

JORF n° 0171 of July 25th, 2019

Text n° 1

BILL n° 2019-759 of July 24th, 2019 on the creation of a tax on digital services (1)

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The National Assembly and the Senate have adopted,

The President of the Republic promulgates the law whose content follows :

Article 1

I.-The General Tax Code is amended as follows :

1° Book I, Part 1, Title II, Chapter II is reworded as follows :

" Chapter II

" Tax on certain services provided by large companies in the digital sector

" Art. 299.-I.-A tax is instituted, payable on the revenues received by the companies in the digital sector defined in section III, resulting from the provision in France, during the calendar year, of the services defined in section II.

" II.-The taxable services are :

" 1° The making available, by electronic means, of a digital interface which allows users to find other users and to interact with them, in particular for the supply of goods or services directly between such users. However, the making available of a digital interface is not a taxable service :

" a) Where the person making the digital interface available uses it principally in order to provide users with :

"- digital content ;

"- communications services ;

"- payment services within the meaning of Article L. 314-1 of the Monetary and Financial Code ;

" b) Where the digital interface is used to run the following systems and services :

"- interbank settlement systems or systems used for settlement and supply of financial instruments within the meaning of Article L. 330-1 of the same Code ;

"- the trading venues defined at Article L. 420-1 of the said Code or the trading systems of the systematic internalisers defined at Article L. 533-32 of the same Code ;

"- crowdfunding investment advice activities within the meaning of Article L. 547-1 of the same Code and, if they facilitate the granting of loans, crowdfunding intermediation services within the meaning of Article L. 548-1 of the same Code ;

"- the other intermediation systems referred to in an order of the minister for the economy, whose activity is subject to authorisation and the provision of services subject to the supervision of a regulatory authority in order to ensure the security, quality and transparency of transactions involving financial instruments, savings products or other financial assets ;

" c) Where the digital interface enables the purchase or sale of services that seek to place advertising under the conditions provided for in said point 2 ;

" 2° Services sold to advertisers or their representatives that seek to place targeted advertising on a digital interface based on data relating to the user who consults it that are collected or generated when such interfaces are consulted even where such interface falls under 1° c of this section. Such services may include in particular services for the purchase, storage or dissemination of advertising, advertisement control, performance measurement and user data management and transmission services.

" The services referred to in this section II, points 1 and 2 provided between companies belonging to the same group, within the meaning of the last paragraph of section III, are excluded from taxable services.

" III.- The companies referred to in section I are those, wherever they are established, for which the amount of revenues received in consideration of taxable services in the calendar year before the year referred to in said section I exceeds the following two thresholds :

" 1° EUR 750 million in respect of services provided worldwide ;

" 2° EUR 25 million in respect of services provided in France, within the meaning of Article 299 *bis*.

" For companies, regardless of their form, that are related, directly or indirectly, within the meaning of Article L. 233-16 of the Commercial Code, compliance with the thresholds referred to in this section III, points 1 and 2 is assessed at the level of the group they form.

" Art. 299 bis.-I.-For the purposes of this chapter :

" 1° France means the national territory with the exception of the communities governed by Article 74 of the Constitution, New Caledonia, the French Southern and Antarctic Lands and Clipperton Island ;

" 2° A user of a digital interface is located in France when he consults it with a terminal located in France. The location in France of such terminal is determined by all means, including its IP address (internet protocol), in compliance with personal data protection rules ;

" 3° Payments resulting from the provision of a taxable service as defined at Article 299, section II, point 1 mean all sums paid by the users of such interface except these related to the supply of goods and services which form a divisible economic supply of the taxable service ;

" 4° Payments resulting from the provision of a taxable service as defined in the section II, point 2 mean all sums paid by advertisers, or their representatives, in consideration of the actual completion of the placement of the advertising or any other operation which is economically closely related to it.

" II.- The taxable services referred to in Article 299, section II, point 1 are provided in France during a calendar year if :

" 1° Where the digital interface allows the supply of goods or services between users of the interface, such a transaction is concluded during that year by a user located in France ;

" 2° Where the digital interface does not allow the supply of goods or services, one of its users has had during that year an account opened from France that allows him to access all or some of the services available on such interface.

