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Clara Young [00:00:02] Thank you for choosing OECD podcast. Welcome to OECD podcast, where policy meets people. I'm Clara Young and I'm here in the studio with Pascal Saint-Amans, who is the head of the OECD's Centre for Tax Policy and Administration. So thanks for coming in, Pascal.

Pascal Saint-Amans [00:00:21] Hello, my pleasure.

Clara Young [00:00:22] There's been a lot of attention focused on the taxation of tech companies over the past years. They've come under fire for not paying their fair share of tax. At the OECD, we have a project called BEPS, short for Base Erosion and Profit Shifting. BEPS attacks the ability of multinational companies to avoid paying tax, but it's focused on traditional tax rules and business models. When BEPS was unveiled in 2015, the issue of tax avoidance in the digital economy was left unresolved. Now, four years later, the pressure's on to deal with digitalisation and taxation. But the 127 countries and jurisdictions that signed on to BEPS have pretty significant differences on how to tackle these issues. And in the meantime, many countries are moving ahead with short term measures to tax digital companies. The U.K. has announced new measures. So has France, Chile, Indonesia, and Australia have signalled that they will act. So my first question is this Pascal: A big part of the problem with taxing a digitalised economy is that much of the international tax rules we currently have simply don't fit a digitalised economy. And what exactly is the problem?

Pascal Saint-Amans [00:01:38] Okay, thank you. There is a lot in what you've just said, maybe to clarify first, the G20, in the wake of the financial crisis, decided to address what we call the tax haven issue or how we can ensure that multinational companies pay the taxes where the tax is due, meaning where the activities are taking place. And that's the BEPS project. BEPS standing for Base Erosion and Profit Shifting, and all countries agree on BEPS. Fifteen measures being implemented, we are now monitoring the implementation and this is a pretty significant change. The time where you could shift profits to a tax haven without any constraint legally has come to an end. You can no longer take advantage of tax techniques like treaty shopping or hybrid mismatches. Stuff which is for tax geeks, but which means that you could avoid taxes legally by putting your profits in tax haven. This is over. In other words, the implementation of BEPS is putting an end to this. We still need probably another couple of years for all the countries to have completed the implementation of BEPS. But again, this is something which is done. Now, that said, what remains to be done is addressing what we call the tax challenges of the digitalisation of the economy. What does that mean? With the digitalisation of the economy, which is not limited to a few tech giants that all the peoples have in mind: Google, Facebook, Airbnb, Uber, Netflix, Amazon. It's something which actually is much broader than that because all the companies are one run of the digitalising. When you now have an engine built by Rolls-Royce, you have captors which are embarked and these captors will collect data on the engine. And this will help the company Rolls-Royce to provide a service to decide when you need to repair, when you need to review and all that. So you have a change even in the most traditional part of the economy. And this change is about doing business on a territory without necessarily being present on that territory. And this is a difficulty because the traditional rules agreed amongst countries were that the country would tax activities when you have people on the grounds, when you have what we call the permanent establishment. With the digitalisation, you lose that link not only for the tech giants, but for all the companies. And this is what is being debated at the OECD and because it has taken some time because countries are not in agreement yet. Some countries have announced unilateral measures. So to summarise this introduction, you have BEPS, which is limiting tax avoidance by changing the rules to patch the system and make sure you cannot take advantage of lack of regulation. Now we face the next step or the last mine, hopefully, which is how do you deal with an economy which is digitalising where it's more and more difficult to find activities on the ground to determine what to tax? And this is what we are discussing. It's taking time. It's taking time because for a few years, the US was opposed to any form of conversation. So countries said we cannot find any solution, we'll take unilateral measures. You quoted France, the UK, the European Union, Chile and a few others. But all these countries now that the U.S. has said, let's engage in real conversation, they're working, and we're at the point where we are exploring concrete solutions to address the tax challenges that the digitalisation of the economy.

Clara Young [00:05:21] I understand what you say about how now, you know, the whole economy is digitalising, so it doesn't really make sense just to focus on companies like Google and Amazon and all that. But I think that the focus on them is also because of the problem of what you say, the non-physical presence of companies that are headquartered in low tax jurisdiction. And that's the case that we see with these tech companies.

