Public Affairs Media Policy

BRIEFING

Digital taxation of tech giants around the world

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Taxes: One of the main advantages of the tech giants over traditional media

A very interesting study commissioned by the Brazilian Confederation of Communication delves into how the difference in applicable regulations represents an objective advantage that tech giants have on traditional media companies while competing for the same public and advertising money. The concept is not new, but the comparison charts are uncanny, whether one considers the applicable (or not applicable) obligations on content, advertising, ownership, labour law, copyright or rectification.

This briefing focuses on a category of inequality that sums up both asymmetries and direct economical advantage in a blatant way: taxation.

The authority of states to impose taxes upon entities established in their territory has been one of the most evident examples of national sovereignty. The rise of the digital economy has challenged this "territorial paradigm." Corporate income is taxed in the country of permanent establishment. Therefore, multinational companies offering digital services tend to choose the most-favourable jurisdiction in terms of regulatory and financial conditions, exploiting the extraterritorial nature of digital services. While businesses have become cross-border and global, the principles of taxation remain strictly territorial, so the direct result is a competitive advantage for online operators over traditional businesses. In addition, tech giants largely implement tax-planning strategies that exploit gaps in tax rules, to shift profits to low-tax or even no-tax locations where there is minimal economic activity, resulting in little or no overall corporate tax being paid.

The purpose of this report is to provide an international overview across the six continents of the domestic developments in the field of taxation of multinational companies operating in the online environment.

Far from being exhaustive, the paper gives the reader an idea of how both complex and urgent it is to obtain from the tech giants a fair contribution to the economy of the countries where their wealth is created. By providing a big picture of the current scenario, this report will describe how different regulatory frameworks in the world have addressed (or are trying to address) the taxation of global companies' revenues and digital services. We also touch upon the recent developments of the OECD's "base erosion and profit shifting" measures, the progress of the Inclusive Framework and its plan to deliver a long term solution by 2020.

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I. Introduction

1. Background

Digitalisation involves everyday life, shaping how society and the economy are organised. Society has become increasingly connected and the world more globalised through the development of new digital technologies. Ubiquitous digital devices and connectivity affect relationships, and markets too. Digital technologies have influenced the structure of business: cloud computing is the epitome of the borderless mobility that makes it complicated for states to impose their regulation over entities operating outside their territory.

The authority of states to impose taxes upon entities established in their territory has been one of the most evident examples of national sovereignty. The rise of the digital economy has challenged this "territorial paradigm." Multinational companies operating in the online environment – tech giants such as Google, Amazon and Facebook – offer their products and services worldwide without the need to establish a subsidiary in each country where they operate.

While businesses have become cross-border and global, the principles of taxation remain strictly territorial, so the direct result is a competitive advantage for online operators over traditional businesses. Corporate income is taxed in the country of permanent establishment. Therefore, multinational companies offering digital services tend to choose the most-favourable jurisdiction in terms of regulatory and financial conditions, exploiting the extraterritorial nature of digital services.

In addition, tech giants largely implement tax-planning strategies that exploit gaps in tax rules, to shift profits to low-tax or even no-tax locations where there is minimal economic activity, resulting in little or no overall corporate tax being paid.

2. The OECD Base Erosion and Profit Shifting

The Organisation for Economic Cooperation and Development calls these strategies "base erosion and profit shifting" measures - BEPS. It estimates that tax revenues lost from BEPS account for between 4% and 10% of global corporate tax revenues, equivalent to roughly $100 billion-$240 billion a year.

After the 2012 G20 summit, the OECD was tasked to develop a BEPS Action Plan. After two years of work, the Committee of Fiscal Affairs within the OECD produced the Final BEPS Package, consisting of 15 Actions, which was endorsed by the OECD Council and the G20 Leaders in November 2015. Action 15 of the Package recommended the adoption of a multilateral instrument that would implement measures developed in the course of the work on BEPS, and at the same time enable countries to amend their existing treaties just through its ratification, without the need to individually renegotiate the existing 1,200-plus tax treaties. The process came to a conclusion with the adoption in 2017 of the Multilateral Convention to Implement Tax Treaty Related measures to prevent Base Erosion and Profit Shifting ("MLI").