" III.- The taxable services referred to in Article 299, section II, point 2 are provided in France during a calendar year if :

" 1° For services other than those referred to in this section III, point 2, an advertisement is placed during that year on a digital interface consulted by a user located in France;

" 2° For sales of data that have been generated or collected when users have consulted digital interfaces, data sold during that year derive from the consultation of such an interface by a user located in France.

" IV.- Where a taxable service referred to in Article 299, section II is provided in France during a calendar year within the meaning of section II or section III of this article, the amount of the payments resulting from such provision is defined as the product of all payments made during that year in return for such service by the percentage representing the share of such services attached to France evaluated during that same year. Such percentage is equal :

" 1° For the services referred to in section II, point 1 of this article, to the proportion of supplies of goods or provision of services for which one of the users of the digital interface is located in France ;

" 2° For the services referred to in the section II, point 2, to the proportion of users who have an account that has been opened from France and allows access to the services available from the interface and who have used that interface during the calendar year concerned ;

" 3° For the services referred to in section III, point 1 of this article, to the proportion of advertisements placed on a digital interface based on data relating to a user consulting this interface while being located in France ;

" 4° For the services referred to in the section III, point 2, to the proportion of users of whom all or part of the data sold were generated or collected upon consultation, as they were located in France, of a digital interface.

" Art. 299 ter.- The taxable event of the tax provided for at Article 299 is the end of the calendar year during which a company as defined in section III of the same Article 299 received the revenues in return for the provision of taxable services in France. However, if the taxpayer ceases his activity, the taxable event occurs on cessation.

" The person liable for the tax is the person who receives the revenues. The tax becomes chargeable when the taxable event occurs.

" Art. 299 quater.-I.-The tax provided for at Article 299 is assessed on the amount, excluding value added tax, as defined in section IV of Article 299 bis, of the revenues received by the taxpayer, in the year during which the tax becomes chargeable, and resulting from a taxable service provided in France.

" However, revenues resulting from the making available of a digital interface which facilitates the sale of products liable to excise duty, within the meaning of Article 1 of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC, are not taken into consideration, where they have a direct and indivisible link with the volume or value of such sales.

" II.- The amount of tax is calculated by applying a 3 % rate to the base defined in section I.

" Art. 299 quinquies.-For the purposes of this chapter, revenues received in a currency other than the euro shall be converted by applying the latest exchange rate published in the Official Journal of the European Union known on the first day of the month during which the revenues are received.

" Art. 300.-I.- The taxpayer shall declare and assess the tax provided for at Article 299 as follows :

" 1° For taxpayers subject to normal value added tax regime referred to in Article 287, point 2, on the annex to the return referred to in point 1 of the same Article 287 filed in respect of March or the first quarter of the year following the year during which the tax became chargeable ;

" 2° For taxpayers subject to simplified value added tax regime provided for at Article 302 septies A, on the annual return referred to in point 3 of Article 287 filed in respect of the year during which the tax became chargeable ;

" 3° In all other cases, on the annex to the return provided for in point 1 of Article 287, submitted by the taxpayer where it has its registered office or main establishment, at the latest on April 25 of the year following the year in which the tax became chargeable.

" II.- The tax shall be paid under the conditions provided for at Article 1693 quater, except for taxpayers subject to the simplified tax regime provided for at Article 302 septies A, for which it shall be paid under the conditions provided for at Article 1692. Without prejudice to the provisions of Articles L. 16 C and L. 70 A of the Book of Tax Procedures, it shall be collected and controlled according to the same procedures and subject to the same penalties, guarantees, sureties and privileges as turnover taxes. Claims shall be filed, examined and ruled upon in accordance with the rules applicable to the same taxes.

" III.- Taxpayers shall retain information on revenues received monthly in consideration of each of the taxable services provided, in support of their accounts, for as long as the tax authorities may exercise their right of adjustment under Article L. 177A of the Book of Tax Procedures, distinguishing between those relating to a service provided in France, within the meaning of sections II and III of Article 299 bis, and, where relevant, those excluded from the base pursuant to the second paragraph of section I of Article 299 quater, together with the monthly quantitative items used to calculate the proportions provided for in section IV of Article 299 bis. The information on the revenues received monthly shall state, where relevant, the amount received in a currency other than the euro and the amount converted

into euro as provided for at Article 299 quinquies, showing the exchange rate used pursuant to the same Article 299 quinquies.

" Such information shall be kept at the tax authorities' disposal and provided to them on first request.

