Digital Services Tax

Sharing our first experiences

wts global TaxOnAir
Webinar

January 19, 2021

Agenda

Speakers

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MINISTÈRE DE L'ÉCONOMIE DES FINANCES ET DE LA RELANCE
Liberté Égalité Fraternité

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Introduction

» Welcome / Agenda

- Participants
- Questions
- Polls / Q&A

» Introduction WTS DSTC & DST Expert Team

Quick Update on DST Experiences

» Increase of DST’s (France, UK, Italy, Spain, Turkey, Austria).

» “*Light*” Versions: Portugal, Poland (“Netflix Tax”), Austria in practice digital advertisement.

» First Experiences
  - Substantial impact on, and increase of Compliance obligations
  - Fiscal Representatives
  - (local) DST Laws have been designed in a broad way, are rather vague on some points and do not provide on necessary guidance on other points.
  - Examples

» Going forward
  - Increasing political support amongst the EU Member States? *E.g.* Dutch elections March 2021

Background

- The tax on digital services (DST) has been adopted in France on July 11th, 2019 and came into force on July 25th, 2019.

- France is the first country to have implemented such a regulation.

- The tax is largely based on the European Commission’s proposal for a common tax system on digital services.

Tax base : Digital revenues generated in France

» The tax is set at 3% on digital revenues generated in France.

» This tax is levied on two types of activities:
  - The connection of Internet users by platforms, in particular marketplaces.
  - Targeted online advertising (including data sales for advertising purposes);

» These services are taxed in accordance to the part of the data collected from France.

» <u>Certain activities are outside the scope of the tax :</u>
  - E-commerce and digital services are not concerned
  - Communication services, payment services and regulated financial services are also exempt.

Thresholds

» Only **companies with a large audience and high revenues** are affected.

» Indeed, revenues must exceed the following two thresholds :

› € 750 million of digital services taxable worldwide ; and

› € 25 million of digital services taxable in France.

The proportion of turnover generated in France would be determined by applying to worldwide turnover a ratio of digital presence in France determined on a prorata French users.

» A Law firm conducted a study on the DST and concluded that for 2019, about 27 companies would be subject to the Tax. For 2020, the Government planned that around 40 companies would be subject to the DST.

Tax collection

» DST must be declared and paid with VAT on the French tax authorities' website.

» Option for the consolidation regime:

- › When several companies are liable of the DST in France and are directly or indirectly linked, they have the possibility to create a DST group and to appoint a "reference taxpayer" to carry out the reporting and payment formalities for all the taxpayers of the group.
- › Such option shall be exercised with the consent of all the taxpayers of the group.
- › Each taxpayer member of the group shall be jointly and severally liable with the taxpayer who has exercised the option for payment of the tax.
- › The option shall be exercised for at least 3 years.

» Tax collection modalities

- › The tax is levied in April of each year;
- › 2 instalments have to be paid in April and October : each equal to at least 50% of the amount of tax due for the previous year and the balance is required when the return is filed.

Tax collection

- Concerning 2019 (the first year)
  - Only one instalment have been paid with the October 2019 VAT return submitted in November.
  - This instalment was based on the proportion of services attached to France over the period between the entry into force of the law and September 30, 2019.
- Concerning 2020
  - Following an agreement between the US and France (January 23rd, 2020) the 2 instalments for 2020 have been delayed to December.
  - So in 2020, the companies have paid in April the balance due for 2019 DST and in December the two instalments for 2020 DST.
- For 2019, first year of collection, the DST generated € 350 million.
- The amount of the DST collected for 2020 has not yet been unveiled for the moment but the government plans that the DST will generate more than € 600 million.

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WTS webinar, Jan. 19th 2021

The French tax on digital services (DST) : experience and outlook

Christophe Pourreau
Director
Tax legislation directorate

1. DST : the French experience

1. DST : the French experience

- **The OECD report :**
  - **The challenges raised by the business models of the digital economy : the discrepancies between the places where the value is created and the places where the tax on the profits deriving from this value is collected**
  - **The absence of consensus to amend the international tax framework**
- **The proposal for a Council directive :**
  - **The directive proposal of March 21st 2018**
  - **The failure to reach an agreement at EU level**
- **The French legislation :**
  - **A tax bill inspired by the directive proposal**
  - **Article 1 of the law n° 2019-759 of July 24th 2019**

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1. DST : the French experience

Taxable services : two main categories :

- **The making available of a digital interface which allows users to find other users and interact with them**

