Global digital tax developments review

April 2016
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Recent Digital Tax Developments
“Companies’ global business strategies and operations are increasingly tax-sensitive. That’s what makes tax so key to securing digital confidence.”
Welcome

For me, nothing quite illustrates the implications of emerging digital economy taxation quite like talking to the global tax director of a major multinational company. Our interview here with Paul Morton, Head of Group Tax for the global publisher RELX Group, is no exception (see page 4). Spoiler alert: try not to blanch at the scenarios he describes with words like “administrative nightmare” and “insurmountably difficult.”

Actually, the strongest theme running through the interview with Paul is digital confidence. Think of digital confidence as a company’s enterprise-wide grasp of current and future digital business catalysts, along with sustaining a deep understanding of their tax, legal and policy implications. It is the kind of confidence companies must have to act with agility in today’s hypercompetitive global market.

Then consider Paul’s active engagement in tax policy arenas, his path-breaking participation in a quadrilateral advance-pricing agreement and, yes, even his description of an incredibly complex chain of transaction that makes up the electronic publishing process. All tax executives need to be thinking ahead and approaching taxation with the same agility that their companies bring to conducting business, both traditional and digital.

Companies’ global business strategies and operations are increasingly tax-sensitive. That’s what makes tax so key to digital confidence.

And yet, this edition of EY’s Global digital tax developments review also underscores the tax challenges that can sap digital confidence. Our “Short guide to Action 1” speaks, of course, about the Digital Economy Report finalized last October by the Organisation for Economic Co-operation and Development’s Base Erosion and Profit Shifting project (OECD BEPS project, see page 12). In the BEPS project’s wake, businesses still lack the visibility they require to perform solid business planning. Still to come are clarifications of the 2015 guidelines, a detailed mandate for further work to be issued in 2016 and yet another set of digital tax guidelines to be published in 2020.

That’s just at the global level. Regional and national developments like those we describe in this edition can be just as challenging – from a new Japanese ruling on e-commerce warehousing (see page 31) to a European Union judgment on a more “horizon” technology: virtual currencies (see page 6).

I find at least three important takeaways in this edition: for one thing, it should be clear by now that tax directors must take an active role in their company’s strategic planning around digital as a matter of course. At stake is business innovation, growth and profitability.

Furthermore, engagement with tax authorities could be more important than ever in 2016. That’s because implementation of BEPS recommendations will be a complex process, with countries choosing between different options, alternative approaches and subjective interpretations, even as the OECD monitors current BEPS outcomes in order to set the agenda for future work, and as tax authorities worldwide try to come to grips with even more (and possibly even more disruptive) digital business innovation.

Finally, there will likely be potential “outliers” among countries. Some jurisdictions have already co-opted, reinterpreted and even digressed from the tax guidelines in the Digital Economy Report. Keep an eye out for additional surprise measures – novel withholding taxes or concepts of digital permanent establishment. Tax directors need to expect the unexpected as they continue to actively monitor digital tax developments worldwide.

We hope this quarterly review can help in all three regards. I would be eager to hear your experiences and perspectives, as well as to hear about topics that you would like us to focus on in future issues.
Are you ready for your close up? How a new era of tax transparency is being woven together

Multinational businesses face a multitude of different transparency and data disclosure requirements in the wake of the broad debate about how the international tax environment should reflect 21st century ways of global business. Among other things, they face new transfer pricing documentation requirements, demands to publicly account for their tax and business activities on a country-by-country (CbC) basis, and pressure in countries like the UK to disclose more information about their overall tax strategy. In this report from EY, we provide a snapshot of some of these new demands and offers those with responsibility for keeping business compliant some insights on the current and potential future trajectories of the debate.

Global Tax Policy and Controversy Briefing

The latest issue of our Global Tax Policy and Controversy Briefing is a special edition, focusing on the recommendations. For each OECD report, we provide a factual commentary, plus a supplementary point of view analysis by other EY Tax leaders.

After two years, thousands of pages of discussion drafts and many hours of meetings and public consultations, the OECD, on 5 October 2015, released the final deliverables under its BEPS Action Plan. The blood, sweat and, most likely, tears shed over the last two years resulted in the issuance of 13 reports covering 15 Action items (Actions 8-10 were addressed in one report) that comprised almost 2,000 pages and a series of recommendations intended to improve the functioning of the international tax framework. The package was approved by the G20 finance ministers at their October meeting in Lima, Peru and then by the G20 leaders at their November summit in Antalya, Turkey.
Global digital tax developments review

Map of recent developments

**United Kingdom**
- United Kingdom’s HMRC announces new “Make Tax Digital” program – including predicting “the end of the tax return.”

**Denmark**
- Danish Government presents bill requiring reporting of distance selling and sale of electronic services to Denmark.

**Russia**
- Russia introduces draft law on new indirect tax rules for Electronic Services.

**Japan**
- Japanese court’s decision impacts taxation of online-business warehouses.

**Australia**
- Australian Parliament passes Bill for Multinational anti-avoidance law (MAAL), CbC reporting and increased penalties with wider ATO public reporting.
Interview with Paul Morton – Head of Group Tax, RELX Group

Rob Thomas: Paul, before we get started on the challenges of being a digital company, can you tell us a little bit about RELX in terms of your business, business model and structure?

Paul Morton: RELX was previously known as Reed Elsevier. The company brings together a number of very new and very old businesses. In fact, our publishing businesses are more than 100 years old and our Dutch business takes its name from the original House of Elzivir, a Dutch family publishing house founded in 1580.

RELX Group is a world-leading provider of information solutions for professional customers. We combine high-quality content and data with analytics and technology in global platforms. We operate in four market segments: Scientific, Technical & Medical (STM); Risk and Business Information; Legal and Exhibitions.

Our business models, as they exist today, are largely digital; we’re around 70% digital now, about 15% face-to-face and the remainder of the business is based on print. We think there’ll always be a place for print and there are still certain businesses where print is the preferred medium. Where we are digital, content may be sourced and processed digitally, and available to users digitally. We are constantly using data analytics and new ways of representing data and information visually – using sound, graphics, moving images, etc. – to deliver, for example, the so-called scientific “article of the future.” So we’ve become a very digital business, employing something like 7,000 technology people across the group and having some centers of deep technological excellence, including our new Alphabeta center, which was opened late last year by the British Chancellor.

Rob Thomas: In terms of going digital, I assume that it’s all been an ongoing process that you’ve had to manage through the years – one that continues to unfold daily, as it were?

Paul Morton: That’s very much the case. In some respects, we went digital very rapidly, for example when we acquired LexisNexis from the Mead Corporation. LexisNexis was really one of the first businesses to digitize substantial volumes of legal materials, originally for the state of Ohio, because the business was formed in Dayton, Ohio using technology first developed for the US Air Force bases there. Those longer in the tooth will remember the old Lexis terminals with the special colored buttons. We acquired that business in 1994 and since then we have come a long way. The newest technology, in fact, is a complete revamp and it entirely replaces the earlier technology.

In other areas, such as scientific, technical and medical, there has been a more gradual progression from paper-based journals. I remember as a science student, charging off to the “stacks” whenever a paper had to be read, leafing through dusty volumes on the big metal gantries to find the right article. It has been a gradual process to where we are today, which I think is that the vast majority of scientists will access the material electronically and will process their work and deal with their work electronically. We’re now in a world in which there is the scientific version of social networking, which in turn recognizes the tremendous value of the peer review process, which is why our business model remains absolutely at the core of scientific research, but with much more reliance on electronic means of disseminating information and sharing.
In 2007, half of RELX's sales were still in print. In 2015, print accounted for just 15%. That's a big transformation. We're really an information and analytics company and no longer a publisher.

Rob Thomas: So in terms of running a tax function that’s responsible for maintaining and sustaining compliance around those activities, does that bring any particular challenges? Do you structure your tax function perhaps any differently than a traditional bricks and mortar company might do? How do you keep tabs on so many different groups internally who are all innovating and having great ideas, and even coming up with new business models?

Paul Morton: You're describing the exact area where we are different from some more traditional companies, which is quite simply the pace of change and keeping track of new developments. It's not just refinement of our existing business models, we have completely new business models popping up all the time. Part of one of our divisions, which used to be called Reed Business Information, was just a few years ago primarily based on the controlled-circulation model, which means there was a journal provided free to people in a particular industry and advertisers would take advertising space in the journal. That business model has greatly diminished and that happened over a very short period around the time of the economic downturn, and with the rise of the internet as a business tool. Accordingly, we moved to more online data services, with that kind of controlled circulation paper journal almost disappearing in some cases overnight. Even now, the ways in which business information is being disseminated and shared, the business models are changing all the time and the technology is changing too.

So how do we keep on top of all of that? Over the last year in particular, we have been putting tremendous emphasis on business partnering and we’ve been working to further develop our skills in this area. The first part of this project was to identify, for every part of every one of our businesses, someone in the group tax department who is going to be the key customer contact.

Except perhaps unlike a Customer Relationship Manager (CRM), they won’t necessarily be responsible for dealing with everything; they’re there as a safeguard, in case a communication channel isn’t already established between someone in the tax department and the particular business. We're doing some training for everybody in the department, including myself, to build on our business partnering skills so that we can ensure we're having the right conversations. We're very accessible to people in the businesses, we're using language they can understand and we're capturing information in real time to help us ensure that we're advising on everything we need to.

I think the first part of that project has been successful. We've established the linkages and we now have good relationships with people in the finance community internally. I think the next step is to take that further to build good quality relationships with the business community as well, with our finance colleagues on board with that so we're fully joined up.

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It’s not just refinement of our existing business models, we have completely new business models popping up all the time.

Rob Thomas: One assumes that something like BEPS is a huge thing for you, particularly around Action 1. Can you share your perceptions of what you’ve seen and what you’ve digested so far around the BEPS recommendations?

Paul Morton: Absolutely, and we’ve been very much engaged with the OECD and policymakers in the US, UK, Netherlands and various other countries throughout the two years of work on Action 1.

Rob Thomas: Do you manage that engagement through the Business and Industry Advisory Committee (BIAC) or individually or through some other means?

Paul Morton: It’s through BIAC, the Confederation of British Industry as well as individual connections. So we have had individual meetings with the OECD and policymakers in various countries as well. We also took part in BIAC meetings and through various other bodies. We are very concerned about the possibility of premature implementation of some of the new ideas being developed, particularly in France, for taxing a “digital presence,” digital withholding taxes, bit taxes, etc., all being new ways of potentially taxing the digital economy. I was fortunate to attend both of the last two G20 tax symposia and to make some comments along those lines, that these ideas were very untested, they were going to be very, very difficult to apply in practice and they were unquestionably going to result in double taxation, confusion and disputes between tax authorities unless thoroughly thought through.

I think we were quite successful in making those points, and we explained our business model to each of those stakeholders. It is fair to say that nobody was able to see any practical way in which those ideas could be applied to our business without a great deal of further thought. Our comment letters to the OECD set out in a bit more detail why that is. It was nevertheless disappointing in the end to see in the final report that although it (the report) suggests that none of these ideas are ready for implementation, it does suggest that if any countries wish to try those ideas it would be interesting to learn from the experience. We think that’s unfortunate. We think it would have been better if the digital economy task force had been able to say, “We completely reject all these ideas at the current time until everyone can work out how to implement them properly.”

So we remain a bit concerned that countries will try to jump the “general consensus” gun a little bit and try to experiment with some of these ideas because we really don’t think they will work at the current level of technology and the current level of thinking generally.

Channing Flynn: I’m fascinated to speak with people in your roles who are engaged in the information revolution. I was an early adopter of LexisNexis when I was in graduate school so I’ve followed that product and its use over the better part of two decades! You mentioned France just a moment ago and very recently you will have seen that, in the Italian system, the courts came down with a settlement situation around another significant technology company’s nexus issue in that country. I’m just curious from your perspective, as you look at a global organization and the digitization of so much information, are there other countries or approaches that also concern you? I agree with you that Action 1 was a good effort, but I think we would all agree it fell short of giving everyone that same clear direction as to what to do. So which countries cause you concern and do you have a corporate strategy to react and communicate your concerns about double taxation?

Paul Morton: There are several parts to my answer to that. Action 7 on the definition of permanent establishment also concerns me; in fact, I think that worries me as much as Action 1 because, in the digital economy, it’s often necessary for people to visit countries and visit customers to talk them through very complicated contracts for digital services. Now, with the greatly expanded definition of permanent establishment, we feel that could be as much of a problem as some of the ideas in Action 1 for a digital presence or digital permanent establishment.

We’re worried about the next steps in quite a number of countries. I think France is probably the best example of a jurisdiction where new ideas have emerged from the political and technical debate, and I have to admire the intellect which has been brought to bear on the digital economy. There are many other developed countries which have been quite creative in relation to the taxation of the digital economy, but many, many others where we are concerned that people will experiment with new ideas before they have been properly thought through. We’re also very concerned about how policy makers will react in developing countries, which I think can draw inspiration from the OECD reports for taxing profits of digital companies and other technology companies who provide digital services remotely into the country. We sell into more than 180 countries and if they all start trying to tax some profits attributable to imported digital services there would be real problems ahead.