" IV.-Where the taxpayer is not established in the European Union or in any other State party to the agreement on the European Economic Area that has concluded with France an administrative assistance agreement to combat tax fraud and avoidance as well as a mutual assistance agreement for tax recovery, it shall appoint to the tax administration a representative liable to value added tax established in France who commit, where appropriate, to accomplish the formalities in the name and on behalf of the represented and to pay the tax. " ;

2° Book II, Chapter 1, section II, II quater is reworded as follows :

" II quater : Special regime of the tax on certain services provided by large companies in the digital sector

" Art. 1693 quater.-I.- Taxpayers liable for the tax provided for at Article 299 other than those subject to the simplified tax regime provided for at Article 302 septies A shall pay the tax in two instalments during the year in which it becomes chargeable, equal to at least half the amount due in respect of the previous year.

" The first instalment shall be paid when the tax that became chargeable in the previous year is declared.

" The second instalment shall be paid :

" 1° For taxpayers subject to normal value added tax referred to in Article 287, point 2, at the same time as the annex to the return referred to in point 1 of the same Article 287 filed in respect of September or the third quarter of the year ;

" 2° In other cases, at the latest on October 25, at the same time as the annex to the return provided for in the same point 1 submitted by the taxpayer where it has its registered office or main establishment.

" II.-Taxpayers who consider that the payment of an instalment would result in exceeding the final amount of tax due may postpone such payment or reduce the amount thereof.

" Where a taxpayer avails himself of the option provided for in the first paragraph of this section II and the final amount of tax due is more than 20 % greater than the amount of the instalments paid, the interest on arrears provided for at Article 1727 and the surcharge provided for at Article 1731 shall apply.

" The interest on arrears and the surcharge referred to in the second paragraph of this

section II shall be applied to the positive difference between the sum of the amount of each of the two instalments that would have been paid if such amount had not been mitigated and the sum of the amount of each of the two instalments actually paid.

" III.-The amount of tax due is adjusted when it is declared. Amounts to be returned to taxpayers, if any, shall be offset against the instalment paid when the declaration is made then, if necessary, against the subsequent instalment paid in the same year, or reimbursed if there is none or if the amount is insufficient.

" Art. 1693 quater A.- In the event of cessation of the taxpayer's activity, the amount of the tax provided for at Article 299 payable in respect of the year of cessation of the activity shall be determined immediately. It shall be declared, paid and, where relevant, adjusted in the same way as for the value added tax for which it is liable or, failing that, within sixty days following cessation of the activity.

" Art. 1693 quater B.-I.- A taxpayer liable for the tax provided for at Article 299 which is not subject to the simplified tax regime provided for at Article 302 septies A may choose to declare and pay the tax for all the taxpayers of the group, within the meaning of Article 299, section IV, last paragraph, to which it belongs. In such case, Article 1693 ter shall not apply to such tax.

" Such option shall be exercised with the consent of all the taxpayers of the group.

" II.- Where the option provided for in section I is exercised, the taxpayer shall submit its request to the competent tax department. Such option shall take effect for payments and reimbursements made as of the return filed in the year following its reception by the competent tax department.

" III.- The option shall be exercised for at least three years.

" A tax payer waiving the option shall notify its decision to the competent tax department. Such waiver shall take effect for payments and reimbursements made as of the return filed in the year following such department's receipt of the request.

" The option shall apply to the tax payable by any new member of the group concerned. Should such new member disagree, the option shall be waived under the conditions provided for in the second paragraph of this section III.

" IV.- The return filed by such a taxpayer shall mention the amounts due by each member of the group.

" V.- Where the option provided for in section I is exercised, the taxpayer shall obtain reimbursements of the tax due by taxpayers which are members of the consolidated group, where relevant, by offsetting them against the amounts due by the other members and shall pay the taxes, interest on arrears and penalties provided for at Chapter II of this Book as a result of offences committed by taxpayers who are members of the group.

" VI.- Each taxpayer member of the group shall be jointly and severally liable with the taxpayer who has exercised the option provided for at section I for payment of the tax and, where relevant, the corresponding interest on arrears and penalties that this later taxpayer is required to pay. This liability is limited to the amount of the taxes, interest and penalties for which the taxpayer who is a member of the group would be liable if the option referred to in said section I had not been exercised. " ;

3° In article 302 decies, the reference "299," is inserted after the words "the articles" ;

II.- Part 1, Title II of the Book of Tax Procedures is amended as follows :

1° Chapter 1, section II, I ter is reworded as follows :

" I ter : Tax on certain services provided by large companies in the digital sector

" Art. L 16 C.- The tax authorities may ask a taxpayer liable for the tax provided for at Article 299 of the General Tax Code for justifications of all elements used as the basis for calculating such tax, without such request marking the start of an audit or review of accounts.

