



French Parliament Passes GAFA Tax

On July 11, 2019, the French Parliament adopted the bill creating a tax on digital services, applicable as from January 1, 2019.

Failed International Attempts

The desire to adjust tax policy in the digital age is not new.

The Organization for Economic Co-operation and Development ("OECD") has addressed the matter for more than 20 years and recently published a report on "Tax Challenges Raised by Digitization" (2018). However, the organization has so far obtained only a tentative agreement from the United States, and the prospect of an international agreement by 2020, as announced, seems unlikely.

At the European level, the world's largest market for GAFA (an acronym for Google, Apple, Facebook, and Amazon), the European Commission proposed the concept of a European tax to target the digital economy's largest actors on March 21, 2018, and the bill passed on July 11, 2019. However, the legislative procedure has been paralyzed by the veto of some Member States, and unanimity is required on European tax matters in the name of national sovereignty.

It is precisely on such sovereignistic ground that France and other European countries are justifying their attempt to impose taxes on GAFA at the national level.

The French GAFA Tax

The tax will consist of a 3% flat rate directed at:

- Companies with digital revenues of more than €750 million worldwide and €25 million in France.
- Digital interface activities that connect customers and producers, retailers, or service providers, as well as advertising and the resale of personal data for advertising purposes.

The national revenue from digital activities will be based on companies' reports, taking into account a digital presence coefficient calculated on the basis of the company's worldwide revenue.

Setting a Precedent That May Be Followed

This French initiative appears to be part of a growing national trend toward the regulation of digital taxation (now underway in Spain, Great Britain, and Italy) and could contribute to a European tax system. Austria is also examining a draft for a 5% tax on advertising earnings.

The U.S. Administration's Trade Representative, Robert Lighthizer, announced the launch of an investigation under Section 301 of the 1974 Trade Act, the same authority that has supported U.S. tariffs on Chinese imports. The purpose of this investigation, which will involve a public hearing and solicitation of written public comments, is to determine whether France is unreasonably targeting U.S. companies.

In addition, the likely complexities of its implementation—in particular the taxable base based on nonpublic data—are a topic of concern.

The "GAFA tax" is intended to be temporary, until a more global regime is set by the OECD. But it is common knowledge that when it comes to tax matters, the short-term can easily become long-term....



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