Pascal Saint-Amans [00:05:44] Now, as I've told you, it's not some tech companies, it's something which is pervasive. So people over focus on a few companies, and that's wrong. It's the wrong approach, and it's misleading. You think that you could find a solution for a few companies where actually, if you try to explore that, you will see that it's too limited and doesn't address the issue. There may be some solution on what we call highly digitalised business models for the few of these companies Google, Facebook and the advertisement or the platforms like Uber or Airbnb. That's what we call the U.K. proposal. The U.K. is suggesting that we could focus on the highly digitalised business model and change the international rules only to that extent. But many other countries think that it's too limited. You don't even catch all the tech companies and actually beyond the tech companies, what is at stake is to be able to tax on the territories where the services are provided or the sales of goods are taking place taxed more in these jurisdictions. So what the OECD is currently discussing is a set of solutions, the UK being one of them quite limited but broader solution like an American proposal to give more rights to tax to the market jurisdictions, whatever the product is, whether it's a digital service or whether it's a good. And you also have India, which said, well, we need to explore how we can give more recognition to the market jurisdictions. So this is what the debate now looks like, and this debate will take place in the next 18 months.

Clara Young [00:07:24] So the shift in international taxation that we're are about to discuss is then to look at taxation of revenue that is from the places or the countries where consumers are consuming these services or these goods, and not so much in the countries where companies are headquartered or where they have declared themselves as a permanent establishment. Is that correct?

Pascal Saint-Amans [00:07:55] We're not talking about a complete shift. The current rules provide for profits, residual profits, the big profits you're making after paying the factories, the manufacturers, the R&D. And so what is left? What we're talking about here is changing the rules. Currently, what is left is supposed to go to the headquarter countries, the country where the company is headquartered. And some countries are not saying there should be a fair share of that going to the market jurisdiction. Now you have many options possible and this is what the discussion will be focussing on. You can use a marketing intangible approach...

[00:08:40] What do you mean by a marketing intangible, just for people who are not familiar with?

Pascal Saint-Amans [00:08:43] Well, it's a bit technical, so I'm not sure we want to get into the details of marketing intangible, but it's an approach which would say if you want to operate in the country, you need to invest on marketing. And all this investment should trigger a return which should go to that country. So that's the marketing intangible amongst all the intangibles of a company and the brands and many other intangible. You have some which are related to marketing and therefore they are linked to the market. And through that link, the market should be able to tax. Significant economic presence, it's another way to tackle the same issue and see whether there are enough links through sales on the territory. Then there should be something like triggering a right to tax. So these are these changes which are not about shifting all the rights to tax from the headquarter country to the market jurisdiction, but seeing how you can better share the residual profits between the country of residence of the company and the country, which is the market of these companies?

Clara Young [00:09:47] OK. How much money are we losing right now in taxes? Because tech companies? No, I won't say tech companies. I will say companies are avoiding paying it.

Pascal Saint-Amans [00:10:02] They are two different issues, and we should be mindful not to confuse them. One issue is BEPS. Tax avoidance, tax avoidance, what is at stake is between 150 to 250 hundred billion dollars a year, so you have almost a quarter trillion of U.S. dollars, which is lost through tax avoidance by multinational companies, and this should be reduced by the implementation of the BEPS project.

Clara Young [00:10:32] Already.

Pascal Saint-Amans [00:10:32] Already. You have another issue, which is where should companies pay their taxes? For sure? They shouldn't look their profits in tax havens. This is what BEPS is taking care of. But then the question is, well, if they don't pay in Bermuda or if they don't locate their profit in Bermuda, where should I pay lower taxes? Is it in the country of residence of the company for the residual profits? Or is it in the market jurisdiction? That's the question. On that one, nothing is lost as long as you stop putting your profit in a tax haven. But the debate on the tax challenges of the digitalisation are not that much about how much money is lost, because if BEPS is properly implemented, no money is lost. But the question is where should they pay their taxes? And then you have winners and losers if you decide that the market jurisdictions will get more, well, the countries of the headquarters will collect less tax, but the market countries will collect more tax. So you have something like a shift of revenue of public revenue from developed countries with trade surpluses, which will lose towards emerging economies or trade deficit countries, which will win. So two issues. How much money is lost through avoidance? This is BEPS, the BEPS issue, we address that. Then reallocation of taxing rights. It's actually a zero-sum game because it's a question of who gets what.

Clara Young [00:12:02] I think it was in December, you mentioned the idea of a minimum tax, which is something that the U.S. introduced its tax reform last year. For those of us who are unfamiliar with the minimum tax, what is it?

