Taxation and Big Data
The Reflection of Data-Driven Value Creation in the 2018 OECD and EU Tax Proposals

Julia Sinnig – 25 May 2018, Université Paris 1 – Panthéon Sorbonne
Contents

- 2018 OECD interim report: role of user data in the digitalised economy
- Location of user data
  - (Raw) data collection
  - Data processing
  - Developers
- EU Commission proposals: significant digital presence and digital services tax
Findings of the 2018 report:
- No consensus, three different opinions
- Foundations of the international tax system: residence and source?
- No recommendation of interim measures

Big data, user data, data…
- Still no uniform definition

Collection, processing and use of data = integral part of digitalised business models

Effect of economies of scope
Data value cycle

Some business models only “possible” due to exploitation of user data

Income generation vs. value creation

Taxing economic rents?
Location of user data

- Place of *(raw) data collection*
  - Data origination
  - Users/devices = data sources
  - Geographic location possible

- Place of *data processing*
  - Any geographic location

- Place of the “*genius*” behind technology
  - Possibly residence of company/developer or permanent establishment
  - Geographic location possible
## The EU Commission proposals

### Significant digital presence

<table>
<thead>
<tr>
<th>Tax base</th>
<th>Net profit taxation</th>
<th>Digital services tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax rate</td>
<td>National CIT rates</td>
<td>3%</td>
</tr>
<tr>
<td>Beneficiary</td>
<td>Revenue goes to MS</td>
<td>Revenue goes to MS</td>
</tr>
</tbody>
</table>

### Services covered

- Services delivered over internet or other electronic network **and**
- Nature of which renders their supply essentially automated **and**
- Involving minimum human intervention **and**
- Impossible to ensure without information technology

- Placing of user-targeted advertising on a digital interface **or**
- Intermediation services making available to users a multi-sided digital interface, potentially facilitating the provision of goods and services between users **or**
- Transmission of collected user data

### Thresholds

<table>
<thead>
<tr>
<th>Revenue (&gt; EUR 7.000.000) <strong>or</strong> number of users (&gt; 100.000) <strong>or</strong> number of concluded B2B contracts (&gt; 3.000)</th>
<th>Total amount of taxable revenues (&gt; EUR 750.000.000) <strong>and</strong> EU revenues (&gt; EUR 50.000.000)</th>
</tr>
</thead>
</table>
EU COM: Significant digital presence

- All corporations established in MS and third States
  - Specific DTC provision
  - In reality: limited scope/impact?

- List of excluded services

- Three alternative criteria for threshold

- Modified profit attribution rules
  - OECD AOA confirmed
  - “Economically significant activities”
  - DEMPE functions
  - Profit-split method
EU COM: Digital services tax

- **Double taxation** issues

- Place of taxation and allocation of taxable turnover between different MS

- **Tax collection**

- **Equalising** lacking CIT state revenue?
  - Fairness, equality, neutrality, ability to pay?
SDP and DST

- **User location**
  - IP addresses

- **Timeframe**
  - No sunset clause in DST proposal
  - Ambitious

- **CCCTB**
  - Reference in SDP proposal
Conclusions

- 2018 OECD report: sobering result

- Clear reflection of data-driven value creation in EU COM proposals
  - Criteria of location of that value creation in proposals → debatable

- Shift of tax revenue to market jurisdictions

- Final solution?!
Merci de votre attention !

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