REQUEST FOR INPUT ON WORK REGARDING THE TAX CHALLENGES OF THE DIGITALISED ECONOMY

1. Background

a) The Action 1 report on *Addressing the Tax Challenges of the Digital Economy* (the 2015 report) was released in October 2015 as part of the OECD/G20 Base Erosion and Profit Shifting (BEPS) package. The 2015 report, which had been developed by the Task Force on the Digital Economy (TFDE), was subsequently endorsed by the Leaders of the G20 in November 2015 and by the more than 100 countries and jurisdictions participating in the Inclusive Framework on BEPS.

b) The 2015 report recognised that digitalisation and some of the resulting business models present some challenges for international taxation. However, the report also acknowledged that it would be difficult, if not impossible, to 'ring-fence' the digital economy from the rest of the economy for tax purposes because of the increasingly pervasive nature of digitalisation.

c) While digitalisation and the resulting business models do not generate unique BEPS issues, some of the key features of digitalisation exacerbate BEPS risks. The 2015 report concluded that it would be expected that the implementation of the BEPS package, especially BEPS Actions 3, 6, 7 and 8-10, would substantially address the BEPS issues exacerbated by digitalisation. However, the report also noted that digitalisation raises a number of broader direct and indirect tax challenges for policy makers. In particular, these challenges relate to nexus, data, and characterisation for direct tax purposes and, in the indirect tax context, the collection of VAT from cross border transactions, especially those between businesses and consumers.

d) In responding to the broader international tax challenges, the 2015 report considered a number of tax policy options. In the context of direct taxation, the 2015 report considered a new tax nexus concept of "significant economic presence", the use of a withholding tax on certain types of digital transactions, and a "digital equalisation levy." None of these options was recommended for adoption, although it was acknowledged that countries could introduce any of these options in their domestic laws as additional safeguards against BEPS, provided they respected existing tax treaties and international obligations. In the area of indirect taxation, the International VAT/GST guidelines have been updated to provide the basis for countries to effectively collect VAT from cross border business-to-consumer (B2C) transactions.

e) In January 2017, the Inclusive Framework on BEPS approved a renewed mandate for the TFDE's future work on tax and digitalisation, under which it was anticipated that an interim report would be produced by the end of 2018 and a final report by 2020. In July 2017, at their summit in Hamburg, the G20 Leaders reiterated their support for the OECD's work on taxation and digitalisation (*G20 Leaders´ Declaration*). This followed the request made by the G20 Finance Ministers at Baden-Baden in March 2017, that the TFDE bring forward the delivery of its interim report on the implications for taxation of digitalisation to the G20 Finance Ministers in April 2018 (*Communiqué of the G20 Finance Ministers Meeting*). Separately, at their meeting in Bari in May 2017, the G7 Finance Ministers expressed strong support for the work of the TFDE (*Communiqué of the G7 Finance Ministers Meeting*).

f) At the same time, the lack of a global consensus on how to respond to the direct tax challenges associated with digitalisation presents an ongoing and increasing challenge, where an increasing number of countries have begun taking steps towards the implementation of unilateral and uncoordinated domestic measures aimed at taxing digitalised activities and highly digitalised business models. A number of countries have already implemented unilateral measures such as "diverted profits taxes" and "equalisation levies", while many others have already announced such measures or are considering introducing them in a near future. Most recently in Tallinn, following an initiative of France, Germany, Italy and Spain, the Finance Ministers of ten European Union (EU) countries (which also included Austria, Greece, Portugal, Bulgaria, Romania and Slovenia) asked the EU Commission to explore EU law compatible options based on the concept of an "equalisation tax" to tax digital companies (link to the Political Statement).

g) In this context, to support the development of its interim report for the G20 Finance Ministers (see outline), the TFDE will hold a public consultation in November 2017 and is seeking input from the public on a number of key issues.

2. Submission Method

a) This request for input launches a public consultation on a series of questions (set out below) and a draft outline of the interim report (see outline). Respondents are invited to respond to any or all of the questions below and provide feedback on the draft outline of the interim report. All responses should be sent to TFDE@oecd.org in Word format (in order to facilitate their distribution to government officials) **by no later than Friday, 13 October 2017**.

b) Please note that by submitting comments you are authorising the OECD to publish them on its website. Comments submitted in the name of a collective "grouping" or "coalition", or by any person submitting comments on behalf of another person or group of persons, should identify all enterprises or individuals who are members of that collective group, or the person(s) on whose behalf the commentator(s) are acting.

c) The OECD intends to hold a public consultation on the tax challenges raised by the digitalisation of the economy on Wednesday, 1 November 2017 at 9.30 am (Pacific Time) at the **Warren Room, Simon Hall, Goldberg Room, 2745 Bancroft Way, School of Law**, University of California, Berkeley. Further information and registration details for the public consultation will be published on the OECD website later in September. Speakers and other participants at the public consultation will be selected from among those providing timely written comments on the questions.

