Chapter 4. Relevant tax policy developments

This chapter outlines the unilateral measures that have been introduced by countries and that are potentially relevant to digitalisation. These types of measures are grouped into four categories and a detailed description of each measure is provided, as well as a description of their common features.

4.1. Overview

341. This chapter provides a description of the design and implementation of a variety of country measures that are potentially relevant to digitalisation, notably where these measures relate to the broader direct tax challenges identified in the 2015 BEPS Action 1 Report (i.e., nexus, data and characterisation).

342. These uncoordinated and unilateral actions can been grouped into four categories: (i) alternative applications of the PE threshold; (ii) withholding taxes; (iii) turnover taxes; and (iv) specific regimes targeting large MNEs.

343. Certain design features are common to some of these unilateral and uncoordinated actions. First, they aim at protecting and/or expanding the tax base in the country where the customers or users are located, generally based on an expanded view of the enterprise's engagement in that country. Second, many include elements linked to a market in the design of the tax base (e.g., sales revenue, place of use or consumption). More generally, they appear to reflect a discontent among some countries with the taxation outcomes produced by the current international income tax system.

4.2. Introduction

344. In 2015, the BEPS Action 1 Report identified a number of broader tax challenges relating to nexus, data, and characterisation for direct tax purposes. These challenges raised questions regarding the ability of the existing international tax framework to determine where economic activities are carried out and value is created for corporate tax purposes. To address these concerns, a range of potential options were analysed by the Task Force on the Digital Economy (TFDE), which included alternatives to the existing permanent establishment (PE) threshold based on a "significant economic presence", the imposition of a new withholding tax on certain types of digital transactions, and the introduction of a separate "equalisation levy".

345. At the time that the Action 1 Report was adopted, however, no agreement had been reached among countries participating in the BEPS Project on the actual scale and impact of these broader direct tax challenges. In particular, no common view emerged on whether changes going beyond the measures proposed in the BEPS package were warranted. The result was that none of the potential options discussed in the Action 1 Report were adopted as agreed international standards. Nonetheless, it was acknowledged that countries could introduce any of these options in their domestic laws, provided that they respected existing tax treaties and other international obligations.

346. Since the release of the Action 1 Report, the lack of consensus in relation to these options has seen many countries around the world explore alternative measures for the taxation of highly digitalised businesses, generally by adopting new tax measures or changing the way they interpret existing laws and tax measures. To date these uncoordinated actions include a variety of measures usually implemented through domestic law changes seeking to protect and/or expand source taxation of online business activities (or more generally of activities of large MNEs), whether based on a measure of profit or some other equivalent factor. While only some of these measures draw upon elements of the options described in the Action 1 Report (e.g., the "equalisation levy"), they all respond, at least to some extent, to similar concerns such as the desire to secure an appropriate tax base in respect of business activities performed in, or closely linked with, the market jurisdiction where goods and services are supplied.

347. It is in this context that the TFDE was mandated to monitor relevant tax policy developments across the world that are potentially relevant to digitalisation, with a focus on measures that seek to address aspects of the broader tax challenges identified in the Action 1 Report. In the absence of global consensus, it was deemed important to keep track of all potentially relevant measures introduced by countries as part of this monitoring, and to ensure a good understanding of the details of their design and implementation (e.g., compliance, impact, revenue collected etc.). Also, this section provides a description of various potentially relevant actions taken by countries to adapt to an increasingly digitalised economy,[1] including a discussion of their potential impact and effectiveness. These tax measures have been grouped into four categories: (i) alternative applications of the PE threshold; (ii) withholding taxes; (iii) turnover taxes; and (iv) specific regimes to deal with large MNEs.

348. It is noted that the technical aspects of the measures described in the Boxes of this section are based primarily on information reported and verified by the countries introducing these measures. The information contained in the Boxes is intended to be descriptive only. Any statements regarding the objectives of the measures, their efficacy and/or their compliance with existing international standards, including consistency with existing bilateral tax treaties, will generally reflect the views of the government introducing the measure and do not represent the considered conclusions of analysis undertaken by the Inclusive Framework on BEPS.

4.3. Alternative applications of the permanent establishment threshold

349. Some countries have responded to the structural changes resulting from digitalisation by reconsidering the way the threshold for source-based taxation of business profits – the permanent establishment (PE) definition – is applied under their domestic law and/or in tax treaties. In contrast to the traditional approach,[2] these amendments or new interpretations of the PE threshold are generally aimed at diluting the requirement for permanence and physical presence at a specific geographical location to establish a nexus for net-basis taxation. Also, these measures generally have the effect of deeming a PE to exist in circumstances where one would not ordinarily exist under the traditional application of the PE definition. The most relevant developments across the globe in this area include measures drawing upon some factors of "digital presence" to establish a taxable presence, or supporting applications of the "service PE" threshold unconstrained by physical presence requirements.[3]

4.3.1. Measures incorporating digital presence factors

350. In general terms, digital presence-type of criteria include a variety of non-physical factors intended to evidence a purposeful and sustained interaction with the economic life of a country through digital means. They are designed to establish nexus in situations where a non-resident enterprise, physically established in a remote location, is proactively taking steps to create and maintain an ongoing interaction with the users and customers of a given country (e.g., typically by leveraging technology, the Internet and other automated tools).[4]

351. While a significant number of countries have announced their intention to modify their domestic and/or treaty PE threshold based on such factors of "digital" or "online" presence,[5] the measures implemented and enforceable so far include the "Significant Economic Presence" test introduced in April 2016 by Israel's Tax Authority (Box 4.1), the expanded definition of a "fixed place of business" for certain digital platforms

introduced in 2017 by the Slovak Republic[6], and the new nexus rule based on the concept of "Significant Economic Presence", which is expected to come into effect in 2019 in India (Box 4.2). While the measure in the Slovak Republic is targeted at specific activities carried out by online platforms (i.e., intermediation services for transportation and accommodation), the measures in Israel and India involve a more general broadening of their existing domestic nexus rules based on the concept of "significant economic presence" (SEP). All these measures are applicable only to non-resident enterprises and allow for net-basis taxation irrespective of the level of physical presence of the non-resident enterprise in the source country. The impact of these measures is, however, expected to be constrained by a number of factors, such as existing tax treaty obligations. For example, Israel's SEP test applies only to a foreign enterprise that is resident in a country with no double tax agreement with Israel. Further, this SEP test is based on administrative guidelines reflecting the views and interpretation of the tax administration, with the result that any potential conflict between the measure and current statute law would be resolved in favour of the latter.

352. Notwithstanding the constraints identified above, these measures may work as an additional safeguard against BEPS. Their application can be effective to tax remote sales from enterprises situated in a low-tax jurisdiction with no double tax treaty. While no additional revenue has yet been reported by the relevant countries in relation to these measures, it has been reported in Israel that some on-going tax audits are being carried out on the basis of the different interpretations outlined in the administrative guidelines.[7]

Box 4.1. Israel's Circular introducing a "significant economic presence" test

For the purpose of making source determination under domestic law,[1] the Circular clarifies that online services provided by a non-resident enterprise from a remote location to in-country customers may create a taxable presence in Israel if these activities constitute a "*significant economic presence*" (SEP).[2] This domestic law measure applies only outside the scope of double tax treaties, when the supplier of the online services is resident in a country with no double tax agreement with Israel. The SEP test may be satisfied absent any physical activities in Israel, and is broadly defined by reference to factors of "*digital presence*" which include, but are not limited to.

- **Online contract conclusion**: a significant number of contracts are concluded online between the foreign company and Israeli customers;
- **Use of digital products and services**: the foreign company offers online services/products that are used by a significant number of Israeli customers;
- **Localised web site**: the foreign company employs a website with localised features targeted at the Israeli market (e.g., Hebrew language, local discounts and marketing, local currency and payment options);
- **Multi-sided business model**: the company generates significant revenue that is closely related to the volume of online activities performed by users located in Israel.

The wording of the Circular indicates that the listed "digital presence" criteria can be applied separately or cumulatively, with no revenue threshold requirement based on local sales. Where the test is satisfied, for the purpose of attributing profits, the Circular merely refers to the domestic rules based on the arm's length principle (i.e., analysis of functions performed, assets used and risks assumed). Also, it leaves unresolved the issue of whether any meaningful profits could be attributed to a taxable presence associated with little or no physical presence in terms of tangible assets and/or personnel.

1. Domestic nexus rules in Israel are generally not based on a strict PE-type of threshold, but refer more broadly to the location of the income-producing activities of an enterprise (Section 4A of the Income Tax Ordinance).

2. Administrative Circular No. 04/2016 (11 April 2016) released to clarify the circumstances in which a foreign enterprise engaged in online activities ("*activities via the internet*") may be liable to corporate income tax in Israel. While the circular provides comments on a broad range of rules relevant for the taxation of a non-resident enterprise (e.g., permanent establishment (PE) definition under tax treaties, registration for VAT purposes), the relevant provisions described in this section relate to the interpretation of the domestic nexus rule for corporate income tax purposes.

Box 4.2. India's new nexus based on a concept of "significant economic presence"

Several amendments to domestic nexus rules for corporate income tax purposes (i.e., the concept of "business connection in India") were recently introduced and are expected to become effective from 1 April 2019.[1] One of these amendments expands the domestic definition of nexus for business income by incorporating the concept of significant economic presence (SEP). The latter constitutes an alternative threshold allowing the taxation of the profits of a non-resident enterprise on a source basis irrespective of the level of physical presence of that enterprise in the taxing jurisdiction.

The legislation provides that a SEP of a non-resident enterprise can be characterised in two distinct situations:

- *A threshold based on local revenue*: "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", and
- *A threshold based on number of local users*: "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 create a direct tax liability in India irrespective of the location and/or residence of the taxpayer. Following a consultation with relevant stakeholders, further rules and implementation guidance are expected to clarify the elements of these two thresholds.