The MLI entered into force on 1 July 2018. At the time of publication it has been signed by 84 countries, with six more jurisdictions expressing their intent to sign. The MLI allows for immediate changes in the bilateral tax treaties between two countries that have both ratified it, with respect to the provisions on which neither country has submitted reservations to the OECD.

The main changes involve modifications to the transfer-pricing guidelines – the pricing of transactions between different arms of a multinational – and provisions to prevent "treaty shopping."

According to the Financial Times, the Business and Industry Advisory Committee, which represents business at the OECD, praised the quick result. But it added that further work was necessary with regard to the "permanent establishment" rules. In the MLI, the main changes in this respect concern the definition of a dependent agent.

The new definition reads: "where a person is acting in a Contracting State on behalf of an enterprise and (…) habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise," that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise. This applies irrespective of whether the "person" signed the final contract or not – which was the main criterion in the past.

On 29 January 2019 the OECD has released a policy note laying out its plans to enable a " new consensus-based long-term solution in 2020 (...) over how to best tax multinational enterprises in a rapidly digitalising economy".

The note foresees two main pillars of reflection. Firstly, the nexus rules – the ones that establish the connection between an enterprise and a given jurisdiction, and how much profit should be allocated to the business conducted there – will need to be re-examined in depth and adapted to the digital environment.

Secondly, solutions will be evaluated to address the issue of profit shifting to entities subject to no or very limited taxation.

The over 125 countries and jurisdictions that compose the Inclusive Framework on the implementation of the BEPS Package plans to report progress to the G20 Finance Ministers in June 2019 and deliver solutions in 2020.

3. Scope and Methodology

The purpose of this report is to provide an international overview of the domestic developments in the field of taxation of multinational companies operating in the online environment. By providing a big picture of the current scenario, this report will describe how different regulatory frameworks in the world have addressed (or are trying to address) the taxation of global companies' revenues and digital services.

More specifically, this report looks at the six continents, analysing domestic legislation adopted by those countries, which have provided (or are trying to provide) answers to the challenges raised by the digital economy. As a preliminary remark, it is worth observing that, among the proposals, there is no unique regulatory solution to extend traditional taxation to the digital economy.

However, it is possible to distinguish at least three main categories of tax systems applied to the digital economy. First, countries have introduced forms of indirect taxation relating to the sale of digital products and services, for example Value-Added Tax (VAT) or Goods and Services Tax (GST). Second, other countries have reviewed their corporate tax law in order to include non-resident entities offering services to their citizens or territory. Third, in some jurisdictions, diverted profit tax or anti-abuse tax have been introduced as additional tax systems.

This report does not focus on a specific sector, since the issues relating to the taxation of the digital economy are cross-sectoral. However, it is not possible to exclude the fact that different domestic tax laws apply in some areas.

Regarding geographical scope, this report will focus on different national experiences highlighting the recent developments in the field of taxation of the digital economy. This report will not address either the European Union proposals such as the Anti Tax Avoidance Directive presented in 2016, or the specific international tax treaties between states.

II. Taxing the Digital Economy around the World

1. Latin America

Argentina

Under the comprehensive tax reform enacted through Law No. 27,432, the Regulatory Decree No. 354/2018 establishes a VAT on digital services provided by foreign entities and used in Argentina. These services include Internet services; remote system management and online technical support; data storage and online advertising; software as a service (SaaS); and downloads of digital content (e.g. music, games).
On 14 May 2018, Argentina published General Resolution No. 4240/2018, implementing the mechanism for the payment of VAT on digital services provided by foreign entities and used in Argentina. The provisions of the Resolution entered into force on 27 June. Services delivered by these non-resident companies and used by customers based in Argentina will attract the new 21% VAT rate. Argentina's Federal Public Revenue Administration (AFIP) has also published a list of digital services under the scope of the new VAT rules, including services such as Netflix and Spotify.

Brazil

The National Council of Treasury Policy (Confaz) has concluded Convênio Imposto sobre Circulação de Mercadorias e Serviços (ICMS) 106/2017. This measure regulates collection procedures for transactions involving digital goods and merchandise traded via electronic data transfer. The ICMS taxpayer is the legal entity that owns the website or electronic platform that sells or makes available the digital goods. The taxpayer must collect and remit the ICMS to the state where the customer is located. Nevertheless, the Brazilian Association of Information and Communication Technology Companies (Brasscom) obtained a preliminary injunction to suspend the effects of the ICMS from March 2018.

