



Alert n° 9

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## The French Parliament has adopted the "GAFA tax", challenged by the United States

The European Commission had proposed the adoption of a directive on the common system of the Digital Services Tax (DST) applicable to the revenues derived from the provision of certain digital services.

It planned to tax at a rate of 3% all revenues generated by the provision of certain digital services.

The reporting entities would have been those that meet both of the following conditions:

- The total amount of global revenues reported by the entity for the year in question exceeds € 750 million; and,
- The total amount of taxable income generated by the entity in the European Union during the year in question exceeds € 50 million.

Thus, the tax was aimed in particular at the digital services' giants (Google, Apple, Facebook and Amazon, hence the name "GAFA").

The Directive was adopted at first reading by the European Parliament but was blocked by some Member States in the Council. The project is on hold and the issue has been referred to the OECD, where discussions are continuing to reach an agreement on an international tax on digital services by 2020.

A number of Member States, including France, have announced their willingness to adopt their own national laws for the taxation of digital services.

**In France**, a bill was passed on March 6, 2019, largely inspired by the European initiative, and finally adopted by the Senate on July 11, 2019. The tax would apply to about thirty groups, including the four mentioned above, including Meetic, Airbnb, Instagram or the French Criteo.

The law aims to tax the following **two categories of services**:

- Intermediation between Internet users: this service connects two users who can be indifferently professionals (B2B) or individuals (C2C) or both (B2C). When intermediation allows the realization of an economic transaction (purchase of a good or a service), only the intermediation service is taxed, excluding the underlying economic transaction;
- The provision of advertising targeting services.

**The law excludes from its scope the following services:**

- Direct provision of digital content (videos, audios, applications and software, including games);
- The provision of online data storage services;
- Sale of goods online;
- Untargeted online advertising services.

**Only the services provided in France will be taxed at 3%**, i.e. services that rely on the activity of Internet users located in France. A user is deemed to be located in France when he/she logs in from France to perform his/her operation (using the user's IP address or from any other index, like the information contained in a customer account).

The services to be taxed will be those provided by the companies with an **annual worldwide revenue from digital services exceeding € 750 million, of which at least € 25 million are generated in France.**

In response to this law, targeting the US digital giants, the United States announced opening an investigation into the effects of this tax. The investigation, which could take up to 12 months, can result in tariffs or other restrictions on imports from France if both parties fail to reach a mutual agreement.

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