Taxation of the Digital Economy

Stora Skattedagen
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How Tax Authorities may perceive digital providers
Proposed Agenda

- Introduction
  - What are we trying to fix?
- Digital Economy
  - The Models
- BEPS
  - Value Creation
- Equalization Tax
- Political Pressure
- EU Proposals
  - E-Commerce, Split Payments
- Legal Developments
  - Americas, ASPAC, Europe

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How did we get here?
What are the problems we are trying to fix?

- Explosion of internet and B2C trade in goods cross border
- Massive under reporting of tax (deliberate and unintended)
- Explosion of SME's trading or offering services via Marketplace
- Marketplace and facilitators – Agent v Principal (“it’s not my problem” sentiment)
- Outdated or quick fix legislation not keeping pace and creating disparities globally
- Supplier reputation
Digital Economy - The models

Sale of goods or services

Vendor liability model

Marketplace operator model

Vendor

Online platform

Tax authority

Customer

Bank / Card provider

Split payment model

Customer collection model

Logistics model

Logistics provider
Developments - The Americas

**United States**: The findings in the Quill case (1992) govern nexus rules (similar to place of supply rules in VAT).

**Canada**: No special digital economy rules, but GST/HST liability in case of ‘carrying on business’ in Canada.

**Bahamas**: VAT registration if B2C electronic services >$100,000.

**Colombia**: VAT withholding for certain B2C e-services effective Jul. 2018.

**Brazil**: New ICMS sourcing rules on inter-state sales of B2C goods + ISS scope expansion to include e-services.

**Argentina**: ‘Netflix’ tax in Buenos Aires + statement by head of tax authority that e-commerce should be taxed.

**Costa Rica**: Proposal to apply VAT withholding on B2C e-services.

**Cost to KPMG 2017 Survey on VAT/GST treatment of cross-border services**
Developments - ASPAC

India: Under new GST regime from 1 July 2017 registration for B2C e-services

Australia: GST on B2C imported services from July 2017, and on low value imported goods from July 2018.

New Zealand: GST registration for B2C remote services effective Oct 2016

Russia: VAT registration for B2C e-services effective Jan 2017

Thailand: Draft legislation potential PE and VAT registration for e-commerce sales

Malaysia: Proposals under consideration to extend GST to digital services

Singapore: Proposals under consideration to extend GST to digital services

Link to KPMG 2017 Survey on VAT/GST treatment of cross-border services
Developments - Europe

**Belarus:** VAT registration for B2C e-services effective Jan 2018

**Serbia:** VAT registration for B2C e-services effective Jan 2017

**EU:** Comprehensive proposals to address VAT collection on e-commerce in goods

Link to KPMG 2017 Survey on VAT/GST treatment of cross-border services
VAT e-commerce package
1 January 2021

"One Stop Shop" for reporting VAT on distance sales

A person who facilitates is considered to "receive and supply"

Applies for both EU and non-EU origin goods
- Low value consignment relief abolished
- Single registration threshold of €10k, replaces 27 separate distance selling thresholds

“through the use of an electronic interface such as a marketplace, platform, portal or similar means”
- Applies in limited circumstances
- What constitutes facilitation?
- How can a middle-man apply the correct tax?
Joint and several liability measures toned down from original draft

- Applies where sales “facilitated through the use of an electronic interface such as a marketplace, platform, portal or similar means, often resorting to fulfilment warehousing arrangements”.
- But commented that such measures have "proved insufficient to ensure effective and efficient collection of VAT".

Member States may provide that a person other than the person liable for the payment of VAT is to be held jointly and severally liable for payment of VAT.
Split Payments, a new trend?

Payment of VAT into a dedicated bank account
- Either held with tax authority or with an approved bank
- Which party is responsible for directing the payment?
- What will interaction be with active or live data provision be e.g. SAF-T, SIII?
- VAT fraud is key driver
Equalization Tax

Why now?

“Digitalized business models are subject to an effective tax rate of only 9%, less than half compared to traditional business models”
European Commission

“We’re at a stage where countries are saying they will move forward because of domestic political pressure”
Pascal Saint-Amans, Director, Center for Tax Policy and Administration, OECD

“The bloc should agree to a tax on revenue, rather than profits, of the digital industry by mid-2018”
Bruno Le Maire, French Finance Minister
Equalization Tax

Equalization tax on turnover of digitalized companies

- A tax on all untaxed or insufficiently taxed income generated from all internet-based business activities, including business-to-business and business-to-consumer, creditable against the corporate income tax or as a separate tax.

Challenges?
- Definition of turnover, covered companies, etc.
- Compatibility with tax treaties (DT or PE), EU-law, etc.?
- Reactions from non-EU?
- Taxes gained vs impact on Economy?
- …

Goal is to take cross-border tax optimization out of tech companies' business planning

EUs long-term plan: Fundamental reform of the international corporate tax framework: including virtual PE rules, transfer pricing rules, profit attribution to digital technologies, CCCTB

The EC's view is that the tax framework needs to be reformed to effectively capture the value created in new business models
Where is the Value Created?

OECD BEPS-project

✓ Action 8-10 of the project addressed how to align transfer pricing outcomes with value creation, to avoid Base Erosion Profit Shifting (BEPS)

✓ According to the BEPS-project, the value of an intangible is created where the following activities are performed:
  - Development
  - Enhancement
  - Maintenance
  - Protection
  - Exploitation

However, in a digitalized world, it is not always clear:
  - what the value is,
  - how to measure it, or
  - where it is created.

✓ Value creation, rather than legal ownership or funding, is what determines where profits are to be allocated
Five key take aways

1. Digital Economy is changing the world
2. Pressure to reach fair taxation
3. Constant global change
4. EU is making fundamental VAT changes
5. Focus on value creation
Thank you!

Peter Sanderson  
+46 8 7239529  
peter.sanderson@kpmg.se

Tobias Ekwall  
+46 8 723 9990  
tobias.ekwall@kpmg.se
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