3. Request for input

A. Digitalisation, Business Models and Value Creation

A.1 The process of digitalisation has become one of the main drivers of innovation and growth across the economy. Please describe the impact of this process on business models, and the nature of these changes (e.g. means and location of value creation, organisation, supply chains and cost structure).

A.2 Highly digitalised business models are generally heavily reliant on intangible property (IP) to conduct their activities. What role does IP play in highly digitalised businesses, and what are the types of IP that are important for different types of business models (e.g. patents, brands, algorithms, etc.)?

A.3 Digitalisation has created new opportunities in the way sales activities can be carried out at a distance from a market and its customers. How are sales operations organised across different highly digitalised business models? What are the relevant business considerations driving remote selling models, and in which circumstances are remote selling models (as opposed to local sales models) most prevalent?

A.4 Digitalisation has permitted businesses to gather and use data across borders to an unprecedented degree. What is the role of data collection and analysis in different highly digitalised business models, and what types of data are being collected and analysed?

A.5 In a number of instances, businesses have developed an architecture around their online platforms that encourages the active participation of users and/or customers from different jurisdictions. Is the establishment and operation of such global (or at least cross-country) user networks new and specific to certain highly digitalised business models, and what are the potential implications for value creation?

A.6 The digitalisation of the economy is a process of constant evolution. Please describe how you see business models evolving in the future due to advances in information and communications technology (e.g. Artificial Intelligence, 3D printing).

B. Challenges and Opportunities for Tax Systems

B.1 What issues are you experiencing with the current international taxation framework? (e.g. legal, administrative burden, certainty)

B.2 Digitalisation raises a number of challenges and opportunities for the current international tax system. In particular:

a) What are the implications of highly digitalised business models and their value chain on taxation policy? In particular:

(i) What impact are these business models having on existing tax bases, structures of tax systems and the distribution of taxing rights between countries?
(ii) Are there any specific implications for the taxation of business profits?

b) What opportunities to improve tax administration services and compliance strategies are created by digital technologies?

C. Implementation of the BEPS package

C.1 Although still early in the implementation of the BEPS package, how have the various BEPS measures (especially those identified as particularly relevant for the digital economy – i.e. BEPS Actions 3, 6, 7 and 8-10) addressed the BEPS risks and the broader tax challenges raised by digitalisation? Please feel free to support your answers with real life examples illustrating these impacts.

C.2 A growing number of countries have implemented the new guidelines and implementation mechanisms relating to value-added tax (VAT)/ goods and services tax (GST) that were agreed in the BEPS package to level the playing field between domestic and foreign suppliers of intangibles and services. What has been your experience from the implementation of these collection models (e.g. compliance, impact on business operations)? What are some examples of best practice in this area?

D. Options to address the broader direct tax policy challenges

D.1 The 2015 Report outlined a number of potential options to address the broader direct tax challenges driven by digitalisation. Please identify and describe the specific challenges associated with the application (e.g. implementation, compliance, neutrality) of these options. What are the advantages and disadvantages of these options, including from an administrative and economic perspective, and how might some of the disadvantages be addressed or mitigated through tax policy design? In particular, comments are welcome on the following specific issues:

a) Tax nexus concept of "significant economic presence":

(i) What transactions should be included within its scope?
(ii) How should the digital presence be measured and determined?
(iii) How could meaningful income be attributed to the significant economic presence and how would such an approach interact with existing transfer pricing rules and profit attribution rules applicable to the traditional permanent establishment?
(iv) How could such a measure be efficiently and effectively implemented in practice?

b) Withholding tax on certain types of digital transactions:

(i) What transactions should be included within its scope?
(ii) How could the negative impacts of gross basis taxation be mitigated?
(iii) How could the threat of double taxation be mitigated?
(iv) How could such a measure be efficiently and effectively implemented in practice?

c) Digital equalisation levy:

(i) What transactions should be included within its scope?
(ii) How could the negative impacts of gross basis taxation be mitigated?
(iii) How could the threat of double taxation be mitigated?
(iv) How could such a measure be efficiently and effectively implemented in practice?

D.2 A number of other tax measures have been proposed, announced or introduced by various countries that seek to address the direct tax challenges of highly digitalised business models (e.g. diverted profit taxes, new withholding taxes, turnover taxes).

a) What are the advantages and disadvantages of these approaches? Where possible, please share any direct experience from the implementation (e.g. compliance, impact on business operations) of these approaches.

b) How might some of disadvantages of these approaches be addressed or mitigated through tax policy design?

c) What are the specific impacts of these unilateral and uncoordinated approaches on the level of certainty and complexity of international taxation?

E. Other Comments

E.1 Are there any other issues not mentioned above that you would like to see considered by the TFDE as part of its work on taxation and digitalisation?