The other area we should touch on is indirect taxation, where, in the last couple of years we’ve seen many countries introduce indirect taxes on imported digital services such as the Japanese consumption tax, new tax charges in South Korea, South Africa and many more. There is a long list of countries which have done that, and of course we have change at the EU-level too. So we see ourselves registering in many, many countries with the risk that the local authority will then say that we should be paying profits tax as well as withholding consumption taxes.
Action 7 on the definition of permanent establishment also concerns me; in fact, I think that worries me as much as Action 1, because in the digital economy, it’s often necessary for people to visit countries and visit customers to talk them through very complicated contracts for digital services. Now, with the greatly expanded definition of permanent establishment, we feel that could be as much of a problem as some of the ideas in Action 1 for a digital presence or digital permanent establishment.
We foresee that a great deal of compliance effort will be required and we also see difficulties in cases where customers are going to have to bear a consumption tax for the first time. A hospital or a university might have a fairly fixed budget, so there may be questions about securing extra budget or an exemption, or finding other ways of resolving the issue.

I think on the corporate tax side, we see issues arising pretty well everywhere. So what are we going to do about it? It's probably a little early to say until we see how countries implement BEPS Action 7 and 1 in a little more detail. One possibility is that multinational enterprises will have to create a local subsidiary everywhere, which first of all, would be an administrative nightmare and secondly, might perhaps change the relationship with the customer. Many multinationals serve their customers from central locations for efficiency reasons.

If we have a local entity and a local contract, will tax administrators expect to see more local presence? I don't know. And there are also issues we are discussing with the businesses as to how the customers might be impacted. One possibility is we have local subsidiaries absolutely everywhere. Or do we go with the regional sales operation where we may have more regional disputes between tax authorities as to how to carve where we may have more regional disputes. We go with the regional sales operation.

Creating valuable marketing insights. In our case, external stakeholders contribute material of all kinds and they could be regarded as “free workers.” If we’re supposed to be paying tax where the free workers are carrying out their work, I think that would be insurmountably difficult. We don’t even necessarily know where they are!

Rob Thomas: When you and I first met Paul, you told me a wonderful anecdote about the free worker contributing an article in one country, sending it to a proof reader or an editor in another country who then loads it onto a server in a third country. Then the Japanese businessman on a beach in the Seychelles goes through his VPN and downloads it. The question, of course is, where is the value added? How do you deal with that kind of complexity of a life cycle of a business asset or a piece of content coming and generating revenue from it today? How do you just get your arms around those massively complex processes and ensuring compliance around them?

Paul Morton: It certainly strains the existing thinking on tax to almost breaking point. Even when something is entirely proprietary – like one of our technology platforms, for example – we have people in a number of different countries contributing to the intellectual property in ways that are quite difficult to define. The overarching design of the platform, which is where the real platform value is created, might be undertaken by a very small number of people, albeit in multiple locations. Half a dozen people, for example, could be responsible for developing a hugely valuable piece of technology. Then there might be dozens of people who are converting the general ideas into more specific design principles. Then we might have hundreds of people carrying out coding.

So where we attribute the value in that kind of scenario is very hard to determine. I can also mention in passing that we were very disappointed with the OECD paper on cost sharing that came out as part of the work on transfer pricing in Actions 8, 9 and 10. They really said that you can’t recognize cost sharing effectively anymore for tax purposes; they said that every participant’s contribution has to be assessed at fair value. In these sorts of scenarios where you’ve got many people in different locations contributing in different ways, it’s really hard to know what the fair value of any particular contribution would be.

We also have another very interesting scenario; it’s possible in some of our business models that we end up with just one person who is responsible for really creating all of the value in a certain product or offering. The one person can be responsible for all of the goodwill, if you like, in a journal or publication. If that one individual tells us that he or she wants to move from one country to another because, for example, that’s where there are more scientists in the particular field, and we say, “We don’t really want you to go but you can go if you want to,” do we then end up with a situation where we have all the IP remaining in Country A, but with no people functions at all carried on there? Or do we have a scenario where somehow all the IP moved along with the individual when he or she packed up their bags and went to Country B?

We think the second scenario would be crazy because there’d be both an exit event and also newly imported IP every time anyone moved anywhere. We think the first scenario, where there is IP but with no people functions, is one the tax authorities are going to struggle with because that’s exactly what they’ve wanted to address in parts of the BEPS project. So we don’t yet know what the answer to that one is going to be.
Channing Flynn: I agree with you on the cost-sharing issue. One comment about the US is they are very, very much in support of that strategy, so hopefully our slow reform here in the US will provide some impetus to retain the relevance of those rules, because I think all of this still needs to be linked to the basic premise that third parties still do that so why can’t affiliated companies? I think that’s a hard issue for the OECD, or even local countries, to grapple with.

As you look at changes like that, like threats to be able to not have IP be paid for effectively as third parties will do, and then the scenario you described about does the IP move with one person, or the fact that in the digital world so few human beings are needed to create value, let alone revenue, in any one jurisdiction. You mix all that up and you look at it, where are you in thinking of the concept, or what I like to call the statutory deployment of the development, enhancement, management, protection, exploitation (DEMPE) functions, the often cited but ill-defined in terms of specifying examples of development enhancement, maintenance protection and exploitation.

Are you guys giving real thought to building out an economic model around the DEMPE functions as you try to understand where profit should be attributed?

Paul Morton: Absolutely, yes. We find the discussion of the DEMPE functions very helpful in one respect in that all of our business models are based on where people are actually carrying on their businesses. We try to do nothing which is artificial or purely for tax planning purposes, so everything is based on where the business activities are actually carried on. In that context, I think the discussion of the DEMPE functions has been quite helpful because it’s brought a bit more detail and color to that discussion.

What we do think though is that it doesn’t go far enough in the implementation and in the ongoing development of transfer pricing thinking in general; there’ll have to be much more specific clarification as to what we mean by the various DEMPE functions in the context of some of our businesses. A really good example of where this is really hard is in relation to trademark and brand management where there are clearly legal functions to be carried on and there are brand-related functions that can be carried on as well. At the moment I think we find even the new guidance on DEMPE functions relating to trademark and brand management somewhat insufficient.

Channing Flynn: Again, in the United States we have in our tax laws and our regulations, not with respect to digital economy type matters, but with respect to CFC type matters, we have very explicit rules that follow patterns like the DEMPE functions are hitting at are needed. Do you think that it’s important that we have very specific guidelines in local country rules around things like DEMPE, for example, guidelines with functional descriptions of jobs and how they contribute to revenue or profit, or do you think that the discussion should remain subjective and much more open to interpretation, which of course is going to lead to open controversy?

Paul Morton: That’s a very difficult question; on the one hand we do like precision. It enables us to be clearer. But I think there I worry that the sheer volume of guidance and regulation is almost beyond human comprehension, and it’s extremely hard for even the most sophisticated tax administrations like the US and the UK to get (and stay) on top of all that detail. On the other hand, the other approach, which is to use judgment and to have much briefer guidance and regulation means that it’s all that much more uncertain and open to different interpretation in different countries. So I suppose there is the right balance to be struck somewhere but at the moment I think there’s a real risk that all but the very largest in-house tax departments and their advisors, and the very largest tax administrations are just going to be drowning in the detail.

Rob Thomas: Maybe we can zoom out a bit and just sit back I think. You talked about the BEPS Action 1, 7 and everything bedding down for a bit. I’m seeing BEPS right now as the whole world being at the end of the beginning and not the beginning of the end. What do you see ahead looking out? We used to look out ten years, now it’s impossible to look out any more than two or three years; what are your hopes for the digital tax policy space in the couple of years ahead?

Paul Morton: Well, we’re very much hoping that the engagement will continue, although it’s been very time-consuming, the engagement at the OECD and with policymakers in the various countries has been tremendous.

Rob Thomas: So you’re a firm supporter of the engagement, overall?

Paul Morton: It’s been great, and I think the OECD secretariat, and indeed the OECD in general has done a wonderful job of engaging through things like the consultation meetings, the G20 conferences and other events, and I hope that continues. In the UK, US and the Netherlands, our most important countries, we certainly want to maintain very close dialogue, and in all three countries there have been different fora in which very good quality discussions have taken place, so hopefully that will continue.
What we hope not to see is a huge flurry of countries around the world testing new ideas. We hope that instead, implementation will be measured and thoughtful.

What we hope not to see is a huge flurry of countries around the world testing new ideas. We hope that instead, implementation will be measured and thoughtful and that policymakers will build on ideas that seem to work. I have to say the early signs are not entirely encouraging. In one sense, it’s actually good to see that in the US the pace of tax reform is quite slow, so there is plenty of time to think it all through and for politicians to debate and discuss policy issues. I’d like to think that in the US, when we do see comprehensive tax reform in due course, it will bring together the best thinking on the digital economy. I imagine it would be in the US’s interest to do that, given that the biggest technology companies are mainly American.

I think the other thing we would love to see is really good progress on dispute resolution, particularly through the OECD BEPS process, if that’s possible. But in general, we’d like to see better use of multilateral dispute resolution processes wherever possible. We feel that in the digital economy many of the disputes will not be bilateral, they’ll be multilateral and we’d like to see more use of Advance Pricing Agreements (APAs). We are currently part way through a quadrilateral APA and we’d like to see more use of that kind of approach. The processes are going to have to be more efficient because presumably there’ll be more demand for them. Multilateral is quite difficult, as you can imagine, but it is moving forward and we do see that as a way of resolving some of these complex cases.

Rob Thomas: One of the things I’m particularly interested in at the moment is seeing how tax administrations themselves are going digital; they’re going to get their arms around lots more data through CbC reporting and the transfer pricing documentation. They’re getting more information in terms of VAT, digitizing their VAT programs, and they’re using new or existing data gathering powers is another thing we’re seeing. Have you had any experience or do you have any particular thoughts about tax administration going digital? Have you had any good experiences or bad experiences in that area?

Paul Morton: We haven’t seen very much, apart from the simple things such as submission of tax returns electronically. I wonder whether it’s more directed at the large bulk of less complex tax payers, and particularly individuals. We can certainly see a place for that technology. We know that HMRC here in the UK are moving towards all sorts of digital solutions like that. We think that looks very exciting at the individual and small business level.

In terms of large businesses, we certainly talk to HMRC and other tax authorities about shared workspaces and better use of the data that we already have. Tax authorities have become much better at using software to extract useful information.

Channing Flynn: That’s an interesting space. From what I’m hearing, you seem to sound like you’re more as a supporter of opening up access to a tax administration, that it might actually ease the compliance burden and actually grease the wheels of compliance a little bit, is that right?

Paul Morton: Yes, indeed. I think the ideal would be for tax authorities, in an appropriate controlled way, to be able to come in and just extract the data they need in a fairly automated sort of way, process that, apply the analytics, come to their conclusions and then for us to have a sensible conversation about it with the minimum of effort. That somehow seems a much more efficient process on both sides than the more traditional approach. We have found that use of computer based analytics has worked reasonable well in several jurisdictions.

Rob Thomas: I think that virtually every tax director I talk to has a similar message of there’s a lot of change, we’re in a period where we’re going to have to see where things bed down whilst dealing with ongoing business. Any advice for people in your position who haven’t had the experience of going digital over a number of years, but are just trying to get their arms around this for the first time? I hear a lot about tax directors having to deal with digital blooming left, right and centre within their company but digital might not be their core business model. Any advice for them about what they should do to start managing those things?

Paul Morton: One thing that we have found very useful is early engagement with the tax authorities. We’re a great enthusiast of the co-operative compliance approach. So where we have a digital model which raises some questions, we’ve been both to the OECD and indeed to our own tax inspectors to start to talk to them about how to deal with these business models. I think the other thing I’d say is that to a surprisingly large extent, with almost any business model, it is possible to think back to what the business model would have looked like before the digital economy emerged and to start with the traditional economy version of the business model.

So if we begin by attributing value where it would have been attributed in a paper publishing model, for example, we can then add the tax analysis of the digital platform on top of that foundation and then start to build the tax impact of the other functions to arrive at a comprehensive tax model. I think that does serve as a surprisingly useful approach, and where we get to a stage where tax authorities have no better idea than we used to, how if you were to start afresh you would tax something, if you build on what was there before it can work quite well. I suspect that with most businesses that will be possible, even with start-ups, if there are analogous traditional models that one can start with.
From the outset, technology companies have been in the vanguard of globalizing new digital business models that may challenge sovereign borders. As such, they have also found themselves under the spotlight from policymakers and the media as tax issues have risen to new prominence.

In our new report, we address the likelihood that multinational technology companies are going to see significant upward pressure on their global tax rates in 2016 and beyond – some of them, even sooner – shedding light on the need to prepare now.

“Multinational technology companies need to be fully aware that global effective tax rates are trending upward – how much remains an open question. Those tax practitioners and international finance executives who prepare now will be in the best position to influence the answer for their own companies.”