The tax base is expected to be limited to profit attributable to transactions or users connected to the SEP. To date, the legislation does not suggest any modifications to standard profit allocation rules, or clarify how profits will be attributed to a SEP associated with little or no physical presence (i.e., in terms of tangible assets and/or personnel). It clarifies, however, that any conflicting provision of double tax treaties (e.g., permanent establishment definition) would prevail over domestic nexus rules, including the concept of SEP. Also, the latter is likely to apply only to situations not covered by tax treaties (i.e., transactions with countries where there is no double tax treaty and abusive transactions such as some transactions involving conduit or shell companies) until such time as corresponding changes are made to double tax treaties concluded by India.

1. Union Budget 2018, Amendment to Section 9(1) of the Income Tax Act of 1961.

4.3.2. Other measures

353. Another relevant development related to digitalisation includes the minority view expressed by some countries that the requirement of physical presence is no longer relevant for the application of the "service PE" definition in Article 5(3) (b) of the UN Model Tax Convention (UN MTC).[8] A similar provision is not included in the OECD MTC itself.[9] The prevailing interpretation of the "service PE" rule contained in the UN MTC is that it operates on the basis of where the services provided by the non-resident enterprise are performed, and that a physical presence of the non-resident enterprise is

implicitly required in the source country, either through employees or other personnel engaged by the non-resident enterprise.[10] A minority view in contrast is that the term "furnishing of services" used in this treaty provision refers to services "used" or "consumed" in the source jurisdiction, and as such can include services performed from a remote location provided the other requirements of the PE definition are met (e.g., duration test).[11]

354. At the origin of this position lies the concern that digitalisation has facilitated the adoption of centralised sales and distribution models, where online services can be performed remotely without any material presence in the markets being served. This broad interpretation, sometimes referred to as the "virtual service PE", has been officially endorsed in Saudi Arabia,[12] as well as embraced by some case law decisions in some jurisdictions such as India.[13] The impact of this measure could potentially go far beyond online activities, and include any remote services supplied to a market (e.g., consultancy services, call centres). However, in the absence of any amendments to the tax treaty provisions themselves, these measures run the risk of being challenged by taxpayers before Courts.[14] So far, no information has been made available on the efficiency of these measures in terms of impact on taxpayer behaviour and/or tax revenue.

4.4. The use of withholding taxes

355. For items of passive income such as dividends, interest, and royalties, domestic laws and double tax treaties commonly use exceptions to the PE threshold to tax a non-resident enterprise that are based on alternative source rules (e.g., residence of the payer, place where the asset or service is used, place of performance etc.). Some of these exceptions are currently reflected in Articles 10 (Dividends), 11 (Interest) and 12 (Royalties) of the OECD Model Tax Convention. They create a specific distributive rule allowing the source state to impose a withholding tax on a gross basis with the residual right to tax belonging to the state of residence of the enterprise.

356. Recent developments across the world tend to show an increasing use of such exceptions in domestic law and double tax treaties for specific categories of digital products and services. The objective is generally to assert taxing rights for the source jurisdiction even when the non-resident enterprise has no physical presence in that jurisdiction. Further, the process of digitalisation has led to a greater blurring in the distinctions between business profits, royalties and technical services in some cases (e.g., cloud computing). This has increased the potential significance of these exceptions to the traditional PE threshold, and has exacerbated the risk of characterisation issues. For example, questions arise regarding whether infrastructure-as-a-service (IaaS) transactions should be treated as services (and hence payments characterised as business profits for treaty purposes), as rentals of space on the cloud service provider's servers by others (and hence be characterised as royalties for the purposes of treaties that include in the definition of royalties payments for rentals of commercial, industrial, or scientific equipment), or as the provision of technical services. The same characterisation issues arise regarding payments for software-as-a-service (SaaS) or platform-as-a-service (PaaS) transactions.[15]

357. Relevant measures in this area identified by the TFDE include, *inter alia*:

- Broadening of the withholding tax for royalties: Some countries have expanded their domestic definition of royalties subject to withholding on a gross basis by incorporating into that category items of income traditionally classified as

business profits in double tax treaties.[16] Such expansion includes, for instance, payments for the use or right to use software,[17] and payments for "visual images or sounds" transmitted through information and communication technology.[18] These definitions generally bring certain SaaS type of transactions within the scope of the withholding tax. Some corresponding changes have also been introduced in recently negotiated double tax treaties.[19] Separately, instead of just broadening the definition of royalties, the United Kingdom recently proposed legislation that would broaden the source definition in certain limited circumstances to enable the taxation of foreign-to-foreign related-party payments connected to local sales. The proposal is targeted at intra-group arrangements that achieve low effective tax rates through holding intellectual property in low or no tax jurisdictions and, if implemented, is expected to impact predominantly on more digitalised businesses.[20]

- Adoption of the withholding tax on fees for technical services: An increasing number of countries create an exception to the PE threshold for certain service fees in their domestic law and/or double tax treaties, allowing a withholding tax on a gross basis in the source country when the payer is resident in that country.[21] The OECD MTC does not contain this exception. It was recently added to the UN MTC as part of its 2017 update[22] in response to the fact that substantial services are now supplied without any physical presence in the source state.[23] The scope of this exception is typically limited to fees for technical services, generally defined as payments in consideration for the services of managerial, technical (i.e., requiring expertise in a technology), or of a consultancy nature. While this definition is not specifically targeted at digital products and services, it generally includes a broad range of cloud computing services (e.g. IaaS, SaaS etc.).[24]
- Introduction of new withholding taxes on other specific categories of income, such as income from online advertising[25].

358. Importantly, most of these measures were adopted or announced for domestic law purposes, and have not yet been translated into corresponding amendments to all (or a meaningful number of) double tax treaties. In practice, this entails that these measures will often be limited by the application of double tax treaties. Where applicable, such measures are usually easy to apply in business-to-business transactions, with relatively limited administrative and compliance costs for both taxpayers and the tax authorities. Collection issues arise, however, for business-to-consumer transactions, as private consumers have little incentive to declare and pay the tax due, and little experience performing tax withholding.

4.5. The use of turnover taxes

359. Recent developments indicate that a meaningful number of countries have taken actions outside the framework of income taxes to assert taxing rights over non-resident enterprises, such as foreign-based suppliers of digital products and services. These measures typically include sectoral turnover taxes targeted at (or including) revenue from online advertising services, such as India's Equalisation Levy (Box 4.3),[26] Italy's levy on digital transactions (Box 4.4), Hungary's advertisement tax (Box 4.5),[27] and France's tax on online and physical distribution of audio-visual content (Box 4.6).[28]

360. These measures are generally combined with broad nexus rules focused on the destination of the supplies, and generally apply both to resident and non-resident enterprises irrespective of their location (e.g., level of physical presence in the taxing

jurisdiction) and/or status.[29] For instance, France's turnover tax delineates the taxable transactions primarily on the basis of their final destination, such as the location of the "public audience" (i.e., viewers) for the online supply of digital content. Similarly, the scope of the advertisement tax in Hungary is ultimately dependent on the location of the targeted public. For online activities, this location is deemed to be in Hungary when the advertisement is displayed predominantly in the Hungarian language. Also, under both tax regimes a tax liability may arise in situations where the payment is made for the display of advertisements to in-country internet users (e.g., online multi-sided platforms), irrespective of the location or residence of the payer and of the supplier. This covers the situation where for example a subsidiary A of a multinational group (resident in country A) buys online advertisement services from the subsidiary of an advertising group (resident in country B) and the online advertisement is targeted to customers in country C (the taxing jurisdiction). In contrast, the scope of the levies adopted by India and Italy are dependent on the location of the payer – i.e., typically a business resident in the taxing jurisdiction – and as such would not cover such situations.

361. In addition, these measures share another important common policy objective. They all seek to improve neutrality by restoring a level playing field between foreign suppliers of certain digital goods and services and similar domestic suppliers, as well as between suppliers of certain digital goods and services and more conventional, brick and mortar suppliers of competing goods and services. Hungary's tax applies to a broad list of advertising services, irrespective of the medium used for their broadcast to the public (e.g., TV and radio, printed newspapers, outdoor billboards, internet websites). Similarly, the turnover tax in France applies to all forms of distribution of audio-visual content, irrespective of their medium (e.g., physical videotape, online streaming) or revenue model (e.g., advertising-based revenue, subscription-based revenue, purchases or rentals). India's Equalisation Levy pursues the same objective, but targets a rather narrow class of digital transactions: online business-to-business advertising services. By design, such narrow scope may fail to achieve neutrality in its treatment of the taxation of digital services more generally (i.e., advertising versus non-advertising digital services, and business-to-business versus business-to-consumer digital services), and lead in some cases to unequal treatment between economically equivalent digital transactions. Italy's levy on digital transactions may be affected by similar limitations depending on the list of transactions that will be effectively covered. Finally, it should be noted that for all these measures, depending on market conditions, there is a risk that a share of the tax burden will be passed on from the supplier to the customer.

362. These measures generally face a number of administrative and compliance issues, particularly in relation to the challenge of trying to collect tax from foreign-based entities that are not located (i.e., physically present) in the jurisdiction of taxation. To address this challenge, these regimes generally introduce a joint liability for the local paying customer (Box 4.3, Box 4.4 and Box 4.5), or create specific reporting requirements on locally-based intermediaries (Box 4.6). To date, according to the limited information currently available, the levels of revenue collected from these measures appears to have been quite modest.[30]

Box 4.3. India's Equalisation Levy

India's Equalisation Levy (EL) is a separate tax that was introduced in 2016, which draws upon some features of the options described in the 2015 BEPS Action 1 Report (notably the "Equalisation Levy"). It effectively works as a 6% charge deducted from the gross amount of consideration paid for the provision of online advertisement services by non-residents. The tax base is the value of the covered transactions, not the income generated by them. It is therefore a gross-based tax or equivalently a turnover tax limited to revenue from online advertisement services supplied by non-residents.

