The Information Technology Industry Council (ITI) welcomes the opportunity to respond to the European Commission’s public consultation for a digital levy. ITI is the premier global advocate for technology, representing the world’s most innovative companies. Founded in 1916, ITI is an international trade association with a team of professionals on four continents. We promote public policies and industry standards that advance competition and innovation worldwide. Our diverse membership and expert staff provide policymakers the broadest perspective and thought leadership from technology, hardware, software, services, and related industries.

We will take this public consultation as an opportunity to reiterate our high-level perspectives and respond to developments since the feedback period for the Inception Impact Assessment (IIA) closed in February. ITI’s 11 February submission responding to the IIA is attached for your reference.

Our members have consistently supported the negotiations at the Organisation for Economic Co-operation and Development (OECD)/G20 Inclusive Framework, including through regular technical engagement and the development of Principles for a Solution in the OECD’s Project for Addressing the Tax Challenges of the Digitalisation of the Economy. Global tax policy challenges require global tax policy solutions, which is why nearly 140 governments and more than a dozen observer organisations have committed to the negotiations taking place under the auspices of the Inclusive Framework. We have welcomed the European Union’s (EU) commitment to reaching a multilateral, consensus-based solution to the tax challenges arising from the digitalisation of the global economy, and encourage the European Commission to continue to promote multilateral engagement as the sole means of addressing the underlying tax policy challenges identified by participating governments.

During the weeks since the IIA feedback period closed, the EU has publicly reiterated its support for the OECD/G20 Inclusive Framework’s negotiations at several points. The 26 February and 7 April meetings of G20 Finance Ministers and Central Bank Governors yielded a renewed commitment to realising “a global and consensus-based solution by mid-2021.” The Statement of the European Council following a 25 March video conference among EU leaders included a reference to the leaders’ “commitment to reaching a consensus-based solution on international digital taxation within the framework of the OECD.” During a 16 March informal meeting of the EU Economic and Finance Council (Ecofin), EU Ministers of Economic and Finance again expressed their support for reaching multilateral agreement through ongoing negotiations at the OECD/G20 Inclusive Framework.

In the same 16 March Ecofin meeting, 22 of the 27 EU Ministers of Economic and Finance voiced concern about the Commission’s intended timing for the introduction of a digital levy. There is an inherent disconnect between demonstrating genuine support for reaching agreement in multilateral negotiations and at the same time advancing a unilateral measure that ultimately detracts from ongoing multilateral efforts to address the tax challenges arising from the digitalisation of the global economy. ITI and others – including Pascal Saint-Amans, Director for the OECD’s Centre for Tax Policy...
and Administration, in recent comments to the European Parliament Committee on Budgets – have encouraged the European Union to set aside its plans for a unilateral measure, especially given the multilateral project’s stated intent for participating governments to withdraw unilateral measures. In addition to further complicating negotiations, unilateral tax measures contribute to greater fragmentation of the international tax system through the contravention of international tax and trade norms by charging a tax on gross revenue, targeting nonresident companies, operating outside of tax treaties, and attempting to isolate the digital economy.

Each of the three options listed in the IIA and the questionnaire appears to ring-fence the digital economy for taxation purposes. This approach would be incompatible with ongoing negotiations for a multilateral agreement and the conclusions reached to date by the Inclusive Framework. ITI has long agreed with the OECD and the Inclusive Framework that it is unrealistic to try to ring-fence the digital economy – a position that the OECD/IF has also expressed as a key underpinning of its work to address the tax challenges presented by the digitalisation of the economy. However, the 16 March Ecofin “Main Results” state that the EU intends for the digital levy to “be a separate instrument which should not be linked with the corporate tax rules that are being negotiated at the OECD/G20.”

Benjamin Angel, the Commission’s director for direct taxation and acting director for indirect taxation, confirmed in an interview published on 30 March that the EU’s digital levy would be in addition to whatever EU Member States will implement as part of the Unified Approach. This approach effectively presumes that the Commission will consider as insufficient any multilateral, consensus-based solution to emerge from those negotiations. From a practical perspective, it is impossible for the Commission to determine how it would complement measures that have yet to be agreed upon at an international political level, much less developed and implemented. Any unilateral actions or premature indications that an outcome will not be viewed as sufficient undermine the ongoing essential multilateral work by the Inclusive Framework.