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Dealing with digital: Why company tax leaders must get to grips with the digital megatrend

Understanding when, where and how your enterprise is going digital is a critical task for tax function leaders to be aware of. Without proper visibility and assessment, significant tax risks can be created and opportunities missed. In this roundtable discussion, EY leaders from Tax and Advisory groups discuss why and how this can be achieved.

Rob Thomas: David, what do we really mean when we say a company is “going digital”? I’m assuming this doesn’t mean another way of describing what a company is doing with their own internal technology or Enterprise Resource Planning (ERP) systems?

David Jensen: That’s right. It’s not just about the transformation of technology or the IT organization. Those are enablers, but ultimately we refer to “digital” as being a fundamental change in how you do business. It’s how data and digital technologies are creating opportunities and threats around your business that you have to respond to. That may sound a little abstract, but it is about how, fundamentally, data and technology are forcing businesses to both ask and answer new questions. One of the best questions a company can ask is: “What is our business strategy in a digital world and how do we think about our business in terms of the opportunities to evolve change and serve customers in a very different way?”

Laurence Buchanan: To me, digital quite simply is a megatrend. On the one hand, there’s absolutely nothing new about the megatrend because we’ve been digitizing analogue information into digital information for more than 30 years now. We’ve been connecting to networks, we’ve been building new devices, so on one hand there’s absolutely nothing new about digital at all. What probably is different today than it was maybe 5 or 10 years ago, though, is the speed of that change and the sheer level of digitization that we’ve reached today – though having said that – I am a firm believer that we have all literally only just started the digital journey.
Cisco's former CTO will tell you that we've only reached about 1% of the potential connectivity that we'll see in the next decade. I use the word "digital" almost as an umbrella term to describe all of the big technology-driven disruption that we've seen in the last decade – that we'll continue to see in the next decade, everything from e-commerce, mobile, social, through to the Internet of Things, artificial intelligence, robotics and who knows what.

David's point is absolutely fundamental: a company's response to that megatrend has to be holistic. It can't simply be a technically-driven response to a megatrend that's impacting companies today from top to bottom.

Rob Thomas: From a business point of view, I see a very broad spectrum playing out today. For some companies, digital is very much core to their whole business model, or it even is their business model; for others, going digital can be a real differentiator, but their overall business model remains the same. What we're finding though – from a tax perspective in particular – is that the real difficulty for companies is where going digital is not necessarily at the core of the business model, but it's something the company is doing anyway because they need to, in order to keep up. From a tax perspective, that's difficult; it adds yet another layer of change that has to be managed at a time when the tax department has more on their plate than ever before. Are you also seeing that, David? And are there any things that companies should or shouldn't be doing as they address that part of the spectrum where it's not actually their core business model but they need to do it anyway?

David Jensen: As you say, there are some industry sectors where the entire industry and business model has been digitized; for obvious reasons the media sector has seen its core product become a digital product. The retail sector, because of the disruption of the e-commerce giants and because our buying patterns are shifting to online and mobile, every retailer now has to think about e-commerce. So those two sectors for very obvious reasons have been well ahead of the curve.

I think that there are a whole range of industry sectors where disruption has barely begun. If you think about sectors like insurance, automotive, healthcare, life sciences, government, public sector, infrastructure, real estate, if you go back to Laurence's comment of where are we in the overall evolution of the megatrend of digital, I agree that we're still at a very nascent stage.

If you think about the next 5 or 10 years, when every single car on the road is connected and autonomous, then suddenly that actually creates a profoundly different model for the average insurance company offering motor insurance or for an automotive company selling what used to be a metal box on wheels, but now will be a connected, intelligent car. If you think of the potential in health care, at the moment, probably only a tiny fraction of our human genomes have been sequenced and digitized.

Very, very few medical devices are connected. We're still at fairly early stages, but again, fast forward and think about your entire life and personal well-being being connected from devices that are measuring your CO₂, levels, blood pressure, stress levels, every medical device being connected, every genome being checked, that profoundly changes the way we deliver health care or how life sciences companies can develop and distribute their drugs.

So for me, all that's really happened so far is that companies have digitized the front end of their business. They've built websites and apps, but the entire value chain has not yet been rewritten.

Laurence Buchanan: I completely agree with your view. Let me add to it a caution or a warning. The very nascent state of digital could be seen to suggest that companies don't need to worry about it for now, but it's actually quite the contrary. If companies don't worry about it – if business leaders don't think about the potential of their business and the disruption that's going on – somebody else will disrupt them.

We can already point to many examples of things that have happened in the last 10 years that have disrupted companies. Much of this has occurred in media and entertainment, consumer products and travel, initially, but the other sectors he outlined are exactly the places that I would say the leaders and engineers in Silicon Valley, Tel Aviv, Berlin and Digital Roundabout are targeting. They're looking at what they can do in insurance or in the health care space or life sciences.

So yes, we're in a nascent state, we're at the early stages of all this playing out, but if the response to that by a business leader is to be lulled into either delaying their response or simply being lulled into some sense of security that oh, it's not going to happen to them, that's exactly when it will happen.

Rob Thomas: Channing, what are some of the tax challenges that are now occurring as a result of a company's ongoing digital activities?
Tax directors have realized generally in the last few years that they – or their delegates – need to be out in the business, developing and sustaining wider relationships so that they can understand where the business is heading and then work with business – and not against them – to identify the tax challenges and, hopefully, some opportunities for the company.

Channing Flynn: This is a hugely complex area. At the start of the OECD’s BEPS project, many countries – with France taking a “first among equals” role – hoped that specific new rules could be developed to address the challenges of taxing digital activity. Virtually straight away, though, it became clear that the digital economy cannot be ring-fenced and treated separately. In essence, the digital economy is the economy these days. So in October 2015 we saw the final BEPS recommendations issued, and Action 1 addressed digital.

Essentially, the BEPS reports, including the Action 1 report, are intended to restore tax on “stateless” income derived by digitally active companies. The Action 1 report, taking into account the point on ring-fencing, suggests the limiting of offshore deferral or profit shifting via enhanced CFC rules (Action 3); prevent the artificial avoidance of permanent establishment (PE) (Action 7); and increase scrutiny in situations where transfer pricing has shifted profits to low tax jurisdictions (Actions 8 through 10). In the context of indirect taxation, the Final Report urges individual countries to implement Guidelines 2 and 4 of the OECD’s International VAT/GST Guidelines in order to minimize tax planning opportunities.

Potential implementation of Action 1 recommendations falls across two distinct dimensions. The first dimension relates to those digital tax recommendations embedded within BEPS Action items 3, 7, 8, 9, 10 as I just mentioned. The second dimension addresses value-added tax (VAT) measures. Here we saw many countries already move in this direction, well ahead of the Final Report’s recommendations. Many continue do adopt new VATs and we expect that number to grow in 2016.

As with all complex concepts, a final point on implementation addresses what could be described as “outliers” – those countries adopting additional measures, such as novel withholding taxes or concepts of digital permanent establishment.

So that’s the technical approach; it’s all rather dry, and to be honest, it’s really focused on the largest companies who have digital business models. When I speak to companies, I think you can split them into two broad categories. The first category would characterize as where digital activity – things like selling into a country, or providing a platform for other people to either sell goods or services to the public – are either the business model itself or a very significant part of the overall business model. These companies tend to be very, very aware of the challenges of digital taxation, right up to the point of being in constant contact with the policy-makers to communicate their concerns.

The second type of company is where digital isn’t an absolutely central part of the business model, but digitization is going on in some form, in some part of the company. The important thing here is that the tax function might not be fully aware of that activity, and risks can therefore arise. These risks can be very substantial; they might include the accidental creation of a permanent establishment in a country, which in turn could result in non-compliance with many required tax filings. That, in turn, can lead to disputes, penalties and interest, which in turn can drive reputational risk.

So you can see that a simple decision on how to enable digital can lead to a real risk if the tax aspects aren’t considered in full, and early in the strategy process. And of course, alongside the risks, you may be missing opportunities – either around the tax aspects of operational model efficiency, or from something as simple as not claiming the appropriate R&D incentive on your digital research.

My experience tells me that even the most experienced tax director may be unaware of the pockets of digital activity occurring; that’s a dangerous situation, and we’re now seeing more and more tax directors spending time outside of the tax department and getting more involved not only in high-level business strategy, but also with groups like marketing, PR and business development.

Rob Thomas: David and Laurence, you are not tax professionals, but have you had the same kind of experiences as Channing describes?

Laurence Buchanan: If you think about how companies approached digital maybe just 10 years ago, it was historically seen as something for the PR and communications department – it was about front-end websites and not a great deal more. That’s now completely out-of-date. Digital is impacting every single part of the enterprise, from top to bottom, and it’s just as relevant for the Chief Finance Officer as it is to the Chief Marketing Officer and Chief Executive Officer because it’s challenging a company’s business model, strategy, customer experience, back office and operations. One thing that I quite often talk about is the ripple on impact that going digital has, which is that when you make decisions about changing the business model or launching a brand new proposition, then everyone gets involved in the debate. But if you fail to think about the ripple-on impacts of those decisions – things like the impact on new regulatory compliance, the way you’re organized from a tax perspective, your cyber security and so on – those things aren’t just difficult and painful, they’ll bring down the company. It’s as simple – and painful – as that, unfortunately.

1 For more analysis of BEPS Action 1, please see the February 2016 edition of EY’s Global Tax Policy and Controversy Briefing at ey.com/tax.
Channing Flynn: To me, that situation is actually going to get more and more challenging, because the digital world is moving at such a high pace that every single tax, legal and regulatory system around the world is now in catch up mode. Every single one of them is trying to change, legislate and adapt to a digital economy. Again and again, we see change like the EU data privacy laws, the US Safe Harbour agreement for data, and then a whole patchwork approach of new tax laws — new value-added taxes, new withholding taxes, concepts of digital permanent establishment, not to mention all of the BEPS-inspired changes that we're likely to see in the next one to three years. Our clients are operating in this constantly changing patchwork of legislation and regulations which is really only going in one direction — more and more difficult.

David Jensen: I think that's why the approach that EY takes to this is so fundamentally different to anything everyone else is trying to do. We're trying to take a “whole-company” approach to digital, trying to infuse it in everything we do. When we come across a client challenge, we try to take skills and competencies from across EY that bring together not only digital technologists and experienced design resources who are the people you usually associate with digital, but we're then combining those people with lawyers, cross-border tax professionals, regulatory professionals and so on. If you don't have that cross-functional set of skills answering client challenges, you just can't make it work.

Rob Thomas: From a tax director's perspective, it's like a double whammy — you've got the speed of digital change, getting inexorably faster and faster, driving more and more change on the business strategy side, but then they've also got to worry about the external world around the policy and regulation changing and trying to catch up, but all in different ways, and using different types of taxes, different interpretations. From a tax director's perspective, they've got a very difficult job to execute. Channing, are there leading practices for tax directors to consider in terms of getting more closely engaged with their enterprise digital strategy?

Channing Flynn: I think Paul Morton described it brilliantly in his interview with us, and that's the importance of business partnering. I think tax directors have realized generally in the last few years that they — or their delegates — need to be out in the business, developing and sustaining wider relationships so that they can understand where the business is heading and then work with business — and not against them — to identify the tax challenges and, hopefully, some opportunities for the company. Digital both speeds that relationship process up but also makes it even more important. It's a big step for tax professionals — we are not always considered the most social of animals and this is forcing us to learn new skills and competencies.

The second thing I think companies can consider is early and regular engagement with the tax administrators in the countries they do business in. I think we all need to put the “us and them” mentality behind us and realize that we are all in this together. I think opening lines of communication with the tax authorities on these complex issues can remove a lot of the roadblocks, which, when you and your competitors are trying to move so quickly, is a good thing to try and do. That engagement can extend beyond tax administration, too. If you come up against new tax policies that impede business, government usually wants to hear about it, and there may be opportunities to work together to improve the overall policy shaping process.

Third, but definitely equally as important as the first two issues, is what David mentioned about taking a holistic approach to all things digital. It's not just about the coding, the processes, the technology and the shiny website; you need to marry up all that with a deep, global understanding of what the tax and legal implications might be. But you have to do that sooner rather than later. It's no good setting up servers in Country A and then realizing that you've created an unintended tax consequence or unintended data privacy consequences. You have to bring the tax and legal guys in right at the start and have the confidence that they are going to help you to a successful, speedy outcome, not slow you down with questions and challenges.

Rob Thomas: Laurence, I know that you were one of a group if architects who put together EY's whole approach to helping companies with their digital approach. Can you describe that framework to us?