Chile

On 23 August 2018, the Chilean government presented a tax modernization bill, which includes the establishment of a new tax on digital services. According to the bill, this specific 10% tax is indirect and substitutive of any other tax, and it is levied on digital services provided by foreign companies, to the extent that such services are used in Chile by users who are individuals. In the event that these digital services are used by Chilean companies, they will be subject to additional tax in accordance with the rules established in the Income Tax Law (ITL). Moreover, this tax would apply to digital services, so that it does not affect the purchase of physical goods by technological means, which are affected in accordance with the rules in force for customs duties and VAT on imports.

Colombia

A draft law in Colombia has been published, confirming the liability for foreign suppliers to register, collect and remit VAT at 19% in Colombia from 1 July 2018. This system regards business-to-consumer transactions. On 9 October 2018, the Colombian Tax Authority (DIAN) issued a draft resolution proposing a VAT in accordance with Section 8 of Article 437-2 of the Colombian Tax Code.

Uruguay

On 29 May 2018, the Decree 144/018 introduced tax regulations on digital services. The new tax provisions affecting digital services (Law 19,535) came into force on 1 January the same year. The law distinguishes between businesses that directly provide online services and services, and intermediaries that connect suppliers with consumers. Both kinds of companies are subject to 22% VAT. Moreover, in the case of online-services providers (e.g. Netflix or Spotify), the Non-Residents Income Tax would be assessed (at the rate of 12%) over 100% of their sales. But in the case of online services intermediaries (e.g. Uber or Airbnb), the Non-Residents Income Tax may only be assessed over 50% of their sales, in which case the effective income tax rate would be reduced to 6%. If these online companies have a permanent establishment in Uruguay, they would be subject to Corporate Income Tax at the rate of 25%.

2. North America

Canada

Canada has not introduced taxation for digital services at federal level. In March 2018, the Quebec government revealed that, from 1 January 2019, non-resident suppliers of digital services to consumers in Quebec will have to register, collect and remit Quebec Sales Tax to Revenu Québec. Registration is dependent on the supplier exceeding an annual sales threshold of CAD30,000. To confirm the end customer's location, the Quebec government will demand that two pieces of non-contradictory evidence be collected by the non-resident supplier. Accepted pieces of evidence include the customer's billing address or personal address, the IP address of the device used or another method of geolocation, payment-related bank information or the billing address used by the bank, information from a SIM card, the place of the person's landline, or any other relevant information.

United States

In 2017, the base erosion and anti-abuse tax was introduced as part of a broader tax reform (Tax Cuts and Jobs Act). This tax applies only to resident corporations and their branches subject to US income tax, and is limited in scope to specific intra-group transactions. This tax is payable in addition to the regular corporate tax liability. In particular, this tax applies to US domestic companies or permanently established members of a multinational group whose activities in the US exceed the threshold of $500 million over a three-year period, calculated on their annual US domestic gross receipts. Moreover, the taxpayer must make "base-eroding payments" accounting for 3% or more of its total deductions claimed for income-tax purposes. The tax is calculated as the excess of 10% (reduced to 5% for 2018, and to be increased to 13.5% as from 2026) of the regular corporate tax base, plus any base-eroding payments over the regular corporate tax liability of the taxpayer at the rate of 21%.

Taxation of digital services has been introduced at national level. Pennsylvania, Minnesota and South Carolina are only some examples of taxation of digital services at the local level. However, in June 2018, the decision in South Dakota v. Wayfair Inc., opened the possibilities for States to tax foreign digital services. The court overturned a system created in 1992 where, in Quill Corporation v. North Dakota, it decided that the Constitution does not allow the US government to require businesses to collect sales tax unless they have a substantial connection to the state.

3. Africa and the Middle East

Gulf Cooperation Council

In June 2016, the six Gulf Cooperation Council (GCC) members signed the Common VAT Agreement, introducing a VAT system at a rate of 5%. The agreement was published in Saudi Arabia's official gazette in April 2017. The agreement does not expressly address the taxation of foreign suppliers of digital services. However, non-resident service suppliers that sell in the GCC member states must register, collect VAT, and remit it to the relevant tax authority. The unified agreement sets out the framework under which VAT can be implemented in each of the GCC member states. On 31 July 2017, the Federal Law No. 7 of 2017 for Tax Procedures entered into force at federal level for the United Arab Emirates. From 2019, Bahrain is the third country to introduce the above-mentioned VAT system. On 28 March 2018, Oman's Minister of Finance issued Decision No. 64/2018, approving the introduction of VAT. Regarding Qatar and Kuwait, the debate about taxation of services and corporations is still running. Kuwait will probably introduce the GCC VAT system in 2021.

