France’s DST imposes a three per cent cash flow tax on the French revenue of large multinationals that provide digital advertising and digital platform services, such as Google, Amazon, Uber and Facebook. While the US is strongly opposed to the tax, a number of European countries have indicated their intention to introduce a DST in 2020. This Flagpost discusses the broader implications of France’s actions and Australia’s current position on a DST.

The difficulties posed to tax authorities by the digital economy

France’s DST is a response to the challenges that the digital economy poses for tax authorities around the globe. Of particular concern is the ability of large tech companies to facilitate, or provide, a service in one location but to recognise the revenue from that transaction for tax purposes in another location (usually with low rates of tax).

The Australian Treasury has raised concerns about the suitability of the current international tax framework to:

... properly capture the value to digitalised businesses of the participation of users, the provision of personal data or user-created content. For countries with large numbers of users but few highly digitalised domestic businesses, there is an increasing prospect of tax revenues diminishing as foreign, highly digitalised businesses replace traditional business activities.

For more information, see the 2019 Parliamentary Library Briefing Book article, Multinational taxation and the digital economy.
International developments concerning taxation of digital services

Following the finalisation of the OECD’s Base Erosion and Profit-Shifting (BEPS) reports in 2015, the G20 tasked the OECD in 2016 with undertaking further work on the tax challenges arising from digitalisation. In March 2018 the OECD’s Interim Report noted the need for consensus-based longer term tax reform.

The OECD also recognised that some countries wanted to take more immediate action and issued a framework to guide the introduction of an interim DST, broadly based on India’s Equalisation Levy (2016) and a similar European Commission (2018) proposal.

However, the OECD noted it is important that countries follow the framework, as it recognises complexities like double taxation, compliance with international trade rules and the risk that the tax may ultimately be borne by consumers. The OECD noted that it expected countries would remove any DST’s once a longer term solution was reached.

The OECD is due to release a Final Report in 2020, including recommended long term solutions for taxing the digital economy.

France has long been concerned about the digital economy

From as far back as 2014 France has been highly active in the digital taxation space. In 2017 it called on the EU to develop a Europe-wide Equalisation Levy. In December 2018 France announced it would introduce a DST. France’s Minister for the Economy and Finance, Bruno Le Maire, said at the time:

Paris would only change course if a better deal for taxing the firms could be agreed internationally

... Nobody can understand either in Europe or the US that the internet giants do not pay the same level of tax as other private companies – 14 points less taxation for the digital giants compared to the other private companies, including the SMEs [small and medium enterprises].

What is France’s DST?

Being broadly based on the European Commission’s (EC) DST proposal, France’s DST applies to companies that have worldwide revenue of €750 million and digital services revenue generated by French consumers of greater than €25 million. It applies a three per cent tax on sales revenue (exclusive of VAT) from online intermediation services and online advertising ‘made or supplied in France’ (where the user is located in France or the account accessing the service is opened in France). However, the DST does not apply to intermediation services used to provide only digital content, communication services, payment services, banking services and inter-group services.

It has been estimated the DST will apply to 30 companies and raise around €500 million a year.

The US strongly opposes the DST

The US strongly opposes DST’s and views them as a targeted attack on the profits of US businesses. The White House has launched an official investigation into whether France’s DST violates existing trade agreements or unjustifiably or unreasonably burdens US commerce. If it is determined that it does, the President may impose retaliatory measures against France.

A number of US media outlets and the Harvard Business Review allege that France’s DST discriminates against US firms and could create a new ‘trade war’.

It has also been reported recently that the US has ruled out a free trade deal with the UK if it
proceeds with its proposed DST.

Other countries are considering a DST

While India and Hungary have implemented versions of a DST, France is the first country to do so since the release of the OECD’s Interim Report. Following Europe’s failure to reach a consensus on a DST, a number of European countries have indicated their intention to introduce a DST, including Austria, the Czech Republic, Italy, Poland, Spain and the UK. The actions taken by these countries are summarised in the table at the end of the Flagpost.

What’s next?

