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VH/AP

EACB comments on the OECD consultation about the Unified approach under Pillar 1 on how to tax Digital Economy

General comments

The European Association of Cooperative Banks (EACB) gladly takes the opportunity to comment on the OECD consultation about for the Unified approach under Pillar 1 on how to tax Digital Economy.

The EACB welcomes the OECD's proposal of a Unified approach by combining individual components from the previous considerations under Pillar 1. While, the EACB recognises the difficulty to build compromises, it believes that the Unified approach leads to a very complex system in which many calculations steps have to be carried out by internationally active companies in order to determine their tax obligation. Moreover, the EACB expresses its concerns that there will be numerous delimitation difficulties and double or multiple taxation will probably occur.

In view of these difficulties (nexus, overtaxation), companies may be forced to establish a physical presence in order to avoid the new system. This can be especially the case in those countries where a nexus is only created via the Unified approach. As a result, EACB fears that the new approach can produce excessive unnecessary regulations to establish a foreign permanent presence.

Finally, EACB believes that several companies might choose offering their worldwide services only to a reduced group of users, which would be detrimental to the politically desired digitalisation and market freedom as a whole.

Answers to specific questions

Q.1 Scope: What challenges and opportunities do you see in defining and identifying the businesses in scope?

The EACB believes that banks should generally be exempted from the new rules (pillar 1). This should apply both to the investment banking business and at consumer-facing banking services.

Internationally active banks - at the cooperative sector in particular the central body of the Group/Network - already have to consider many different jurisdictions in their field of business. Nowadays, even questions on the allocation of income to a securities account are difficult and associated with many delimitation issues. As

The voice of 2.914 local and retail banks, 81 million members, 209 million customers in EU

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a result, the complexity of the system would increase even further in case that the distinction is added of whether an investment is subject to digital tax or not.

In any case, banks are strictly regulated regarding the activities that they perform. Every jurisdiction has limits on the types of financial services that can be provided. The services offered must comply with these rules. In order to perform banking activities in jurisdictions other than their home country, banks require a licence to operate in these countries (so-called bank licences). Especially, retail banking businesses do not operate remotely across borders because such remote operation would normally be prevented by the regulatory framework for banking business. In order to obtain a banking licence, banking supervisors insist on a physical presence of the retail bank in the market jurisdiction so that they can exercise their supervisory role and protect local consumers and deposit holders by imposing capital requirements, reporting requirements, adequate staffing requirements, codes of conduct and participation in deposit guarantee schemes. Therefore, banks are often forced to maintain a local presence anyway, to which the respective jurisdiction can link the tax consequences.

Moreover, the main goal of the new Unified Approach is mainly to tax fair the activities of the Digital Companies (e.g. GAFA). It must also be taken into account that banks do not have such high profitability, especially in consumer and retail banking, as might be the case in the digital sector. This fact can be verified by simply applying the return on equity and return on assets standards. Moreover, institutional and investment banking should also be out of scope of the Uniform Approach since these services are provided in a business to business context.

Finally, our members fear that the new regulations and the resulting compliance will place an additional financial burden to the banking sector. This extra addition of another complex tax system will have a negative impact on the banking industry.

Therefore, the answer to the question, whether banks should be exempted from the new rules on digital tax, can only be positive.

Q.2 New Nexus - What challenges and opportunities do you see in defining and applying a new nexus?

We do not see that political institutions have expressed concerns regarding the level of taxation of banks with consumer contact. As a result, there is no need to rectify any injustice in terms of profit sharing. In general, the current tax system works well for the banking sector. EACB would also like to add that the problem of market intangibles does not really exist in the banking sector.

Q.3 Calculation of group profits and determination for Amount A - What challenges and opportunities arise from this approach?

If the banking industry is subjected to the new approach, this would mean an extensive calculation of profits using two systems (RPS and fractional apportionment). This may make the allocation of profits appear fair,



but the calculation of the tax obligation will become more complex. In addition, EACB believes that the nature and the calculation of the term "deemed routine profit" should be clarified further.

Q.4 Elimination of double taxation - What possible approaches do you see for eliminating double taxation

EACB expresses the view that only the removal of banks from the new system can contribute in avoiding double or multiple taxation.

Q.5 Amount B- What challenges and opportunities does this approach offer in terms of simplification and prevention of dispute resolution?

The EACB believes that the introduction of a certain "underlying asset" for the service offered may help to prevent disputes. However, it would have to be ensured that the "underlying asset" is always adjusted to the circumstances in practice. In many occasions, this is not the case. For example, the current interest rate for late tax payments can be high in some countries (e.g. Germany-6%), despite the low interest environment. For this reason, a mandatory adjustment according to internationally standardized regulations is therefore vital only for regular, but not for too long intervals.

Q.6 Amount C/ dispute prevention and resolution - What opportunities do existing and possible new approaches to dispute prevention offer to reduce disputes and resolve double taxation?

EACB is of the opinion that this procedure should also be subject to regular and effective monitoring.

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