[FR] “YouTube tax” comes into force

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As confirmed by decree no. 2017-1364 of 20 September 2017, the tax on the advertising revenue of Internet sites making videos available online either for free or in return for payment (the “YouTube tax”) is about to enter into force. The proceeds of this 2% “video tax” are to be made over to the National Centre for Cinema and the Animated Image (Centre National du Cinéma et de l’Image Animée - “the CNC”) for the financing of support for the creation of new works. The tax dates back to 1993 in respect of actual videograms (VHS/DVD); in 2004 it was extended to French sites charging for video-on-demand (“VOD”); and in 2013 it was extended further to include pay video platforms established outside France for the portion of their turnover realised in France from their subscribers. In 2016, Parliament voted for a further extension, to include all platforms offering mainly free videos, whether they are established in France or elsewhere. In this case the tax is applied to the platforms’ advertising revenue. These last two extensions, after having been submitted for examination by the European Commission, may now enter into force with the publication of the Decree. Henceforth, all video platforms, whether any money changes hands or not, and whether they are established in France or elsewhere, will be subject to the same fiscal rules with regard to that portion of their turnover achieved in France.

By passing legislation on 29 December 2016 to amend its budget, the French Parliament incorporated in the base for the tax on the sale and rental of videograms (VHS/VOD) the advertising revenue of sites making videos available online either for free or against payment, in favour of the CNC (under the new Article 1609 sexdecies B of the General Tax Code). The tax is due from both the editors of on-demand audiovisual media services and community platforms (such as YouTube and Dailymotion) if they allow access to audiovisual content. Thus, the tax is payable by any operator, wherever it is established, offering a service in France that gives or permits access, either for free or against payment, to cinematographic or audiovisual works or other audiovisual content. The rate of the tax is to increase from 2% to 10% if the revenue from advertising or sponsorship is connected with “the circulation of cinematographic or audiovisual works of a pornographic or violent nature”.

The base for the tax is the amount of the sums (not including VAT) paid by advertisers and sponsors for the circulation of their advertising and sponsorship messages on the services in question to the taxpayers concerned or to the

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agencies handing the advertising and sponsorship messages. A flat-rate reduction of 4% is applied to these sums; the reduction is increased to 66% for services giving or allowing access to audiovisual content created by private users for the purpose of sharing and exchange within “communities of interest”. For on-demand audiovisual media services, the base for the tax is the price paid for access to cinematographic and audiovisual works. The base for the tax does not include amounts paid by advertisers and sponsors for the circulation of their advertising and sponsorship messages on catch-up television services, which are already subject to a different tax.

“This is a new stage in the integration of video platforms in the ecosystem for the financing of French and European works,” said Minister for Culture Françoise Nyssen. For Frédérique Bredin, President of the CNC, “This is a great victory for the cultural exception. … With Germany, we are the first to integrate the major foreign platforms into our ecosystems for financing the creation of new works.” On the other hand, according to the association of community Internet services (Association des Services Internet Communautaires - “the ASIC”), “no YouTuber or MotionMaker is in a position to receive so much as a centime from the CNC for their video clips circulated exclusively on the Internet”. The ASIC is therefore calling for “a minimum of 30% of the total aid granted by the CNC to be directed towards creators present exclusively on on-line platforms”.

Décret n° 2017-1364 du 20 septembre 2017 fixant l'entrée en vigueur des dispositions du III de l'article 30 de la loi n° 2013-1279 du 29 décembre 2013 de finances rectificative pour 2013 et des I à III de l'article 56 de la loi n° 2016-1918 du 29 décembre 2016 de finances rectificative pour 2016, JORF N°0221 du 21 septembre 2017

https://www.legifrance.gouv.fr/eli/decret/2017/9/20/MICK1721690D/jo/texte/fr

Decree No. 2017-1364 of 20 September 2017 laying down the entry into force of the provisions of Article 30(III) of Act No. 2013-1279 of 29 December 2013 amending the 2013 budget and Article 56 (I) to (III) of Act No. 2016-1918 29 December 2016 amending the 2016 budget, published in issue no. 0221 of the Official Journal (JORF) on 21 September 2017

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