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Taxation and Big Data

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

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- 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**

Role of user data in the digitalised economy (1/2)

The 2018 OECD interim report

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- 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	Digital services tax
Tax base	Net profit taxation	Gross turnover taxation
Tax rate	National CIT rates	3%
Beneficiary	Revenue goes to MS	Revenue goes to MS
Services covered	<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • 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	Revenue (> EUR 7.000.000) or number of users (> 100.000) or number of concluded B2B contracts (> 3.000)	Total amount of taxable revenues (> EUR 750.000.000) and EU revenues (> EUR 50.000.000)

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

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- **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?

- **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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