Laurence Buchanan: We decided it makes sense to start with the highest level value proposition — which is what we're calling “building digital confidence.” Within that value proposition, we're helping our clients see where they need to either grow, optimize or protect their businesses in regard to digital activities. It's a very simple framework, based on the belief that you can deliver digital confidence through growth opportunities, optimization opportunities and by managing risk. These three things aren't independent of one another. In fact, they're highly interdependent.
There are then five key strategic elements that together make up a company’s digital enterprise strategy. We start off by addressing what might seem like an easy question, but in fact is the hardest part of all – what should your business strategy be in a digital world? The next element is around digital incubation and innovation. Innovation and digital really go hand in hand; whether you’re looking at digital through leveraging big data, by providing a digital sales platform or by embedding robotics into your manufacturing processes, all of those things are enablers or your business strategy. So you need to think about being more agile in terms of an approach and bringing an innovative mind-set to bear.

The third element – digital experience transformation – is what you might think about as the front office, the things that people interact with, applications, websites, customer care, and so on. Next, in the fourth element, comes supply chain and operations enablement. Here, we help companies find new ways of manufacturing and distributing products and services and new ways of running back- and middle-office operations. Last, but definitely not least, the fifth element is around digital and cyber risk, governance and audit confidence.

Rob Thomas: So Channing, are there tax aspects in each of those five elements?

Channing Flynn: Absolutely, and I would go as far as to say that there’s not a single area of what Laurence described that doesn’t have some kind of tax, legal or regulatory aspect to it. Let me give you a few examples. Think about the very process of setting your digital enterprise strategy, the very first box. Any company is probably going to be spending a lot on recruiting the right people to enable that strategy, they’re going to be creating a lot of valuable intellectual property (IP) and all that IP is going to have to reside somewhere. Well, under the new OECD recommendations, exactly where you house that IP, who controls it, and what royalties or licensing fees you pay for it (as just a couple of examples) are now incredibly important, and could well be the source of a major dispute or even litigation in the future.
So the point I want to make is that it’s important to make sure that the tax department is on board right at the start of these kinds of discussions; leaving it until later just creates risks – not only of financial penalties and reputation, but potentially even business disruption. Let me give you another example – digital supply chain and operations. Here, there’s a whole range of things that need assessing from a tax point of view: does digital enablement change the warehousing patterns within my supply chain, and if so, does that cause a new tax risk? Are we putting in place new sales structures such as a commissaire or sales agency structure as a result of going digital? And do we really understand the indirect and customs implications of what a change to our supply chain or operating model might mean?

Basically, it doesn’t really matter where in the framework you look, there are tax and legal risks – and opportunities. Now, I can’t quite remember which game show it was when I was growing up, but there was a catch-phrase that said “you’ve got it to be in it to win it” and the same is true with tax and digital. If you’re not involved at the start, at worse you can find yourself picking up the pieces, at best, you might just miss some good tax opportunities, not least getting the right R&D incentive for all that investment! So for the tax director, I’m afraid digital means a new layer of complexity, and another good reason to get out into the business a lot more.

Actions for tax leaders to consider

1. Engage business leaders such as chief executive officer, chief finance officer, chief marketing officer and chief information officer to better understand current state and future digital strategy.

2. Put in place operational relationships with those parts of the enterprise where digital activities may also be nurtured and developed.

3. Assign resources to understand or monitor digital tax developments at both multilateral and national levels.

4. Consider opportunities to engage with policy-makers and tax administrators on your business’ needs.
In October 2015, the OECD concluded more than two years of deliberations when the group released their final report under (Action 1) of the BEPS Action Plan. The document, *Addressing the Tax Challenges of the Digital Economy* (the *Digital Economy Report or Final Report*) acknowledges that special rules designed exclusively for the digital economy would prove unworkable.

What is the action trying to achieve?

The Digital Economy Report is targeting alleged taxpayer abuses. For example, Annex B of the 290 page document illustrates legal and tax structures that place pressure on the existing international tax framework. While the traditional taxing paradigm calculates liability in part by analyzing functions, assets and risks, this income tax framework is challenged by the following digital economy features – and more:

- App stores
- Online advertising
- Cloud computing

Essentially, the BEPS reports, including the Action 1 report, are intended to restore tax on “stateless” income derived by digitally active companies. The report suggests the limiting of offshore deferral or profit shifting via enhanced CFC rules (Action 3); prevent the artificial avoidance of PE (Action 7); and increase scrutiny in situations where transfer pricing has shifted profits to low tax jurisdictions (Actions 8 through 10). In the context of indirect taxation, the Final Report urges individual countries to implement Guidelines 2 and 4 of the OECD's international VAT/GST guidelines in order to minimize tax planning opportunities.

Full and detailed information can be found in the EY Tax Alert on Action 1.1

Were any of the action recommendations unexpected?

The OECD's Task Force on the Digital Economy (TFDE – the OECD body tasked with developing Action 1) had a substantial project in front of them because evolutionary business models (beyond the e-commerce issues of the 1990's) are being disrupted, with new examples cropping up each day. Meanwhile, the OECD is under pressure from impatient nation-states troubled by a reduction of income they feel is a result of BEPS, the “sharing economy,” “cloud computing,” and the spread of “digital currencies.”

Although the TFDE considered the adoption of – (i) a new nexus in the form of significant economic presence; (ii) a withholding tax on certain types of digital transactions; or (iii) an equalization levy, none of these recommendations were made in the *Final Report*. Likewise, the *Final Report* dismissed a multi-factor apportionment test, which could have acted as a safe harbor.

Is there any interaction between this Action and others?

The *Final Report* states that the work developed under other BEPS Actions took into account the digital economy's key features to ensure that the proposed solutions effectively address BEPS in the digital space. Chapter six notes that Action items 3, 7, 8, 9 and 10 will address issues raised in the digital economy.

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Have any countries made specific comments in relation to this Action?

While many jurisdictions are putting in place new legislation which will guarantee a minimum amount of tax, other jurisdictions are taking a longer term approach. For example, in 2012, France set up a task force on the taxation of the digital economy which concluded that there is a clear link between tax and data-use issues. Nevertheless, the main message conveyed by the French report was that in the digital economy, the notion of a fixed place of business is not relevant for determining the place where the substance of a business activity is carried on. As a result of this report, the French Tax Authority (FTA) has increased the number of tech company audits and often pushes these cases into the French court system – by arguing that the taxpayer has a French PE.

Ireland also supports the BEPS initiative, but from a different angle. The Irish Government has not hidden the fact that they are keen to exploit the BEPS report to improve their international competitiveness. For example, the Irish Government is committed to the 12.5% tax rate and recently introduced new depreciation and IP box regimes intended to increase Foreign Direct Investment (FDI).

Historically capital and technology importers, Latin American countries (particularly Mexico and Brazil), strongly support BEPS initiative and the recommendation derived therefrom. Faced with taxpayers relocating their valuable intangibles during the late 90's and the early 2000's many Latin American jurisdictions have already enacted and implemented several special regimes to prevent base erosion schemes. These include: transfer pricing rules, CFC regimes, thin capitalization standards, and in some cases, general anti-avoidance rules. In fact, during the process of enacting tax reform for year 2014, several BEPS-inspired statutes were discussed and passed through Mexican Congress (even against the OECD recommendation that clearly asked the member countries to wait for the final reports).

Australia and the United Kingdom, meanwhile, have both put in place tax legislation which is designed to tackle what UK has described as “diverted profits.”

What’s going to happen next and how uniform might implementation be?

Potential implementation of Action 1 recommendations falls across two distinct dimensions. The first dimension relates to those digital tax recommendations embedded within BEPS Action items 3, 7, 8, 9 and 10. Here, there is not yet a clear picture, and readers are directed to review the articles and insights of my colleagues on each of those Actions.

The second dimension addresses VAT measures. Here we saw many countries already move in this direction, well ahead of the recommendations of the Final Report. Many continue do adopt new VATs and we expect that number to grow in 2016.

As with all complex concepts, a final point on implementation addresses what could be described as “outliers” – those countries adopting additional measures, such as novel withholding taxes or concepts of digital permanent establishment.

Consider the view of jurisdictions like Hong Kong and Singapore. With comparatively low tax rates, the two island nations are common jurisdiction for e-commerce principal companies that tend to capture a relatively bigger share of profits. Under these circumstances, both Hong Kong and Singapore would still have to pay attention to the relevant BEPS recommendations but probably from a different perspective.

What are the potential impacts on business?

With all this uncertainty, one thing is clear: as enterprises move towards a digital supply chain, tax directors need to be cognizant of new legislation targeting perceived abuses of common tax-operating models. An advised approach for tax directors to take is to ensure that the functions supporting IP (depending on the business) can be accurately articulated, and are supported by the people functions at the IP owner.

It is not unreasonable to expect digitally-active companies to face a gradual rise in their effective tax rate (ETR) over the short to medium term. Entities should review their current DEMPE (Design, Enhance, Market, Protect and Exploit) function models, considering whether their existing IP structures are sustainable. Businesses should assess and carefully manage the digital elements of the supply chain, ensuring it is documented and assessed from a digital tax perspective. This will probably require a deeper dive into the digital supply chain than most tax directors have hitherto undertaken.

On a final note, tax departments must continue to improve their own adoption of internal digital technologies – as the more effective collection and remittance of GST and VAT is a key part of the Action 1 recommendations, and thus, potential source of tax risk.
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What changes in taxation policy might that scenario drive?

“3D printing has not transformed the economy quite yet. It’s too early to answer the countless questions this disruptive new technology will raise. But it is certainly not too early to start defining these questions and influencing the policy surrounding the answers.”

Channing Flynn
EY Global Technology Industry Leader
Tax Services

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On 22 October 2015, the Court of Justice of the European Union (CJEU) ruled that transactions involving the exchange of a traditional currency for a virtual currency and vice versa constitutes a supply of services effected for consideration, which is exempt from VAT.¹

The referral

The CJEU delivered its judgment in a referral case from Sweden concerning the VAT treatment of transactions involving the exchange of traditional currency for virtual currency and vice versa. The CJEU had delivered the opinion of Advocate General Kokott in this case on 16 July 2015.

The taxpayer, Mr. Hedqvist, wished to provide, through a company, services consisting of the exchange of traditional currency (such as the Swedish krona) for the "bitcoin" virtual currency and vice versa. The CJEU had delivered the opinion of Advocate General Kokott in this case on 16 July 2015.

The taxpayer, Mr. Hedqvist, wished to provide, through a company, services consisting of the exchange of traditional currency (such as the Swedish krona) for the "bitcoin" virtual currency and vice versa. The company would not charge any other fees. Before beginning operations, Mr. Hedqvist sought to clarify whether VAT was due on this exchange service. The Swedish tax authorities considered that this activity was not covered by any VAT exemption. The referring court asked whether transactions involving the exchange of traditional currency for units of the "bitcoin" virtual currency and vice versa constituted the supply of services for consideration for VAT purposes and, if so, whether such exchange services were exempt from VAT.

The judgment

Referring to the CJEU judgment in the case of First National Bank of Chicago (C-172/96), the CJEU held in the present case that the exchange transactions constituted the supply of services for consideration within the meaning of EU VAT law.

The CJEU further held that such transactions were exempt from VAT under Article 135(1)(e) of the VAT Directive, which applies to transactions concerning currency, bank notes and coins used as legal tender. Specifically, the CJEU held that the exemption laid down by Article 135(1)(e) was intended to alleviate the difficulties connected with determining the taxable amount in the context of the taxation of financial transactions. Transactions involving non-traditional currencies (i.e., currencies other than those that are legal tender in one or more countries), in so far as those currencies had been accepted by the parties to a transaction as an alternative to legal tender and had no purpose other than to be a means of payment, were financial transactions.

It therefore followed from the context and the aims of Article 135(1)(e) that to interpret that provision as including only transactions involving traditional currencies would deprive it of part of its effect. In the present case, it was common ground that the "bitcoin" virtual currency had no other purpose than to be a means of payment and that it was accepted for that purpose by certain operators. Consequently, the CJEU held that Article 135(1)(e) also covered the supply of services which consisted of the exchange of traditional currencies for units of the "bitcoin" virtual currency and vice versa.

¹ C-264/14 David Hedqvist
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The better the question. The better the answer. The better the world works.
EU Commission’s VAT Committee provides guidelines on distance selling

The VAT Committee of the European Commission has published updated guidelines in response to specific questions in relation to suppliers’ responsibilities in the European Union (EU) for charging VAT on cross-border sales of goods sold to end consumers (B2C).

The questions relate to the application and operation of Articles 32, 33 and 34 of the Principal VAT Directive (the Directive). The UK and Belgium have raised concerns about arrangements implemented by some EU businesses to obviate the requirement for a distance seller to register for VAT in the customer’s country of residence (and charge VAT there). These arrangements relied on an interpretation of the term “goods dispatched or transported by or on behalf of the supplier” under Article 33 of the Directive. In summary, the businesses involved in B2C distance selling sought to separate the supply of the goods from the transport of those goods to customers in other Member States, so that the requirement to register for VAT in the customer’s country would not arise.

