

Paris, 23 June 2025

DIGITAL SERVICES TAX: A constitutional question is referred to the constitutional council

Decision No. 502728, 17 June 2025 of the French Supreme Court

1. Case Summary

Introduced in 2019, the digital services tax (“DST”) targets major digital companies -especially global tech giants often referred to as “GAFA”- that generate substantial revenue in France through the exploitation of user data or the operation of online platforms facilitating interactions between third parties. France implemented this tax unilaterally, pending a broader agreement at the European or international level.

In this context, *Digital Classifieds France*, parent company of *SeLogger*, filed a request for reimbursement of the DST paid for the year 2019, challenging its legality.

To that end, the company raised a priority preliminary ruling on constitutionality (“QPC”) before the Administrative Court of Montreuil.

The court found that the question warranted further examination and referred it to the French Supreme Court, which in turn decided to refer it to the Constitutional Council, considering the arguments raised to be sufficiently serious.

2. The Constitutional Question

By this QPC, *Digital Classifieds France* contends that provisions of the French tax code relating to DST scope (including its tax base, thresholds for application, and territoriality criteria) infringe upon several constitutionally protected rights and freedoms of the 1789 Declaration of the Rights of Man and of the Citizen. The alleged breaches include:

- Unequal treatment between taxpayers depending on whether or not they are subject to corporate income tax in France, resulting in unjustified discrimination;
- Arbitrary exclusions from the scope of the tax, in violation of the principle of equality before the law;
- Discriminatory treatment between digital and non-digital services offering similar functionality, without rational justification;

- Group-based thresholds and an irrebuttable presumption of fraud, leading to unequal treatment depending on corporate structure;
- Irrational territorial rules, particularly the "national presence coefficient" used to attribute digital activity to France, which is said to lack objectivity and coherence, especially for 2019;
- Unjustified disparities based on the group's structure, depending on whether services are operated by a single company or through multiple entities within a group;
- Disproportionate threshold effects, causing a breach in equality before public burdens;
- Disparate treatment based on nationality, as foreign operators are allegedly less subject to effective audit by the French tax authorities.

3. The French Supreme Court's decision

In its decision No. 502728 of 17 June 2025, the French Supreme Court ruled that the constitutional question satisfied admissibility conditions and specifically acknowledged that several of the claims (particularly those alleging a breach of equality before the law and public burdens) were sufficiently serious to warrant referral to the Constitutional Council.

Accordingly, the matter has now been formally referred to the Constitutional Council, which has a three-month period to issue its ruling.

If the contested provisions are found to be unconstitutional, this could pave the way for affected taxpayers to file claims for reimbursement covering the last three non-prescribed tax years.



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