Focusing on Saudi Arabia, in February 2017 the government ratified the above-mentioned agreement introducing VAT on 1 January 2018. Moreover, its Department of Zakat and Income Tax (DZIT) provides a new interpretation of the "permanent establishment" (PE) notion regarding services offered by non-resident companies in the Kingdom of Saudi Arabia. More specifically, the Kingdom has introduced the notion of Virtual Service Permanent Establishment. The new PE concept takes into consideration only the duration of the contract, rather than the actual activities of the service provider in the Kingdom. In particular, a non-resident is considered to have a PE in the Kingdom if a non-resident furnishes services to a person in connection with his activity in the Kingdom, and if the period during which such services are rendered according to the contract exceeds the threshold period under the applicable tax treaty. This definition does not consider the physical presence of employees or contractors of a non-resident service provider. Therefore, non-resident businesses would be considered resident in the Kingdom for any contract concluded with a customer in the Kingdom.

Israel

The crucial change from the Israeli Tax Authority (ITA) is to the definition of "permanent establishment" to include online businesses, where the economic activity of the foreign digital service supplier is via the Internet. A foreign corporation's income from services to Israeli residents is taxable only if it is produced in Israel. If the foreign company is a resident of a country with which Israel has a double-taxation agreement, it will be taxed in Israel only if the activity is considered a "permanent establishment." In April 2016, the ITA published Circular 4/2016, addressing the taxation of foreign companies that operate in Israel through e-commerce and online services. The Circular provides the notion of "significant economic presence" (SEP). According to this concept, a non-resident business providing online services from a remote location to in-country customers may be taxable in Israel. It is worth underlining that this domestic law applies only outside the scope of double-taxation treaties. As a result, SEP applies only when online services providers are resident in a country with no double-taxation agreement with Israel.

The broad SEP notion includes: cases where a significant number of contracts are concluded online between the foreign company and Israeli customers; the foreign company offers online services or products that are used by a significant number of Israeli customers; the foreign company employs a website with localised features targeted at the Israeli market (e.g. Hebrew language, local discounts and marketing); or the company generates significant revenue that is closely related to the volume of online activities performed by users located in Israel. These factors, defined as "digital presence criteria," apply without any threshold requirement.

Regarding VAT, Israeli law requires that a non-resident corporation registers for VAT and appoints an Israeli representative if it carries on business in Israel. The Circular clarifies that a non-resident business may be regarded as carrying on business in Israel where the foreign company has a permanent establishment in Israel; has a local branch or office or employees in Israel; provides services through an Israeli representative; or has a significant digital presence in Israel.

South Africa

South Africa introduced its VAT rules for electronic suppliers on 1 July 2014. Foreign digital service providers are required to register for VAT if their sales revenue exceeds 50,000 rand (around €3,200). Unlike other countries, South Africa does not make a distinction between business-to-consumer and business-to-business sales: both are subject to the 15% VAT charge. Any digital service seems to be included in the scope of electronic VAT rules. Therefore, digital businesses based in any other country could be included in the scope of VAT if they meet the thresholds.

4. Europe

Albania

Albania introduced VAT rules for digital services on 1 January 2015. The VAT rate is 20%, with no registration threshold. As a result, all non-resident businesses offering services to Albanian consumers must collect and register for VAT in Albania. As a result, digital services offered are taxable in the place where the recipient is established or where he has his permanent address or usually resides. As a result, non-resident service providers may be obliged to register for Albanian VAT.

France

The case of France is peculiar, since it involves an indirect tax on sales and rentals of "videograms" to finance domestic audio-visual production (known as "YouTube tax"). This tax applies both to resident and non-resident businesses. The scope of this tax was extended first in 2004 to include online video-on-demand services, and again in 2016 to include online video-on-demand services provided for free but monetised through advertisements displayed to the viewers.