It applies only under the following conditions:

- First, the payment must be made by a business located in India (hereafter, the "payer") to a non-resident enterprise (hereafter, the "payee"). This implies that the EL is only charged on cross-border business-to-business transactions (B2B).
- Second, the payment must be made in consideration for certain listed transactions, such as online advertising and any provision of digital advertisement space. Noteworthy, this list of transactions covered can be expanded by notification from the central government.
- Third, an exemption is available if the total consideration paid by the payer over a year does not exceed a revenue threshold equal to INR 100 000 (equivalent to about USD 1 500 or EUR 1 400).
- Finally, an exemption is also available if the specified services are effectively connected to a permanent establishment (PE) of the payee in India. No payment can be subject to both the EL and India's corporate income tax. This exemption does not, however, necessarily apply to foreign MNEs that adopt a local sales model – i.e., recognition of the advertising revenue in a local reseller (subsidiary or PE) subject to corporate income tax in India. This is because the EL is not restricted to sales of online advertising services to ultimate purchasers, and as such applies to both cross-border intra-enterprise dealings (i.e., between a PE and its head office) and intra-group transactions.

The legal liability of the EL is imposed on the non-resident payee. Nonetheless, the EL is collected by the payer (i.e., the local business in India), who is responsible for remitting the tax to the central government in the month that follows the payment. In contrast, no compliance requirements apply to the non-resident payee.

The EL is not classified by the Indian legislation as a tax on income, but rather as a transaction-based tax that applies to the "amount of consideration" received. As a result, it is unlikely to give rise to double tax relief in another jurisdiction under domestic law or a double tax treaty, and may generate situations of double taxation for foreign enterprises already liable to corporate taxes in their country of residence.

For the period covering June 2016 to March 2017, the Indian government reported that revenue from the EL amounted to approx. 3.4 billion Indian Rupees, which corresponds to around EUR 52 million and USD 47 million.

Box 4.4. Italy's Levy on Digital Transactions

The Levy on Digital Transactions ("LDT") is a transaction-based tax proposed by the Parliament and adopted in 2017. It applies to both resident and non-resident enterprises and is expected to become effective from 1 January 2019.[1] The stated objective is to restore a level playing field between suppliers of digital services and other suppliers of more "conventional" services, by taxing digital transactions whose value, generated by users and user-generated content, is currently not captured (or at least is only partially captured) by existing corporate tax rules. Some parallels can be drawn with the "Equalisation Levy" described in the BEPS Action 1 Report.

The LDT is imposed at a rate of 3% on the "value" of the taxable transactions, i.e., the amount of consideration paid (net of VAT) in exchange for the provision of digital services supplied electronically. The taxable transactions are defined as services delivered over the Internet or an electronic network and the nature of which means that their supply is essentially automated, involves minimal human intervention, and is impossible to complete without information technology.[2] A specific list of taxable transactions will be provided by a forthcoming decree expected to be issued by 30 April 2018.

Focused on the destination of the supplies, the LDT applies only to transactions concluded with customers resident in Italy (including permanent establishments in Italy of non-resident enterprises), other than certain defined small businesses[3] and private individuals, i.e., only business-to-business transactions (B2B).[4] In contrast, the place where the transaction is concluded, together with the residence and/or location of the supplier, is irrelevant.

The tax liability rests formally on the supplier of the taxable transactions, irrespective of its location and/or residency.[5] This includes typically domestic and foreign-based online platforms supplying B2B services to Italian customers. An exemption is, however, available for suppliers that contract no more than 3,000 taxable transactions in a calendar year (i.e., minimum activity threshold). In contrast, the responsibility to collect the tax falls on the Italian customer. The latter withholds the tax when the payment for the service is made and remits it to the tax authorities on the 16th day of the month that follows the payment, unless the supplier declares on the invoice (or other similar documents) that the threshold of 3 000 transactions has not been exceeded.

Importantly, the LDT is not creditable against any other Italian taxes due by the taxpayer (e.g. CIT, local taxes, wage taxes),[6] and does not cover non-monetary transactions (e.g., online platforms with advertising-based revenue models), B2C transactions, and supplies of goods. Domestic-based suppliers will, however, be able to deduct the tax from their domestic corporate tax base, while deductibility for foreign suppliers will depend upon corporate tax rules of other countries. Designed as a transaction-based tax, it should apply to domestic and foreign-based suppliers of online services irrespective of their level of physical presence in Italy and should fall outside the scope of double tax treaties. The estimated revenue of the LDT is EUR 190 million per year (circa USD 235 per year).[7]

1. Paragraphs 1011-1019 of the Article 1 of the Law 205/2017.

2. Article 1, paragraph 1012 of Law No. 205 of 27 December 2017. This definition resembles the definition of electronically supplied services for VAT purposes contained in article 7 of Council Implementing Regulation (EU) No. 282 of 2011.
3. An exclusion is provided for transactions involving an enterprise that qualifies for or has opted for the special tax regime available to certain small enterprises (Article 1, paragraphs 54-89 of Law No. 190 of 2014).
4. Article 1, paragraph 1011 of Law No. 205 of 27 December 2017.
5. Article 1, paragraph 1013 of Law No. 205 of 27 December 2017.
6. The legislation proposed by the Senate initially included a provision allowing for the deduction of the levy against the Italian corporate income tax and social security contributions. This was removed from the final legislation approved by the Parliament.
7. Official Government revenue estimates accompanying the Draft Budget Law for 2018.

Box 4.5. Hungary's advertisement tax

The tax applies to the net sales revenue (exclusive of VAT) of both resident and non-resident enterprises arising from the sale of advertisement time or space in Hungary. The taxable transactions include a broad list of advertising services defined by reference to the various media used for their broadcast to the public (e.g., TV and radio, printed newspapers, outdoor billboards, vehicles, real estate, and internet websites).

In terms of establishing nexus with Hungary, the legislation is focused on the destination of the advertisement and the location of the targeted public. Different proxies apply depending on the type of advertisement concerned. Looking at the particular case of online advertising, for example, nexus is established when the advertisement is displayed predominantly in the Hungarian language, irrespective of the location of the publisher and of the advertiser.

The tax liability rests primarily on the supplier of the taxable transactions, who must register with the tax authorities and fulfil all the compliance requirements. The supplier is generally the publisher of the advertisement – e.g., media content and service providers, publishers of press products and web publishers – irrespective of its location, residence or status.

Also, to improve the collection and enforcement of the tax, including among foreign-based publishers with no physical presence in Hungary, a secondary tax obligation can also arise at the level of the customer (i.e., usually the local advertiser). The latter is liable to the advertisement tax if they cannot provide to the tax authorities a formal declaration from the primary taxpayer (i.e., the publisher) in which the latter recognises its tax liability and commits to comply. This is not a reverse-charge mechanism, as the secondary tax obligation cannot settle or extinguish the primary tax obligation.

Initially the tax incorporated a very progressive tariff. However, following the decision by the European Union (EU) Commission to investigate the tax for its compatibility with the EU State aid rules, the measure was amended in July 2015 to replace the progressive tariff by a 0% rate up to HUF 100 million (circa EUR 320 000) of turnover and a 5.3% rate for the excess. After the EU Commission decision regarding the incompatibility of the first version of the tax with EU State aid rules, Hungary raised, on a temporary basis, the marginal rate of the tax from 5.3% to 7.5% to finance the costs associated with the recovery of the unlawful state aid. This rate applies only to the primary tax obligation. The secondary tax obligation, where applicable, is determined by applying a 5% rate to the monthly actual costs (excluding VAT) generated by the taxable transactions in excess of HUF 2.5 million (circa EUR 8 000).

To date, the local tax authorities have reported relatively low levels of compliance of non-resident enterprises with the measure and, consequently, no meaningful tax revenue.

Box 4.6. France's tax on online and physical distribution of audio visual content

To finance its domestic movie and audio-visual production, France introduced in 2003 an indirect tax targeted at sales and rentals of "videograms" (i.e., a physical object containing audio-visual content, such as a videotape or DVD). This tax may apply to both resident and non-resident enterprises. In 2004, with the rise of electronic commerce, the scope of the tax was extended to online video-on-demand services where movies and audio-visual content are accessed through electronic communications in exchange for a payment. In 2016, to accommodate the growing importance of advertising-based revenue models, the tax was further extended to online video-on-demand services provided for free but monetised through the advertisements displayed to the viewers. On that occasion, the designation of the tax was also changed to "Tax on the online and physical distribution of audio-visual content" (also regularly referred to as the "YouTube tax" in the media).

The tax is imposed at a flat rate of 2%, increased to 10% for movies and audio-visual content containing "pornography" or "incitement to violence". It effectively works as a retail tax on the value of a number of defined transactions concluded with final customers. The taxable transactions include sales and rentals of videograms, together with online video-on-demand services where access to movies and audio-visual content is made available through electronic communications. The objective is to capture all types of distribution models, irrespective of their medium (e.g., videogram, online platforms etc.).

In terms of establishing nexus with France, the tax is generally focused on the destination of the related supply. In the case of the sale and rental of videograms, the tax liability arises if the place of performance of the sale or service is in France. In the case of online video-on-demand services, the tax liability arises if the "audience" (i.e., a person viewing the content not liable to VAT) is located in France (i.e., an Internet user established, domiciled or usually resident).

In contrast, the location, residence or status of the supplier of the covered transaction is irrelevant. Nevertheless, the supplier constitutes the taxpayer and has the responsibility to report and remit the tax. Typical taxpayers include domestic or foreign-based suppliers renting or selling videos in France, or providing online video-on-demand services to users located in France. For example, the legislation makes an explicit reference to online platforms – whose activity is to host, transmit and index digital content for a large audience – as a potential taxpayer irrespective of their tax residence or physical location. Also, as a way to encourage foreign taxpayers with no physical presence in France to comply with these rules, specific reporting requirements apply to advertising intermediaries based in France regarding payments received from advertisers or sponsors.

The tax base is composed of two elements:

- The consideration paid (exclusive of VAT) for the purchase, rental or access to online audio-visual content; and/or
- The consideration paid (including through an advertising intermediary) for the display of advertisements and/or sponsorships linked to a particular

online audio-visual content. Before such consideration is subject to the tax, the taxpayer is allowed a deduction of 4% allowance (increased to 66% where the audio-visual content is created by private users for the purpose of sharing and exchanging among members of a community sharing interests), and only the remaining amount in excess of EUR 100 000 is subject to the tax (de minimis rule).