Pascal Saint-Amans [00:12:15] In the course of the discussion on how to address the tax challenges of the digitalisation of the economy, some countries said we also need to complete the BEPS work. We need to make sure that we have all the instruments to fight avoidance. And there is one instrument which was not adopted in the course of the BEPS project, which, by the way, was adopted by the United States in the course of the tax reform, which is a minimum tax idea. What is a minimum tax idea? It's not the idea that all countries should put in place at least a X percent corporate income tax. On the country, it's the idea that all the countries should be able to protect themselves if profits of their companies are shifted to a country where the level of tax is below a level to be determined, which would be the minimum tax level. So the idea put forward by the French and the Germans in the context of the conversation on digital, which goes much beyond digital, is about saying we should protect ourselves. With the rule inspired from the US tax reform, which would mean that if a profit is shifted from a taxing jurisdiction to it to low tax jurisdiction, then we should keep the right to tax this profit. So that's what this proposal is about. In the case where it's your company which is investing abroad and shifting the profit abroad, or whether it's a foreign company doing business on your territory or taxing country, and you can see the profit shifting to a tax haven. And then when the profit leaves, you would deny the deductibility or you would tax it so that at least it's taxed at the minimum rate. So this is a quite interesting proposal, which again is already implemented in the U.S., and that France and Germany and a few other countries, including the U.S., really should become a global standard. So how would the globalisation of a minimum tax, how does that work in step with these talks about moving taxation to market jurisdictions?

Pascal Saint-Amans [00:14:20] We currently have two pillars to be explored in the context of the work we do on digital. One pillar is the reallocation of taxing, right? The other pillar is reflection and further work on this minimum tax idea. So they complete each other. They are independent from each other, but they could go very well together.

Clara Young [00:14:41] Pascal Why is it a short term digital tax like what the EU and the UK are proposing a good, simple way to ensure fairness in the tax system quite quickly?

Pascal Saint-Amans [00:14:50] Because countries cannot decide on their own on the system, which actually is interdependent so you can do something. The European Union has proposed a digital service tax doesn't seem to get to agreement nor unanimity. The UK announced that they will engage the OECD would fail, and that's something. The French have also announced that they will put in place a tax on digital services. These taxes are extremely constrained because what we're talking about at the global level is taxing the profits of companies. Corporate income tax is a tax on the income of corporations, and the income is something which is the net between all your your turnover and your expenses. So your tax profit. Countries cannot act unilaterally on the profit because they are bound by tax treaties and international constraints, thus the need for all the countries to get an agreement which takes time. That's the question. Well, why don't we do something quick and dirty on our own? Well, because what you can do there is extremely limited because it's outside the scope of tax treaties. What can you do? You can do a tax on transactions. Well, you already have VAT, so you add another layer of tax on transactions. And taxing transactions like that's like a duty is something that the taxpayers, the users, the consumers would have to pay in addition to VAT.

Clara Young [00:16:19] So it's an extra burden.

Pascal Saint-Amans [00:16:20] So it's an extra burden on the people protesting on the fact that Facebook and Google don't pay enough taxes. So you can see here you have a limitation and this has pretty negative spill-overs on the economy. I'm not saying that there is no reason for doing that. People are angry. There is a need to show that there is some move and it's hard for governments to say, well, we don't do anything before we have a global agreement, which may take a couple of years. But these measures are limited in what they can achieve. And at the end of the day, it's the people in the street which will have to pay for this so you can see that you may want politically to send a signal and that I think everybody understands that you have to recognise that this is extremely constrained and that this quick and dirty idea is not a great idea, even though it may be necessary for political reasons.

Clara Young [00:17:13] Because you mentioned a couple of years. What's the timeline now?

Clara Young [00:17:17] The timeline is to get an agreement on a programme of work on the different proposals which have been tabled, including this minimum tax idea or reallocation of taxing right, the two pillars that the OECD is working on. Agreement on the programme of work by May so that we can report that to the G20 finance ministers in June. And then we will work. We will implement this programme of work with the view of getting refined hypotheses, refine solutions, but developed solutions because we need to develop technically all of these elements so that by the end of 2020, which is the deadline which has been fixed to the OECD since 2015, by the end of 2020, we should be able to provide a technical solution which should be politically agreed by all the members of the inclusive framework so that they are just to implement this solution. This will require political commitment from the government's seriousness from the governments, walking the walk and not only talking the talk. And we understand that there is a lot at stake. If you change the allocation of profit, the allocation of taxing right, you may have an impact on the budgets. That's serious and countries need to be serious. This is why they need a few more months to reflect on the consequences. Well, again, who has said we need to change the system urgently? The countries which were not happy because the tax challenges of the digitalisation of the economy had not been addressed, and that's why they need to reconcile the need to move fast to address these challenges. Why taking the time necessary to make sure that when you change fundamental rules, you don't do things which you wouldn't master? So that's the conundrum, but I am confident that by the end of 2020, we may have a solution.

Clara Young [00:19:07] You have your work cut out for you, Pascal. Thank you very much and thank you for listening to OECD podcasts. I'm Clara Young to find out more about the OECD's work on tax, go to oecd.org/tax. To listen to other OECD podcasts, find us on iTunes, Spotify, Google Podcasts and soundcloud/oecd.