The UK noted in its submission to the VAT Committee that: “while these arrangements offer customers the options of collecting the goods in person or arranging delivery themselves, customers invariably request delivery by another legal entity ‘supposedly under a separate contract.’ Often, this transport company is associated with the supplier. The UK considers that, ultimately, the customer is ordering goods from the supplier and wants those goods delivered to him. The arrangements put in place between the supplier and the transport company are merely an alternative way in which the supplier has his goods delivered to the customer. The introduction of the transport company for the purposes of delivering the goods does not prevent those goods from being ‘dispatched or transported by, or on behalf of the supplier.’ Consequently, the UK considers that VAT is due in the member state of delivery.”

The VAT Committee has now issued new guidelines on distance sales, essentially agreeing with the views put forward by the UK and Belgium. Specifically, for the purposes of Article 33, goods shall be considered to have been “dispatched or transported by, or on behalf of the supplier” in any cases where the supplier “intervenes directly or indirectly in the transport or dispatch of the goods.” The VAT Committee has agreed that the supplier shall be regarded as having intervened indirectly in the transport or dispatch of the goods if any of the following conditions apply:

1. The transport or dispatch of the goods is sub-contracted by the supplier to a third party who delivers the goods to the customer.
2. The dispatch or transport of the goods is provided by a third party but the supplier bears totally or partially the responsibility for the delivery of the goods to the customer.

3. The supplier invoices and collects the transport fees from the customer and further remits them to a third party that arranges the dispatch or transport of the goods.

The Committee further clarified that, in other cases of “intervention,” in particular where the supplier actively promotes the delivery services of a third party to the customer, puts the customer and the third party in contact and provides to the third party the information needed for the delivery of the goods, the seller should likewise be regarded as having “intervened indirectly” in the transport or dispatch of the goods.

It is important to note that guidelines issued by the VAT Committee are merely views of an advisory committee, they do not constitute an official interpretation of EU law and they do not necessarily have the agreement of the EU Commission.

Therefore, it seems likely that member states’ tax administrations will now look closely at any arrangements for B2C cross-border sales of goods within the EU and question the VAT registration status of suppliers from outside their territories that sell to private customers. As a result, distance sellers that are not already registered for VAT in the country(ies) where their customers reside may now be required to register for VAT (subject to the distance selling turnover thresholds). Furthermore, VAT registration may apply retrospectively, which may result in assessments for VAT payments in the country where the goods are delivered and penalties for late registration.
Technology is having a profound impact on all tax stakeholders. Companies are responding to the digital era with new technologies that drive organizational and business changes. Technology transformation in business operations often improves the connection to customers but can inadvertently alter the organization’s tax cost and the bottom line, impacting earnings and returns.

The disruptive potential of digital technologies has also profoundly affected tax policy. While a great deal of work has been done, to date no consensus has been reached on a framework for how to tax digital activities. The changing environment and global nature of business are also bolstering global calls from the public, media and various government bodies for heightened levels of tax transparency.

All of this change means that tax function leaders must also evolve to adopt and leverage these new technologies. Our goal in focusing on technology in this issue of Tax Insights is to present readers with a variety of perspectives, to facilitate dialogue between key stakeholders and to offer insights into the continued changes technology will have on the world of tax.

For more insights, interactive content and to learn about the mobile edition of our magazine, visit taxinsights.ey.com.

In 1990, books were sold in stores, banking was done at local branches that followed bankers’ hours, and if one referred to the cloud it was generally in the context of the weather. Fast-forward 25 years. Some three billion people have access to the internet, using it to stay connected, shop for groceries and clothing, conduct banking transactions, watch TV and even pay their tax bills.
Governments must determine how to recover revenue streams disrupted by sharing-economy models and decide whether to empower their citizens to participate. For governments, the sharing economy raises many questions—not least how do they recover disrupted revenue streams by revising tax, regulatory and legal codes? Governments that put in too many stringent regulations can end up shutting down innovations before they can gain momentum.

Advancing technology makes existing tax, regulatory and legal codes obsolete with increasing frequency as waves of innovation occur more rapidly. This has long been a challenge. Sharing-economy business models magnify the challenge by raising complex questions that any two people—let alone separate jurisdictions—may answer differently. Consequently, uncertainty reigns as tax, regulatory and legal guidance falls behind market activity.

Sharing-economy business models have magnified the nexus questions that are always raised when transactions occur in virtual online spaces. They have also raised new questions, such as which party is responsible for a given tax and who is and isn’t an employee subject to withholding. The Organisation for Economic Co-operation and Development (OECD) provided new global guidelines on digital economy taxation issues in October 2015, so governments have some base-level guidance in hand as they wrestle with these questions. But the sharing economy is already overtaking the new guidelines. For instance, consider how B2B sharing-economy models could test the OECD’s new provisions for such fundamental tax questions as transfer pricing and the attribution of intellectual property within global value chains.

These are just some of the issues raised in EY’s new report which can be accessed at ey.com/digitaltax.
Cloud computing, the linchpin of the global digital economy, pervades businesses across all sectors, acting as both disruptor and transformer.

Generally described as borderless technology that enables organizations to exchange goods and services over the internet, cloud computing has changed how business is conducted around the world.

Nearly every organization is utilizing cloud computing to access new markets, products and services, while achieving efficiency and cost savings through scalable and flexible technology.

EY’s updated guide includes chapters for over 120 countries, plus the OECD. The guide also identifies EY’s global network of tax professionals who are focused on cloud computing.

Country articles
At a glance

- Inbound B2C supplies to be subject to GST from 1 July 2017
- Many B2B supplies by non-residents to be taken outside the GST net, possibly from 1 October 2016
- Non-resident suppliers need to consider whether they need to remain registered for GST, or are now required to be registered for GST
- EY can help you to understand how these changes apply and assist you to take the necessary steps

The GST landscape for cross-border transactions is due for a radical change with the introduction of the Tax and Superannuation Laws Amendment (2016 Measures No 1) Bill 2016 into Parliament on 10 February 2016. In this regard Australia is joining many other countries in addressing the integrity of their tax systems, in an endeavor to tax private consumption of digital products and services purchased from non-resident suppliers.

The Bill contains measures which seek to extend GST to the B2C supply of digital products, services and other intangibles into Australia from 1 July 2017. These supplies largely escape GST under current law. In some instances, principally with regard to digital products, the GST compliance burden could fall on an intermediary operating an “electronic distribution platform” through which those digital products are distributed to end consumers in Australia.

Separately, the Bill also contains measures designed to remove certain B2B supplies made by non-resident businesses from the Australian GST system, many of which are caught under the current law (which treat such supplies as occurring within Australia). Subject to the date of Royal Assent, these B2B changes could apply from as early as 1 October 2016.
B2C: Extending GST to digital products and other services “imported” by consumers

In most instances, the inbound supply of intangibles by non-resident suppliers, which includes everything other than goods or real property (digital products, services, rights etc) is not presently subject to GST on the basis that these supplies are usually neither “done” in Australia or supplied through an Australian enterprise. They are currently not connected with Australia and hence outside of the scope of GST.

While these changes have been popularly referred to as the ‘Netlix Tax’, their ambit is broad. As well as applying to digital products like movie streaming, downloads of music and apps, etc., they also apply to any intangible supply including that of services, some financial products, rights, gaming products and insurance.

Under these proposed changes such supplies to Australian Consumers will be taken to have that necessary connection with Australia and are hence prima facie subject to GST unless otherwise exempted. An Australian Consumer is simply defined as an Australian resident that is not registered for GST, or if registered, does not acquire the intangible supply for their business.

This definition attempts to identify Australian Consumers making offshore acquisitions for personal consumption. The GST Act applies to these non-resident suppliers in its entirety, although they can register for GST in a “limited” capacity to reduce their compliance burden. This limited GST registration effectively allows non-residents to collect and remit GST on a quarterly basis without the ability to claim any input tax credits for GST included within associated expenses. Non-resident suppliers maintain the option of opting in for full GST registration.

Some sophisticated Australian Consumers may be able to “mask” their true residency when making purchases over the internet with the result being non-resident suppliers may consider they are not making supplies to Australian Consumers and therefore not apply GST. Non-resident suppliers will be protected in these circumstances where they have taken reasonable steps to collect sufficient information to allow them to reasonably conclude that they are not supplying an Australian Consumer. While this need not require an extension beyond current native business systems, the onus is on the supplier to substantiate its position. Administrative penalties apply for customers misrepresenting their residence.

Of key importance to suppliers of digital services, the GST obligations for such supplies can fall on the operator or an aggregator of an “electronic distribution platform,” which effectively act as intermediaries between the supplier of digital products and the consumer. There is some optionality in this, which will require clear dialogue between the supplier and the operator to agree which party the GST liability will reside.

This is a fundamental change to the way in which non-residents will need to interact with Australia’s GST system – the full implications will need to be considered very carefully, including the somewhat complex transitional measures.

Separately, the recently announced proposal to reduce the A$1,000 low value for the importation of goods remains on the table for implementation by 1 July 2017, but is not part of these measures.
Where a non-resident is not making supplies through an enterprise that the supplier carries on in Australia, then the following types of supplies will no longer be connected with Australia, and therefore not subject to GST:
- Supplies of all intangibles (anything other than goods or real property) to Australian businesses that are registered for GST
- Supplies of intangibles to non-residents that are made in Australia
- Supplies of leased goods in Australia to a non-resident
- The supply and installation of goods in Australia by non-residents in certain circumstances

Notwithstanding the Bill will remove the above supplies from the scope of Australian GST, the overall (net) GST collection won’t change as the existing reverse charge mechanism in the GST Act will require those Australian-based business recipients that make input taxed supplies to reverse charge a GST liability, and then determine what proportion of that GST they can claim as an input tax credit.

Finally, the Bill includes some modifications for supplies by Australian businesses to non-residents. Certain supplies to non-residents that are in fact provided to an Australian business recipient are currently subject to GST. However it is intended these supplies will become GST-free and no longer subject to GST. Again, this is a fundamental shift that will need to be considered very carefully and businesses will need to revisit their tripartite arrangements that involve non-residents to consider the potential impact.

Next steps

Non-residents supplying into Australia should start work now to consider how the proposed changes are likely to impact their operating models, including the information they need to gather.

While the B2C changes don’t take effect until 1 July 2017, they are likely to require systems changes in the lead up to implementation; and B2B changes could apply in a little over 6 months.

The implications of these changes could include:
- Suppliers making supplies to Australian Consumers coming within the Australian GST net and having to register for GST, collect and remit that GST
- Suppliers currently accounting for GST on supplies that may now no longer be connected with Australia may be able to turn off the GST and cancel their GST registration
- Domestic suppliers making supplies involving non-residents currently subject to GST being able to turn off the GST on those transactions

B2B: some suppliers taken out of the GST system

Reflecting proposals dating back to previous Board of Taxation reviews, the Bill will also exclude certain non-resident suppliers from the GST system that are currently registered for GST, making taxable supplies within Australia, lodging GST returns and making payments to the Australian Taxation Office (ATO).

The measures do this by treating certain B2B transactions as no longer being “connected” with Australia - GST cannot therefore apply and the non-resident supplier can disengage from the GST system. Broadly, these rules apply where the non-resident is not acting through an Australian enterprise.

The concept of an entity acting through an Australian enterprise will be re-defined to more align with international tax treaty definitions around identifying when an entity has a permanent establishment within a country. This new GST definition will reflect business operations in a “fixed place” or through any place, for more than 183 days in a 12 month period including through some agents. Again, this changed definition could mean that some non-residents that are currently in the Australian GST system may be excluded and vice versa. The ATO has also published additional guidance on this aspect of the Bill to provide further guidance in determining whether non-residents are operating within Australia for GST purposes.
ATO public reporting of large companies’ tax data is now live

On 17 December 2015, the ATO launched its long-awaited reporting of tax data for corporate entities with a total income of AU$100 million or more, on the basis of their 2013-14 income tax return ("relevant entities"). As we have previously communicated, relevant entities should prepare for scrutiny by the media, advocacy groups and investors. Australian larger private companies that are not covered in this reporting should prepare for a release of their data in early 2016.

A file with tax data for 1,539 corporate entities (plus 19 disclosures for MRRT and PRRT) is accessible at a Government website: data.gov.au/dataset/corporate-transparency. It shows for each entity its ABN, total income, taxable income and tax payable. Also available are charts and analysis from the ATO, showing that 38% of relevant entities paid no tax for the year in question, including analysis by industry segment. The ATO also discusses why companies might have low taxable income: ato.gov.au/Business/Large-business/in-detail/Tax-transparency/Corporate-tax-transparency-report-for-the-2013-14-income-year/

Relevant entities, particularly those with low reported tax payable, should prepare for extensive reporting of this information by media (and other stakeholders and advocacy groups) in the months ahead. That may in some cases misinterpret the drivers for low tax payable by some relevant entities. Given the current tax reform debate, the attention will continue through 2016 and beyond. Media and stakeholder attention can also be driven by other issues (such as labour negotiations concerning redundancies, or opposition to corporate strategies). Relevant entities with exposure to broader stakeholder risks should also prepare for scrutiny.