The second component of the tax base was introduced in 2016 to capture multi-sided business models that monetise data collected from a French audience through advertising opportunities, and ensure a level playing field between economically equivalent transactions irrespective of their revenue model (e.g., advertising-based revenues, subscription-based revenues, purchases or rentals).

Given the recent entry into force of this measure, no information is available yet on the amount of tax revenue collected.

4.6. Specific regimes targeting large MNEs

363. Another category of relevant measures observed across the globe includes more general legislative responses that either create new administrative regimes aimed at restoring a balance of power between the tax authorities and large MNEs, or introduce specific anti-abuse rules to address excessive use of base eroding payments by large MNEs. Rapid digitalisation, its impact on all business models and the ever-more complex tax planning structures implemented by large MNEs[31] are among the main challenges faced by tax authorities worldwide. In this context, a number of countries have introduced specific regimes targeted at large MNEs, such as the Diverted Profits Tax (hereafter, collectively referred to as the "DPT") in the United Kingdom and Australia[32] (Box 4.7 and Box 4.9),[33] the enhanced procedure for cooperation and collaboration for PE in Italy[34], and the base erosion and anti-abuse tax (BEAT) in the United States (Box 4.10). While these new regimes have not been exclusively targeted at highly digitalised businesses, some of the situations that they are targeted towards are relevant for some digitalised businesses.

364. Although the DPT has been designed in some countries as a separate tax, it effectively works as a deterrent complementary to the existing legislative body of anti-abuse rules for income tax purposes. Relatedly, the DPT measures introduced in some countries are tied to the existing international standards on nexus and profit attribution (e.g., dependent agent PE, arm's length principle and transfer pricing rules), and do not expand the coverage of the income tax base. One of the principal objectives of these regimes is to increase the information available to the tax authorities in situations presenting significant tax risks – typically trade structures involving remote sales to avoid the recognition of a PE, or intra-group base eroding payments[35] – and require large MNEs to be more transparent about their global value chain (including in relation to transactions and activities conducted by overseas related entities). One of the key aspects of these measures is their unique administrative regime: a 12-month "review period" during which a dialogue takes place between the tax authorities and the taxpayer, and the latter is encouraged to consider the appropriateness of its tax arrangements and, where necessary, restructure its operations to better reflect the operational realities.[36] This regime usually improves the level of compliance of large MNEs that have an incentive to engage in

aggressive international tax planning strategies, and restores a level playing field with more conventional businesses or SMEs that operate mostly at the domestic level.

365. To date, countries that have implemented a DPT measure have reported positive results in terms of revenue, notably additional corporate tax raised as a result of income tax adjustments and behavioural changes (Box 4.7 and Box 4.8). At the same time, like other anti-abuse rules, the DPT is technically a relatively more complex regime and highly fact-dependent. To reduce uncertainty and ensure the efficient application of the measure, its implementation has required significant investments in terms of resources from the tax authorities (including skilled and experienced personnel). For example, the issuance of a DPT liability is typically subject to a strict governance process, which requires several levels of oversight, senior executive sign-off and additional safeguards (e.g., endorsement from an independent panel etc.). Efficient safeguards are generally required to ensure that the measure is applied in a manner proportionate to the risks involved, and it is likely that the effectiveness of these regimes is to be enhanced in those jurisdictions where there is a history of cooperative relationships between the tax authorities and the taxpayer. Finally, compliance costs for taxpayers associated with the measure can be important, for instance in terms of economic costs associated with restructurings (e.g., conversions to reseller models).

366. Like the DPT, the BEAT adopted in the United States (US) is not targeted specifically towards highly digitalised business models, but applies more generally to MNEs with large operations in the United States. It works as a minimum corporate income tax. This result is achieved through a formula which involves the disallowance of deductions for a range of outbound payments – mainly interest, royalties, rents and certain services. While implementation is still in progress, the projected revenue generated by the BEAT over the next 10 years is estimated at approximately USD 149.6 billion (circa EUR 119.7 billion).

Box 4.7. The United Kingdom's Diverted Profits Tax

The United Kingdom's Diverted Profits Tax (DPT) is a distinct tax, levied at a rate of 25% (i.e., higher than the standard corporate tax rate of 19% in 2017), limited in scope to profits that are considered to be artificially diverted from the United Kingdom.[1] It is combined with a very specific administrative regime, based on a 12-month review period during which a dialogue needs to take place between the taxpayer and the tax authorities to determine the final tax liability. Profits diverted from the United Kingdom are identified according to two basic rules: an avoided permanent establishment (PE) rule and an alternative provision rule.[2] These rules potentially cover a broad range of BEPS arrangements, and are not confined to structures used by highly digitalised businesses.

The avoided PE rule

This aspect of the DPT is focused on non-resident companies that have entered into artificial arrangements to avoid a UK permanent establishment. It is combined with a high sales threshold to limit its impact (and compliance regime) to large MNEs.[3] It draws on some elements of the traditional PE definition for income tax purposes, and shares some common policy objectives with the recent changes proposed to the PE definition under BEPS Action 7.

It is designed to target a specific type of trade structure: the use of an overseas "billing company" supported by personnel based locally (typically a local subsidiary or branch),[4] with the aim of remotely supplying goods and services to final customers directly from the overseas "billing company" rather than from the local subsidiary or branch carrying on the substantive sales activity. Such arrangements are generally characterised by local employees engaged in the sale of products and services to local customers but with the contracts signed overseas. The purpose of the structure is to supply goods and services to in-country customers with the help of locally based activities without creating a dependent agent PE in that country. They are, in practice, often available to businesses providing digital goods and services. The structure falls within the scope of the DPT if it is reasonable to assume that "*one of the main purposes*" of the arrangement in connection to the inbound supplies - i.e., the activity of the person in the United Kingdom, or of the non-resident company, or both - is to avoid a PE in the United Kingdom and to pay local income tax.

If applicable, the measure enables the taxation of the foreign entity that carries on the supplies as if it was carrying on its trade through a PE in the United Kingdom. The tax base must be determined in accordance with standard income tax rules, including transfer pricing, "*on the basis of the best estimate that can reasonably be made*" by the tax authorities at the time of issuance of the charging notice, but subject to review and amendment during a 12 month "review period".[5] In addition, the alternative provision rule of the DPT may apply to deny totally or partially the deduction of a base eroding payment incurred by the foreign entity,[6] together with a 25% charge in lieu of withholding tax on royalty payments made by the non-resident taxpayer in connection with the "avoided PE", subject to any limitations applicable under double tax treaties.

The alternative provision for intra-group transactions

This aspect of the DPT draws on some elements of the transfer pricing rules regarding re-characterisation. It is focused on intra-group transactions (typically involving licensing or

transfer of IP, leasing of equipment, and management services) that involve UK resident companies or non-UK resident companies with a permanent establishment or an avoided permanent establishment.[7] These arrangements are in practice used by MNE groups across all sectors of the economy.[8] The alternative provision rule may apply to both excessive deductions (e.g., base eroding payments) and understated income (e.g., transfer of assets for an undervalued price, charging of unduly low service fees), in situations where the two following requirements are met:

- The "effective tax mismatch outcome" and "80% payment test": the excessive deduction or income diverted from the United Kingdom is subject to a foreign tax liability lower than 80% of the reduction in UK tax resulting from the expense or reduction in income (i.e., the tax benefit);[9] and
- The insufficient economic substance test: it is reasonable to assume that the arrangement is designed to achieve the tax benefit and the tax benefit from the arrangement exceeds other financial benefits.[10]

To assess the tax base, the arrangement under review may be entirely disregarded if it is reasonable to assume that the transaction would not have been concluded in the absence of the tax benefit.[11] When assessing an initial DPT liability (the charging notice), the relevant payment may also be subject to a 30% disallowance if it is "*reasonable to conclude*" that the expense was inflated in light of the arm's length principle. Any final DPT liability charged at the end of the review period, however, will be based on the arm's length principle.

Common features and objectives

The design features described above indicate that the primary objective of the DPT is not to generate a distinct tax liability, but to act as a deterrent and increase compliance with income tax rules. This is corroborated by the fact that in many cases the DPT liability, calculated at the higher 25% rate, can be substituted by a transfer pricing re-assessment for corporate tax purposes during the 12-month review period. The related tax liability will then be calculated at the 19% standard corporate income tax rate.[12] This creates a strong incentive for large MNEs to avoid coming within the scope of the DPT and pay additional income tax, usually by changing their trade structures (e.g., adopting a local reseller model, such as a local buy-sell subsidiary) and/or self-adjusting their transfer pricing arrangements to fully reflect profits arising from UK economic activity.

Further examination of the measure indicates that the DPT is also, if not primarily, a unique administrative regime designed to incentivise large MNEs to be more transparent and cooperative with the tax authorities. The assessment process, which includes a 12 month review period, is characterised by:

- (i) the upfront payment of the DPT liability with no possibility for suspension or deferral (so-called "*pay first, argue later*" approach);[13]
- (ii) the flexibility of the tax authorities in applying the DPT provisions up until the end of the review period ;[14]
- (ii) the onus is on the taxpayer who is expected to challenge the "*best estimate*" of the tax authorities by providing timely and relevant information during the review period; and
- (iii) the interaction with transfer pricing and the possibility in many situations to make transfer pricing adjustments at any time during the review period and

thereby avoid facing a DPT liability.[15]

Taken together, these enhanced powers of the tax authorities are expected to encourage large MNEs to disclose relevant information in a timely manner on some high risk transactions for transfer pricing purposes. This includes, in particular, information on transactions and activities conducted by overseas related entities that are part of the same value chain as the UK entities. In this respect, the DPT facilitates an analysis of the global value chain of large MNEs on a consolidated basis for transfer pricing purposes, and shares common policy objectives with Actions 12 and 13 of the BEPS project.

