The Constitutional Framing of the French Digital Service Tax: an Analysis of Decision No. 2025-1157 QPC

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On September 12, 2025, the French Constitutional Council rendered Decision No. 2025-1157 QPC, which, for the first time, recognized the compatibility of the Digital Services Tax (DST), established in 2019, with constitutional rights and freedoms.

The matter was referred to the Constitutional Council by the company Digital Classifieds France. Interventions were also admitted from Airbnb Ireland Unlimited Company, LBC France, and SCM Local, each supporting claims of unconstitutionality. The companies challenged the constitutionality of Articles 299, 299 bis, and 299 quarter of the French General Tax Code (Code général des impôts), as worded under Law No. 2019-759 of July 24, 2019. The aforementioned provisions were enacted in the context of an ongoing policy of corporate tax reduction measures and introduced the DST in France.

According to the challenged provisions, the French DST applies to companies providing digital services, regardless of where they are established, as long as they have a worldwide turnover exceeding €750 million and a French turnover exceeding €25 million. In the case of companies that are directly or indirectly linked by a control relationship, the fulfilment of these thresholds is evaluated at the group level. Taxable services include the making available of digital platforms that enable user-to-user interactions, particularly for the purpose of supplying

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goods and services directly between them, and advertising services delivered through digital interfaces, where such services rely on user data. The DST is levied on the French-source turnover, excluding value-added tax (VAT), at a rate of 3%.

The applicant company argued that the French DST violated the principles of both equality before the law and equality in bearing public burdens, as provided for in Articles 6 and 13 of the Declaration of the Rights of Man and of the Citizen of 1789. This would be the case because the criteria for defining taxable activities and the taxation thresholds lacked objectivity and consistency with the law's intended purpose. Moreover, the contested provisions would disregard the traditional criteria of tax territoriality, namely the place where the activities were carried out or the geographical origin of the revenues generated. It was argued that the "national presence coefficient" adopted by the legislation, based on the proportion of users connecting from France, was inadequate for determining the taxable base.

The applicant further argued that, by determining the percentage representing the share of services linked to France for 2019, the first year in which the DST was collected, based only on the last five months of the year, rather than the entire year, the legislator had adopted incoherent rules of assessment and collection that prevented an objective evaluation of taxable companies' contributive capacity during the initial period of application. On this matter, the Council examined the specific modalities for the first year of implementation and found that limiting the evaluation to the five-month period following the law's promulgation was justified by practical difficulties in data collection. Since this approach neither altered the tax base nor affected equality, it was declared constitutional.

Finally, the applicant argued that the DST was confiscatory in nature, as it resulted in double taxation of companies already subject to corporate income tax. In addition, it was claimed that the taxation would be excessive insofar as, once the legal thresholds were met, a 3% rate would apply to all revenues from services deemed to be provided in France, without introducing any form of progressivity or a mechanism for smoothing the tax burden.

The Constitutional Council dismissed all the taxpayer's claims and upheld the constitutionality of the French DST. With regard to the determination of taxable services, the Court acknowledged that the purpose of the DST was to increase public revenue by taxing companies with a strong digital presence both locally and globally that held revenue streams directly linked to user activity in the country. Accordingly, by applying the DST only to digital services whose value is mainly generated through user activity (e.g., targeted advertising), and excluding services whose value creation derives primarily from their own content (e.g. certain banking services), the legislature was considered to have used objective and rational criteria of distinction to achieve its intended purpose.

As to the taxation thresholds, the Constitutional Council held that the legislator intended to target companies with a significant digital footprint both in France and globally. Therefore, setting two cumulative thresholds, based on worldwide turnover and French turnover of taxable services, constituted an objective and rational approach in view of the purpose pursued. The consideration of the economic group for the purpose of satisfying the taxation thresholds was likewise deemed an appropriate measure to assess companies' ability to operate in markets characterized by entry barriers and network effects, and to prevent the artificial fragmentation of activities for the purpose of tax avoidance.

In relation to the rules of territoriality, the Court held constitutional the criterion based on the percentage of users located in France for determining tax liability and the taxable base, which results in the taxation of transactions involving a French user, even if part of their value was not created in France. Given the intangible nature of the taxed economic operations and the purpose of the DST, the criterion was deemed not to violate the principle of equality.

Finally, as regards the amount of the tax, the Constitutional Council considered that, since the DST applies solely to the turnover of specific taxable digital services rendered in France, the evaluation of its alleged confiscatory nature should not take into account other taxes levied on profits, which are calculated on a distinct tax base. On that basis, it was held that the 3% rate was not excessive and that the absence of progressivity did not violate any constitutional principle. The difference in treatment between companies marginally exceeding the taxation threshold and those falling just short of it was regarded as an inherent consequence of the very existence of legal thresholds.

The importance of the decision is undeniable, as it dismissed challenges to the constitutionality of the DST and thus affirmed its legitimacy as a mechanism for taxing the digital economy. A central element of the decision, with likely implications for future cases, is the recognition of the legislator's margin of discretion in imposing taxes on the digital economy, not only in selecting the taxable services, but also in setting taxation thresholds and defining the nexus that justifies taxation, provided such choices are supported by a rational and objective justification. This acknowledgment of "legislative discretion" is particularly relevant in a context of emerging forms of taxation targeting cross-border digital services, where traditional notions of territoriality and value creation are held as insufficient to capture the realities of modern business models.

Equally significant is the Court's position in recognizing the legitimacy of distinguishing, for purposes of applying the DST, between digital services that create value through user activity and those that do not. This is a relevant criterion for the taxation of the digital economy, and one that is directly connected to the legitimacy of using the location of the consumer market as a nexus capable of justifying taxation. Both understandings demonstrate that the digital economy requires an updated interpretation of the concept of source for tax purposes, one that cannot disregard the relevance of the consumer market.

Furthermore, the Court's reasoning is particularly relevant in establishing that the corporate income tax base should not be considered when assessing whether the DST has a confiscatory effect. Although the Court did not expressly define the legal nature of the DST (whether it is a turnover tax or an income tax), its understanding that the absence of identity between the taxable bases (profit vs. turnover) prevents comparability between these levies, suggests a tendency to treat the DST as distinct from an income tax. This interpretation may have significant implications in the international sphere, as ongoing debates concern whether DSTs could be characterized as income taxes given their resemblance, in certain aspects, to withholding taxes on income, which would be decisive for the application of double taxation treaties.

In conclusion, Decision No. 2025-1157 QPC represents a pivotal moment in the constitutional framing of digital taxation in France. By upholding the DST, the Constitutional Council not only confirmed the measure's compliance with the constitutional principles of equality and proportionality but also provided interpretative guidance on the flexible scope of legislative activity in the digital economy. The Court's reasoning, particularly its recognition of user-based value creation, its restraint in defining the tax's legal natures, and its dismissal of claims of confiscatory effect, underscores a pragmatic approach that balances constitutional rules with the fiscal realities of the digital economy. As such, the decision is likely to serve as an influential reference point for both national courts and international discussions concerning the legitimate boundaries of DSTs.

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