The tax is established generally at a flat rate of 2%. A 10% rate applies for audio-visual contents including "pornography" and "incitement to violence." The nexus is generally based on the destination of the related supply. In the case of physical sale or rental, the tax liability arises if the place of performance is in France. But for on-demand services, the criterion is the location of the audience in France. The location, residence or status of the supplier is irrelevant. The tax base is composed of the consideration paid (exclusive of VAT) for the purchase, rental or access to online audio-visual content; and/or the consideration paid for the display of advertisements and/or sponsorships linked to a particular online audio-visual content.

Hungary

Hungary applies a tax on the sale of advertising time or space to resident and non-resident companies. The scope of this tax is broad, including not only traditional media outlets but also the online environment such as websites. The nexus in this case is based on the destination of the advertisement and the location of the public targeted. More specifically, in the case of online advertisements, the nexus is established when the advertisement is displayed predominantly in the Hungarian language. The supplier must register with the tax authority and is subject to tax liability. Moreover, a secondary tax obligation can also arise. The customer can also be liable to the advertisement tax if he cannot provide to the tax authority a formal declaration from the primary taxpayer (i.e. the publisher).

After the European Commission recognised the incompatibility of the first version of this tax with the EU state aid system, the marginal rate applicable to the primary tax obligation was raised from 5.3% to 7.5%. The secondary tax obligation applies a 5% rate to the actual monthly costs if the taxable transactions exceed 2.5 million forints (around €7,700).

Iceland

Iceland introduced VAT rules for electronic suppliers on 1 November 2011. The standard VAT rate is 24%, which applies to electronic services except for e-books (where the reduced VAT rate of 11% applies). The registration threshold is 2 million krónur (around €14,400) in any consecutive 12-month period. For B2B selling, foreign companies are not required and can account for the VAT as part of the input tax.

Italy

The 2019 Budget Law has introduced a new tax applicable to the provision of digital services. This law has repealed the tax introduced by the 2018 Budget Law (i.e. "web-tax"), which never entered into force. The new tax applies at a 3% rate on the gross amount of the revenues generated in Italy by the sale of digital services and shall be paid by the supplier of said services on a quarterly basis by the end of the month following each quarter. The tax applies to business activities, whether they are established in Italy or not – provided that, individually or at the group level, they meet both of these thresholds during the fiscal year: global amount of revenues not lower than €750,000,000; not less than €5,500,000 of revenues generated in Italy only from the sale of digital services. Moreover, the scope of application covers revenues generated through advertising on a digital interface targeted to users of the same interface (i.e. Google); revenues from the provision of a digital multilateral interface aimed at allowing users to interact (i.e. Facebook); BtC intermediation through transmission of data collected from users and generated by the use of a digital interface (i.e. Uber).

Italy (continued)

The Ministry of Finance is required to issue an implementing decree within the four months following the entry into force of the Budget Law (i.e., by 30 April 2019) and the tax will apply as from the 60th day after its publication in the Official Gazette (i.e., accordingly, it should be applicable starting from 30 June 2019).

Russia

Russia introduced a new regulation (Federal Law 244-FZ of 3 July 2016) to tax digital transactions on 1 January 2017. Foreign companies providing services to Russians in electronic form are subject to the 18% VAT rate. There is no registration threshold, therefore foreign businesses selling digital products to Russia consumers must collect VAT and report it to the Russian tax authority. According to the 244-FZ, foreign digital service providers and intermediaries operating as VAT tax agents should register on the website of the Russian tax authority within 30 days after providing digital services, and also exchange information and submit VAT returns.

Serbia

Since 1 April 2017, Serbia has required non-resident providers of electronic services to consumers to register for VAT and to charge it at the local rate – currently 20%. Under the new VAT rules, digital businesses are required to register for VAT via a tax agent. There is no registration threshold. This means that as soon as digital businesses make a digital sale to a Serbian consumer, they have to apply taxes and to settle VAT with the national tax authority. In order to register for VAT, the foreign business should have a Serbian Tax Identification Number and indicate the bank account used for VAT purposes.

Switzerland

The Swiss Federal Tax Authority (FTA) introduced its VAT rules for the supply of services from non-resident companies to Swiss residents on 1 January 2010. If a non-resident company supplies digital products or services to a Swiss consumer, it must collect and remit VAT to the FTA. Article 10 of the Swiss VAT Act states that VAT is applied on a service supplied by any person who carries on a business based abroad, supplying telecommunication or electronic services on Swiss territory to recipients who are not liable to the tax. The VAT rate is the standard Swiss rate of 8%, with a threshold of 100,000 francs. Since January 2018, the method of calculating the threshold has been based on the total global sales of the business, rather than just on sales to Swiss consumers.

