DIGITAL FINANCIAL SERVICES

KREAB

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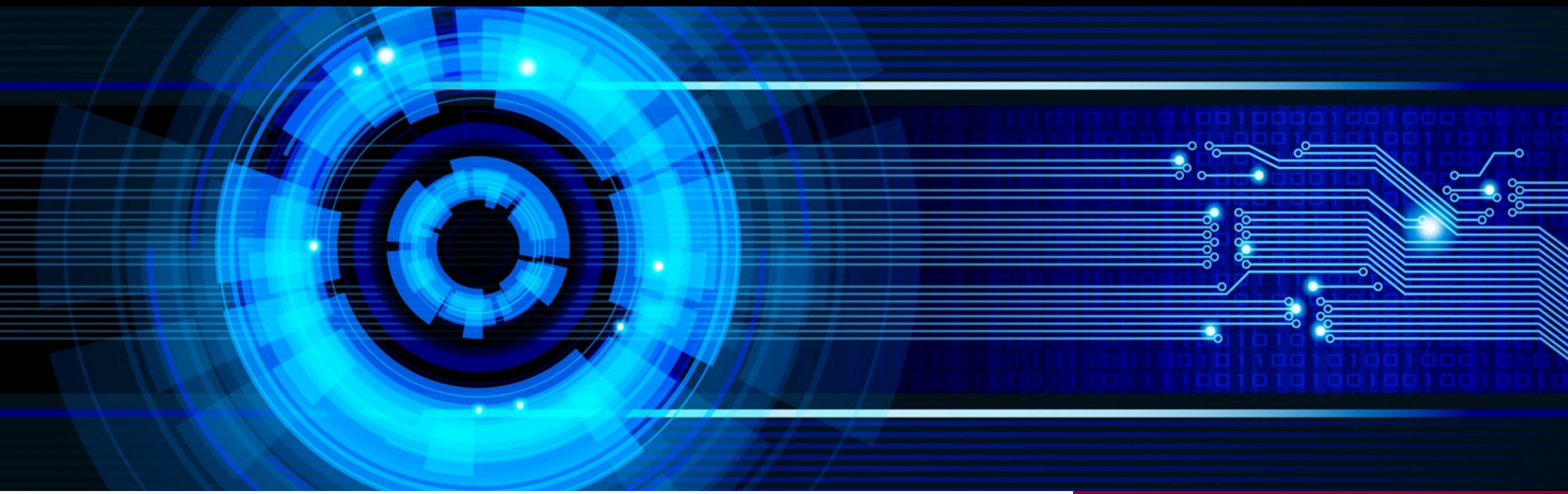

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CONSULTATIONS

European Commission:
Future “Counterfeit and Piracy watch-list"
Closes 31 March

European Commission:
Exchange of data to combat VAT fraud in the e-commerce
Closes 25 April

UK - HM Treasury:
Cash and digital payments in the new economy
Closes 5 June

For more information
Please contact
Wouter Baljon
wouter.baljon@kreab.com
+32 492 73 07 29

Digital taxation – What is to be done?

Simon Burns, Associate Director at Kreab, looks at the road ahead

Brussels-based audiences may be forgiven in finding conferences, speeches, and seminars on taxation a little…academic. For all the talk about what the European Commission could do in this field, the fact remains authors of legislation are often left frustrated in their efforts. For engaged observers this can breed a degree of skepticism, even cynicism about significant reform prospects. Things may be about to change however.

On March 21 the European Commission **launched** two legislative proposals designed to ensure digital companies booking large revenues while actually paying little tax begin contributing more to national budgets. This is not to say that the companies are doing anything wrong however.

The concern is more that "digitalisation" of certain service provisions has enabled businesses – particularly those with a large online presence – to gain access to consumers around the globe, without having the need for any sort of tangible, taxable presence in the respective jurisdiction (often referred to as a "permanent establishment").

This apparent discrepancy is politically unpalatable for certain stakeholders, not least the relatively new administration of French President Macron who feel something needs to be done to ensure the big digital players in this market begin paying their "fair" share. This begs two key questions however: what is fair and how is this to be achieved? These have captured the imagination of policy (not just tax) aficionados across the EU and in Brussels over the last year in particular. This month alone senior French politicians have written calls for action in local newspapers; the UK Finance Ministry tabled its own views on the issues at stake, as did the Organisation for Economic Cooperation and Development (OECD) - the international standard setter in this regard – on March 16.

No shortage of interest to be sure, but what has the European Commission actually come up with? And does it stand any chance of being implemented? The proposed approach is two-fold. In the interim the solution put forward would see a new tax of 3 per cent levied on the gross revenues (not profits) derived from the provision of free online content by Multi-national Enterprises (EUR 750,000,000 annual turnover plus).

The idea would be for this to be a stop-gap, as the unintended consequences of turnover taxes can be significant. Hence why a more comprehensive approach has been presented, to be discussed in tandem. This would introduce the concept of "digital permanent establishment" into the tax lexicon.

By way of example, if a business were to amass revenue generated by the digital service in an EU Member State beyond €7,000,000 per annum, that would be sufficient to trigger a tax liability in that country. This could be seen as a more elegant solution than a turnover tax, but as it risks capturing more business activities than just those operated out of Silicon Valley, wider opposition to this may be somewhat more pronounced.