=> Exceptions : digital interfaces whose main object is to provide digital content, communication services, payment services

- **Services sold to advertisers or their representatives that seek to place targeted adverstising based on data relating to the user who consults it on a digital interface**

=> Note 1 : this can include the management and transmission of data related to the users of digital interfaces

=> Note 2 : not all the services contributing to the placing of targeted advertisings are taxable services

1. DST : the French experience

Scope of the tax :

- **The taxable services must be provided in France, the definition of a service provided in France depending on the various taxable services**

=> For marketplaces, it means that an underlying transaction has been concluded by a user located in France. For matchmaking services, it means that one of the users has an account opened from France. For online advertising, it means that an advertisement has been consulted by a user located in France

- **The provision of taxable services must result in payments**

- **The previous year, the taxable person must have received revenues in consideration of taxable services which exceed two thresholds :**
  - **750 M€ in respect of services provided worldwide**
  - **25 M€ in respect of services provided in France : digital footprint in France**

1. DST : the French experience

Amount of the tax :

= total amount of revenues in consideration of taxable services * coefficient of national presence * 3 %

1. Taxable revenues : sums paid by the users of a digital interface (except those related to the supply of goods and services which constitute operations independent from the use of a digital interface) or by advertisers for the placement of an advertising

2. Coefficient of national presence (for each category of taxable services) :

- For marketplaces : proportion of underlying supplies of goods and services for which one of the users (buyer or seller) is located in France
- For matchmaking services : proportion of users who have an account opened from France and have used the digital interface
- For online advertising : proportion of advertisings targeted to users consulting the interface while located in France

3. Tax rate = uniform rate of 3 %

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1. DST : the French experience

- Taxable event : the end of the calendar year
- Person liable for the tax : the person who receives the revenues
- Declaration : annex to the VAT return in respect of March
- Payment :
    - Two instalments, equal to at least half the amount due in respect of the previous year, the first paid when the tax due in respect of the previous year is declared (April), the second paid in October
    - The final amount of tax is adjusted when it is declared
- A tax deductible from the taxable income

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1. DST : the French experience

- **A tax largely inspired by the directive proposal :**
  - **Consistent with the objective to address the challenges raised by the business models relying heavily on the value created by the Internet users**
  - **More acceptable and easier to merge into a possible European DST**

- **A tax departing from the directive proposal on several aspects :**
  - **Definition of services consisting in the placing of a digital interface of advertising targeted at users of that interface : the will to avoid economic double taxation**
  - **Worldwide turnover threshold : the will to take into account the networking effects and increasing returns enjoyed by the biggest companies**
  - **Share of revenues attached to France : no consideration of other DSTs**

2. DST : future outlook

2. Future outlook

A tax which functions well :

- **A tax modern in many ways :** definition of taxable services, revenue allocation rules, etc.
- **A tax which addresses the shortcomings of the current international tax system :**
  - The turnover may constitute a relevant indicator of an ability to pay a tax as long as the tax rate remains reasonable
  - The DST does not fall within the scope if bilateral tax treaties
- **A tax which does not raise many difficulties from the point of view of the tax administration :**
  - Commentars have been published and submitted to public consultation in March 2020
  - The number of taxable persons and the number of questions asked are limited
  - So far, the main questions relate to the definition of the taxable services (computerized reservation systems, online gaming, etc.) and the delimitation of taxable revenues (exclusion of sums related to operations independent from the use of a digital interface

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2. Future outlook

A tax which should to be temporary :

- **The DST will be deleted when a satisfactory agreement on Pillar 1 is reached at the OECD :**
  - **A commitment which is still valid**
  - **The technical discussions at the OECD are moving ahead**
- **Pillar 1 consists in the modification of the rules regarding the allocation of the right to tax the profits made by multinational companies :**
  - **The discussions are not limited to the sector of the digital services, but include the other consumer-facing businesses**
  - **The new rules would only concern the most profitable companies**
- **Nevertheless, the obstacles to an agreement are well-known :**
  - **Technically, the treatment of consumer-facing businesses raises questions**
  - **More fundamentally, the current American administration opposes any change to the international taxe rules**

2. Future outlook

A tax which could therefore continue in the meantime :

- Making sure that digital companies pay a fair share of tax in the countries where they create value is a political priority for the French government

  => The Covid crisis has only reinforced this tendency

- Many countries have voted or consider voting a national DST modelled on the European tax

- There is no indication on the position of the future American administration and no certainty that an agreement will be found in the short term despite the best efforts of many countries

- The EU has urged the Commission to submit a new proposal by mid 2021 in case no agreement is being found at the OECD and has indicated that a « digital levy » should count among its future own resources

2. Future outlook

Insights from other DSTs or recent trends are worth mentioning :

- **Taxable services : the discussions at the OECD have been extended to all automated digital services (streaming, cloud computing, etc.)**
- **Tax rates : the ECJ has recently ruled that progressive taxation could be based on turnover**
- **Taking into account of the profitability of the companies : the British DST includes such a disposal**

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Thank you for your attention

Poll: Do you agree with these statements?