Further considerations

The local tax authorities reported that a great majority of MNEs potentially within the scope of the DPT have already taken or are expected to take the necessary steps to avoid the DPT liability (and the associated uncertainty), including by changing their trade structure or disclosing relevant information in a timely manner.[16] These improvements in terms of tax transparency are likely to significantly accelerate the resolution of transfer pricing disputes, to increase compliance with income tax rules, and ultimately to increase revenue collection.

To date, it has been reported that the revenue collected as a result of the DPT in the United Kingdom has totalled GBP 31 million (circa EUR 38 million and USD 46 million) in 2015/16 and GBP 281 million (circa EUR 330 million and USD 376 million) in 2016/17, including additional amounts of corporation tax raised as a result of behavioural changes.[17] In the latter year, of the GBP281 million (circa EUR 330 million and USD 376 million), the amount raised from issuing DPT charging notices was GBP 138 million (circa EUR 162 million and USD 185 million).[18]

1. Designed as a separate tax, the DPT is intended to fall outside the scope of double tax treaties, and as such is unlikely to give rise to double tax relief in another jurisdiction. However, the DPT provides its own relief mechanism for double taxation, by granting a credit for any UK or foreign income tax paid on the same profit (including a CFC charge) within a set time limit.
2. The alternative provisions rule enables to consider a reasonable alternative postulate to the arrangement set-up by the taxpayer, in accordance with the income tax rules and the arm's length principle. It shares common features with "non-recognition" or "re-characterisation" rules, to the extent that it enables in some cases to undo a set of transactions set-up by the taxpayer and to reconstruct another arrangement that is more consistent with the economic substance of the operations.
3. A personal exemption is available for resident and non-resident companies that do not meet the domestic SME definition. In addition, regarding the PE avoidance rule, the UK-related annual sales must exceed £10 million (circa. EUR 11 million), or UK-related annual expenses must exceed £1 million (circa EUR 1.1million).
4. A person (i.e., a UK resident or the UK PE of a non-resident) carrying out activity in the United Kingdom "in connection" with the Supplies is required for the rule to apply (i.e., a local business activity connecting factor). No participation condition is required, but an exemption is available if the person in the United Kingdom is an agent of independent status.
5. In calculating the profits attributable to a foreign entity as a result of an avoided PE, it would be necessary to determine and deduct an arm's length reward to the UK entity (or PE) for the services it provides to the foreign entity. The legislation does not clarify whether any profit would remain attributable to the avoided PE once an arm's length reward has been paid to the UK entity (or PE).
6. The transactions between the foreign entity and related parties may be relevant to the calculation of the profits of the avoided PE of the foreign entity. Specifically, where payments made by the foreign entity to another related entity come within the scope of the alternative provision rule (by failing the sufficient economic substance test), the profits of the avoided PE are determined as if the foreign entity had not entered into the profit stripping transaction.

7. This aspect of the DPT applies only to intra-group transactions or series of transactions (the so-called "material provision") concluded by a UK resident (or UK PE) with a related person (non-resident or UK resident). An exemption is provided for loan relationships (i.e., interest payments;
8. As a result the impact of the DPT is not limited to highly digitalised businesses, but covers potentially all traditional industries as well (BBC NEWS, 2017[1]).
9. The relevant measure is based on a computation of the foreign income tax liability in relation to the arrangement by the taxpayer and/or any other involved related entity, not the statutory tax rate. Some "qualifying" loss reliefs and deductions at the level of the related person are disregarded for this calculation.
10. The "other financial benefits" from the arrangement that can be measured and balanced against the tax benefits are intended to be broad in scope (e.g., economies of scale and scope, group synergies, non-tax location specific advantages such as legal framework, local know-how, lower labour cost). For example, the guidance provided by the tax authorities states "*It is not the amount of the transaction, or the value of whatever is bought or sold through it, that is being tested with reference to the amount of the tax reduction. The question is rather what non-tax economic value the particular transaction generates and whether that is greater than the tax reduction. In that sense it is a test of the commerciality of the transaction, the value it adds taking into account both its direct and indirect effects, and whether it is entered into mainly for tax or other, commercial reasons*." (DPT 1191 (HM Revenue & Customs, 2015[2])).
11. This is an additional requirement posed by the non-recognition rule which is based on a counterfactual analysis of options realistically available to the taxpayer.
12. Section 83 of the Finance Act states that a DPT liability can be displaced by a "*full transfer pricing adjustment*" if "*all of the company's diverted profits for the accounting period are taken into account in an assessment to corporation tax included, before the end of the review period, in the company's company tax return for the accounting period*".
13. The DPT liability must be paid "upfront" within 30 days following the issuance of the charging notice, with no possibility for appeal, suspension or deferral during the review period (i.e., "pay first, argue later" approach). An appeal can be submitted by the taxpayer within 30 days after the notification of the final charge.
14. The provisional tax basis giving rise to a DPT charging notice will be calculated according to the "*best estimate that can reasonably be made*" by the tax authorities in accordance with the arm's length principle, and the taxpayer has no possibility to challenge that assessment before a Court up until the end of the review period.
15. During the review period, based on new information received from the taxpayer, the tax authorities can issue a "supplementary" or "amending" DPT charging notice, as well as make an amended income tax assessment. Also the final DPT charge may change upwards or downwards, including by reducing the charge to zero.
16. The UK tax authorities reported that they have received 48 and 145 DPT notifications in 2015/16 and 2016/17, respectively (HM Revenue and Customs, 2017[3]). The obligation to notify however does not necessarily translate into a DPT charge or a change of tax behaviour. During 2015/16, the UK tax authorities did not issue any DPT preliminary or charging notices, while in 2016/17 they issued 16 DPT preliminary notices and 14 DPT charging notices.
17. These behavioural changes can be the result of an inquiry into the taxpayer's affairs on the basis of the DPT (e.g., self-adjustments during the DPT review period), or the result of spontaneous changes by the taxpayer. The additional revenue from the latter can only be estimated by the relevant tax authorities.
18. The full amounts of tax revenues can be found in the HMRC Annual Report and Accounts 2016/17 (HM Revenue and Customs, 2017[4]). Information on the methodology used to estimate the additional corporate tax revenue can be found in another report (HM Revenue and Customs, 2017[5])

Box 4.8. Australia's Multinational Anti-Avoidance Law

Australia's Multinational Anti-Avoidance Law (MAAL) is an anti-abuse rule for corporate tax purposes adopted in the context of a significant debate in Australia on the level of taxes paid by MNEs.[1] It replicates aspects of the United Kingdom's DPT related to permanent establishment (PE) avoidance, and shares common policy objectives with the recent changes proposed to the PE definition under BEPS Action 7.

The measure works as a PE anti-avoidance rule limited in scope to non-resident enterprises belonging to large MNEs.[2] It is designed to target a very specific type of trade structure: the use of an overseas company (so-called "billing company"), supported by locally based personnel (typically a local subsidiary),[3] with the aim of remotely supplying goods and services to final customers located in Australia. These trade structures are characterised by local employees effectively engaged in the sale of products and services to local customers, where the contracts are signed overseas. The purpose of the structure is to supply goods and services to Australian customers while limiting the tax paid by the MNE group in Australia, such as avoiding the creation of a dependent agent PE in that country. These structures are, in practice, often available to businesses providing digital goods and services. The structures fall within the scope of the MAAL if some or all of the income generated by the inbound supplies is not attributable to an Australian PE, and it is reasonable to conclude that the "principal purpose" of the arrangement is to obtain the related tax benefit (or a tax benefit together with a reduction in foreign taxes).[4]

If applicable, the measure results in the cancellation of the tax benefit obtained by the MNE through a re-characterisation of the arrangement to recognise what would have reasonably been expected to occur had the current scheme not been entered into. Typically, this will result in the income being allocated to a deemed PE of the foreign entity in accordance with the traditional PE definition (e.g., Article 5 of the OECD MTC). Where a PE is deemed, the net profits attributable to the deemed PE are determined in accordance with the arm's length principle.[5] In addition, a 30% gross-based withholding tax may apply on any royalty and/or a 10% gross-based withholding tax may apply on any interest considered as outgoing from the deemed PE,[6] together with an additional penalty of up to 100% of the tax avoided (or 120% if aggravating factors are present).[7]

Coupled with the penalty, the measure is targeted at deterring certain taxpayer behaviours, such as the use of trade structures involving remote sales of digital products and services. To date no reassessment has yet been issued on the basis of the MAAL, but local tax authorities have reported that approximately 38 taxpayers have restructured or are restructuring their trade arrangements in response to this measure, .e.g., by moving to a local sales structure (buy-sell distributors).[8]

To date, based on aggregate income available from MNEs that have reorganised their trade structures in Australia in response to the MAAL, the local tax authorities have estimated that an additional AUD 100 million (equivalent to around EUR 72 million and USD 77 million) in corporate tax revenue will be collected each year, corresponding to the reallocation of about AUD 7 billion (equivalent to around EUR 5 billion and USD 5.4 billion) in tax base to Australia per year.

1. The MAAL is laid down in Section 177 DA of the Income Tax Assessment Act (1936).

2. The personal scope of the measure is limited to non-resident enterprises that are members of a MNE that is globally significant (i.e., AUD 1 billion or more in global or group/consolidated annual income, circa EUR 720 million).
3. A local "associated" or "commercially dependent" entity (usually a subsidiary or PE) that conducts activities "directly in connection" with the supplies is required for the rule to apply (i.e., a local business activity connecting factor).
4. This purpose test is intended to be a lower threshold than the existing "sole or dominant purpose" test that applies under the Australian GAAR. Noteworthy, one of the relevant factors in determining the purpose of the arrangement is whether the inbound supplies are subject or not to a meaningful corporate tax liability in another jurisdiction.
5. The tax base is determined under standard corporate tax rules, with appropriate deductions on the sales income that is attributable to the PE. Also, in calculating the profits attributable to the avoided PE it would be necessary to determine and deduct an arm's length reward to the Australian entity (or PE) for the services provided to the foreign entity.
6. Subject to lower rates available under an applicable tax treaty or domestic exemption.
7. The tax authorities have the power to reduce or waive the penalty.
8. The term local "buy-sell distributor" refers to a reseller which takes title to the goods or services being sold to local customers. This creates a local point of revenue recognition, as the sales revenue generated by transactions with local customers will be reported in that entity's local financial statements and tax return. In addition, a "buy-sell distributor" typically bears the risks associated with buying, holding and selling the products.