The European Commission is of course alive to the dynamics and challenges inherent in EU tax policymaking. However, for all the trials and tribulations there is still a chance of something emerging from the EU's legislative machinery, before the end of this current mandate in late 2018.

First, by providing options to Member States and the business community the ability of one or the other to flatly reject legislative proposals in this field becomes more limited. Second, fair political winds are certainly in the Commission's favour with the Franco-German engine squarely behind reform. Third, sufficient numbers of EU Member States (ten on the record) have signaled their intent to follow suit, which means that the so-called "Enhanced Cooperation Procedure" (which allows a vanguard of Council Members to proceed if unanimous support cannot be found) could be used in any event.

Setting aside the rights and wrongs of the policy at stake, the European Commission would seemingly have given itself the best possible chance of securing reform here. At the very least this may add a little more punch to tax policy discussions over the next few years which for those in attendance, is not wholly unwelcome.

BIG DATA

ESAs publish report on benefits and impacts of Big Data

On 15 March, the Joint Committee of the European Supervisory Authorities (ESAs) published a report on the benefits and impacts of Big Data on consumers and financial firms. The ESAs highlight that the "benefits of this innovation currently outweigh" potential risks, which are in part already mitigated by existing legislation. Overall, the ESAs conclude that there is no current need for a legislative intervention, given that certain key legislative texts which address some of the risks encountered. In addition, the ESAs suggest an indicative list of arrangements and behaviors that should be followed by financial institutions to develop good practices on the use of Big Data.

CRYPTOCURRENCIES

Commission hosts roundtable on cryptocurrencies and BIS report analyses possible impacts of central bank digital currencies

On 26 February, Commission Vice-President Dombrovskis hosted a roundtable on cryptocurrencies, which broadly focused on three themes: cryptocurrencies and their implications for financial markets; risks and opportunities associated with their use; and the potential and challenges posed by initial coin offerings (ICOs). Following the roundtable, a debriefing followed, during which Mr Dombrovskis stressed that the Commission will continue monitoring cryptocurrency markets with other stakeholders, both at the EU and international level. Separately, the Bank of International Settlements' (BIS) Committee on Payments and Market Infrastructures (CPMI) and its Markets Committee published a joint-report on 13 March on "Central bank digital currencies." This examines the implications for financial stability and monetary policy from Central Banks issuing digital currencies, which will be presented and discussed at the next G20 meeting.

FINTECH

EBA launches its FinTech Roadmap

On 15 March, the European Banking Authority (EBA) published its FinTech Roadmap reflecting the mandates given to it by the European Commission in its Fintech Action Plan and it further builds upon the EBA's 2017 Discussion Paper on FinTech. Moreover, the EBA announced the set up of a Fintech Knowledge Hub to share and enhance knowledge among regulators and supervisors with a view to promote technologically neutral approaches across the EU. Key priorities for the next two years include: authorisation and regulatory sandbox regimes; prudential risks for institutions; cybersecurity; consumer protection and the impact of FinTech on anti-money laundering.

Next step: The roadmap lists several reports to be published by the end of 2018 and the establishment of the Fintech Knowledge Hub but with no concrete deadlines.

INNOVATIVE TECHNOLOGIES

European Commission launches two expert groups on AI and Liability and New Technologies

On 9 March, the European Commission launched calls for applications for two expert groups on Artificial Intelligence (AI) and Liability and New Technologies. The objective of the former is to support the implementation of the European strategy on AI, which includes recommendations on future AI-related policy developments and on ethical, legal and societal issues related to AI (the deadline for applications ends on 9 April). The latter will focus on providing the Commission with expertise on the applicability of the Product Liability Directive to traditional services, new technologies and new societal challenges (the deadline for applications ends on 30 April). The two expert groups are expected to feed into the Commission's forthcoming Communication on AI and Robotics (expected in April) as well as other related workstreams.

Kreab Financial Services and Technology Forum event on crowdfunding

On Monday 19 March the Kreab Financial Services and Technology Forum hosted its first event of 2018, bringing together policymakers and industry representatives to discuss the European Commission's recent legislative proposal on crowdfunding. There appeared measured support for what the Commission had come forward with: a voluntary regime for cross-border investment and lending-based activity. However, with certain revisions and tailored amendments the proposal could go even further towards achieving the ultimate aim of making the EU a region capable of competing with the US in nurturing crowd funding activity. This will be a message conveyed to the co-legislators as negotiations begin.

Digital Financial Services Timeline

Q1 2018

- E-Privacy Regulation: Council to continue negotiations throughout Q1 & 2
- Data Flows: Potential EU adequacy decision granted to Japan
- FinTech: Commission to publish legislative proposal on Crowdfunding / P2P lending
- FinTech: EBA to move forward with workstreams outlined in its roadmap
- Distributed Ledger Technology: European Parliament Resolution
- Free Flow of Data Regulation: IMCO draft report publication - March
- Payments: Extension of Single European Payments Area - 28 March

Q2

- New deal for consumers: Commission proposal - 11 April
- Security Union: cross-border access to and use of financial data by law enforcement authorities - 14 April
- E-Privacy Regulation: Trialogues to begin on (indicative)
- E-evidence proposal - 17 April
- Third Data Package: Including Commission communication on Artificial Intelligence - 25 April
- Cybersecurity: NISD application date - 10 May
- Data Protection: GDPR application date - 25 May

Q3

- Cybersecurity: Vote on ITRE Cybersecurity Act draft report - 10 July

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