OECD TAX TALKS

CENTRE FOR TAX POLICY AND ADMINISTRATION

16 March 2018
15:00 – 16:00 (CET)
Join the discussion

Ask questions and comment throughout the webcast:

CTP.Contact@oecd.org

@OECDtax or #OECDTaxTalks
INTRODUCTION
2015 Action 1 Report

• Digitalisation of the economy, instead of the “digital economy”
• BEPS is exacerbated by the digital economy
• VAT: new rules, with destination principle for determining the place of taxation of cross-border supplies and effective collection mechanisms
• CIT: no agreement, monitoring of developments with next report in 2020
Process since 2015

• G20 mandate in March 2017 to produce interim report by 2018 IMF/WBG Spring meetings
• TFDE: 113 jurisdictions on an equal footing
• Interim Report: consensus based document to be reported to the G20
The 2018 Interim Report

• 8 Chapters, in particular:
  – In-depth analysis of business models and value creation
  – Stock-taking exercise on BEPS implementation and impact
  – Long-term solution
  – Interim measures
  – Special feature
  – Next steps
Key messages from the Interim Report

• Global engagement on the work in the Inclusive Framework
• Technically complex questions on taxing rights and profit allocation
• Diverse positions: 3 broad groups
• Interim measures
• Delivery by 2020; next meeting in July

Access the report → http://oe.cd/digitaltax
SINCE THE 2015 BEPS PACKAGE
Timeline

January 2017: New TFDE mandate
March 2017: Request from the G20
September 2017: Request for input
November 2017: Public consultation
March 2018: Delivery of the Interim Report
HIGHLY DIGITALISED BUSINESS MODELS AND VALUE CREATION
Business models and value creation

Complex reality. Three key factors prevalent in highly digitalised businesses (HDBs):

1. Cross-jurisdictional local scale without local mass
   - HDBs often highly involved in economic life of a jurisdiction without any significant, physical presence
2. Reliance on intangible assets, including IP
   - Intangible assets crucial support of business models of HDBs
3. Data, user participation and their synergies with IP
User participation: countries’ views

• General agreement:
  – Data and user participation are common characteristics of highly digitalised businesses

• Current different opinions on
  – **Whether and the extent to which** they represent contribution to value creation by enterprise
User participation: countries’ views

1. Role of user participation is a unique and important driver of value creation
   – Allows HDBs to collect a great deal of information and monetise it in various ways (e.g., pricing, advertisement)

2. The action by HDBs to source data from users is NOT an activity to which profit should be attributed
   – User’s contributed data, content and other information similar to any other input sourced from an independent, third party
BEPS IMPLEMENTATION & OTHER RELEVANT COUNTRY MEASURES
Implementation and Impact of the BEPS package

Relevant measures of the BEPS package

- Amended PE definition (Action 7)
- Revised TP guidelines (Action 8-10)
- Strengthened CFC rules (Action 3)
- VAT collection (Action 1)
- Other BEPS measures (Action 6, Action 5)

Impact assessment

- Important impact on BEPS issues (e.g., conversion from remote sales models to local reseller models, on-shoring of assets)
- Limited impact on the broader direct tax challenges (nexus, data and characterisation)
Other Relevant Tax Policy Developments

Identification and description of uncoordinated country measures

**Alternative PE thresholds**
- Significant Economic Presence test (e.g. Israel, India)
- Virtual Service PE (e.g. Saudi Arabia)

**Withholding Taxes**
- Broader royalty definitions
- Technical service fees
- Online advertising

**Turnover Taxes**
- Sectoral taxes, such as for advertisement (e.g. Hungary)
- Levy on Digital Transactions (Italy)
- Equalisation Levy (e.g. India)

**Specific regimes for large MNEs**
- Diverted Profits Tax (e.g. UK and Australia)
- BEAT (US)
Other Relevant Tax Policy Developments

Analysis in consultation with relevant countries
ADAPTING THE INTERNATIONAL TAX SYSTEM TO THE DIGITALISATION OF THE ECONOMY
Key concepts

Fundamental rules of the International Income Tax System

**NEXUS**
Rules that determine jurisdiction to tax a non-resident enterprise

**PROFIT ALLOCATION**
Rules that determine the relevant share of the profits that will be subjected to taxation
Implications of digitalisation

Potential implications of the three features of certain HDBs on the international tax rules

**Cross-jurisdictional scale without mass**
Impacting the distribution of taxing rights over time by reducing the number of jurisdictions where a taxing right can be asserted over the business profits of an MNE

**Reliance on intangible assets**
Significant progress under BEPS project, but often difficult to determine how to allocate income from intangibles among different parts of an MNE group

**Data and user participation**
If considered a source of value creation, could pose challenges, as such a concept of value creation is currently not captured by the existing tax framework
Divergent perspectives

The views of countries can be generally described as falling within three groups:

**First Group**
User participation may lead to misalignments between where profits are taxed and where value is created. This does not undermine the principles of the existing international tax framework. Only targeted changes needed.

**Second Group**
Digitalisation and globalisation of the economy present challenges to the existing international tax framework, but these challenges are not exclusive or specific to highly digitalised business models.

**Third Group**
BEPS package has largely addressed double non-taxation, but still too early to fully assess the impact. Generally satisfied with the existing tax system and do not currently see the need for any significant reform.
Review of the key concepts

Members of the Inclusive Framework have agreed to:

- Undertake a coherent and concurrent review of the profit allocation and nexus rules that would consider the impacts of digitalisation on the economy, relating to the principle of aligning profits with underlying economic activities and value creation.

- Work towards a consensus-based solution by 2020 with an update to be provided in 2019.
INTERIM MEASURES
Interim Measures

- There is no consensus on the need for, or merit of, interim measures.
- The Report does not recommend the introduction of such measures.

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<th>Suggest Lack of conceptual basis and potential for adverse consequences</th>
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<td>Impact of a gross tax on investment, innovation and welfare,</td>
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<td>Potential economic incidence of taxation on consumers and business</td>
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<td>Possibility of over-taxation</td>
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<td>Concern that interim measure may prove not be interim</td>
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<td>Compliance and administration costs</td>
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<th>Acknowledge challenges but consider imperative to act pending global solution</th>
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<td>Untaxed value is being generated within their jurisdiction</td>
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<td>Current position undermines the fairness, sustainability and public acceptability of the system.</td>
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<td>Any challenges need to be weighed against the consequences of not acting</td>
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<td>At least some of the possible adverse consequences can be mitigated through the design of the measure.</td>
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Interim Measures

Countries that favour the introduction of interim measures have agreed guidance that needs to be taken into account in the design of such a measure:

- Compliance with a country’s international obligations, including tax treaties, WTO, EU and EEA membership
- Temporary
- Targeted, discussion of both internet advertising and online intermediation services
- Minimising over-taxation
- Minimising impact on start-ups, business creation and small business more generally
- Minimising cost and complexity
BEYOND THE INTERNATIONAL TAX RULES
Beyond the international tax rules

• Gig and sharing economies, the rise of non-standard work and the role of online multi-sided platforms
• Supporting innovation while ensuring a level-playing field
Beyond the international tax rules

- Digital tools for better taxpayer service
- Harnessing big data for improved tax compliance
- Risks from new technology, such as blockchain which underlies crypto-currencies.
WHAT’S NEXT?
Next phase of work

• Next TFDE meeting in July 2018
• Delivery of final report by 2020, with 2019 update
• Test feasibility of technical options relating to profit attribution and nexus
• Monitor the impact of BEPS implementation and the introduction of any unilateral measures
• Explore opportunities and risks for tax policy and administration as a result of new technologies
THANK YOU