Box 4.9. Australia's Diverted Profits Tax

Australia's Diverted Profits Tax (DPT) Act was adopted in April 2017 as a complement to existing anti-abuse rules for income tax purposes.[1] The measure may apply to both resident and non-resident enterprises, and works as an alternative provision rule[2] limited in scope to large MNEs[3] and intra-group cross-border transactions. These transactions typically involve licensing or transfer of intellectual property (IP), leasing of equipment, loans, and management services.[4] The alternative provision may apply to both excessive deductions (e.g., base eroding payments) and understated income (e.g., transfer of assets for an undervalued price, charging of unduly low service fees), provided that the arrangement was set-up for the "*principal purpose of, or for more than one principal purpose of*" securing this tax benefit.[5] The tax authorities' ability to make a determination of the principal purpose is not prevented by the lack of, or incomplete, information provided by the taxpayer. Similarly, the tax authorities are not required to actively seek further information to reach a conclusion on the purpose of the arrangement.

To mitigate the risks and uncertainties inherent in a purpose test, a number of safe harbours were introduced to improve the predictability of the application of the DPT for taxpayers. Specifically, an exemption is available for arrangements that meet one of the following requirements:

- The *de minimis* threshold: the total sum of the income of the local taxpayer, the diverted profit and any other Australian source income of the MNE group of which the local taxpayer is a part, does not exceed AUD 25 million (equivalent to around EUR 16 million and USD 19 million);
- The economic substance test: it is "reasonable to conclude" that 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;[6] or

The sufficient foreign tax test: it is "reasonable to conclude" that 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. This is broadly equivalent to a foreign tax rate higher than 24% levied on base eroding payments.[7]

The tax base corresponds to the tax benefit of the arrangement, determined by the tax authorities relative to an arrangement that would have taken place if tax wasn't a motivating factor. This may for instance be based on a total or partial assessment of some base eroding payments on the basis of the arm's length principle (e.g., interest, royalties, and management fees). This tax base is subject to a punitive tax rate of 40% (instead of the 30% standard corporate tax rate), but the tax authorities have discretion to permit a substitution between a DPT liability and an amended increased corporate income tax liability, calculated at the lower standard rate. The measure is essentially designed to work as a deterrent and improve compliance with corporate tax rules. Large MNEs are encouraged to avoid the DPT by self-adjusting their income tax arrangements and paying the lower corporate tax rate. In this respect, the DPT shares common policy objectives with the revised transfer pricing guidelines under BEPS Actions 8-10.

Further examination of the measure indicates that the DPT is also, if not primarily, an administrative regime designed to incentivise large MNEs to be more transparent and cooperative with the tax authorities. The assessment process, which includes a 12 month

review period,[8] is characterised by:

(i) the upfront payment within 21 days of assessment of the DPT liability with no possibility for appeal, suspension or deferral up until the end of the review period which is by default 12 months but can be shortened on taxpayer request (so-called "pay first, argue later" approach),[9]

(ii) the flexibility of the tax authorities in the application of the income tax rules up until the end of the review period,[10]

(iii) the onus is on the taxpayer who is expected to challenge the estimation performed by the tax authorities by providing timely and relevant information during the review period, and

(iv) the linkages with income tax adjustments, which may be substituted at any time during the review period to a DPT liability.[11]

Taken together, these enhanced powers of the tax authorities are expected to encourage large MNEs to disclose relevant information in a timely manner on some high risk transactions for income tax purposes. This includes, in particular, information on transactions and activities conducted by overseas related entities involved in the same value chain as the Australian entities. In this respect, the DPT facilitates an analysis of the global value chain of large MNEs on a consolidated basis for income tax purposes, and shares common policy objectives with Actions 12 and 13 of the BEPS project.

The Australian Government expects the DPT to raise AUD 100 million in revenue a year in 2018-19 and 2019-20 (equivalent to around EUR 72 million and USD 77 million). This estimate includes revenue from the DPT and also additional corporate income tax revenue.

1. The DPT Act constitutes an expansion of Part IVA of the Income Tax Assessment Act 1936 laid down in Sections 177H to 177R.
2. The DPT operates usually by considering a reasonable alternative postulate to the arrangement set-up by the taxpayer, in accordance with the income tax rules and the arm's length principle. It shares common features with "non-recognition" or "re-characterisation" rules, to the extent that it enables in some cases to undo a set of transactions set-up by the taxpayer and to reconstruct another arrangement that is more consistent with the economic substance of the operations.
3. The personal scope of the DPT is limited to local taxpayers (i.e., resident enterprises or local PEs of non-resident enterprises) who are member of a MNE group which is "globally significant", i.e., AUD 1 billion or more in global or consolidated annual income (circa EUR 720 million and USD 770 million). The Explanatory Memorandum to the DPT Act estimated the number of taxpayers that could potentially fall within the scope of the measure at 1600. Among the companies that are in the scope, it further expects that only a small percentage would need to engage with the tax authorities to assess a DPT risk.
4. The DPT is designed to focus on certain arrangements – so-called "scheme", i.e., a transaction or series of transactions (or even any action or course of conduct) involving the local taxpayer and a related non-resident entity – that produces a tax outcome for the local taxpayer (and in some instances for the local taxpayer and another taxpayer) more favourable than an alternative tax outcome had the arrangement not been carried out – so-called "tax benefit".

5. This purpose test is clearly intended to be a lower threshold than the existing "*sole or dominant purpose*" test which applies under the Australian GAAR, with an implicit reference to the language of the Principal Purpose Test (PPT) recommended in the BEPS Action 6 Report to assess eligibility to treaty benefits. It applies to the purpose of the local taxpayer and/or any other related entity involved in the arrangement, having regard to all the facts and circumstances. The Explanatory Memorandum contains important guidance to clarify the application of the test. For example, it includes examples of non-tax financial benefits related to the arrangement that may be measured and balanced against the tax benefit: productivity gains and/or costs savings, value added and/or synergies, location specific benefits (e.g., local know-how, lower labour cost), reduction of non-income tax costs, public (non-tax) subsidies. Importantly, other commercial benefits that are not quantifiable may still be relevant when assessing the purpose of the arrangement.

6. The economic substance test examines all of the relevant facts and circumstances, such as the conduct of the parties, the economic and commercial context of the relevant activities, and the object and effect of those activities. The determination is generally based on a transfer pricing analysis looking at the functions performed, the assets used and risks assumed by each entity involved in the arrangement. The Explanatory Memorandum makes an explicit reference to the revised transfer pricing guidelines following BEPS Actions 8-10, notably "the accurate delineation of the actual transaction". Also, the DPT does not apply to arrangements that resulted in commercial transfer of economic activities and functions to a low-tax jurisdiction provided the transfer is done in accordance with arm's length principles and transferred assets and risks are properly priced.

7. The relevant measure is the foreign income taxes effectively paid (i.e., after deduction of losses, use of tax credits and other tax attributes) in relation to the arrangement by the local taxpayer and/or any other involved related entity, not the statutory tax rate. Indirect taxes (and any other foreign equivalents) are not included. This amount is determined on the basis of information provided by the local taxpayer reliable enough to support the conclusion that the foreign tax included has been, will be, or may reasonably expected to be paid in another country. The assessment of the 80% threshold is based on a comparison of the foreign tax actually paid with a theoretical Australian tax liability, which is determined by applying the standard corporate tax rate (30%) to the amount of the tax benefit.

8. The assessment process is led by a specific "Tax Avoidance Task Force" within the Australian tax authorities. It starts with the issuance of a DPT assessment notice which opens a 12-month review period. The latter gives the taxpayer an opportunity to engage openly with the tax authorities by providing additional and relevant information on the disputed arrangement. This documentation may support an amendment to the DPT liability, or an amendment to the corporate tax liability (subject to the 30% rate).

9. Under the DPT regime, upfront payment is required within 21 days after the issuance of the final DPT assessment, with no possibility of appeal during the review period. An appeal can be submitted by the taxpayer within 60 days after the end of the review period, but with restrictions on any new evidence presented by the taxpayer. Any information or documents that the taxpayer did not provide to the tax authorities during the review period will generally not be admissible on behalf of the taxpayer in an appeal against the DPT assessment.

10. Generally, given the flexibility inherent to a purpose test, the provisional tax basis giving rise to a DPT notice will be calculated according to the best estimate that can reasonably be made by the tax authorities in accordance with the arm's length principle. There is no opportunity for the taxpayer to challenge that assessment before a Court up until the end of the review period.

11. During and up until the end of the review period, the tax authorities can issue a supplementary or amending charging notice (the final charge may change upwards or downwards, including by reducing the charge to zero), as well as make an amended income tax assessment.

Box 4.10. The United States' base erosion and anti-abuse tax (BEAT)

The base erosion and anti-abuse tax (BEAT) was adopted in 2017 as part of a broader tax reform – commonly referred to as the Tax Cuts and Jobs Act (TCJA)[1] – which led the United States to move from a worldwide corporate tax system (primarily focused on residence country taxation) to a hybrid territorial corporate tax system. The BEAT applies only to resident corporations and otherwise branches subject to U.S. income tax and is limited in scope to specific intra-group transactions (each as described in more detail below). It relies on a formula-based approach and adjustments to determine any potential tax liability.

Scope

The BEAT only applies to US taxpayers – i.e., domestic companies or permanent establishments (PEs)[2] – that are members of a MNE group whose activities in the United States exceed a high sales threshold – i.e., average annual US domestic gross receipts exceeding USD 500 million over a three-year period.

