



ETNO – GSMA joint response to the ‘Statement by the OECD/G20 Inclusive Framework on BEPS on the Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalisation of the Economy’

About ETNO

ETNO has been the voice of Europe’s telecommunication network operators since 1992 and has become the principal policy group for European electronic communications network operators. Its 40 members and observers from Europe and beyond are the backbone of Europe’s digital progress. They are the main drivers of broadband and are committed to its continual growth in Europe.

ETNO members are pan-European operators that also hold new entrant positions outside their national markets. ETNO brings together the main investors in innovative and high-quality e-communications platforms and services, representing 70% of total sector investment.

About the GSMA

The GSMA represents the interests of mobile operators worldwide, uniting more than 750 operators and nearly 400 companies in the broader mobile ecosystem, including handset and device makers, software companies, equipment providers and internet companies, as well as organisations in adjacent industry sectors. The GSMA also produces industry-leading Mobile World Congress “MWC” events held annually in Barcelona, Los Angeles and Shanghai, as well as the Mobile 360 Series of regional conferences. With over 5 billion mobile connections, GSMA operators are committed to supporting digital and financial inclusion globally.

The telecommunications industry

Prior OECD reports (both tax-specific and otherwise) have espoused the benefits of digital transformation and information and communications technology (ICT), including the effect on productivity, growth, efficiency, innovation, and social development. The telecommunications industry makes a substantial physical investment into local ICT networks making communications cheaper, faster and more powerful over time thereby creating the critical infrastructure within each market jurisdiction: the back-bone which enables the widely recognised digital transformation benefits.

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ETNO and the GSMA provide their comments below in response to the ‘Statement by the OECD/G20 Inclusive Framework on BEPS on the Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalisation of the Economy’.

We consider it appropriate for the Digital Economy to be taxed in a fair and transparent way with profits taxed where value is created. Whilst we applaud the speed at which OECD is acting we should re-focus on the main objective and scope of this reform and avoid double taxation of industries already heavily regulated and taxed.

The following comments focus specifically on the Scope of ‘The New Taxing Right (Amount A)’, which is central to the revised architecture outlined by the OECD for a Unified Approach to Pillar One, and have focused on the key relevant points identified by our members.

The OECD Pillar One Approach – Scope and Specific considerations

- We observe that the OECD has commented that due to globalisation and the digitalisation of the economy, there are businesses that can develop an active and sustained engagement in a market jurisdiction, beyond the mere conclusion of sales, without necessarily investing in local infrastructure and operations.
- The OECD has identified two categories of businesses that will fall within scope of the new taxing right under Amount A – Automated digital services and Consumer-facing businesses. We note that Consumer-facing businesses would bring into scope businesses that generate revenue from the sale of goods and services commonly sold to consumers (paragraph 24), and revenues from licensing rights over trademarked consumer products/businesses that generate revenue through licensing a consumer brand (paragraph 27).
- We further observe that certain industries will not be within the consumer-facing businesses definition. For extractive industries this is on the basis that taxes paid on associated profits can be considered to be part of the price paid by the exploiting company for those national assets (and are paid to the resource owner) (paragraph 30). The financial services sector will be out of scope either because they interact with commercial customers or given the impact of regulation and licensing requirements that ensures “residual profits are largely realized in local customer markets and therefore justifies that these activities should be excluded from scope” (paragraph 31).
- We further observe that “it is also expected that any consensus-based agreement must include a commitment by members of the Inclusive Framework to implement this agreement and at the same time to withdraw relevant unilateral actions, and not adopt such unilateral actions in the future” (paragraph 89).

Telecommunications Operators

- We wish to highlight the following in respect of telecommunications operators:
 - Telecommunications operators provide electronic communications networks and services within each market jurisdiction. These services are critical for the whole economy and are widely recognised as the backbone for the digital transformation of society. Telecommunications operators are commonly seen as consumer-facing businesses – they provide critical services that improve lives by creating an inclusive digital society.

- In order to access the telecommunications market in each local country and undertake their activities, operators are required to acquire the appropriate spectrum licenses¹ in each country in which they operate. These spectrum licenses, typically acquired directly from national governments (i.e. the resource owner), are the price paid to acquire the right to use the specific spectrum bandwidth which is a limited national asset, and are an integral part of the physical infrastructure of the countries in which they operate.
 - Telecommunications operators are subject to heavy sector specific regulation² in each country in which they operate. The impact of this local regulation (which may include price regulation) means that telecommunication operators may not earn non-routine profits. In addition, the licensing requirements mean that the vast majority (if not all) of the profits of telecommunications operators are required to be realised in the local customer markets.
 - In order to provide such services, the operators are required to make significant physical and tangible investments (e.g. vast network expenditure) in the infrastructure of the countries in which they operate.
 - Telecommunications operators do not solicit customers outside of the countries in which they operate.
 - Telecommunications operators pay arms-length “connectivity” fees to local market operators outside of the countries in which they operate that enable an operator’s customers to roam outside of their jurisdiction. These fees paid to local market carriers will be booked in the jurisdiction in which the customer roamed, thus ensuring taxation in the local market jurisdiction. Where connectivity fees are paid between related parties they are covered by the ALP.
- In addition to the above, the telecommunications industry is also subject to existing unilateral telecommunications-specific taxes (“TSTs”) such that operators are already subject to tax in the local customer markets. That is, in addition to corporate income tax and other general taxes applicable in the country, many countries already levy a wide range of specific unilateral taxes, regulatory fees and contributions on local fixed and mobile telecommunication operators that add to the overall tax burden for local operators³ and which do not obtain double taxation relief under double taxation agreements. These include:
 - taxes on connections, activation and usage,
 - licence and spectrum fees which may be lump sum and/or based on revenues (these may be levied on telecommunications companies but are not necessarily limited to telecommunications revenues),
 - universal service fund contributions,
 - numbering fees or taxes,
 - special communications taxes, and