Australian majority-owned private companies with a total income of more than $200 million ("larger private companies") should prepare for upcoming ATO public disclosures. We understand the ATO plans to write to affected larger private companies in January to advise them of the proposed numbers to be disclosed, with the public reporting likely to occur in March 2016. Larger private companies should consider media and other stakeholder reactions to the December 2015 disclosures and review their response plans for their public disclosures.

As well, companies should consider the voluntary tax transparency code (TTC) under development by the Board of Taxation. The recent consultation paper proposes a TTC for corporate entities with greater than AU$100 million Australian turnover, with minimum standards for additional financial statement tax disclosures and an annual taxes-paid report for large companies (turnover greater than AU$500 million). This voluntary code approach mirrors developments in the other countries.
The Danish Government has presented a bill to Parliament authorizing the Danish tax authorities to require bank, credit card companies and others handling transfer of payments to inform the tax authorities of payments involving distance sales of goods to Danish customers and electronic services supplied to non-taxable persons in Denmark.

The tax authorities must request permission from the Danish National Tax Board before requiring the banks and other entities to provide the payment information.

The information will be used in connection with the Danish tax authorities’ examination of whether foreign companies fulfill the Danish value-added tax rules regarding distance sale of goods and electronically supplied services to non-taxable persons.

The payment information relevant for the examination is the total amount the supplier has received from Danish customers. The customer’s identity, and payment method is irrelevant in this context. Therefore any information about the customer will be anonymous.

It is proposed that the bill will be effective 1 January 2016.

The amendment should be viewed in the context that the tax authorities have declared that they will increase the focus on foreign businesses selling to Danish customers. The tax authorities will likely in this matter increase their focus on checking the shipments of goods (through the postal services and other distributors) shipped to customers. Therefore, it is important that companies that sell goods to private customers review their sales to Denmark. The threshold for registration for distance selling to Denmark is DKK280,000 (approximately US$41,400).
India proposes equalization levy on digital e-commerce transactions in 2016 budget

Under Action 1 of the Organisation for Economic Co-operation and Development’s (OECD’s) base erosion and profit shifting (BEPS) Action Plan, the OECD had considered, inter alia, an equalization levy (i.e., a tax to equalize the tax burden on remote and domestic suppliers of similar goods and services) as one option to tax digital transactions. While the final Action 1 report released in October 2015 did not recommend introducing such a levy as an internationally agreed standard at this stage, it did state that countries could introduce one in their domestic laws as an additional safeguard against BEPS, provided they respect existing treaty obligations, or include them in their bilateral tax treaties.

In the Indian fiscal budget presented on 29 February 2016, Finance Minister Arun Jaitley proposed inserting a new chapter titled Equalization Levy in the Finance Bill 2016 to provide for an equalization levy of 6% of the amount of consideration for specified services received or receivable by a nonresident not having a permanent establishment (PE) in India, from a resident in India who carries out business or profession, or from a nonresident having a PE in India.

How it will work

The equalization levy has been defined as “tax leviable on consideration received or receivable for any specified service under the provisions of this chapter.”

The levy would fall under a separate, self-contained code and would not be part of the Income Tax Act, 1961.

Services covered

The equalization levy would apply at a rate of 6% on the gross consideration payable for a “specified service.”

Specified service is defined as follows:

• Online advertisement
• Any provision for digital advertising space or any facility/service for the purpose of online advertisement
• Any other service which may be notified later by the central government

The Finance Minister in his budget speech stated that the equalization levy is aimed at taxing business-to-business (B2B) e-commerce transactions. Therefore, the scope of the levy may be expanded to cover a wider range of digital goods and services as time progresses.

Applicability

The levy will be applicable on the payments received by a nonresident service provider from an Indian resident or an Indian PE of a nonresident in respect of the specified service.

The levy would not be applicable to nonresident service providers having a PE in India, as they will be subject to regular PE-basis taxation. The levy is currently applicable only on B2B transactions, if the aggregate value of consideration in a year exceeds approximately US$1,500.

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1 See EY Global Tax Alert, OECD issues final report on the tax challenges of the digital economy under Action 1, dated 23 October 2015.
India proposes equalization levy on digital e-commerce transactions in 2016 budget (continued)

Date of applicability and treatment of income under income tax law

The Government will notify the date from which this provision shall be effective.

To avoid double taxation of income which has been subject to an equalization levy, such income will be exempt in the hands of the nonresident under the Income Tax Act, 1961.

However, one would need to evaluate the possibility of claiming a tax credit for such levy in the home country of the nonresident service provider.

Who needs to comply

Every resident person and foreign company (having a PE in India) is required to withhold the equalization levy when making payment to a nonresident service provider. The compliance procedure is similar to withholding tax provisions already prevalent in India.

While the compliance obligation is largely on Indian residents, the levy would be withheld when making payment to nonresident service providers. Service recipients are required to comply and also file an annual statement in respect of services received.

Delayed payment carries a fee of simple interest at 1% of the outstanding levy for every month or part thereof that payment is not made.

Consequences of noncompliance by service recipient

- Penalty for failure of payment:
  - Equalization levy was not deducted: The penalty is equal to the amount of the levy that the assessee failed to deduct (along with interest and the outstanding levy amount)
  - Equalization levy was deducted but not deposited: The penalty is equal to INR1,000 for each day the failure continues, but not to exceed the amount of the equalization levy that the assessee failed to pay (along with interest and the outstanding levy amount)
  - Disallowance of such expenditure in the hands of the payer (unless the defect is rectified)
  - Penalty for failure to file statement of compliance: INR100 for each day the noncompliance continues
  - Prosecution: If a false statement has been filed, the person may be subject to imprisonment of a term of up to three years and a fine

Other issues

- As with other cases of remittance in India, it would be in the ordinary course of business for an Indian service recipient to ask the nonresident service provider for a "No PE" declaration in order to enable the recipient to decide on the applicability of the equalization levy.
- Online advertising services are separately subject to service tax at a rate of 14.5% (the Finance Bill 2016 proposes increasing that rate to 15%) on a reverse charge basis which is to be collected and discharged by the Indian service recipient.

Implications

This is the first significant step taken by India to tax digital economy transactions. As the other services and rules relating to the proposed equalization levy are notified, we will have better insights into the scope and intent of the levy.
On 13 March 2016, the Israeli Ministry of Finance published a draft bill to amend the VAT Law that, if passed, would require nonresident suppliers of digital services to register and account for VAT in Israel.

The draft bill draws on the OECD’s final report on BEPS, Action 1: Addressing the Tax Challenges of the Digital Economy, as well as on its International VAT Guidelines, and on EU law in this context. While the draft bill comes closer to a draft circular published by the Israeli Tax Authority (ITA), in April 2015, it is also a product of public consultation carried out since then. Under the draft bill, it is generally business-to-consumer (B2C) supplies of digital services that would give rise to local VAT obligations on the part of nonresident suppliers. By contrast, where such services are supplied to Israeli businesses, non-profit organizations, or financial institutions (B2B supplies), the VAT would be self-accounted for by the customer.

Additionally, the draft bill applies to both nonresident suppliers themselves, and nonresident operators of online stores. Accordingly, multinational companies selling virtual content or providing internet services to Israeli customers should assess the potential impact of the recent VAT developments on their business and VAT compliance in Israel.

Background

Generally, under the current Israeli VAT Law, a foreign corporation is required to register for VAT and appoint an Israeli representative in case it carries on business in Israel. In the draft ITA circular published in 2015, the tax authorities established their position that foreign corporations providing internet services to Israeli consumers may, under certain circumstances, have VAT obligations in Israel, under the presumption that the internet services are part of an Israeli business activity. The recent proposal follows up on the ITA policy presented in the circular, although the amendment now specifically focuses on VAT collection challenges originating from business-to-customer digital transactions (as opposed to B2B supplies). The draft bill sets in motion a formal legislative process which is also in line with the OECD recommendations regarding B2C supplies.

The party liable to pay VAT

The draft bill applies to a digital service provided by a foreign resident to an Israeli resident who is a private consumer (not a business/non-profit organization/financial institution). Under such circumstances, the party liable to VAT would be the nonresident supplier or operator of the online store through which the service is supplied, as the case may be. However, where the customer is not a consumer, it would be liable for payment of VAT, rather than the supplier.
Israel proposes legislation to collect VAT on digital services acquired from overseas suppliers (continued)

Note that for purposes of the proposed amendment, a nonresident supplier is an entity that was incorporated outside of Israel, and does not carry on business in Israel (if either of these is not met, the supplier may be a taxable person required to register under the Israeli VAT Law).

The digital service

Digital service is defined under the proposed amendment as any of the following:

- Telecommunication service – service with respect to information transported via lines, optic fibers, radio, electromagnetic system, including various telecommunication services, VoIP, fax, and internet access services.
- Television or radio broadcast services
- Electronic services – services, including sales of intangible goods, provided through the internet or other network, including software sales or upgrades, entertainment products, music, digital books, gambling, gaming, TV programs, movies, other internet services, transfer of rights to sell intangible goods or services in an online store in exchange for consideration, and intermediating between buyers and service providers.

Registration and reporting requirements

As in some other jurisdictions, the registration process for nonresident suppliers of digital services would be different than for standard suppliers. Under the draft bill, the special registration procedure would be determined by the Israeli Finance Minister.

In addition, a registration threshold of app. USD 25K would apply to nonresident suppliers of digital services.

To the extent that a foreign digital supplier is required to register, it will submit a periodic report to the Israeli VAT commissioner (e.g., on a quarterly or bi-quarterly basis) and pay the appropriate tax. The report will include the total transactions price for the period and the tax liability on such.

Under the amendment, the foreign resident is obliged to retain information on transactions for a period of at least 10 years in order to allow effective examination of the reporting. Moreover, within the 10 year period, the VAT commissioner will have an authority to demand payment on account of tax deficiency within 30 days from giving a notice to the foreign resident (regular appeal procedures under the VAT Law would apply to the foreign resident in such case).

Impact

If enacted into legislation, the proposed amendment to the VAT Law will have direct and potentially significant implications for multinational companies selling virtual content or providing internet services to Israeli customers. Accordingly, such companies should assess the potential impact of the recent VAT developments on their business and VAT compliance in Israel.
Japanese court decision impacts taxation of online-business warehouses

Decision is in line with OECD BEPS Action 7

The Tokyo District Court recently rendered its decision in a dispute over the existence of a PE of a US resident person conducting an online retail business selling auto parts and accessories to Japanese customers. The taxpayer used an apartment and warehouse located in Japan for storage and delivery and for the receipt of returned products. Part-time Japanese employees packed orders, included appropriate product instructions, arranged for delivery and handled product returns.

In analyzing the existence of a PE, the court held that the activities mentioned in Article 5(4) of the Japan-US Income Tax Treaty (Treaty) (equivalent to Article 5(4) of the OECD Model Convention) are not automatically deemed to be “preparatory or auxiliary.” It held that such activities should only be treated as exceptions to the general definition of a PE if they are preparatory or auxiliary in character. The court noted in particular that a warehouse located in Japan for quick delivery to customers and the ability to handle returned products were important elements of the online retail business. Because these activities and other activities performed in Japan were in fact “significant” for an online retail business, the court upheld the existence of a PE in Japan. Furthermore, the court held that substantially all of the sales income from the business activity should be attributed to the PE, without any deductions, due to:

1. The functional significance of the activities in Japan.
2. The fact that the taxpayer did not cooperate with the tax audit process and did not disclose its accounting books which creates a rebuttable presumption for income calculation under the Treaty.

The OECD BEPS final report on Action 7, Preventing the Artificial Avoidance of Permanent Establishment Status, singles out warehouses as an example, describing how the maintenance of a very large local warehouse in which a significant number of employees work for purposes of storing and delivering goods sold online to customers by an online retailer of physical products (whose business model relies on the proximity to customers and the need for quick delivery) should constitute a PE for that seller under the new OECD Model language and OECD Commentary. This view is not shared by all countries. The Action 7 report implies that a number of countries believe that there is no need to modify Article 5(4) and that the list of exceptions in subparagraphs a) to d) of Article 5(4) should not be subject to the condition that the activities referred to in those subparagraphs be of a preparatory or auxiliary character. The extent to which the revised Article 5(4) would be implemented in each tax treaty will also depend on the outcome of the OECD BEPS Action 15’s multilateral instrument negotiation.2

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1 See EY Global Tax Alert, OECD releases final report on preventing the artificial avoidance of permanent establishment status under Action 7, dated 19 October 2015

Russia introduces Draft Law on new indirect tax rules for electronic services

Executive summary

Following the enactment of legislation in the EU countries, South Korea and Japan, Russia is planning to introduce special indirect tax rules for electronic services. Deputies of the State Duma have prepared Draft Law No. 962487-6 (Draft Law), which stipulates that the place of supply of electronic services will be determined based on the customer location. The current version of the Draft Law is not final and most likely it will be revised during discussions and consideration in the State Duma. It is planned that the provisions would come into effect on 1 January 2017.