Turkey

Turkey introduced a new VAT for sale of electronic services on 1 January 2018. These rules apply for sales of electronic services for consideration to non-VAT registered individuals by electronic service providers who do not have residence in Turkey. There is no threshold, and the VAT rate applied is 18%. Foreign electronic service providers must declare and pay VAT, which is charged on electronic services to non-VAT registered individuals.

United Kingdom

The United Kingdom's Diverted Profits Tax applies to profits considered to be artificially diverted from the UK, and these are subject to a levy at a rate of 25%. In order to detect when profits are diverted from the UK, two rules apply: an "avoided permanent establishment" rule, and an "alternative provision" rule.

Regarding the first mechanism, the rule focuses on non-resident companies which have artificially avoided UK permanent establishment. This system applies when the activity of the person in the UK and/or of the non-resident company aims to avoid paying local income tax by not being subject to UK permanent establishment. A personal exemption applies to resident and non-resident companies outside the scope of small and medium-sized enterprise definition at domestic level. Moreover, its annual sales in the UK must exceed £10 million or its annual expenses must exceed £1 million. Outside these exemptions, the tax liability rests on the supplying foreign entity as if it was permanently established in the UK.

The second mechanism focuses on intra-group transactions (e.g. the licensing or transfer of intellectual property) that involve both UK resident and non-resident companies with a permanent establishment, even if this is avoided. The alternative-provision rules cover excessive deduction and understated income when: the excessive deduction or income diverted from the UK is subject to a foreign tax liability lower than 80% of the reduction in the UK tax resulting from the expense or reduction in income (i.e. the Effective Tax Mismatch outcome); and it is reasonable to assume that the arrangement is designed to achieve the tax benefit, and the tax benefit from this arrangement exceeds other financial benefits (i.e. the Insufficient Economic Substance test).

Moreover, the UK plans to introduce a digital levy at the rate of 2% on certain business models from 2020. The scope of this tax would cover the global revenues of these tech giants, not their profits. The tax would apply only to companies that generate more than £500 million a year in global revenues.

5. Asia

China

In China, the 17% VAT is not subject to a distinct turnover threshold for e-commerce activities. Thus, the applicable threshold is determined considering the provision of services and the sale of goods. Since April 2016, purchases of products from foreign e-commerce providers have been subject to a tax rate of 11.9% for purchases of up to 2,000 renminbi (around €250) at a time, with a yearly limit of 20,000 renminbi per person. Normal customs and VAT liabilities apply for purchases that exceed such thresholds.

India

Amendments to domestic nexus rules for corporate income-tax purposes are expected to become effective in the near future. One of these amendments introduced the notion of significant economic presence (SEP), providing two thresholds, based on local revenue and local users.

According to the local-revenue threshold: “any transaction in respect of any goods, services or property carried out by a non-resident in India, including the provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds the amount as may be prescribed.”

According to the local-users threshold: “systematic and continuous soliciting of its business activities or engaging in interaction with such number of users as may be prescribed, in India, through digital means.”

These thresholds allow India to tax businesses regardless of their location. The legislation clarifies that in the case of conflicting provision between domestic law and double-taxation treaties, the latter would prevail over the former. Consequently, SEP applies only to situations not covered by tax treaties.

India (continued)

The Government of India's Finance Act 2016 introduced an equalisation levy of 6%, applicable "to consideration received or receivable for specified services provided on or after the commencement of this Chapter." It applied only to B2B transactions. The Finance Act clarified that "specified service" means online advertisement and any provision for digital advertising space or any other facility or service for the purpose of online advertisement. It also provided that such specified services include any other service as may be notified by the central government in this regard.

The levy applies to specified services for more than 100,000 rupees (around €1,300) supplied by non-residents not having "permanent establishment" in India. The levy has to be deducted by a recipient, who is resident in India or has a PE in India, "from the amount paid or payable to a non-resident in respect of the specified service" and paid to the central government by the seventh day of the month after the calendar month in which the sum was deducted. The levy came into force on 1 June 2016. Regarding GST, service providers charge a total tax of 18%, and there is no sales threshold. As a result, every foreign digital business that makes any sale to an Indian consumer must register for GST in India.