" Such request shall expressly inform the taxpayer of the points to which it relates and shall set a deadline for an answer, which may not be less than two months.

" Where the taxpayer has not answered or has not sufficiently answered the request for justifications within the deadline stipulated therein, the tax authorities shall serve official notice on it to produce or complete its answer within thirty days, specifying where relevant the desired additional answers. Such notice shall mention the estimated assessment procedure provided for at Article L. 70 A." ;

2° A paragraph is inserted after the third paragraph of Article L. 48, worded as follows :

" For a taxpayer which is a member of a group referred to in Article 1693 quater B of the General Tax Code, the information provided for in the first paragraph of this article shall concern, with regard to the tax provided for at Article 299 of the General Tax Code and the corresponding penalties, the amounts for which such taxpayer would be liable if it were not a member of the group." ;

3° In the last paragraph of the same Article L. 48, after the reference: "Article L. 247", are inserted the words: "of this book" ;

4° An Article L. 70 A is added to the Chapter I, section V, I B, worded as follows :

" Article L. 70 A. – Where, within thirty days of receipt of the notice referred to in the last paragraph of Article L. 16 C, the taxpayer has failed to answer, not completed its answer or not completed it sufficiently, the tax authorities may apply the estimated assessment procedure to the taxpayer in respect of the tax provided for at Article 299 of the General Tax Code." ;

5° Article L. 177 A is reworded as follows :

“ Article L. 177 A. – By way of an exception to the first paragraph of Article L. 176, for the tax on certain services provided by large companies in the digital sector provided for at Article 299 of the General Tax Code, the tax authorities may exercise their right of adjustment until the end of the sixth year following the year during which the tax has become chargeable pursuant to the provisions of Article 299 ter of the same Code.

“ By way of an exception to the second paragraph of Article L. 176 of the present Code, for the tax provided for at Article 299 of the General Tax Code, the tax authorities may exercise their right of adjustment until the end of the tenth year following the year during which the tax has become chargeable pursuant to the provisions of Article 299 ter of the same Code.
”

III.- Notwithstanding section I of article 1693 quater of the general tax code, the tax provided for in article 299 of the same code due for the year 2019 gives rise to a single instalment, paid under the following conditions :

1° For taxpayers subject to the normal value added tax regime referred to in Article 287, point 2 of the said Code, on the annex to the return referred to in Article 287, point 1 filed in respect of October ;

2° In all other cases, on the annex to the return provided for in point 1 of Article 287, submitted by the taxpayer where it has its registered office or main establishment, at the latest on November 25.

This instalment shall be equal to the amount of tax that would have been assessed on the basis of the revenues received in 2018 in consideration of the taxable service provided in France. The percentage representing the share of services attached to France defined at Article 299 bis, section IV of the same Code shall be evaluated over the period running from the day after publication of this Act until 31 October 2019. The instalment is due by persons exceeding the thresholds mentioned at Article 299, section III of the General Tax Code, determined on the basis of the same sums and the same percentage. It is reimbursed if the conditions of liability are not fulfilled.

For assessment of the tax provided for at Article 299 of the General Tax Code due in respect of 2019, the percentage representing the share of services attached to France defined at Article 299 bis, section IV of the same Code shall be evaluated over the period running from the day after publication of this Act until 31 December 2019.

IV.- The option provided for at Article 1693 quater B of the General Tax Code may, for the tax provided for at Article 299 of the same Code due in respect of 2019, be exercised until 31 October 2019 and shall take effect as of the first payment after that date.

[...]

This law shall be executed as the law of the State.

Paris, 24 July 2019.

Emmanuel Macron
By the President of the Republic :

The Prime Minister,
Edouard Philippe

The Minister of Economy and Finance,
Bruno Le Maire

The Minister of Action and Public Accounts,
Gérald Darmanin

The Secretary of State to the Minister of Economy and Finance and the Minister of Action
and Public Accounts, responsible for digital,
Cédric O