As discussed in the OECD’s Public Consultation Document, the OECD is currently focusing on two work-streams ahead of releasing its Final Report. The first is adjusting tax rules to allow greater recognition of user-created value in allocating tax rights between countries—potentially increasing taxes payable in countries where value-adding users are located. The second is creating a global minimum tax (GMT) applying to all taxpayers (not just digital businesses), allowing countries to tax amounts not sufficiently taxed in a taxpayer’s home country, and to deny deductions for cross-border payments that were undertaxed.

While the above measures do not represent a consensus view, and may not be reflected in the OECD’s Final Report, there appears to be some momentum behind a GMT, with the G7 reportedly broadly supportive. The position of the US and China is unclear.

What does this mean for Australia?

On 20 March 2019 the Australian Government announced that following a consultation process, it would focus on pursuing a long-term consensus solution at the OECD, noting overwhelming stakeholder support for this option and that many stakeholders:

... raised significant concerns about the potential impact of an Australian interim measure across a wide range of Australian businesses and consumers, including discouraging innovation and competition, adversely affecting start-ups and low-margin businesses, and the potential for double taxation.

France’s decision to implement a DST does not appear to have changed the Government’s position.

It is also important to recognise that any proposal to change the international taxation framework may have more far-reaching implications for Australia. For example, the Minerals Councils of Australia has warned that modifications to profit attribution rules to recognise user-created value or demand, may encourage other countries to argue that they are entitled to tax a share of profits from Australia’s natural resources as those profits are partly attributable to demand generated in their countries. However, it is worth noting that a number of countries already generate substantial tax revenues on the importation of Australian commodities or levy import duties on commodities.

APPENDIX A: Recent actions on DST

<table>
<thead>
<tr>
<th>Country</th>
<th>Action(s)</th>
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<tbody>
<tr>
<td>Austria</td>
<td>In April 2019, a draft Bill was released, with a proposed start date of 1 January 2020 and a five per cent tax rate.</td>
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<td>Belgium</td>
<td>In January 2019, legislation was introduced into Parliament proposing a three per cent DST broadly based on the EC proposal.</td>
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<td>Czech Republic</td>
<td>A seven per cent DST was announced in April 2019, and legislation was released in July 2019. It has been estimated the DST will raise US$220 million a year.</td>
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<td>Denmark</td>
<td>While Denmark previously opposed a DST, Reuters has reported that the new Prime Minister Mette Frederiksen stated in 2018 that if elected she would introduce a DST.</td>
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<tr>
<td>Country</td>
<td>Description</td>
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<tr>
<td>Hungary</td>
<td>In 2014, Hungary implemented a tax on digital advertisements published in Hungary or in the Hungarian language. The tax was amended in May 2017, following an EU directive, but continues to be challenged by the EU and Google for breaching EU anti-discrimination rules.</td>
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<tr>
<td>India</td>
<td>India’s Equalisation Levy was implemented in 2016, imposing a six per cent tax on revenue earned from the provision of online advertising services by non-residents. From June 2016 to March 2017 the Levy raised approximately US$47 million.</td>
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<td>Italy</td>
<td>Italy first proposed a Levy on Digital Transactions in 2017. It was re-announced in the 2019 Italian Budget, but has been further delayed. The Levy is broadly based on the EC’s DST, levied at a rate of three per cent, and expected to raise €600 million in 2020 and 2021.</td>
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<td>Poland</td>
<td>Poland supports the EC DST proposal. In May 2019, Poland’s Deputy Finance Minister stated that Poland aims to introduce a DST from 2020.</td>
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<td>Spain</td>
<td>A preliminary draft Bill based on the EC’s DST proposal was released in October 2018 proposing a three per cent DST. Following public consultation, the Final Bill was published in January 2019. It has been estimated that the DST would raise €1.2 billion a year – but this estimate has been queried by the European Commission.</td>
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<tr>
<td>United Kingdom</td>
<td>The UK released position papers on the digital economy in 2017 and 2018. In October 2018, the UK’s 2018 Budget proposed a two per cent DST from 2020. In July 2019, the UK announced the DST would be legislated in the Finance Bill 2019-20.</td>
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Further information on the positions of various countries (including those outside of Europe) can be found in KPMG’s, *Taxation of the digitalised economy*. However, it should be noted that this is a fast-changing issue and some countries have changed positions in the last twelve months.

**Tags:** Taxation