Indonesia

In February 2017, Indonesia proposed a draft regulation in order to tax non-resident digital service providers. However, there is still no tax regulation for these entities. Currently, companies have to comply with two kinds of tax: pajak penghasilan (Pph – income tax) and pajak pertambahan nilai (Ppn – VAT). The application of these taxes is subject to registration, and as a result, the government has experienced different complexities vis-à-vis digital services. In this case, the tax rate in Indonesia is 11%. At the March 2018 G20 gathering in Argentina, Indonesia's Finance Minister urged international cooperation in attempts to tax digital giants (e.g. Google and Facebook). Moreover, in April, at the 32nd ASEAN Summit in Singapore, Indonesia's Minister of Trade proposed a tax on goods and services offered through electronic means.

Japan

The Japanese tax, known as consumption tax (JCT), was introduced and made pertinent to digital business owners on 1 October 2015. The annual threshold for this tax is 10 million yen (around €78,000). The consumption tax rate is 8% (rising to 10% from October 2019). It is to be charged on all B2C transactions delivered by foreign digital businesses to Japanese consumers. Foreign companies must register themselves and designate a tax agent in Japan. B2B transactions apply a "reverse charge" mechanism like other countries, where the recipient, not the seller, deals with the tax. Like other countries, the definitions of which electronic products and services are included in JCT are fairly broad. Digital services such as e-books and distance learning count under this law.

Malaysia

Malaysia introduced a digital tax in its 2019 budget. At the time of publishing it is still unclear if non-resident digital suppliers will have obligations from January 1, 2019, or from January 1, 2020. Sections 47 and 48 of the 2019 Malaysia budget speech in November made specific reference to the extension of SST to B2B and B2C digital supplies with introduction dates stated as January 1, 2019 (for certain B2B supplies) and January 1, 2020 (for certain B2C supplies).

Singapore

From January 1, 2020, Singapore will apply GST to cross-border B2C and business-to-business (B2B) digital service supplies. Foreign businesses offering digital services will have to register using the Overseas Vendor Registration model. The Inland Revenue Authority of Singapore has proposed two thresholds. Foreign businesses should have annual global turnover exceeding $1 million and supply digital services to customers in Singapore exceeding $100,000. Foreign-registered businesses should identify the location of their customer (with two non-conflicting pieces of evidence).

South Korea

From 1 July 2015, the Republic of Korea revised its Value Added Tax Law (VATL) requiring foreign service providers to register for VAT and charge it on the supply of electronic services to customers in Korea. The currently applicable VAT rate is 10%. The registration requirement applies to a foreign service provider that provides electronic services directly to its Korean customers without – or through – a permanent establishment in Korea. In October 2018, South Korea's Finance Minister said his cabinet was evaluating measures to subject foreign digital suppliers (e.g. Google and Apple) to national corporate income tax.

Taiwan

Since 1 May 2017, 5% VAT has generally been imposed on foreign enterprises, institutions, groups or organisations without a fixed place of business in Taiwan, which provide e-commerce services to Taiwanese individuals. These subjects must register with Taiwan's tax authority and file their VAT returns. The registration and VAT return filing obligations are required if the annual e-commerce sales revenue exceeds NT$480,000 (around €14,000).

Thailand

Thailand has introduced a bill for a new VAT from foreign vendors and e-commerce platforms buying and selling there. Thus, a foreign company providing services through electronic media to a non-VAT registered person, and where the services are used in Thailand, must register. The company will be subject to 7% VAT in Thailand if its annual VAT-able income exceeds 1.8 million baht (around €48,000).

Vietnam

Vietnam has already applied the "place of consumption" rule. However, VAT is withheld at source by the Vietnamese party to the contract. This applies unless the foreign contractor has registered for tax purposes in Vietnam. The government is evaluating how to approach the OECD's BEPS proposals.

6. Oceania

Australia

In May 2018, the Australian government announced its intention to introduce a tax on the digital economy. But even before the potential adoption of this new levy, Australia's Diverted Profits Tax (DPT) Act was adopted in April 2017 to prevent multinationals from shifting profits made in Australia offshore to avoid paying tax.