We also disagree with the EU’s broad rationale underpinning the introduction of unilateral measures such as the first DST proposal and the proposed digital levy, which is predicated on a misguided premise that effective tax rates (ETRs) for digital companies are lower than those for companies operating in “traditional” industries. As recently as January 2021 the European Parliament’s Committee on Economic and Monetary Affairs released a draft report that again sought to justify introduction of a digital levy on this unsubstantiated narrative around the ETRs of traditional companies vis-à-vis “digital business models.” Our 11 February submission to the IIA summarised analysis of empirical data from the European Centre for International Political Economy (ECIPE) and Copenhagen Economics, both of which found the Commission’s 2018 conclusions to provide an incomplete picture about the ETRs of digital companies. We also want to draw the Commission’s attention to a 2020 International Monetary Fund (IMF) working paper that concluded “the tech sectors report implied average tax rates more or less in line with the average of other Fortune Global

500 firms” and that “we can reject the widely held hypothesis that on average these companies pay zero or low corporate income taxes at the global consolidated level.” The idea that technology companies pay less in tax than companies in other industries in no way reflects the reality of taxation in the technology sector and should not be used as the basis for developing policy, in Europe or elsewhere.

The EU’s advancement of a unilateral measure would risk pre-empting and pre-judging any negotiated outcome at the OECD/G20 Inclusive Framework, effectively providing a green light for other governments to disregard their own commitments to crafting a global approach. Such a scenario would lead to renewed fragmentation of and excessive pressure on the global tax system – exactly the outcome that participants in the ongoing multilateral negotiations are now seeking to avoid. This is indeed why the Blueprint on Pillar One includes a commitment to withdraw relevant unilateral measures “and to refrain from introducing new ones.” As we have stated before, global tax policy challenges require global tax policy solutions, and a unilateral approach – whether at the national or regional level – only serves to further complicate efforts to reach a multilateral consensus.

Pursuing a unilateral approach also presents serious implications for global trade, both in the form of trade barriers for in-scope companies vis-à-vis domestic competitors and potential retaliation as governments respond to discriminatory tax measures. Independent research has suggested that in addition to the companies directly in scope, small and medium-sized enterprises and other parties in the supply chain are also negatively impacted by DSTs. The OECD Secretary-General Tax Report to G20 Finance Ministers plainly states the broader trade and economic risks associated with pursuing unilateral approaches: “In the current context, international tax cooperation is even more important to ensure that tax disputes do not turn into trade wars, which would further harm recovery at a time when the global economy can least afford it.” These considerations reinforce the importance of forgoing a unilateral approach and focusing governments’ energy on the multilateral negotiations.

**Conclusion**

Advancing towards political agreement in time for review and validation by G20 Finance Ministers during their July 9-10 meeting requires a full embracing of multilateralism. This entails refraining from advancing unilateral measures that actively undermine the pursuit of a sustainable multilateral solution, especially now at such a crucial moment in the negotiations. That the digital levy to be proposed would be assessed above and beyond a consensus-based multilateral solution implemented at the Member State level implicitly conveys that any agreement yielded by the Inclusive Framework’s negotiations will be seen as insufficient for the European Union’s domestic revenue and policy purposes and therefore require an additional EU-wide measure. This is particularly important given the European Union’s leadership role in supporting both the path to

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consensus and the efforts participating governments will take to implement a future agreement. For these reasons and those shared in our 11 February submission to the IIA, ITI strongly encourages the European Union to maintain its commitment to the multilateral project and refrain from introduction of a digital levy. Instead, the EU should devote its efforts and resources to realising a multilateral, consensus-based agreement to the tax challenges arising from the digitalisation of the global economy.

Attached: ITI’s 11 February submission to the Inception Impact Assessment
ITI Response to European Commission’s
Inception Impact Assessment for a Digital Levy

11 February 2021

The Information Technology Industry Council (ITI) welcomes the opportunity to respond to the European Commission’s Inception Impact Assessment (IIA) for a digital levy. ITI is the premier voice for the global information and communications technology (ICT) industry. Our over 70 member companies include the world’s leading innovators around the world across the ICT spectrum. We advocate on behalf of our members for policy and regulatory environments that foster innovation and maximise all the benefits that ICT companies provide, including economic growth, job creation, and the tools to solve the world’s most pressing social, economic, and environmental challenges. We work closely with our partners in government, international organisations, the business community, and civil society to achieve these objectives.

Our members have consistently supported the negotiations at the Organisation for Economic Co-operation and Development (OECD)/G20 Inclusive Framework, including through regular technical engagement and the development of Principles for a Solution in the OECD’s Project for Addressing the Tax Challenges of the Digitalisation of the Economy. Global tax policy challenges require global tax policy solutions, which is why nearly 140 governments and more than a dozen observer organisations have committed to the negotiations taking place under the auspices of the Inclusive Framework. We have welcomed the European Union’s (EU) commitment to reaching a multilateral, consensus-based solution to the tax challenges arising from the digitalisation of the global economy, and encourage the European Commission to continue to promote multilateral engagement as the sole means of addressing the underlying tax policy challenges identified by participating governments.

