such thresholds would be assessed at group level and not at company level.
- The following services would be subject to the DST:
  - **Intermediation services**, i.e. the provision, by means of electronic communications, of a digital interface that allows users to contact and interact with other users, notably with a view to supplying goods or services directly between those users. Such services could be B2B, C2C or B2C. They may include a price comparison website, a dating website, or a marketplace for the sale of goods or services.
  - **Targeted advertising services,** i.e. services marketed to advertisers or their agents, enabling them to purchase advertising space located on a digital interface in order to place **targeted advertising** based on individual data collected from Internet users. This includes notably the sale of user data, data management and transmission services, services for the purchase, storage and distribution of advertising messages, advertising control and performance measurement.
- **Activities would be excluded from the scope of the tax**, namely:
  - The services mentioned above where they are provided between companies belonging to the same group;
  - Advertising services, if general and non-personalized;
  - Direct sale of goods or services including digital services;
  - Regulated financial services;
  - The provision of a digital interface by a person who uses it primarily to provide users with digital content (ex: videos, audio, games), communication services or payment services.
- **The tax base would consist of the turnover generated by the digital services mentioned above provided in France and adjusted to retain only the share of such turnover that reflects the share of digital services connected to France.**
- According to the Draft Bill, a service is considered to be provided in France when one user is located in France, i.e. if the user connects via a terminal located in France.
- The digital services would be deemed to be provided in France in the following cases :
  - **Intermediation services: if** this service allows users to make supplies of goods or services and if the transaction is concluded by a user located in France. If it does not allow it, the service will be deemed to be provided in France if an active account allowing access to the services offered by the platform has been opened from France.

- **Targeted advertising services:** if the advertisement is displayed to an Internet user located in France, or if user data sold was collected from a user located in France.

- The adjustment performed on the turnover generated by the digital services to obtain the final tax base would amount to multiplying such turnover, for each service described, by a percentage representing the ratio of users located in France with respect to each service.
- In any case, the method of determination of the tax base will need to be clarified by the legislator or by the French tax authorities at a later stage as it does lack clarity at this time.
- **The rate of the tax would be 3%.** The tax would be a deductible charge for corporate income tax purposes.
- The group will be able to centralize all payments and returns in a single entity.
- The tax would be applicable to taxable revenues collected as of January 2019 with a first down payment due in October 2019 on the basis of 2018 revenues.
- Should an international consensus with respect to digital taxation arise in the near future under the impulse of the OECD, the tax would be repealed.

Increase of 2019 CIT rate up to 33.1/3% for large companies:

- For the fiscal years beginning on and after January 1st, 2019, the Draft Bill proposes for **companies with a turnover exceeding €250M to maintain the 33.1/3 % rate** (instead of 31% rate deriving from Finance Bill for 2018) on the amount of profits exceeding €500,000.
- **In a tax consolidated group**, the €250m threshold is appreciated **at the group level** after consolidation of the consolidated group's members turnovers.
- From a practical standpoint, if the above-mentioned bill is voted, the CIT instalment due on June 15th would be determined on a 33.1/3% basis and thus, it would include the regularisation of the first instalment to take into account the modification of CIT rate from 31% to 33.1/3%.
- The CIT rate reduction of later financial years would remain unchanged and the CIT rate for fiscal year opened January 1st, 2020 would be reduced to 28% for all companies. Subsequently, the rate would be reduced progressively down to 25% in 2022.

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