The DPT, announced in the 2016-2017 Budget, targets resident and non-resident multinational companies that enter into arrangements to divert their Australian profits to offshore-related parties. The DPT will only apply to multinational companies that meet at least one of these three criteria: a global income exceeding $1 billion (around €633 mil) and Australian income exceeding $25 million (€15 mil 805k); the profit earned by each entity (including the local taxpayer) in connection with the arrangement is commensurate to their activities and contribution to the arrangement (i.e. Economic Substance test); foreign taxes paid on the income shifted abroad as a result of the arrangement constitute 80% or more of the reduced Australian tax of the relevant taxpayer (i.e. Sufficient Foreign Tax test).

Moreover, Australia can also rely on the Multinational Anti-Avoidance Law (MAAL). This regulation is an anti-abuse rule for corporate tax purposes working as a system to tackle the avoidance of permanent establishment by non-resident companies. An enterprise is subject to MAAL if its income is not generated in the framework of a permanent establishment in Australia and it is reasonable to conclude that the principal purpose of the arrangement is to obtain a tax benefit. The result is that the income in question is allocated considering the enterprise in question as permanently established in Australia.

In the 2015-2016 Budget, the government announced that the application of GST would be extended to cross-border suppliers of digital products and other services imported by Australian consumers. Legislation giving effect to this measure received Royal Assent on 5 May 2016, and the measure has applied since 1 July 2017. Australian GST applies to sales of imported services and digital products to Australian consumers. Overseas businesses that meet the $75,000 (around € 47,500) registration threshold will need to register for GST, charge this tax on sales of imported services and digital products, and lodge returns with the Australian Tax Office.

New Zealand

Since 1 October 2016, New Zealand has introduced new laws to tax digital transactions. If a non-resident business supplies services from outside New Zealand to a customer who is resident there, it could be required to register for GST and to file tax returns on such supplies. Services that may require non-resident businesses to register for New Zealand GST and charge GST on supplies made to New Zealand-resident customers include online gaming, gambling, video-streaming and music-streaming services. The GST rate of 15% will apply to all sales of NZ$60,000 (around €36,000) or more across a 12-month period. Digital sellers who provide their services to New Zealand-based consumers must also collect two non-conflicting pieces of evidence proving the customer's location.

III. Concluding Remarks

The digital economy is not a static process. On the contrary, the development of new technologies allowing businesses to expand across borders will probably lead to new seasons of complexities and challenges for policymakers. In this framework, the taxation of the digital economy is destined to change dramatically over time. As a result, monitoring further technological developments is crucial in order to assess the impact on tax systems around the world.

However, even without waiting for a new technological season, developments of new regulatory solutions at international and supranational level will occur in the near future, due to the concerns relating to the competitive advantage of multinational companies operating in the digital environment.

Although it is difficult to foresee future developments with any degree of reliability, the main output of this report shows how there are considerable differences both in the taxation of tech giants in respect of traditional businesses, and in the regulatory solutions implemented by countries around the world.

Looking at the international framework, domestic tax regulations are fragmented. However, the taxation of cross-border sales of digital services is the predominant solution. The majority of states have reviewed their VAT or GST rules, in order to widen their scope to include digital services offered by multinational companies. However, indirect taxation is not always effective, because buyers won't stop relying on the online environment to acquire products and services.

In other cases, countries such as Australia and the UK have introduced regulation in order to prevent profit shifting. However, only in some cases, countries have amended their corporate tax law in order to include companies' profits or revenues generated through the activity carried out in their territory – such as in the case of India or Israel. The application of corporate income tax on non-resident entities can make multinational companies pay taxes in the countries where they effectively obtain an economic advantage in terms of revenues. The OECD has suggested that countries may use an equalisation tax as an interim measure until international rules are established. In particular, India has been one of the first countries to introduce such a measure. However, the path toward extending corporate income taxation to global tech giants still lies ahead.

In his ground-breaking speech opening the Internet Governance Forum in Paris in November 2018, President Macron forcefully expressed his frustration at the unfairness of digital taxation. He insisted on the need of a solution that would prevent the hegemony and domination of "players which garner all the advantages and are currently not fairly taxed", and as a consequence foster innovation and encourage new players to enter the market. He confirmed that France will keep insisting on the development of a European digital tax at European level, and wished that the global community will join in the effort to develop a fairer system.

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