In addition, the US taxpayer must make "base eroding payments" that account for 3% or more of its total deductions claimed for income tax purposes (reduced to 2% for certain banks and registered security dealers). Under the legislation, "base eroding payments" include any amount paid or accrued by the taxpayer to foreign related parties[3] for which a "deduction is allowable", and also include amounts paid to foreign related parties in connection with the acquisition of depreciable or amortizable property. This definition generally excludes expenditures that are treated by domestic legislation as a reduction in gross receipts rather than a deduction from gross profit, such as the cost of goods sold (COGS).[4] The legislation further excludes the following payments that are otherwise deductible amounts: (i) payments made for routine services without a mark-up – i.e., qualify for the services cost method under domestic regulations (Treasury Regulation section 1.482-9(b)), as modified for this purpose by the legislation; (ii) qualified derivative payments; (iii) payments subject to a withholding tax in the United States.[5]

Computation rules (the formula)

The BEAT amount is determined by the excess (if any) of:

10% (reduced to 5% for 2018, and increased to 13.5% as from 2026)[6] of the "modified taxable income" for the year, defined as the regular corporate tax base plus any "base-eroding payments" (see above); over

the regular corporate tax liability of the taxpayer (21% rate), reduced (but not below zero) by tax credits allowed in that year (except for the research credit and a certain amount of "applicable section 38 credits" – e.g. the low-income housing credit, renewable energy production credit, and energy credits – up until 2025).

Where a positive BEAT liability arises, it is payable in addition to the regular corporate tax liability.

1. Public Law No. 115-97, 22 December 2017, Section 14401 introducing SEC. 59A. in Subpart A chapter 1 of the Internal Revenue Code of 1986. The amendments will apply to base erosion payments that are paid or accrued in tax years beginning after 31 December 2017.
2. The BEAT applies also to foreign companies engaged in a US trade or business for purposes of determining their effectively connected income (ECI) tax liability when there is not a treaty with a PE threshold requirement as in Articles 5 and 7 of the OECD Model Tax Convention.

3. Foreign related parties include any 25% owner (voting power or value) of the taxpayer, related persons thereto, and any other person related to the taxpayer under the U.S. transfer pricing statute.
4. The legislation also specifically includes reinsurance payments, as well as expenditures that constitute a reduction in gross receipts (e.g. COGS) when paid to an affiliate part of a group that "inverted" after 9 November 2017.
5. The exemption is pro-rated (in comparison to the statutory withholding rate) in case of a reduced rate under a double tax treaty. Consequently, where the withholding rate is reduced to zero under an applicable double tax treaty, the entire payment is treated as a "base eroding payment" for the purpose of the legislation.
6. Banks and registered security dealers are subject to a one percentage point higher BEAT rate in every year: 6% in 2018, 11% as from 2019 and 14.5% as from 2026.

4.7. Findings on relevant tax policy developments

367. Recent tax policy developments show that an increasing number of countries have implemented a variety of measures aimed at securing their tax base, including in relation to the remote sales of digital products and services into their market. Certain design features are common to some of these unilateral and uncoordinated actions. First, they aim at protecting and/or expanding the tax base in the country where the customers or users are located, generally based on an expanded view of the enterprise's engagement in that country. Second, many include elements linked to a market in the design of the tax base (e.g., sales revenue, place of use or consumption). Finally, they appear to reflect a discontent among some countries with the taxation outcomes produced by the current international income tax system.

368. Until such time as a global consensus can be achieved on how to address the broader direct tax challenges raised by digitalisation, it is likely that more countries will follow suit and adapt their tax system through a series of uncoordinated measures. In September 2017, a group of European Union (EU) Finance Ministers announced that they consider the adoption of solutions based on the concept of an "equalisation tax" on the turnover generated in Europe by digital companies.[37] These solutions are currently being explored by the EU Commission who is expected to deliver proposed legislation in the course of 2018.[38] While these initiatives are generally taken to increase the level of taxation of digitalised businesses, they are also likely to generate some economic distortions, double taxation, increased uncertainty and complexity, and associated compliance costs for businesses operating cross-border and, in some cases, may potentially conflict with some existing bilateral tax treaties. Further, they have increased the sense of urgency among many countries that common policy options need to be developed to ensure the ongoing relevance and coherence of the existing international income taxation framework.

Notes

[1] This section is not intended to be exhaustive, and the measures described were identified by the TFDE on the basis of their relevance for the discussion of the broader direct tax challenges raised by digitalisation and the experience available from their implementation. Measures that have only been announced by countries without any supporting regulations, or measures whose impact and objectives appeared too remote from the tax challenges discussed in this report, have generally not been included in this section.

[2] The PE definition, used in most tax treaties and domestic provisions, encompasses two distinct thresholds: (i) a fixed place through which the business of the enterprise is wholly or partly carried on; or, (ii) where no place of business can be found, a person acting on behalf of the foreign

enterprise and habitually exercising an authority to conclude contracts in the name of the foreign enterprise. Some countries and treaties also include the so-called "service PE" which deems a PE to exist where services are performed within another country through human agency for a certain period of time (e.g., specified number of days within any 12-month period). In all situations, a certain degree of permanence and physical presence in the source jurisdiction is required, either directly through a place of business (premises, facilities or installations), or indirectly through a person habitually engaging in certain activities in the source country.

[3] This section will not discuss alternative measures to the traditional PE definition that are not directly related to digitalisation, such as the use by some countries of specific thresholds for the offshore petroleum industry and/or the insurance industry.

[4] See paragraphs 279-280 of the 2015 BEPS Action 1 Report (OECD, 2015[26]).

[5] Relevant initiatives that have been identified by the TFDE include, *inter alia*, (i) the draft proposal in Turkey to introduce a new domestic nexus rule based on the concept of "*place of business in an electronic environment*" (draft article 129 and 130 of the Tax Procedural Law n°213 (Devranoglu, 2016[6]), (ii) the draft proposal in Thailand to expand the domestic definition of "*carrying on business in Thailand*" to online activities (Draft E-Commerce Tax Law, open for public consultation until 11 July 2017 (BakerMcKenzie, 2017[7]), (iii) the draft regulation in Indonesia introducing a mandatory registration regime for foreign-based suppliers of online Over-The-Top (OTT) services to in-country customers (Draft Regulation from the Ministry of Trade, July 2017, and Draft Circular from the Ministry of Communication and Informatics (n° 03-2016), April 2016, (BakerMckenzie, 2017[8]), (iv) the government plan in Austria to introduce a "*virtual permanent establishment*" for domestic and treaty purposes, (Austrian Federal Ministry of Finance, 2017[9]).

[6] With effect from 1 January 2018, the repeated activities of a non-resident enterprise in the form of facilitation of conclusion of contracts through an online platform in relation to provision of services of transportation and accommodation are deemed to be activities carried out through a fixed place of business in Slovakia (Income Tax Law, Section 16 paragraph 2) (Ernst and Young, 2017[10]).

[7] (Hoke, 2017[11]) (Kalman, 2018[12]).

[8] Article 5(3)(b) of the UN MTC reads as follows: "*3. The term "permanent establishment" also encompasses: (...) (b) The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting State for a period or periods aggregating more than 183 days in any 12-month period commencing or ending in the fiscal year concerned."*.

[9] As from 2008, the Commentary on Article 5 of the OECD MTC includes an alternative provision on services permanent establishments in paragraph 42.23.

[10] Noteworthy, the physical presence requirement is explicit in the "service PE" definition provided in paragraph 42.11-42.48 of the OECD commentary on Article 5 of the MTC.

[11] This minority view has been expressed, among others, during meetings of the United Nations (UN) Committee of Experts on International Cooperation in Tax Matters (United Nations, Committee of Experts on International Cooperation in Tax Matters, 2014[13]).

[12] Official letter of the Saudi Arabia Government, No 01/08/1436 on 10 February 2016 (Ernst and Young, 2016[14]). This statement confirms an approach taken by the local tax authorities (Department of Zakat and Income Tax) in a number of administrative circulars and exchanges with taxpayers (Ernst and Young, 2015[15]).

[13] See for example a recent case in India (The Income Tax Appellate Tribunal Bengaluru, 2015[28]).

[14] For example, in Saudi Arabia, the approach based on a "virtual service PE" has been challenged before a Court because of a conflict with the provisions of the United-Kingdom and Saudi Arabia double tax treaty (Court of Appeal, 2014[25]).

[15] These characterisation issues were identified and described in detail in the 2015 BEPS Action 1 Report (see paragraph 268-270, (OECD, 2015[26])).

[16] There are some differences in the definition of royalties between tax treaties, including between Article 12(2) of the OECD MTC and Article 12(3) of the UN MTC (e.g., payments for the use of, or the right to use, industrial, commercial or scientific equipment). However, most existing tax treaties agree that this definition refers to the specific nature of the rights and properties the use of which gives rise to royalty payments. Also, payments for the use of software do not generally qualify as royalties *per se*, only some of these payments can be classified as royalties if they are made primarily for the use or the right to use the copyright embedded in the software.

[17] This interpretation prevails in countries like Greece (Article 38 (1) of the Income Tax Code, (Sakellariou, 2016[16])) and the Philippines (Circular No 77-2003 (Bureau of Internal Revenue (Philippines), 2003[17])).

[18] See Finance Act 2017 in Malaysia modifying the royalty definition in section 2(1) of the Income Tax Act (Ernst and Young, 2017[18]).

[19] See, among others, Article 12 (2) of the Cyprus-Luxembourg Income and Capital Tax Treaty, signed on 8 May 2017; Article 12 (3) Azerbaijan-Malta Income Tax Treaty, signed on 29 April 2016. Following this trend, the UN Committee of Experts on International Cooperation in Tax matters is currently discussing possible amendments to the commentary on Article 12 in relation to software-related payments (United Nations, 2017[19]).

[20] See the United Kingdom's consultation document *Royalties Withholding Tax*, released on 1 December 2017, which describes the plan to introduce a new tax liability on certain payments for the use or exploitation of rights over intellectual property and other intangible assets in the United Kingdom with effect from April 2019 (HM Revenue and Customs and HM Treasury, 2017[20]).

[21] (Alessi, Goede and Wijnen, 2012[27]).