The Commission’s decision to launch public consultations on an EU-level digital tax is, however, fundamentally at odds with the EU’s public support for the negotiations and risks undermining the significant progress participating governments and the OECD have made during the past several years. Additionally, the advancement of a unilateral EU measure that, by design, would be imposed in addition to Member States’ pursuit and implementation of a multilateral solution poses a direct and inherent challenge to that multilateral cooperation and progress. It is in the spirit of the EU’s commitment to multilateralism that we urge the Commission to refrain from further consideration of a digital levy and instead to redouble its efforts in support of the OECD/G20’s Inclusive Framework project.

Support for a multilateral, consensus-based solution
We acknowledge the rationale that drives the OECD/G20 Inclusive Framework’s work to update existing tax frameworks to reflect the contours of the 21st century economy, and as noted earlier, we have actively supported ongoing negotiations from their inception, including through participation in several public consultations and the release of principles intended to guide negotiators’ efforts.¹

¹ ITI has submitted responses to several public consultations, including those concluded in December 2020, December 2019 (Pillar Two), and November 2019 (Pillar One).
Our global membership – which features industry leaders headquartered in the United States, EU Member States, India, Japan, Korea, and other significant EU trading partners – views the negotiations taking place under the auspices of the Inclusive Framework as the best forum for addressing the tax challenges arising from the digitalisation of the global economy. The proliferation of unilateral measures has already contributed to the fragmentation of the global tax system, and an inability to reach consensus will result in further fragmentation of our global tax system and other effects such as the slowing of economic growth and the augmentation of diplomatic and trade tensions.

**The detrimental impacts of targeted, unilateral measures**

Since the European Commission introduced the first of what would become known as digital services taxes (DSTs) in 2018, unilateral measures have not only proliferated but have also grown in scope, as dozens of governments have introduced measures – many of which take a form similar to the 2018 EU proposal – that deviate from longstanding international tax principles such as neutrality, efficiency, certainty and simplicity, effectiveness and fairness, and flexibility. Ever more expansive digital taxes have also been introduced in markets like India, explicitly targeting the sale of virtually all goods and services online by non-resident firms and bringing European industries into scope. The increasingly widespread application of targeted, unilateral taxes is perpetuating a trend that serves to undermine a functioning international tax system and compromise the predictability that system has afforded companies in Europe and beyond to conduct business globally.

DSTs and similar unilateral, targeted tax measures share several problematic characteristics, such as their application to gross revenues instead of net profits; multiple revenue thresholds and other stipulations that target largely non-resident, globally engaged companies; and a narrow scope of covered digital activities that largely excludes domestic competitors from liability.

First, taxing corporate revenue, rather than income, is inconsistent with international tax principles – as reflected, for example, in the OECD Model Tax Convention on Income and on Capital, the United Nations Model Double Taxation Convention, and over 3,000 bilateral tax treaties. This approach appears to penalize low-margin and loss-making companies and subjects affected companies to potential multiple taxation and significant compliance costs. The structure of taxes on gross revenue also means the burden of the tax most likely falls on in-country consumers.

Second, subjecting companies to an EU-wide corporate tax without regard to whether or to what extent they have a permanent establishment in-country is inconsistent with the international tax laws vis-à-vis bilateral tax treaties as well as international tax principles reflected in the OECD model tax treaty and other instruments, and will, like taxing revenue, create the risk of multiple taxation, significant compliance costs, and greater uncertainty. For example, companies will need to engage in significant re-engineering of their internal business and financial reporting systems to ensure that they can accurately capture required information and comply with the DSTs. Companies will also need to include new filing and audit components on accounts in these jurisdictions, which creates

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2 To illustrate how DSTs as gross receipts taxes compare to corporate income taxes, a DST of 3% applied to a company with a 10% profit rate equates to a 30% effective corporate income tax rate, with limited to no availability for credits. This is applied in addition to corporate income taxes paid by the company. The double taxation and subsequent effective corporate income tax rate are especially impactful to companies with lower profit margins and companies with losses.
legal and financial risks. To the extent that these taxes differ in scope and thresholds, those compliance costs increase. Further, there will be very high audit uncertainty, which will lead to additional disputes and subsequent costs for taxpayers and tax administrations alike. Companies and Member State governments are already preparing to commit resources to the reconfiguration of systems to adopt new rules pursuant to the Inclusive Framework’s conclusions, which benefit from the context of a multilateral agreement, the withdrawal of unilateral measures, and enhanced dispute prevention and resolution mechanisms. The EU’s advancement of a unilateral tax would need to be implemented above and beyond what all participating governments ultimately agree to at the OECD.

