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TAXATION

Big on BEPS

Welcome work by the OECD on taxing the digital economy still needs further thought

Insurance Europe is supportive of the OECD's efforts to address the challenges that digitalisation brings to the international tax system. The OECD's long-standing base erosion and profit shifting (BEPS) project, which seeks to ensure that profits are taxed where economic activity and value creation occur, has remained a key item on the G20 agenda even in these difficult times. Indeed, it could help contribute to recovery from the economic effects of the COVID-19 pandemic.

In a nutshell, the proposed global tax would have two pillars:

- Pillar 1 is new profit allocation and nexus rules to allocate taxation rights based on "significant economic presence". Automated service providers and consumer-facing businesses would be within the scope of the rules, with possible exclusions granted to financial services, including insurance.
- Pillar 2 is a set of rules (including a minimum tax rate) to prevent multinational companies from shifting profits to jurisdictions where they are subject to no or very low taxation. This is also known as the "Global Anti-Base Erosion" (GloBE) proposal.

It is generally accepted that insurers are not, and should not be, the target of this project. This is because insurers do not have profits arising from intangibles and should therefore not be impacted by a tax on digital services. In addition, they are subject to extensive prudential regulations that require them to hold capital and to do so locally, to match local risks. And, in general, taxes on insurance

products, both indirect or on premiums, are levied in the country in which the risk is situated, which largely coincides with the location of the customers. Insurance Europe supports the tentatively agreed exclusion of the financial sector from Pillar 1, but still has concerns over the possible effects of Pillar 2.

Second pillar questions

First, the main goal of Pillar 2 is to impose a minimum level of taxation on profits while avoiding double taxation. The insurance industry is already subject to several tax principles that are fine-tuned with the jurisdiction of the consumer. If the proposed additional taxation rules (eg the "income inclusion" rule, the "under-taxed payments" rule and the "subject to tax" rule) are not effectively coordinated, the cross-border arrangements common in insurance to provide efficient coverage may end up subject to double taxation.

It is also important that Pillar 2 tax rules are implemented clearly and efficiently, and that their interaction (both internally and with existing local tax rules) does not require companies to assess on a case-by-case basis the effective tax rate they must pay. Tax uncertainty would lead to inefficient commercial transactions and add unnecessary compliance complexity and administration burdens to insurers.

Finally, it is crucial to give sufficient consideration to the specifics of particular sectors, such as insurance. While the principles of the new taxing mechanism are public, the details have not yet been shared. Insurance Europe urges the OECD to consult widely with interested parties on the envisaged rules.

Discussions continue in parallel at political and technical level, and important central issues, such as the minimum rate of taxation, remain open. The "blueprints" of the project are expected to be ready in late 2020, but the decisions on their adoption and whether the project should be extended beyond digital companies remain a political matter, so the meeting of G20 finance ministers in October 2020 and the G20 summit in November will be decisive if the aim of agreement by year-end is to be achieved.

National options

Though the preference continues to be for a global approach, many countries are willing to introduce their own national digital services tax if the OECD fails to reach agreement. France has temporarily postponed the levying of a tax that was introduced at the beginning of 2020. Other countries, such as Italy, have included clauses to repeal their national taxes once international taxation comes into force, while others still, such as Spain, are proposing or finalising bills to introduce digital services tax laws.

The EU has likewise been working on a proposal for a digital services tax that would focus on revenues only from the provision of targeted digital advertising services. Discussions were halted in 2019 without agreement and member states are looking with interest at the OECD's proposed global solution and continue to work towards it. Germany has said it is willing to intensify talks on a European proposal for a digital tax during its EU presidency in the second half of 2020 if there is no solid progress on a global agreement.

Insurance Europe will continue to monitor developments to ensure that approaches to a digital tax at global, EU or national level do not have unintended consequences for insurers.

Inconsistent implementation of DAC6

The implementation of the 2018 EU Directive on Administrative Cooperation (DAC6), which requires companies, intermediaries and taxpayers to report on cross-border arrangements in order to increase tax transparency, proved challenging for EU member states, especially once the COVID-19 crisis started. Some have not yet enacted domestic legislation and there has been a lack of guidance and reporting schema details.

For insurers and other financial services entities, the delays in enacting national legislation and the lack of guidance have meant that complying with the new rules has been challenging, particularly with the impact of COVID-19 on operations. For these reasons, Insurance Europe, in cooperation with other European financial services federations, wrote to the European Commission and EU finance ministers requesting a delay in implementation of the rules. While an amendment to the Directive has been proposed, it unfortunately gives member states the option not to delay. A consistent approach throughout the EU would be preferable, to bring significant relief to the financial sector.