¹ Spectrum relates to the radio frequencies allocated to the mobile industry and other sectors for communication over the airwaves. Spectrum is a sovereign asset. That is, use of the airwaves in each country is overseen by the government or the designated national regulatory authority, which manages it and issues the needed licenses. Typically, governments use an auction system to sell the rights (licenses) to transmit signals over specific bands of the electromagnetic spectrum and to assign the scarce spectrum resources for finite periods.

² Regulations vary across countries, however examples of such regulations include the European Electronic Communications Code “EECC” (Directive 2018/1972), its predecessor Directives 2002/19, 2002/20, 2002/21 and 2002/22 as modified in 2009, and all such local or similar laws implementing such regulations including but not limited to those general authorisation regimes as set out in Article 12 of EECC.

³ In some instances, certain taxes and fees are periodically passed on to customers.

- antenna & base station and other network infrastructure fees.⁴

Some of these taxes and fees are charged on a gross revenue basis (hence not creditable against other taxes) and further reduce the opportunity for telecommunications to generate any non-routine profit. In 2017, operators paid 22% of total revenues in taxes and regulatory fees⁵. There is no fundamental difference between TSTs and DSTs except that the TSTs are already in existence, more prevalent and total a (far) higher incidence of taxation than the DSTs.

ETNO and GSMA recommendations

- Based on the above, **we do not consider that the activities of regulated telecommunications operators should be within the scope of the new taxing right under Amount A.**
- If, following the remaining work that needs to be undertaken by the OECD and the Inclusive Framework to further develop the solution, it is concluded that the activities of regulated telecommunications operators are not excluded from the scope of any consensus-based agreement, **we consider that Inclusive Framework members must commit to prevent any double taxation on regulated telecommunications operators.**
- **Specifically, the Inclusive Framework members should commit for any TSTs paid in a local market jurisdiction to be fully creditable against any amount allocated to that local market as Amount A.**
- **The above would ensure that the Unified Approach would not discriminate against regulated telecommunications operators or lead to further double taxation.**
- We consider Amount A should be applied on a line of business basis to ensure any exclusion for regulated telecommunications operators does not extend to non-telecommunications business lines.
- Commentary is provided to the new nexus rules to make clear **roaming does not create nexus** outside of an operator's home country given those operators do not market or solicit remote customers.

⁴ An overview of the taxes and fees paid by mobile operators is shown in Annex 1.

⁵ There are separate GSMA and ETNO sources for this data. GSMA (2019): "Re-thinking mobile taxation to improve connectivity" see <https://www.gsma.com/publicpolicy/resources/rethinking-mobile-taxation-to-improve-connectivity> where these findings are based on a GSMA survey of mobile operators in 86 countries worldwide. Almost a third of those tax payments arose due to mobile-specific taxes that apply on top of general taxes. Moreover, the period between 2011 and 2017 saw an increasing prevalence of mobile-specific taxes that led to an increased tax burden for the sector. All regions researched, except Asia-Pacific, saw a net increase of sector-specific tax rates or introductions of new rates. This was most pronounced in Sub-Saharan Africa with a net balance of 45 new taxes or increased rates.

In Europe alone, ETNO members (both fixed and mobile) paid an estimated EUR42.4 billion in direct and indirect taxes in 2017, which contributed to government funds and projects. This figure represented about 22% of their total fixed and mobile revenue.

Annex 1

Overview of taxes and fees									
Consumers									
TAX BASE	Activation			Usage			Handset		
TAX TYPE	VAT	SIM, connection, numbering taxes	VAT	Usage excise tax	Usage higher VAT	VAT	Handset excise tax	Handset higher VAT	Customs duties
Operators									
TAX BASE	General taxes				Regulatory fees and other payments				
TAX TYPE	Profits	Revenue		Network equipment	Revenue	Fixed amount			
TAX TYPE	Corporation tax	Turnover tax	Other revenue taxes	Customs duties	Universal service obligations	Variable licence fee	Variable spectrum fee	One-off licence fee	One-off spectrum fee

General Mobile sector-specific

Source: GSMA Intelligence

For a detailed analysis of the taxation applicable in 86 countries to the mobile telecom industry, please consult: GSMA (2019): “Re-thinking mobile taxation to improve connectivity”.

<https://www.gsmaintelligence.com/research/?file=8f36cd1c58c0d619d9f165261a57f4a9&download>