Beyond generating inconsistencies and fragmentation in the international tax system, these unilateral deviations have impacts that reverberate in other policy areas, most notably trade. As mentioned earlier, the narrow scope of covered services and revenue thresholds operate together to single out a subset of large, primarily foreign companies for taxation. Such a tax effectively operates as a trade barrier by causing in-scope companies to lose out on business to local rivals that do not meet the revenue thresholds or the strict business model definitions in the tax, establishing a difference in treatment between foreign and domestic competitors. The overall impact hurts the domestic market – in this case the EU Single Market – by making it all the harder for businesses and consumers alike to benefit from productivity-enhancing goods and services, and contributing to a less friendly business environment. As noted above, this detrimental impact on European firms grows as jurisdictions outside of Europe impose even more expansive national taxation measures. It also drives the risk of tax and trade retaliation as governments respond to the deliberate targeting of companies headquartered within their borders.

Finally, the broad rationale underpinning the introduction of such measures is predicated on a misguided premise that effective tax rates (ETRs) for digital companies are lower than those for companies operating in “traditional” industries. A 2018 ECIPÉ study found the Commission’s “selective use of firms and the obscure way of estimating effective corporate tax rate” did not allow for a comprehensive understanding of international taxation, and in fact masked the comparable diversity of profitability levels and overall tax burdens among digital and traditional companies alike. The ECIPÉ analysis further observed that the Commission’s 2018 findings “underestimate the effective tax rates of digital companies by about 20 percentage points if average tax rates are taken into consideration.” These conclusions are echoed in a 2018 Copenhagen Economics paper that found the Commission’s claims of under-taxation can be attributed to digital companies’ substantial investments in research and development, which benefit from public policy tools to encourage such investments. These analyses clearly suggest that the Commission should not base policy action on these narratives of under-taxation.

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4 Ibid., 8.
**Undermining OECD negotiations**

Taking into account stated political support for negotiations at the OECD, the Commission’s decision to move forward at this time with public consultations to inform the development of a digital levy effectively pre-empts the ongoing negotiations at the OECD – to which all EU Member State governments are actively contributing. The language of the IIA itself further presumes that the Commission will consider as insufficient any multilateral, consensus-based solution to emerge from those negotiations. From a practical perspective, it is impossible for the Commission to determine how it would complement measures that have yet to be fully be developed. Any unilateral actions – or premature indications that an outcome will not be viewed as sufficient – undermine this essential work.

The Report on the Pillar One Blueprint reiterates that “Pillar One seeks… to result in the removal of relevant unilateral measures.” It follows that jurisdictions should not seek to take actions in direct contravention of the goals of the multilateral project they openly support. We strongly encourage the EU to maintain its support of the 139 participating member jurisdictions and G20 leaders working diligently towards a mid-2021 timeline for reaching a multilateral, consensus-based agreement, including by refraining from advancing a measure at odds with this overarching goal.

**Responding to COVID-19**

The IIA cites as an objective of the digital levy to “support a more stable medium-term outlook.” We note as well that the “Recovery Plan for Europe,” published by the European Institutions last year, identifies a digital levy as a source of funding. Our companies recognise that, like jurisdictions around the world, the Commission is seeking additional revenue sources to account for spending in response to the pandemic. For all economies, the challenges posed by COVID-19 are extraordinary. Further, the COVID-19 crisis has accelerated technology disruption and digitalisation, which were already transforming the way companies manufacture, operate supply chains, innovate, and reach customers in global markets. Responding to this crisis demands enhanced multilateral cooperation across all fronts – not unilateral tax policies that pit countries facing similar challenges against one another.

We also note guidance issued early in the pandemic by international organisations such as the OECD and the International Monetary Fund (IMF) that emphasizes business continuity and cautions governments against undertaking reforms “that would risk undermining tax certainty after the current crisis abates.” Any proposal must be grounded in long-standing international tax principles. Significant changes to global tax laws should adhere to clear and consistently applied tax policy principles and should be designed to be sustainable and prospective. ITI has long agreed with the OECD that it is both unrealistic and poor policy to try to ring-fence the digital economy – a position that the OECD has also expressed as a key underpinning of its work to address the tax challenges

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presented by the digitalisation of the economy.\textsuperscript{8} Even after the Inclusive Framework has reached a conclusion on these issues, the Commission’s future consideration of tax policy should reflect the digitalisation of the entire economy, rather than attempt again to ring-fence what it considers as the digital economy or distinguish for tax treatment purposes between levels of digitalisation.

**Conclusion**

Our members are committed to the success of the work taking place under the auspices of the Inclusive Framework, and see a multilateral, consensus-based solution as the only sustainable outcome to the tax policy challenges arising from the digitalisation of the global economy. We look forward to continuing to engage with the OECD and members of the Inclusive Framework as they advance their work to resolve the political and technical questions. We would encourage the European Union to reiterate its active support for the Inclusive Framework’s negotiations by discontinuing its consideration of a digital levy and redoubling its efforts to ensure that EU Member States and other jurisdictions participating in these critical conversations have the support they need to develop and implement a solution.