The current version of the Draft Law also abolishes the VAT exemption for the transfer of rights to use the software and databases under a license agreement. The right to recover VAT charged by providers on the costs related to electronic services is proposed as a countervailing measure for the abolishment of the VAT exemption to Russian companies providing electronic services to foreign customers. An income tax preference is envisaged for the companies that provide rights to use the software or databases. The above-mentioned companies should be able to recognize the costs related to the transfer of rights as expenses for income tax purposes in excess of actual costs, reducing the tax base by 80% thereby.

Detailed discussion

Definition of electronic services

According to the Draft Law, electronic services are the services provided via the internet data telecommunications network or any other similar network with the use of information technologies, on an automated basis.

In particular, such services include:

- Transfer of nonexclusive rights to use software and databases, including the right of access to online gaming on the internet
- Enabling the offer of goods (works, services) for sale on internet websites or in computer software; provision of advertising services and services that provide technical, organization, information and other opportunities to establish contacts and conclude deals between sellers and buyers on the internet
- Providing and maintaining commercial or personal presence on the internet
- Storage and processing of information provided by the customer to the seller for the provision of these services via the internet, subject to the condition that the customer has access to the information stored and/or the possibility to process data
- Provision of domain names and hosting provider services
- Provision of services on remote system administration, and remote software support of information systems and websites on the internet
- Provision of automated services on the internet while inserting particular data by the customer; automated services on data search, selection and sorting on demand
• Providing information via the internet, including electronic books, graphic images, musical and audiovisual works
• Providing search systems and other internet portals
• Keeping statistics on internet websites
• Online TV or radio broadcasting with the use of the internet
• Communication services provided via the internet

This list of services is not exhaustive. Respectively, other services provided via the internet or other similar network on an automated basis should be treated as electronic services.

Key aspects

Place of supply of electronic services

According to the Draft Law, the provision of electronic services should be subject to VAT at the customer location. Customers should include both legal entities and individuals. The mechanism for identification of the actual location of the customers of electronic services is supposed to be developed by the Russian Ministry of Finance.

Thus, Russia would not be considered as the provision location of electronic services by Russian companies to foreign customers. At the same time, Russian VAT would apply to foreign companies (not registered in Russia) which provide such services to Russian customers. The aforementioned foreign companies will not have the right to recover VAT incurred in Russia.

While providing electronic services by foreign companies to Russian legal entities, Russian VAT should be paid by these Russian legal entities as tax agents.

If services are provided to individuals located in Russia, a foreign company should register with the Russian tax authorities for VAT payment. The registration will be made based on an application and other documents, submitted by the foreign company in electronic form via an online service on the official website of the Federal Tax Service of Russia. Foreign companies should submit the VAT return via the internet using the taxpayer’s personal account. Foreign companies will be able to provide information and receive documents from tax authorities using the taxpayer personal account. Tax authorities will also be able to send documents via e-mail using the foreign company’s address indicated on the company’s website.

According to the current version of the Draft Law, the in-house tax audit of the foreign company’s VAT return will be conducted within 6 months. A foreign company will have to provide the documents required in the course of an in-house audit within 30 days.

In case of non-submission of the VAT return, the tax authorities will be able to conduct an in-house audit on the basis of the documents (information) on the foreign company at their disposal. The Draft Law envisages the right for the tax authorities to request documents (information) related to transactions of foreign companies providing electronic services to Russian customers from the national payment card system organization, money transfer operators, electronic money operators, payment system operators, bank paying agents (sub-agents), payment infrastructure service providers, operation centers, payment clearing centers, processing centers and mobile phone operators.

In case of non-submission of the VAT return within 30 days of the expiry of the term for provision of the VAT return, foreign companies will receive requests on submission of the VAT return from the tax authorities.

The Draft Law also envisages the right for the tax authorities to de-register a foreign company providing electronic services to Russian customers, in the following cases:

• Providing incorrect information upon registration
• Non-compliance with the VAT payment request within a year from the date of expiry of the request term
• Non-compliance with the request on the provision of documents within six months from the date of expiry of the request term
• Non-submission of VAT return within a year from the date of expiry of the VAT return provision term

De-registration in the aforementioned cases will be only conducted after the collection of overdue VAT amounts, fines and penalties.

The collection of overdue VAT amounts, fines and penalties will only be applied towards foreign companies if these foreign companies have either accounts in Russian banks, or property in Russia which can be foreclosed. At de-registration of a foreign company providing electronic services to Russian customers the fines, penalties, arrears and debts will be recognized as non-recoverable.

If foreign companies overpay VAT to the budget, the Draft Law envisages the refund of tax overpayment to the foreign company’s account in the bank located in Russia.

Agents registered with the Russian tax authorities and operating under agency contracts with foreign companies providing electronic services to Russian individuals should pay Russian VAT as tax agents.

Foreign agents participating in settlements between the foreign company providing electronic services to Russian individuals should also be recognized as tax agents for VAT purposes and have to register with the Russian tax authorities.
Abolishment of the VAT exemption for the rights to software and databases
Under the new rules, the abolishment of the VAT exemption for the rights to software and databases provided under license agreements is proposed.

Benefits for Russian providers of electronic services
Russian providers of electronic services to foreign customers should be able to recover Russian VAT incurred on the costs related to such services. The tax authorities will have the right to request the documents confirming the claimed VAT recovery, including a bank statement (copies of a bank statement), which confirm the actual receipt of revenues from electronic services provision, and documents which confirm the place of the services provision.

The Draft Law envisages the right to reduce the tax base for the income tax by 80% for the Russian companies providing the rights to use computer software and (or) databases under a license agreement, including the access rights and additional functionality. Therefore, the costs related to the revenues from the transfer of these rights should be recognized as costs for income tax purposes in excess of actual costs.

The income tax preference, according to the Draft Law, will be granted to Russian companies which are accredited as the companies operating in information technologies, and provided that the revenues from the transfer of the specified rights will exceed the costs related to these revenues. In this case, revenues and costs from the transfer of rights and other activities should be separately recorded in the accounting records. If the expenses are related to both revenues from the transfer of rights and other revenues, the amount of expenses will be calculated based on the proportion. The proportion will be defined as the ratio of revenues from the transfer of rights to use computer software and databases under a license agreement for the reporting period to the total amount of revenues for the reporting period.

Therefore, providers of electronic services will be subject to the effective income tax rate of 4% with respect to electronic services. Notably, there is no requirement for these companies that the ratio of revenue from electronic services to total revenue should exceed certain threshold.

Implications
The changes stipulated by the current version of the Draft Law can significantly impact the business of many companies. However, they should mainly impact the following companies:

- Foreign companies (including foreign companies being a part of a Russian group) providing software and electronic services
- Foreign intermediaries upon provision of software and electronic services (e.g., electronic trading platforms)
- Russian companies providing software and electronic services

In this respect, businesses should prepare for the new rules, e.g., the following actions may be required:

- Review the current business model and identify transactions that should be subject to the new VAT rules in Russia
- Develop an action plan to register with the Russian tax authorities and meet new requirements
- Adjust supply chains, business models and document framework to mitigate VAT risks and extra costs in Russia
- Analyze the possibility to apply tax benefits
The rise of the digital economy raises complex global taxation questions and opportunities. EY tax professionals help leading companies manage their risk, their reputation and their return on investment on their digital journey. ey.com/digitaitax #BetterQuestions

Disruptive business? Business disruption?

The better the question. The better the answer. The better the world works.
Digitization is not, of course, the sole preserve of the business community. Today, many tax administrations are driving their digital strategy execution in the hope of reducing the cost of compliance, improving overall service levels and increasing tax yields.

In the UK, for example, on 12 November 2015, HMRC announced the next step in their 10-year modernization program, aiming to create a tax authority fit for the future, committing to high-quality jobs and the creation of new regional centers serving every region and nation in the UK.

The initial news was followed in early December by the announcement of further plans to “Make Tax Digital”, with David Gauke MP, Financial Secretary to the Treasury, setting out the government’s desire to “…bring(ing) the digital revolution to Whitehall – ensuring that the services it provides are similarly transformed. The tax system is no exception. During this Parliament, HMRC will make fundamental changes to the way the tax system works – transforming tax administration so it is more effective, more efficient and easier for taxpayers.”

The publication of strategy papers such as these provide interesting insights into the potential future of tax administration; according to Mr. Gauke, by 2020, HMRC will have moved to a fully digital tax system where:

- Bureaucratic form-filling is eradicated – as taxpayers should never have to tell HMRC information it already knows;
- Unnecessary time delays are eliminated – the tax system operates much more closely to “real time,” keeping everyone up to date and removing the risk of missed deadlines, unnecessary penalties, debts arising and errors in the system being carried forward from one year to the next;
- Taxpayers have access to digital accounts – with the information HMRC needs automatically uploaded, bringing an end to the tax return.

Documentation announcing this strategy refers to the “transformed tax system of 2020” possessing four key foundational stones. Overarching all four foundation stones is the intention that taxpayers will see the information HMRC holds through online, digital tax accounts allowing rich functionality, enhanced communications with HMRC and significantly increased integration with third-party software tools. The four pillars are set out here:

1. **Tax simplified**

   Taxpayers should not have to give HMRC information that it already has, or should be able to get from elsewhere, says the document. This includes increased aggregation by HMRC from employers, banks, building societies and other government departments. Taxpayers will see the information that HMRC holds through their digital tax accounts, and be able to check at any time that their details are complete and correct. HMRC will use this information to tailor the service it provides, according to each taxpayer’s individual circumstances. In 2016, HMRC will consult on how information from more third parties might reduce the reporting burden on taxpayers.

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2. **Tax in one place**

Currently, most UK taxpayers cannot see a single picture of their liabilities and entitlements in one place. HMRC wishes to change that scenario. By 2020, the document says, taxpayers will be able to see their complete financial picture in their digital account. In addition, they will be able to set an over-payment of one tax against the under-payment of another – “it will feel like paying a single tax,” says the document.

3. **Making tax digital for businesses**

Businesses should not have to wait until the end of the tax year or even longer before knowing how much tax they should pay. HMRC will collect and process information affecting tax in as close to real time as possible, to stop tax due or repayments owed from building up. From April 2018, businesses, including everyone who is self-employed and those letting out property, will update HMRC at least quarterly where it is their main source of income (or a secondary source of income above £10,000 and their main income is from employment or a pension).

4. **Making tax digital for individual taxpayers**

Individual taxpayers will interact with HMRC digitally, and at any time to suit them, states the document. By April 2016, every individual and small business will have access to a digital tax account. The digital accounts will present individual taxpayers with a personalized picture of their tax affairs, along with prompts, advice and support through web chat and secure messaging.

**More on business taxation**

In terms of business taxation, the HMRC strategy document notes that by 2020, most businesses, self-employed people and landlords will be required to keep track of their tax affairs digitally and update HMRC at least quarterly via their digital tax account. These changes will be introduced for some businesses from April 2018, and will be phased-in by 2020, giving businesses time to adapt.

HMRC will ensure that free apps and software products that calculate taxes due are available, but many businesses and their advisers will choose to use commercially-available tax software packages. Businesses currently report information on tax returns and pay liabilities long after the end of the tax year. The Government is changing the tax system so that it operates much more closely to “real time.” Business will be able to see, through their digital accounts, a real-time view of their tax and a calculation of the tax due. By reporting information closer to real time, businesses will find it easier to understand how much tax they owe, giving them far more certainty over their tax position and helping them to budget accordingly.

**The end of the tax return?**

Over the next five years, the changes outlined in HMRC’s strategy document will bring about the end of the tax return for millions of taxpayers. This, the document says, will be achieved via a number of converging processes:

- Most businesses will keep their records using digital tools and send that information at least quarterly to HMRC.
- In spring 2016, HMRC will consult on where it might obtain information directly from third parties, removing the need for taxpayers to report it.
- Taxpayers with changes to report or other information to submit will do so through their digital tax account.
- A new system of online billing will collect outstanding tax which can’t be collected through PAYE (for example, small pensions) with no need for Self-Assessment tax returns.
- Those who currently choose to complete tax returns simply to check their tax is in order will find all the information they need in their digital account.
Big promises for HMRC to deliver

The promises set out in the HMRC strategy document represent a set of related challenges of enormous proportions – not only in terms of innovative changes to HMRC’s technology and information systems, but to the core of their back-office tax compliance processes. In addition, they will require significant education and change management in terms of engaging with taxpayers – especially those who may be described as the “digitally excluded” – to ensure that the journey toward fuller digitization of tax administration is not fraught with the type of risks that can quickly render a tax regime challenging at best and a competitive disadvantage at worst.

As with many documents of this nature, one of the most interesting approaches to analysis is to not necessarily analyze what was included, but instead to focus on what was left out.

Readers of this publication, for example, may find that the outlook presented in regard to business taxation provides neither insight nor comfort as to what digitization may mean to large, international business with highly complex tax affairs. Prospects for the end of tax return for a business operating in several jurisdictions would certainly seem to be slim. Nothing was mentioned around the desire to aggregate higher levels of tax and financial data directly from company ERP systems, an approach which is widely expected to attract attention from tax administrations in the future. And nothing was set out around the possibilities of digitizing the overall CRM program, providing digital accessibility to the alternative dispute resolution program or improving compliance efficiency (and, hopefully, reducing the compliance burden) via better use of standardized electronic audit files.

