Introductions

My name is Brendan Crowley and I am the Principal Officer in the International Tax Unit of the Department of Finance.

I would like to thank the Committee for the invitation to attend today.

I am joined by my colleague Michail Panteris, who works with me on the department's EU tax files.

I am also joined by two colleagues from the Revenue Commissioners: Kate Levey, Principal Officer in the EU Branch of Revenue's International Division, and Maeve O'Malley, also of Revenue's International Division.

Background: Taxation of the Digital Economy

Before addressing the European Commission's proposals, it is worth reflecting on what has happened regarding the taxation of digital companies in recent years.

The taxation of the digital economy was considered in the OECD Base Erosion and Profit Shifting (BEPS) Project. The BEPS Action 1 report on this issue concluded that there is no separate "digital economy" but rather the entire economy is becoming increasingly digitalised. It also concluded that the tax challenges of the digital economy could be substantially addressed by the implementation of the full suite of BEPS recommendations.

The report did recognise however that the question of how taxing rights on income generated from cross-border activities in the digital age should be allocated required further consideration. It was agreed that the work of the OECD Task Force on the Digital Economy should continue with a final report being agreed by 2020.

An interim report was published by this Task Force in March this year. This report includes an important in-depth analysis of value creation across different digitalised business models. The report makes clear that further work and discussion is needed in considering the extent to which data and user participation actually contribute to value creation within business.

Work is still needed on identifying the extent of the problem we are trying to solve, as well as on the potential solutions that could ultimately be agreed. The report does note that there is no consensus on the merits of, or need for,

interim measures in this area, and that a number of countries consider that an interim measure will give rise to risks and adverse consequences. Work continues at OECD level with a view to reaching consensus among all countries by 2020.

The Commission's proposals

The Commission had a mandate from the European Council in October 2017 to bring forward proposals in this area both to ensure that all companies pay their fair share of taxes and to ensure a global level-playing field in line with the work currently underway at the OECD.

The Commission package includes two legislative proposals as well as a Commission Recommendation.

The first legislative proposal is the **Digital Services Tax Directive**. This proposes that all Member States be required to introduce a new indirect tax chargeable on the revenue generated by the supply of digital services within the EU. Digital services are defined to include 3 different types of services:

- Digital advertising targeted at users of a digital interface;
- The transmission of data collected about users of a digital interface; and
- Intermediation services, such as providing an online marketplace where buyers and sellers can transact.

The Digital Services Tax would be a tax on revenue, not on profits, therefore it would be payable regardless of whether the activity is profitable or not. The Commission have proposed that all Member States must set a tax rate of 3% on this revenue, and there would be no discretion for Member States to increase or reduce this rate.

These types of services have been chosen based on the Commission's view that they are services that are largely reliant on *user* value creation. The proposal assumes that the user adds value in the case of the digital services covered by the Directive and a 3% tax is one-size-fits all attempt to capture that assumed value creating activity.

The tax would only be payable where a corporate group has a worldwide turnover of over €750 million and at least €50 million in turnover from taxable digital services provided within the EU.

The Commission anticipate that a Digital Services Tax would raise approximately €5 billion euro across all Member States. However, the Commission have recommended that the Digital Services Tax should be deductible in Member States against profits subject to corporation tax, although this is not legally required by the Directive as proposed.

The tax has been proposed as an 'interim measure' which would ultimately be replaced by the updated corporate tax rules contained in the accompanying proposed Directive on the corporate taxation of a "Significant Digital Presence" (SDP). The text of the Digital Services Tax Directive itself does not however contain any *sunset clause* or provision for its automatic cessation.

The second legislative proposal is the **Significant Digital Presence Directive**. This is proposed as a longer term solution to the tax challenges of the digital economy. The Commission proposes that Member States introduce the concept of a "Significant Digital Presence" into their domestic law.

This proposals would, in effect, enable a country to charge corporation tax on a company which has no physical presence in that country – no staff and no assets – once it has a digital presence there.

The Directive proposes that a taxable digital presence would be deemed to exist if any of the following thresholds are met - €7 million revenue earned from digital services in a Member State, 100,000 users in a Member State or 3,000 contracts entered into with residents of a Member State. The same threshold would apply for each Member State, whether large or small.

The Directive then considers how to decide what amount of profit to attribute to a country where the company has a digital taxable presence. The Directive notes that the core principles underlying the current OECD transfer pricing rules for profit attribution should be modified. This would allow some profits to be attributed to activities undertaken by digital companies in a Member State on the basis of location of users and data in that State, among other factors. The Directive recognises that ultimately further detailed guidance would need to be developed internationally on this issue.

What is the Government's view of the proposals?

As with any complex proposal, at this stage it is appropriate that officials would undertake a **detailed analysis** to understand the implications for Ireland and to

inform our advice on Ireland's approach to these proposals. Work is now underway within the Department and the Revenue Commissioners.

As with all tax proposals made by the European Commission, these proposals require the **unanimous approval** of all Member States before they are agreed. There are months of detailed technical analysis and technical negotiation ahead, during which the proposals are likely to change shape.

As always, we will engage constructively with that process.

The Minister for Finance has consistently stated that Ireland remains committed to global tax reform and that issues such as these are best addressed at a global level. We believe that the outcome of discussions at EU level must not jeopardise the chances of achieving a sustainable, globally agreed solution.

Conclusion

In conclusion, the Commission's digital tax proposals are significant and warrant careful consideration and analysis. That work is now underway.

We are happy to assist the Committee in its deliberations and to answer your questions.

Thank you Chairman.