Taxation in a digitalized era

The role of users and their data in value creation

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Agenda

A. The concept of taxation where value is created

B. The role of users and their data in value creation

   I. Business models and active user base

   II. Tax policy options

      a. OECD/G20 BEPS Action 1

      b. EC Proposals for Two Directives

      c. HM Treasury position paper

C. Considerations

A The concept of taxation where value is created

I. Tax policy makers

- **OECD/G20 BEPS**
  - G20 Meeting in St. Petersburg (September 2013)

  "Profits should be taxed where economic activities deriving the profits are performed and where value is created"
  - Action 1 - Final Report 2015

  "[E]nsure that profits are taxed where economic activities take place and value is created"
- **European Commission**
  - Communication on a Fair and Efficient Tax System for the Digital Single Market

  "The underlying principle for corporation tax is that profits should be taxed where the value is created"

II. Purpose of the concept

- The core of the BEPS project; a new benchmark for the allocation of taxing rights
- Align the 'mismatch' between where value is created and where taxes are paid
- Two questions: **what** (numerous factors, incl. new taxable items), **where** (nexus, allocation rules)

B The role of users and their data in value creation

I. Business models and active user base

Social networks	Search engines	Intermediation platforms
Platforms that facilitate the interaction of users that create and share their own content	Platforms that provide matching service which connects users with other content creators or information	Platforms that match two pools of users and rely on users to provide content (e.g. sharing economy platforms, online marketplaces)

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B The role of users and their data in value creation

II a. Tax policy options - OECD/G20 BEPS Action 1



- Common characteristics of digitalized business models
  - Cross-jurisdictional scale without mass
  - reliance upon intangible assets, incl. IP rights, and
  - the role of data and user participation
- Phases of data value cycle:

  (1) Data origination; (2) Data collection leading to big data; (3) Data analytics; (4) Knowledge base; (5) Data-driven decision making
- User participation:
  1. Passive user participation (e.g. cookies)
  2. Active user participation: low (e.g. tagging, rating), medium (e.g. writing comments, uploading photos), high (e.g. adding friends, creating communities)
- 2018 Interim Report: no consensus
  - 1st group: users and collection of data
  - 2nd group: users' input is not relevant
  - 3rd group: broader challenges posed by intangibles

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B Tax policy options

II b. Tax policy options - EC Proposals for Two Directives

1. Comprehensive solution – Significant digital presence



Where to tax	What to tax
Revenues from the supply of digital services > €7 million	Profits from user data
Number of users >100,000	Services connecting users
Number of online business contracts >3,000	Other digital services

2. Interim solution – Digital services tax 3%

Online advertising		Worldwide revenue >€750M
Sale of user data	+	and
Digital platforms for user interaction		EU Digital revenue > €50M

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B Tax policy options

II c. Tax policy options - HM Treasury position paper

Two interim digital solutions

HM Treasury

A. Tax on revenues derived from the provision of digital services to the UK market
   - Data and User participation in value creation, e.g. online advertising/social media, online marketplace, collaborative platform

B. WHT on royalties paid, in connection with sales to UK customers, to no or low-tax jurisdictions
   - Royalty payments deemed to have UK source, applicable only when no UK taxable presence (PE or avoided PE within DPT rules)

C Considerations

- **Users and their data** are important value drivers BUT
  1. How much value do data have during the different phases? Raw data? Algorithms?
  2. Users vs. Customers
  3. Differences among the various digitalized business models (e.g. Uber, Airbnb)
  4. Reconciliation with transfer pricing rules (assignment of tax base to origin jurisdictions)
  5. Interim solutions: ring fencing of digital economy; nexus; tax on revenues, instead of profits; double taxation; EU freedoms; GATS national treatment obligation; collection issues
  6. Other value drivers (e.g. finance, R&D, marketing and sales, etc.)
- Shift towards a **destination-based approach**?
  - From origin to destination – from supply side to demand side

Thank you for your attention

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