Perhaps then, HMRC may consider including a consultation (or perhaps some less formal approach) on the potential benefits of digital tax administration with large business. Such an approach does not necessarily need to encompass every aspect of the compliance process, either. I have had numerous conversations with company tax leaders in the last 12 months on the topic of how the CRM program could be improved, for example. Applying sensible digitization in this area – reducing the need for face-to-face meetings on relatively simple issues, providing dashboard reporting on the status of CRM-related processes and, for example, would be a positive forward step. For businesses, this is the feedback that should be put forward to HMRC, either via their numerous consultations in 2016 or via the CRM relationship itself. While corporate income taxes may be making up less of the total tax revenues collected by HMRC than they have in past years, their complexity certainly merits any digital efforts to simplify the administration of a tax regime.
Recent Digital Tax Developments

Direct tax developments

Australia
1 January 2016: new anti-avoidance measures for multinationals.

China
1 December 2014: preferential corporate income tax extended to “technology advanced service enterprises.”
18 March 2015: transfer pricing rules set on outbound related party fee payments.

Colombia
1 January 2015: new wealth tax established for nonresident entities without legal presence.

European Union
2017: General Data Protection Regulation expected date of adoption.

France
February 2015: government recommends changing the definition of permanent establishment.

Greece
July 2015: proposed withholding tax on cross-border transactions withdrawn.

India
February 2015: lower corporate income tax rate proposed from 2016. Implementation of general anti-avoidance rule (GAAR) delayed.

Israel
April 2015: proposal to expand permanent establishment definition.

Italy
April 2015: new tax on the virtual presence of nonresidents considered.

Kuwait
September 2015: concept of virtual service permanent establishment introduced.

Russia
1 January 2015: new reporting requirements targeted at Russian distributors and importers.

Saudi Arabia
July 2015: concept of virtual service permanent establishment introduced.

South Korea
November 2014: patent royalties deemed not to be South Korean source income, therefore not subject to withholding taxes.

United Kingdom
April 2015: diverted profits tax comes into effect.

Indirect tax developments

Albania
1 January 2015: digital services supplied by nonresident supplier businesses to consumers (B2C) subject to VAT.

Australia
1 July 2017: consulting on potential goods and services tax (GST) registration for nonresident suppliers of digital services.
1 July 2017: proposed abolition of low-value threshold on importation of goods.

Bahamas
1 January 2015: VAT introduced at a rate of 7.5%.

Brazil
1 January 2016: sales of software in the state of San Paulo will be subject to State VAT (ICMS) on total sales price, rather than the equivalent of twice the value of the carrier medium.

Canada
2015: consulting on potential GST obligations for nonresident e-commerce businesses.

China
2015: VAT pilot expected to be extended to real estate and property, financial and insurance services, and lifestyle services.

Costa Rica
2016: plan to implement VAT to replace GST at a rate of 13% in 2016, rising to 15% in 2017.

Czech Republic
1 April 2015: domestic reverse charge extended to include mobile importation of goods.

Egypt
2015: plan to implement VAT to replace GST announced but implementation date not confirmed.

European Union
1 January 2015: new rules on B2C place of supply for digital services introduced and Mini One-Stop Shop (MOSS) introduced for simplified VAT compliance.

Gulf Cooperation Council
9 May 2015: agreement reached to introduce VAT.

Hungary
2015: flat-rate internet tax proposed.

India
April 2016: new indirect tax regime proposed.

Iraq
1 August 2015: sales tax applied to domestic providers of mobile phone and internet plans.

Israel
2015: proposal to charge VAT on online advertising and other digital services.

Italy
2015: considering introducing “virtual permanent establishment” rules and withholding tax for digital services.
1 January 2016: 2015 budget proposes that digital newspapers and magazines will qualify for the 4% VAT reduced rate.

Japan
1 October 2015: reverse charge introduced for business to business (B2B) supplies of digital services.

Malaysia
1 April 2015: GST at rate of 6% implemented to replace existing sales and services tax.

New Zealand
2015: discussing introducing GST registration for nonresident suppliers of digital services.

Portugal
2015: excise tax on the sale of digital storage devices proposed.

Puerto Rico
1 July 2015: combined central government and municipal sales and use tax increased from 10.5% to 11.5%.

Romania
1 January 2016: the standard VAT rate will be reduced from 24% to 20%.
1 January 2017: the standard VAT rate will be reduced from 20% to 19%.

South Africa
1 June 2014: nonresident suppliers of electronic services required to register for VAT.

Suriname
1 July 2015: VAT expected to be introduced. Implementation date postponed.

Tanzania
1 July 2015: nonresident suppliers of B2C telecoms and e-services required to register for VAT.

Thailand
2015: considering applying VAT to downloads of mobile applications.

Turkey
2015: proposing the introduction of the concept of an “electronic taxpayer” to apply income tax to nonresident suppliers of digital services.

United States
2016: Many US states and cities are considering, or adopting, measures to tax the digital economy. Examples include: Ohio discussion of “Internet nexus” for sales and use tax and Chicago’s introduction of an entertainment tax on digital activity.

Tanzania
1 July 2015: nonresident suppliers of B2C telecoms and e-services required to register for VAT.

United States
2016: Many US states and cities are considering, or adopting, measures to tax the digital economy. Examples include: Ohio discussion of “Internet nexus” for sales and use tax and Chicago’s introduction of an entertainment tax on digital activity.
Recent Digital Tax Developments

- **Digital tax developments**
  - **South Africa**
    - June 2014
  - **Canada; China; Egypt; Hungary; Israel; Italy; New Zealand; Portugal; Suriname; Thailand; Turkey**
    - December 2014
  - **Albania**
    - January 2015
  - **Bahamas**
    - January 2015
  - **European Union**
    - April 2015
  - **Puerto Rico**
    - April 2015
  - **Tanzania**
    - May 2015
  - **South Korea**
    - August 2015
  - **Iraq**
    - September 2015
  - **Kuwait**
    - October 2015
  - **Japan**
    - November 2015
  - **Brazil; Romania**
    - December 2015
  - **Australia**
    - January 2016
  - **Pakistan**
    - January 2016
  - **Indonesia**
    - February 2016
  - **China**
    - March 2016
  - **Czech Republic**
    - April 2016
  - **Israel**
    - May 2016
  - **Malaysia**
    - June 2016
  - **Pakistan**
    - July 2016

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**2015 - expected changes:**
- **Canada; China; Egypt; Hungary; Israel; Italy; New Zealand; Portugal; Suriname; Turkey; United States**
  - Expected changes:
    - Digital tax developments
      - **France**
        - 1 April 2015: plan to implement VAT to replace GST at a rate of 13%
      - **China**
        - 1 July 2015: expected to implement VAT
      - **Albania**
        - 1 January 2016: VAT pilot expected to be introduced
      - **Bahamas**
        - 1 January 2016: VAT introduced at a rate of 7.5%
      - **South Korea**
        - 1 April 2015: plan to implement VAT
      - **Greece**
        - 1 January 2016: VAT introduced
      - **Saudi Arabia**
        - 1 January 2016: considering introducing new indirect tax
      - **Indonesia**
        - 1 May 2016: VAT introduced
      - **Pakistan**
        - 1 January 2016: considering introducing new indirect tax
      - **Indonesia**
        - 1 January 2016: considering introducing new indirect tax
      - **United States**
        - 1 January 2016: considering introducing new indirect tax
      - **European Union**
        - 1 January 2016: VAT introduced
      - **Iraq**
        - 1 April 2015: plan to implement VAT
      - **Kuwait**
        - 1 January 2016: considering introducing new indirect tax
      - **Japan**
        - 1 July 2015: expected to implement VAT
      - **Brazil**
        - 1 January 2016: considering introducing new indirect tax
      - **Romania**
        - 1 January 2016: considering introducing new indirect tax
      - **Australia**
        - 1 January 2016: considering introducing new indirect tax

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**Indirect tax developments**

**2014**

- **Direct tax**
  - **South Africa**
    - June 2014
  - **South Korea**
    - November 2014
  - **China**
    - December 2014
  - **Albania; Bahamas; Colombia; European Union; Russia**
    - January 2015
  - **France; India; China; Pakistan; Indonesia; United States**
    - February 2015
  - **Czech Republic; Israel; Malaysia; United Kingdom; Gulf Cooperation Council; South Korea**
    - March 2015
  - **Puerto Rico**
    - April 2015
  - **Albania**
    - May 2015
  - **South Korea**
    - May 2015

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**2015**

- **Indirect tax**
  - **South Africa**
    - June 2014
  - **South Korea**
    - November 2014
  - **China**
    - December 2014
  - **Albania; Bahamas; Colombia; European Union; Russia**
    - January 2015
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  - **Puerto Rico**
    - April 2015
  - **Albania**
    - May 2015
  - **South Korea**
    - May 2015

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**2016**

- **Indirect tax**
  - **South Africa**
    - June 2014
  - **South Korea**
    - November 2014
  - **China**
    - December 2014
  - **Albania; Bahamas; Colombia; European Union; Russia**
    - January 2015
  - **France; India; China; Pakistan; Indonesia; United States**
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  - **Czech Republic; Israel; Malaysia; United Kingdom; Gulf Cooperation Council; South Korea**
    - March 2015
  - **Puerto Rico**
    - April 2015
  - **Albania**
    - May 2015
  - **South Korea**
    - May 2015

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**2017**

- **Indirect tax**
  - **South Africa**
    - June 2014
  - **South Korea**
    - November 2014
  - **China**
    - December 2014
  - **Albania**
    - January 2015
  - **Bahamas**
    - January 2015
  - **European Union**
    - April 2015
  - **Puerto Rico**
    - April 2015
  - **Tanzania**
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    - May 2015
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    - August 2015
  - **Kuwait**
    - August 2015
  - **Japan**
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  - **Brazil; Romania**
    - August 2015
  - **Australia**
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  - **Pakistan**
    - August 2015
  - **Indonesia**
    - August 2015
  - **United States**
    - August 2015
  - **European Union**
    - August 2015

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**2018**

- **Indirect tax**
  - **South Africa**
    - June 2014
  - **South Korea**
    - November 2014
  - **China**
    - December 2014
  - **Albania; Bahamas; Colombia; European Union; Russia**
    - January 2015
  - **France; India; China; Pakistan; Indonesia; United States**
    - February 2015
  - **Czech Republic; Israel; Malaysia; United Kingdom; Gulf Cooperation Council; South Korea**
    - March 2015
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  - **European Union**
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Digital tax developments

2014: Digital tax Indirect tax

South Africa: November 2014

2014: China; Canada; China; Egypt; Hungary; Israel; Italy; New Zealand; Portugal; Suriname; Thailand; Turkey

2015: Albania; January 2015

− expected changes: European Union

2015: Bahamas; Russia

2015: Pakistan

2015: Panama

− expected changes: European Union

2015: Puerto Rico

February

− France; India

− 2015: China

− 2015: United Kingdom

− 2015: Greece

2016: Australia

− 2016: China

− 2016: Greece

− April 2016: India

− 2016: Italy

− 2016: United States

July

− 2016: South Korea

− 2016: Tanzania

− 2016: Iraq

− 2016: Kuwait

− 2016: Japan

− 2016: South Korea

− 2016: United States

− 2017: Australia

− 2017: United States

1 Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, UAE

2015

1 January 2015: VAT introduced

2015: proposed abolition

2015: Gulf Cooperation Council

1 December 2014: China

1 May 2015: Council1

1 July 2015: Australia

1 August 2015: Iraq

1 September 2015: Kuwait

1 July 2015: South Korea

1 July 2015: Tanzania

1 August 2015: Iraq

1 August 2015: India

1 January 2016: India

2016: proposal to charge VAT on services, and lifestyle services.

2015: China: VAT extended to include mobile phone and internet plans.

2015: China: plan to implement VAT on sales of software in the state of San Paulo at a rate of 7.5%.

1 January 2015: VAT introduced on importation of goods.

1 January 2015: new wealth party fee payments.

1 January 2016: preferential anti-avoidance measures new

1 January 2016: 2015 budget proposes that digital newspapers be extended to real estate and e-commerce businesses.

1 January 2016: "virtual permanent establishment" of the carrier medium.

1 January 2016: new tax on the equivalent of twice the value of low-value threshold on suppliers of digital services.

1 January 2016: suppliers of digital services supplied by nonresident supplier digital services.

1 January 2017: new reporting requirements for domestic reverse charge place of supply for digital services.

1 January 2017: new tax on the standard domestic reverse charge place of supply for digital services.

1 January 2017: new reporting requirements for business to business (B2B) supplies of digital services.

1 January 2017: implementation of general anti-avoidance rule (GAAR) delayed.

1 January 2017: new reporting requirements for domestic reverse charge place of supply for digital services.

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