1 It is not fair to charge a DST in a specific country if the group is overall loss-making, regardless the reason and the nature of the loss.

2 The larger countries will not be able to convince the smaller countries with an open economy to agree with the current proposals of Pillar 1.

3 If we seriously increase the threshold of Pillar 1, it will be easier to reach global consensus within the working group of the OECD, although the total revenue will decrease..

4 With the Biden administration it will become more likely that the US will agree on the OECD's proposals.

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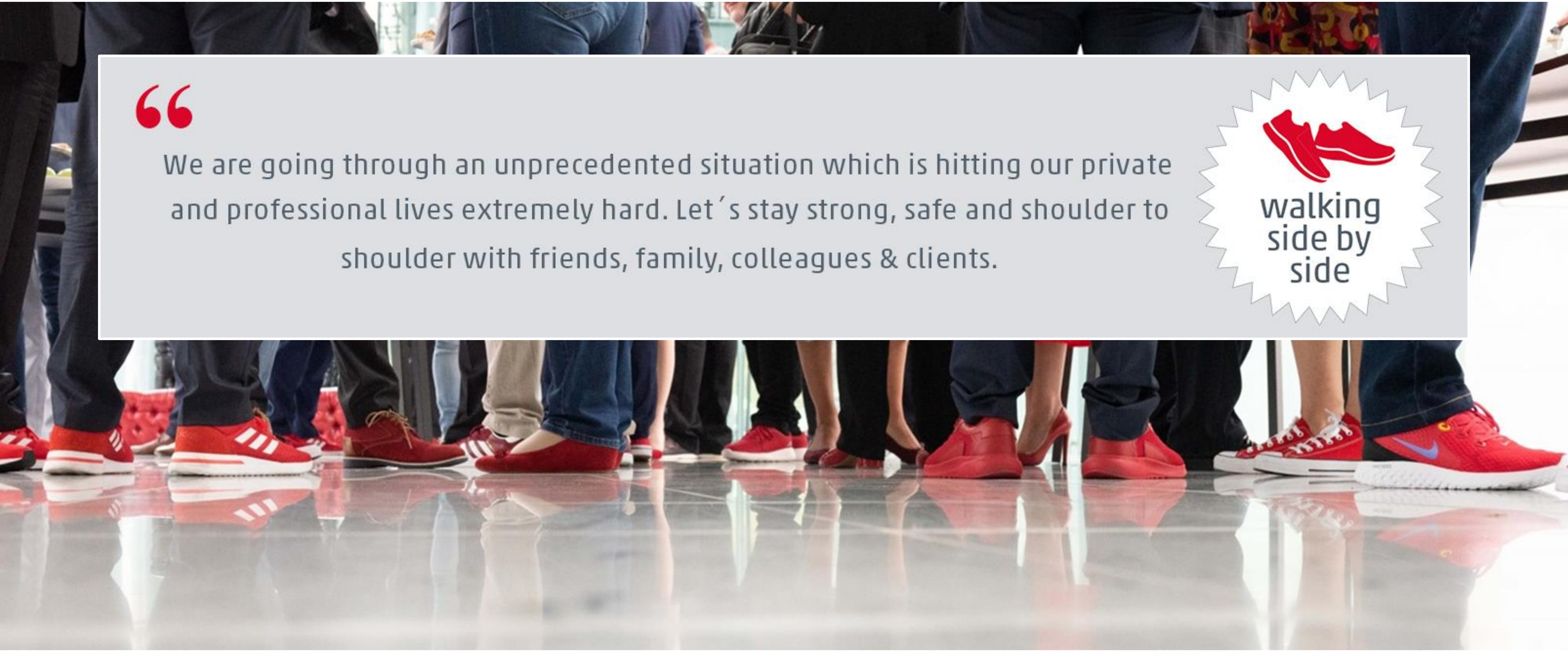

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walking side by side

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