Taxing the Digital Economy: The EU Proposals and Other Insights

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This book is based on papers presented and discussed at a two-day conference jointly organised by the Amsterdam Centre for Tax Law and the IBFD in June 2018. The topic of the tax conference was the taxation of the digital economy, which followed the release of the OECD’s high-profile consultation document on the tax challenges arising from the digitalisation of the economy and the EU’s proposed directives on a digital permanent establishment (PE) and a digital services tax.

The book examines important topics in the context of the OECD’s base erosion and profit shifting project and the EU’s proposals but also discusses more recent policy developments. It is comprised of 14 chapters, which are spread over four parts. The first part deals with value creation and looks at the overall tax challenges of the digital economy. Interestingly, Chapter 2 reviews the concept of data as a value driver and examines how transfer pricing solutions could be applied to data mining. Whilst this may not necessarily be the approach that the OECD has chosen to follow under its more recent consultation document, the analysis is likely to be useful in areas not falling under the unified approach. The next chapter explores the theoretical foundations of the OECD’s and EU’s proposals and more specifically the extent to which users contribute to value creation and the taxing rights that should be allocated to the users’ jurisdiction. The following chapter, Chapter 4, challenges the use of value creation to tax business profits, on the basis that, as interpreted currently, it is not fully aligned with several managerial theories explaining value creation. The author argues that other managerial theories such as the service-dominant theory of value creation might be more appropriate in this area, but this would require global co-ordination and mutual recognition.

The two chapters in part 2 of this book critically assess the EU’s proposal for significant digital presence, as well as other unilateral approaches taken by some countries. The authors of Chapter 6 recommend a final and creditable withholding tax on all gross payments for services paid by a resident or borne by a PE in business-to-business contexts, explaining how this would be a better alternative to digital PE proposals.

The chapters in part 3 review the EU’s proposal for a digital services tax and other similar rules adopted unilaterally by some countries. A recurrent issue is how the EU and more specifically the Commission should be co-ordinating its work with that which the OECD is doing. This chapter critically reviews the Italian digital services tax and Chapter 13 considers the limitations in using the EU VAT system’s one-stop shop model in the context of the proposed EU digital services tax. The final chapter deals with the more esoteric topic of blockchain technology and its possible impact on transfer pricing documentation.

Overall, this book brings together great expertise and a wealth of material at a crucial time where the OECD is exploring potentially ground-breaking exceptions to traditional norms in respect of the allocation of tax. The book provides an excellent and timely analysis of some of the fundamental issues arising in the context of the digital tax debate and is likely to be a very helpful resource for academics, students and legislators.
Footnotes


