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To: OECD - Tax Policy and Statistics Division, Centre for Tax Policy and Administration.

Comments on the OECD's Public Consultation Addressing the Tax Challenges of the Digitalisation of the Economy

BusinessEurope is the leading advocate for growth and competitiveness at the European level, standing up for companies across the continent and campaigning on the issues that most influence their performance. A recognised social partner, we speak for all-sized enterprises in 35 European countries whose national business federations are our direct members.

BusinessEurope welcomes the OECD's recent work and progress in the area of digital taxation. Developing an efficient and fair tax framework that is embedded in a competitive business environment to support the take-up and innovation of digital technologies for the whole economy and society is essential.

BusinessEurope with its Tax Policy Group, under the chairmanship of Krister Andersson, has been actively engaged in and supported past BEPS-work and we continue to believe that the global nature of the issue of taxation in the digitalized economy requires a global solution at the OECD. Only through a global consensus can we hope to reform the global tax system in a coherent and lasting way, without risking a competitive disadvantage for companies as they adopt new business models and get digitalized. The recent Policy Note and Public Consultation shows that the OECD is making significant steps forward in addressing this issue, and we urge all participants in the Inclusive Framework to intensify discussions in order to find an efficient way forward in view of the final report in 2020. One of the objectives, while respecting the sole competence of the participating countries in the field of taxation, must be to avoid that unilateral actions by individual countries lead to a rapid fragmentation of the international tax system.

Given the limited time provided to respond to the consultation and given the complexity of the proposals put forward which themselves will require further development and elaboration, our comments should be seen as preliminary.

We think it is essential that any solution, presented in the final report in 2020, must take account of the following principles:

- **In line with International Taxation Principles**

In recent months, we have seen numerous unilateral initiatives, such as the European Commission's proposed Digital Services Tax, which by taxing the revenue of digital companies would clearly break with the international convention of taxing company profits. When new tax rules are agreed, they should be based on corporate profits and not revenue.

- **No Ring-Fencing of the Digital Economy**

In an ever-digitalising world, which includes the widespread use of data analysis,



customer feedback, data feeds, etc, it is important that any changes to international tax rules, apply across all sectors of the economy, not to just a handful of digital companies.

- **Tax Certainty, including Dispute Resolution Mechanisms**

As we potentially are moving away from relatively well-established profit allocation principles, there is likely to be a proliferation of bilateral discussions and negotiations that the current dispute mechanisms are ill-equipped to deal with even after important recent initiatives and improvements. It is therefore essential that work is done on developing a faster and comprehensive method of dispute resolution, which should be included from the outset in an upcoming agreement. Mandatory binding arbitration would substantially reduce taxpayer uncertainty and therefore promote investments and jobs.

- **Simplicity and Efficiency**

Any new rules should be clear and well-defined, as to avoid numerous different interpretations and assessments, which can lead to costly disputes and legal uncertainty. A predictable tax regime, with a low administrative burden, will allow companies operating across borders to make long-term investments.

Regarding the specific approaches considered in the public consultation, we have the following remarks:

- Recent work, such as that by Copenhagen Economics¹, has highlighted that allocating and increasing taxation rights to market jurisdictions risks resulting in tax uncertainty and a higher administrative burden for businesses. This applies not only to the Significant Economic Presence method or to the User Participation method, but also to the Marketing Intangibles method. With the Marketing Intangibles method, there is a need to determine both the normal rate of return and the value of marketing intangibles, which may create increasing uncertainty and rising compliance costs for business. The Copenhagen Economics report also highlighted that open economies with high R&D intensity in exporting services may lose considerable net revenues. This risks an overall increase in corporate tax rates, which the OECD has considered as the most damaging for economic growth, and likely to be propelled as countries try to compensate for any tax revenue lost.
- The application of a new nexus concept based on user participation or significant economic presence will make some businesses taxable in jurisdictions they have not taken decisions to operate in. It is often a strategic business decision to enter a market or to be active in a jurisdiction. With the proposals, businesses could lose control of which jurisdictions they are taxable in. This may also apply if residual profit accruing to marketing intangibles is allocated to a market jurisdiction based on sales. There will also be technical complications for businesses in tracking user location, which will be required to allocate profits

¹ Future Taxation of Company profits – What to do with Intangibles? by Sigurd Næss-Schmidt, Palle Sørensen, Benjamin Barner Christiansen, Vincenzo Zurzolo, Charlotta Zienau, Jonas Juul Henriksen and Joshua Brown, Copenhagen Economics, 19 February 2019.



between jurisdictions on a user basis. It may also be the case, in particular in long B2B production chains, that the seller does not control the destination.

- We believe that the global anti-base erosion proposal has the potential to break with the fundamental premise of BEPS, which is to ensure taxation where value is created. If there is consensus that the BEPS project has not been effective, we would like to see improvements to the BEPS measures already implemented. If additional measures are considered necessary, we would urge a strong simplification. Rather than introduce an additional layer of rules, they should replace more specific anti-avoidance rules currently in place or being introduced (e.g. BEPS Actions 2, 3 and 4).

We hope the OECD will take these considerations in hand when developing any more detailed proposals in this area and the Tax Policy Group of BusinessEurope stands ready to provide further input to the policy decisions needed to ensure a successful and timely outcome of this important initiative from the OECD and the Inclusive Framework.