[22] Article 12A(3) of the UN MTC: "*The term "fees for technical services" as used in this Article means any payment in consideration for any service of a managerial, technical or consultancy nature, unless the payment is made: (a) to an employee of the person making the payment;(b) for teaching in an educational institution or for teaching by an educational institution; or (c) by an individual for services for the personal use of an individual*".

[23] The UN Commentary released with the new Article 12A makes it clear that the provision was adopted in response to the fact that "*it is now possible for an enterprise resident in one State to be substantially involved in another State's economy without any substantial physical presence in that State. In particular, with the advancements in means of communication and information technology, an enterprise of one Contracting State can provide substantial services to customers in the other Contracting State and therefore maintain a significant economic presence in that State without having any fixed place of business in that State and without being present in that State for any substantial period.*" (United Nations, Committee of Experts on International Cooperation in Tax Matters, 2017[21]).

[24] Brazilian Federal Revenue Service, Advance Tax Ruling Request No 191/2017 (Giacobbo, 2017[24]).

[25] See for instance the new draft legislation on e-commerce in Thailand (BakerMcKenzie, 2017[7]). India also introduced an Equalisation Levy limited to payments for online advertising services which uses the design typical of withholding taxes, except that the levy is not classified as an income tax under domestic legislation (Box 4.3).

[26] Chapter VIII of Finance Act 2016, No 28. This provision is not part of the Income-tax Act, 1961.

[27] Act XXII of 2014 on Advertisement Tax (AT Act).

[28] Article 56 (V) of the Law n° 2016-1918, adopted on 29 December 2016, and modifying Article 1609 B of General Tax Code.

[29] Except for India's Equalisation Levy, which applies only to payments made to non-resident enterprises (i.e., cross-border business-to-business transactions).

[30] India's Equalisation Levy generated approximately INR 3.4 billion for the period covering June 2016 to March 2017, which corresponds to around USD 47 million or EUR 52 million. The Hungarian tax authorities reported that no meaningful revenue has yet been collected from the Advertisement Tax in relation to foreign-based suppliers/publishers. No information is yet available in France on the revenue collected from the tax on the distribution of audio-visual content. Italy estimates that the revenue of the levy on digital transactions will be EUR 190 million per year (circa USD 235 million per year).

[31] The BEPS issues that are exacerbated by digitalisation were described in details in the 2015 BEPS Action 1 Report (paragraph 180-242).

[32] In the case of Australia, the DPT was implemented in two successive steps. First the Multinational Anti-Avoidance Law (MAAL) was adopted in December 2015 to introduce a PE anti-avoidance rule (Box 4.8). Subsequently, another provision entitled "Diverted Profits Tax" was introduced in 2017 to include an anti-abuse rule for transfer pricing purposes (Box 4.9).

[33] In New Zealand a draft Bill incorporating elements of a DPT-type of measure was released by the Government for public comments in March 2017. This announcement has not translated into a legislative proposal to be introduced into the Parliament.

[34] Article 1-bis of Law Decree 50 of 24 April 2017 (Zucchetti, 2017[22]).

[35] As noted above, the range of arrangements potentially covered by the DPT is broad, and not exclusively targeted at structures implemented by highly digitalised MNEs.

[36] The assessment process of a DPT generally starts with the issuance of a charging notice based on a risk assessment by the tax authorities (i.e., so-called "reasonable" estimate). This initial DPT liability needs to be paid upfront by the taxpayer, and opens a 12 month review period during which the taxpayer is expected to provide relevant and timely information to challenge the best estimate of the tax authorities, and demonstrate that the arrangement is not within the scope of the DPT. During the review period, based on new information received from the taxpayer, the tax authorities may amend the initially estimated DPT liability, as well as make an amended income tax assessment. Also the final DPT charge may change upwards or downwards, and can typically be substituted by an additional income tax liability.

[37] (Finance Ministers of Italy, France, Germany and Spain, 2017[29]). This initiative received the support of six additional EU Member States at the EU Digital Summit in Tallinn on 29 September 2017.

[38] (European Commission, 2017[23]).

References

Alessi, A., J. Goede and W. Wijnen (2012), "The Treatment of Services in Tax Treaties", *Bulletin for International Taxation*, Vol. 66/1. [27]

Austrian Federal Ministry of Finance (2017), "Shelling's plan to eliminate opportunities for tax avoidance and evasion". [9]

BakerMcKenzie (2017), "The Thai Revenue Department Introduces a New E-Commerce Tax Law", https://www.bakermckenzie.com/en/insight/publications/2017/07/thai-revenue-department-introduces-new-ecommerce/. [7]

BakerMckenzie (2017), "The Indonesian Government Resumes Discussions on Over-The-Top Regulation", https://www.bakermckenzie.com/en/insight/publications/2017/08/the-indonesian-government/. [8]

BBC NEWS (2017), "Diageo told to pay £107m in extra tax in profits row", http://www.bbc.com/news/business-39871218. [1]

Bureau of Internal Revenue (Philippines) (2003), "Classification of Payments for Software for Income Tax", *Circular*, http://dx.doi.org/77-2003. [17]

Court of Appeal (2014), *Decision n°4*. [25]

Devranoglu, A. (2016), "Turkey introduces 'electronic place of business' concept", *International Tax Review*, http://www.internationaltaxreview.com/Article/3548543/Turkey-introduces-electronic-place-of-business-concept.html. [6]

Ernst and Young (2015), "Saudi Arabian tax authorities introduce Virtual Service PE", *EY Global Tax Alert*, http://www.ey.com/gl/en/services/tax/international-tax/alert--saudi-arabian-tax-authorities-introduce-virtual-service-pe-concept. [15]

Ernst and Young (2016), "Saudi Arabian Government clarifies Service PE concept", *EY Global Tax Alert*, http://www.ey.com/gl/en/services/tax/international-tax/alert--saudi-arabian-government-clarifies-service-pe-concept. [14]

Ernst and Young (2017), "The latest on BEPS", *Global Tax Alert*, http://www.ey.com/Publication/vwLUAssets/The_Latest_on_BEPS_-_18_December_2017/$FILE/2017G_07140-171Gbl_The%20Latest%20on%20BEPS%20-%2018%20December%202017.pdf. [10]

Ernst and Young (2017), "Malaysia enacts Finance Act 2017", *Global Tax Alert*, http://www.ey.com/gl/en/services/tax/international-tax/alert--malaysia-enacts-finance-act-2017. [18]

European Commission (2017), *A Fair and Efficient Tax System in the European Union for the Digital Single Marlet*, https://ec.europa.eu/taxation_customs/sites/taxation/files/communication_taxation_digital_single_market_en.pdf, http://dx.doi.org/COM(2017) 547 final. [23]

Finance Ministers of Italy, France, Germany and Spain (2017), *Political Statement - Joint Initiative on the Taxation of Companies Operating in the Digital Economy*, http://www.mef.gov.it/inevidenza/banner/170907_joint_initiative_digital_taxation.pdf. [29]

Giacobbo, F. (2017), "Brazil: Tax authorities issue guidance on the treatment of software as a service", *International Tax Review*, http://www.internationaltaxreview.com/Article/3721548/Brazil-Tax-authorities-issue-guidance-on-the-treatment-of-software-as-a-service.html. [24]

HM Revenue & Customs (2015), *Diverted Profits Tax: Guidance*, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/480318/Diverted_Profits_Tax.pdf. [2]

HM Revenue and Customs and HM Treasury (2017), *Royalties Withholding Tax - Consultation document*, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/663889/Royalties_Withholding_Tax_-_consultation.pdf. [20]

HM Revenue and Customs (2017), *Transfer Pricing and Diverted Profits Tax statistics, to 2016/17*, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/635330/Transfer_Pricing_and_Diverted_Profits_Tax_statistics.pdf. [3]

HM Revenue and Customs (2017), *Annual Report and Accounts 2016-17*, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/635587/HMRC_Annual_Report_and_Accounts_2016-17_web_.pdf. [4]

HM Revenue and Customs (2017), *Diverted Profits Tax Yield: methodological note*. [5]

Hoke, W. (2017), "Israel Tax Authority Reportedly to Issue Assessments to Google and Facebook", *Tax Notes*, http://dx.doi.org/2017-96265. [11]

Kalman, M. (2018), "Israel to Tax Internet Giants With Local Offices: Tax Chief", *Bloomberg BNA*. [12]

OECD (2015), *Addressing the Tax Challenges of the Digital Economy, Action 1 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264241046-en. [26]

Sakellariou, I. (2016), "Greece: Another wide interpretation of royalties against the digital economy", *International Tax Review*, http://www.internationaltaxreview.com/Article/3580554/Greece-Another-wide-interpretation-of-royalties-against-the-digital-economy. [16]

The Income Tax Appellate Tribunal Bengaluru (2015), , http://www.kluwertaxblog.com/wp-content/uploads/sites/59/2017/08/Bangalore-Tribunal-Ruling.pdf, http://dx.doi.org/IT(TP)A No.1103/Bang/2013 and No.304/Bang/2015. [28]

United Nations, Committee of Experts on International Cooperation in Tax Matters (2014), "Report on the tenth session", http://digitallibrary.un.org/record/787330/files/E_2014_45_E_C.18_2014_6-EN.pdf. [13]

United Nations, Committee of Experts on International Cooperation in Tax Matters (2017), *Issues related to the updating of the United Nations Model DoubleTaxation Convention between Developed and Developing Countries*, http://www.un.org/esa/ffd/wp-content/uploads/2017/03/14STM_CRP1_Article12A_technical-services.pdf, http://dx.doi.org/Agenda item 3(a). [21]

United Nations (2017), *Agenda item 5 (b) (ii) for the fifteenth session*, http://www.un.org/esa/ffd/events/event/fifteenth-session-tax.html. [19]

Zucchetti, S. (2017), "The Italian "Web Tax": The New Administrative Procedure for Multinational Enterprises to Disclose Hidden Permanent Establishments in Italy", *International Transfer Pricing Journal*, http://dx.doi.org/24:5. [22]